

INTERNATIONAL NARCOTICS CONTROL:
NORMS, SYSTEMS AND REGIMES

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DOCTOR OF PHILOSOPHY

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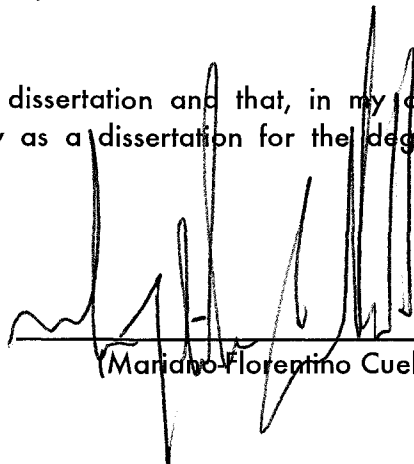
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ABSTRACT

Since the Hague Convention of 1912, nations have rarely countenanced the export of illegal narcotics to other nations, despite vast revenues at stake, and despite a history of doing so throughout the 19th century. This dissertation offers an explanation for this largely understudied fact. It also addresses a shortfall in the political science literature by asking how and why the International Drug Control Regime (IDCR) arose, how it has developed, and under what circumstances states comply or fail to comply with its strictures.

The dissertation argues that both ideology and state interest are important factors in explaining the politics of illegal drugs. While typically such approaches to political science run parallel to each other, it is useful to combine the two in explaining a dynamic system like the international drug control regime, in which powerful state norms legitimate the cooperative use of money, force, and diplomacy to combat a rapidly changing, transnational problem with broad implications for international security. In its analysis of drug control as a norm, the second chapter applies constructivist analysis to explain the impact of ideas and social constructs upon the international system. This chapter relies on several historical sources to describe how anti-opium activists were able to build a successful international activist community which pressured Britain to abandon the opium trade. The third chapter explains the relative power concerns that kept nations from abandoning the trade unilaterally. It uses a realist analysis to illustrate how self-interested, security-seeking nations built the regime that exists today.

In describing the IDCR, the dissertation disaggregates norms and material factors from the legal and institutional phenomena that form the regime. The dissertation examines both material and ideational factors in explaining the growth and development of the IDCR. It also details counter-initiatives developed by drug traffickers to establish markets and avoid prosecution. The fourth chapter focuses on the uses of branding as a means of employed by large- and small- scale traffickers and dealers to introduce law and predictability to a low-security environment, when merchants lack recourse to the state as a provider of security and an arbitrator of disputes.

The dissertation concludes with an examination of the conditions under which states defect from the IDCR's directives. It considers the theoretical significance of the International Drug Control Regime, the likely future of the IDCR as well as the policy implications for international security of the IDCR's strengths and weaknesses.

This is the path which leads to ruin,
Which opens to him who enslaves himself to opium,

From a man in good repute he becomes an outcast,
His enterprises do not prosper and therefore he becomes a thief,

And he is not only miserable in his body,
But misery dwells in his heart,
And misery continues from generation to generation.

—PAKOE BOEWENO II (PAKUBUWANA II), EMPEROR OF MATARAM, 1749

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Philip Robins at Saint Antony's College, Oxford, kindly advised me in a preliminary study of branding that eventually became Chapter IV, a study which also raised in my mind the fundamental question of why states no longer traffic drugs. Through St. Antony's, I also met the late John F. Richards of Duke, who provided crucial data about opium revenues in British India. I benefited greatly from my time at the Institute of Socio-Economic Research (IISEC) in La Paz, which was made possible by a David L. Boren National Security Education Program Graduate Fellowship.

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While these names deserve a great share of whatever credit this project might bring, the errors, of course, remain my own. My conclusions, likewise, are my own and no endorsement of them is necessarily implied by the names mentioned here.

In addition to these guides, there were several people slogging along this path with me—my family, who deserve my deepest gratitude, and to whom this work is dedicated. My parents, who instilled my curiosity and interest in matters political, have been unstintingly generous and supportive of my educational endeavors. My in-laws have been magnificently patient and generous as well, and I could not have finished without their sagacious advice and kind support. My darling daughters

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CWT

March 2008

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CHAPTER I

INTERNATIONAL NARCOTICS CONTROL: NORMS, SYSTEMS, AND REGIMES

This dissertation examines how and why the international drug control regime (IDCR) arose and developed, and under what circumstances states comply or fail to comply with its strictures.

Historically, nations permit the trade of almost anything. International trade means tariff revenue for governments and goods and wealth for citizens. Most international trade is generally encouraged, and the ideal of free trade is often embraced, if not in practice then at least in politicians' rhetoric. Some trade might be discouraged through the use of protective tariffs (or subsidies) for politically important domestic industries, and the trade in certain noxious or dangerous items is often thoroughly regulated. However, these cases are exceptions, and there is usually a politically significant explanation behind such exceptions to the general preference for international trade that makes them worthy of scholars' attention.

In particular, there are some objects of international trade that are not merely discouraged or regulated, but prohibited outright. Not only do individual states prohibit the importation of these "pariah commodities", but they cooperate to crush illicit trade in them. Well-funded international institutions coordinate national military, law enforcement, and political resources in an attempt to prevent such transactions, which are usually spoken of not as "trade" but as "trafficking" or "smuggling".

Most smuggling is not a subject of international concern, but is chiefly the problem of the nation whose borders are being violated and whose revenue enforcement is being circumvented. Cigarette smuggling in Greece is not usually a cause for concern in New Zealand, except insofar as the smugglers present a larger threat than evading Greek customs. But this sort of petty customs-avoidance smuggling is regarded very differently than pariah commodities which are, at least in theory, truly international concerns.

The trade in slaves was one of the first such markets against which sovereign nations united. The modern face of the slave trade, "human trafficking", still finds the community of nations resolved

against it. The trade in endangered animals is another sort of commerce that nations have deemed illicit and coordinate to oppose. While the trade in conventional armament is lucrative, it also closely watched, and illegal gunrunning is the subject of attempts at international control. International transfers of nuclear weaponry, technology and raw materials are closely monitored, as are chemical and biological weapons, and illicit transfers of such dangerous commodities across national borders are the subject of intense international concern and scrutiny.

The focus of this study, however, is cocaine, heroin, marijuana, and a panoply of other prohibited psychoactive drugs. A regime of treaties and bureaucracy unites, at least in name, most of the world's governments in an attempt to prohibit their production and transfer between nations, except where they have a legitimate medical or scientific use.

Yet the sale of illegal drugs is a \$400 billion per year industry, according to one UN estimate.¹ If this figure is accurate, the illegal drug industry is the same size as the total worldwide textile trade. This is in spite of the efforts of governments around the world to suppress the drug trade at a vast expense, often through law enforcement and occasionally through military means. Critics such as Milton Friedman and Ethan Nadelmann have argued that these strategies are self-defeating, since they only serve to make the controlled substances more scarce and therefore more valuable. Therefore, they argue, since prohibition enriches criminals, it is counterproductive and should be abandoned.

If this argument is true, states combating illegal drugs may end up compromising their national security objectives. Corruption is an inevitable by-product of prohibition, and drug-related prohibition has grown so pervasive in some states that their polity is fundamentally undermined. For American allies to become battlegrounds between drug cartels or drug-funded terrorist groups is not an optimal policy outcome. In a recent example that underscores the potential for counterproductive security consequences of drug prohibition, Al-Qaeda terrorists funded the March 11, 2004 Madrid train bombing through bartering hashish for explosives and lodging.² Because of the scarcity of hashish due to prohibition, its value was artificially increased and it became an attractive method to support a deadly criminal enterprise. On a larger scale, several

¹ United Nations International Drug Control Programme, World Drug Report (1997). New York: Oxford University Press. p.124.

² Duval Smith, Alex. Cannabis Cash 'Funds Islamist Terrorism'. *The Observer*, May 13, 2007. Available at <http://observer.guardian.co.uk/world/story/0,,2078419,00.html>

sources allege that North Korea's nuclear program has been, in part, funded through that country's substantial illegal drug production.³

If these scholars are correct, why do countries support such an apparently counterproductive drug-control regime? Why do states maintain a regime that enables insurgencies, weapons proliferation, and transnational crime, and yet justify it on the basis of the drug trade's risk to national security? Or, more cynically, why would nations forgo the billions of dollars of revenue available from the illegal drug trade instead of spending billions of dollars in an attempt to stamp it out?

Legalization advocates might answer that drug prohibition was simply an irrational policy all along, and that this apparently counterproductive result of the drug trade is one more reason to abandon the whole enterprise of prohibition. Perhaps they are right, but an analysis that concludes states are simply dupes of "moral entrepreneurs" (Nadelmann's term for prohibition activists) who marshal an irrational but politically powerful animus towards narcotics, appears simplistic. There is more behind drug prohibition than moral entrepreneurship. Even where moral entrepreneurship plays a part in setting or maintaining a prohibitionist drug policy, there are reasons that such entrepreneurship has proven successful.

Moreover, the very notion of "moral entrepreneurship" driving state policy is itself a controversial idea for political scientists. Pure neo-realists might assess these moral qualms about drug trafficking as no different from other moral assessments of statecraft: epiphenomenal, arising from the underlying struggle of security-seeking states. The struggle for security within an anarchic system either overrides the moral concerns inherent in international politics, or it defines them.

On the other hand, neo-realism has little to offer by way of explanation of why states—especially hegemonic states—pursue a policy that funds insurgencies, enriches rival states, and in general weakens the major powers' relative power in the world. Neorealist analysis, instead of focusing on the role of moral sentiments about the drug trade, would seek to explain the underlying power dynamics of drug prohibition. How might the prevention of traffic in illegal drugs help nation-states maintain their security instead of jeopardizing it?

³ Perl, Raphael F. "Drug Trafficking and North Korea: Issues for U.S. Policy." Washington, D.C.: Congressional Research Service. Dec. 5, 2003.

Clearly both ideology and state interest are important factors in explaining the politics of illegal drugs. A useful answer to these questions will borrow from different traditions in political science: constructivist analysis to explain the impact of ideas and social constructs upon the international system, and neorealist inquiry to illustrate how self-interested, security-seeking nations could decide to build the regime that exists today. While typically such approaches to political science run parallel to each other, there is much to be said for combining the two in explaining a dynamic system like the IDCR, in which powerful state norms legitimate the cooperative use of money, force, and diplomacy to combat a rapidly changing, transnational problem.

I. LITERATURE

Despite these criticisms of Nadelmann's 1990 article and his 2006 book⁴, his views on international regimes justifiably remain a very important in the political science literature for explaining prohibition regimes. Drug prohibition, however, remains an understudied phenomenon. Drug trafficking is often treated as an independent variable, a causative agent that explains variation in a more widely discussed topic such as insurgency or corruption. Alternatively, it is subsumed within the comparative study of a region or nation, with the khat trade in Yemen or the coca trade in Bolivia cited as a factor in Middle Eastern or Latin American politics. While these approaches are valuable, drug trafficking is of sufficient international significance that it also should be considered a global trade and a proper subject of the International Relations sub-discipline of Political Science.

This dissertation corrects a related shortcoming within the literature by treating drug trafficking both as a dependent variable and an independent variable, instead of only as an explanatory factor for other political phenomena. In this way it complements prior studies such as Fearon (2005) who identifies drug crops such as coca as a potential lootable resource which could sustain an insurgency.⁵ George Orwell once observed that the cause and effect of social phenomena are intertwined, so that

⁴ Nadelmann, Ethan. "Global Prohibition Regimes: The Evolution of Norms in International Society", International Organization, Volume 44, Issue 4 (Autumn 1990) 479-526. Nadelmann is executive director of the pro-legalization Drug Policy Alliance for drug policy research. His newer book is Andreas, Peter and Ethan Nadelmann, Policing the Globe: Criminalization and Crime Control in International Relations. Oxford: Oxford University Press (2006).

⁵ Fearon, James D. "Primary Commodity Exports and Civil War." *Journal of Conflict Resolution*, Vol. 49 No. 4, August 2005 483-507. Further work on the relationship between drugs and governance is being

...an effect can become a cause, reinforcing the original cause and producing the same effect in an intensified form, and so on indefinitely. A man may take to drink because he feels himself to be a failure, and then fail all the more completely because he drinks.⁶

Political scientists believe they know that drug trafficking has a measurable effect on political life, so what sort of politics, in turn, affect the drug trade? And what reaction will those changes in turn produce on the political order? This dissertation looks at both traffickers and counter-traffickers as agents that affect each other in a cycle of action and reaction.

Unfortunately studies of the worldwide drug trade seem to have peaked in 1999-2000, possibly because the incentives for scholars to research terrorism instead of drug trafficking shifted abruptly in 2001. A few recent exceptions show that the topic is still of interest. Andreas and Nadelmann's 2006 book on prohibition regimes is one. A review of the most relevant recent literature on the topic of the modern drug trade also ought to include Michael Kenney's *From Pablo to Osama*.⁷ Kenney conceptualizes the "narcs v. narcos" conflict that emphasizes the adaptability and streamlined organization of the drug traffickers, which is their chief advantage over the less agile and more bureaucratic law enforcement agencies that contend with them. Kenney relies on organization theory to differentiate between the styles of each group, and concludes that current prohibition efforts are ultimately doomed in the face of such an adaptable enemy.

Kenney's analysis of drug trafficking represents a major step forward from Nadelmann's static system. Kenney's analysis is more complete and realistic: not only the criminals but also the police learn and adapt to their counterparts' new techniques. Instead of a one-shot game their interactions continue indefinitely, although Kenney also is ultimately pessimistic about law enforcement's chances for a decisive victory in the conflict.

undertaken by Scott Gates and David Letzkian, who note in an abstract that "...[d]rugs, governance and civil conflict are intrinsically interrelated in a complex web of mutual causality." (Letzkian, David. and Gates, Scott: *Drugs, Governance and Civil Conflict. Paper presented at the annual meeting of the International Studies Association, Hilton Hawaiian Village, Honolulu, Hawaii, Mar 05, 2005* <Not Available>. 2006-10-05. Abstract available at http://www.allacademic.com/meta/p72028_index.html)

⁶ Orwell, George. "Politics and the English Language". May, 1945. Available at: <http://www.k-1.com/Orwell/index.cgi/work/essays/language.html>.

⁷ Kenney, Michael: *From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies, and Competitive Adaptation*. University Park: Pennsylvania State University Press (2007).

If anything, Kenney's analysis does not go far enough. Not just law enforcement, but also international lawyers are adaptive agents, who learn from and react to criminal enterprises and also the success and failures of national drug enforcement efforts. Chapter III of this dissertation extends Kenney's conception of the players to include those who write and enforce the rules of the IDCR, and looks at the interplay between these groups, as well as the interplay between the IDCR and drug traffickers for an explanation for the formative changes within the IDCR.

However, while this dissertation concentrates on a particular type of narcotics trading—that sponsored by states—it represents the first step of a broader research agenda into more general questions about the political aspects of the drug trade. It also makes a forthright case for approaching the narcotics trade as, primarily, an international security issue.

Historical research into the start of the India-China opium trade and the founding of the IDCR show that security concerns were crucial priorities for both events. Chapter III explains that the system changed precisely because the world began to perceive the opium trade as not merely a trade issue or a moral issue, but also as a potential threat to national security. Ironically, for a state to leave the opium trade was also a security issue, and the IDCR was founded to address this problem. Fundamentally, the story of the IDCR is less a case of trade or law than it is one of security and sovereignty. While it integrates constructivist thinking on issues of norms as they affect states' formation and perception of their interests, especially in the case of England, this dissertation shows that the IDCR was ultimately a result of power-balancing realism.

In explicating a realist understanding of the IDCR, this project builds upon David C. Jordan's 1999 book, *Drug Politics: Dirty Money and Democracies*, which stands out among similar works for its identification of a structural conflict underlying states' need to negotiate globalized drug prohibition treaties. This is an important insight which is modified and expanded in Chapter III.

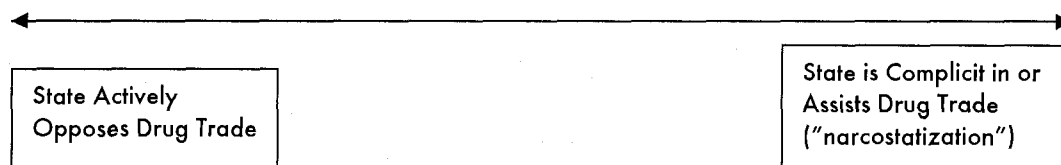
Jordan notes that he set out to write the book as a proponent of the popular understanding of the drug trade—that it was essentially nothing more than a question of supply and demand. His research led him to believe that the situation is far more complex, and is very much a political question instead of just an economic one. Jordan's book also broke new ground in describing the role of the international capital system in maintaining the flow of drug revenues around the world. Among many books on money laundering, Jordan's work deserves close attention because of its

unusual look at the role of an international capitalist elite as a political actor with a stake in world drug policy, one which works to shape attitudes and public opinion about how drug policy should be handled.

Jordan concentrates especially on the phenomenon of national governments being subverted and co-opted by narcotrafficking groups—either insurgents or simple organized crime groups—which accumulate so much money and cultivate such an effective capacity for violence that they can challenge a poor or weak state's legitimate monopoly on violence.

This process is described in greater detail in a perceptive article titled *Transnational Organized Crime* by Louise I. Shelley⁸, who sees criminal groups replacing governments—even strong democratic ones—with what she calls a "new authoritarianism". Similarly Jordan sets out what he calls an "index of narcostatization", tracing the stages states go through from opposing the drug trade into becoming a nation primarily concerned with assisting it. Both authors, it could be said, show an interest in theorizing how and why nations move along an axis like the one shown in Figure 1.1.

Figure 1.1: State cooperation with or opposition to drug trade



Shelley and Jordan are describing a serious trend, but implicit in their narratives of legitimate governments being subverted by drug cartels is the assumption that ordinary governments *need to be subverted or intimidated* before they will collude with drug traffickers or participate in the drug trade. In other words, the international norm is opposition to the drug trade. That assumption is largely, though not entirely, correct, and requires further study and explanation—which is one goal of this dissertation.

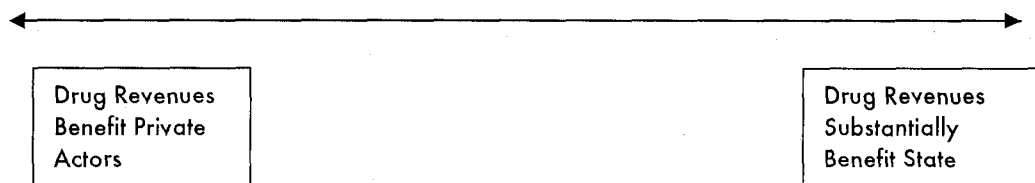
⁸ Shelley, Louise I. "Transnational Organized Crime: The New Authoritarianism." In Friman, H. Richard and Andreas, Peter: The Illicit Global Economy and State Power. Lanham, MD: Rowman & Littlefield (1999). pp. 25-52.

This narrower question of state sponsorship of drug trafficking in the twentieth century has been largely neglected. Two notable exceptions are *Narcoterrorism*, by Rachel Ehrenfeld (1989), and *The Politics of Heroin* by Alfred W. McCoy (first edition, 1972). Both emphasized the interconnectedness of the world drug market and the role of states in encouraging drug-funded insurgencies (or counterinsurgencies) as a political strategy. The two books provide an interesting contrast: Ehrenfeld lays the blame for most of the world's narcotics-fueled insurgency at the feet of international communism, whereas McCoy blames the CIA (especially for conditions in Southeast Asia.)

However, abetting drug traffic as a surreptitious and deniable tool of covert action is a different phenomenon than relying on the drug trade as a source of national revenue or to fund colonial expansion—the overt nineteenth century model which has largely disappeared today. In fact, the covert character of such activities is further evidence of the taboo-like character of the norm against state drug trafficking: this is behavior which nations work very hard to deny.

This question of state reliance on drug revenues then becomes a crucial one for this study. It is useful to represent this also on a continuum in Figure 1.2.

Figure 1.2: State orientation toward drug revenues



The distinction is one of *who benefits*: private individuals (or corporations), or the state?⁹

Finally, combining the dimensions described in Figure 1.1 and Figure 1.2, a useful distinction emerges between states that are complicit in drug trafficking, but the beneficiaries of this complicity

⁹ In almost any conceivable political system in which the state profits from the drug trade, some of the money from the drug trade will also end up in private hands. This may occur deliberately as a consequence of a privatized and taxed industry, as in the 19th century British opium trade when "country traders" made considerable fortunes running opium to China—even as their taxes swelled Imperial coffers. However, even the most severe command economy (e.g. North Korea's) will inevitably lose some revenue to corruption. Any state policy which even attempts to occupy the right-hand side of the equation is politically significant.

are private individuals (or corporations) instead of national treasuries. In other words, such states are corrupt, in that the resources of the state are being exploited for unlawful private benefit.

These latter states are distinct from outright state drug trafficking, as conducted by British India in the 19th century in which the military, diplomatic, law enforcement, and administrative resources of the state are dedicated to assisting the drug trade, and the revenue (at least in significant part) flows back into the state's coffers either directly or through a scheme of taxation on the traders. In Figure 1.3, below, such states would belong in the fourth quadrant, whereas the merely corrupt and more common states belong in the third quadrant:

Figure 1.3: Theoretical map of state drug trafficking¹⁰

	Drug Revenues Benefit Private Parties	Drug Revenues Benefit State
State Opposes Drug Trade	I. e.g. USA, Iran, most countries	II. (an oxymoron)
State Assists Drug Trade	III. Corruption/ Narcocracy model: e.g. Panama, Burma	IV. State Drug Trafficking model: e.g. North Korea, Taliban Afghanistan, Imperial Japan, Bulgaria

This dissertation, then, addresses a shortfall in the Political Science literature by asking, "How and why did the international drug control regime arise and develop, and under what circumstances do states comply or fail to comply with its strictures?"

To answer that question, four more chapters will be necessary. The first of these will explain and prove the existence of the norm against international drug trafficking. The next explains the logic behind the founding and development of the IDCR, and the fourth will look in detail at branding, a

¹⁰ No cases would appear to fall under quadrant II, because no state would fight drug trafficking even as it tried to profit from it. A case might be made that a government which relies heavily on forfeiture actions (in which law enforcement units confiscate resources from drug traffickers) has strayed into this territory, but if this is a collusive relationship I believe it would more properly be placed in quadrant III.

particular institution used by drug traffickers to circumvent prohibition. In its conclusion the dissertation examines nations that for whatever reason act in contravention of the principles of the IDCR, and attempts to explain why these exceptions are exceptional and discusses the significance of the IDCR to theories of international regimes.

II. STRUCTURE

2.1 The Norm

The drug control regime and its expansion through the twentieth century are discussed in the Chapter III. But before doing so, it is necessary to explain the establishment of the ideas underlying the end of the legal narcotics trade and leading to the establishment of the regime, and also to demonstrate that these ideas actually did have the power to constrain nations. Other studies of powerful norms that affect state behavior have typically traced out the process of the norm's adoption. They also take pains to show cases in which the norm actually constrains state behavior and prevents states from taking action in what would be their material or strategic interests. For this reason, a useful strategy for tracing the development of the norm would be to explain how Great Britain, the nation which did the most to promote the opium trade, and which had the most to lose by its prohibition, came to concede voluntarily to its abolition.

The British case is also illuminating because today, states' reasons for complying with the IDCR are reinforced by a series of sanctions. It is in their material interest to prohibit drugs, or at least to make a show of doing so. The consequences of failing to comply with the modern IDCR might include international obloquy and even ostracism, restrictions on banking, trade, and travel, or even (in the case of Panama under Manuel Noriega) invasion. Therefore it is difficult to evaluate whether a state's compliance with the modern regime is in response to an underlying norm, or simply a rational calculation of its own interests.

As Ward Thomas¹¹ explained, these two explanations are not mutually exclusive: "...[w]hen a norm is widely held, there is considerable convergence between the logic of appropriateness and the logic of consequentiality." A better illustration of the presence of a norm against state drug

¹¹ Thomas, Ward. The Ethics of Destruction: Norms and Force in International Relations. Ithaca: Cornell. (2001). p.37.

trafficking would be a case from before the formalizations of the IDCR in which a state abandoned a profitable drug trade—thereby acting against its financial and security interests in response only to moral suasion. In such a case, the two logics would diverge instead of reinforcing each other.

Chapter II will consider in detail the prelude to Britain's policy reversal. There have been several histories written of the opium trade, of the two Opium Wars between Britain and China, and a few of the diplomacy that marked the beginning of the IDCR, and this inquiry will not replace them. However, few of the existing accounts present these events in the light of a conflict of ideas. This study provides a better understanding of the ideas behind the policies, and contributes new and overlooked items to the historical understanding of the era.

A recounting of the ideas, largely reconstructed from primary sources, is necessary to explain the most likely cause of the change: a response of policymakers to an international norm. Norms are, on some level, ideas, even if they are ideas so commonly accepted that they are never given much thought. Even norms now followed unconsciously were once quite controversial. Slavery, for example, was largely unquestioned and taken for granted before anti-slavery activists challenged it, and today antipathy toward slavery is the norm.

Analyzing the ideas opposing the opium trade is necessary for another reason: there is some scholarship suggesting that all ideas about the role and nature of government are not created equal. This is, from a normative perspective, obvious. Debates over the best form and system of government date back to the foundations of political theory. But a fairly radical notion is a positivist proposition that certain ideas are simply more likely to succeed in establishing themselves as worldwide norms and thus limit state behavior.

This proposition was advanced as a tentative conclusion and as a direction for future research by Keck and Sikkink at the conclusion of their study of transnational activism, *Activists without Borders*. They suppose a universal cross-cultural set of values that are common across most, but not all, societies. While "not all cultures have beliefs about human rights...most value human dignity. Gross violations of human rights run contrary to these divergent conceptions of human dignity." They also note that "campaigns involving legal equality of opportunity" tend to be successful but are not certain why.

Chapter II demonstrates that the principles of the anti-opium movement were in accord with what Keck and Sikkink suggest might drive a successful campaign. That is one more reason to conclude that the change in Britain's policies resulted from a coagulating international norm. The alternative possibilities that Britain dropped much of the opium trade either to protect its citizens and subjects from drug abuse, along with the more prominent theory that opium was simply no longer profitable, are also examined and refuted.

It would be foolish to argue that drug control is a purely normative phenomenon. It would be equally absurd to presume that international moral pressure played no part in such a radical shift of, especially, Britain's policy. This section will clarify the normative factors at work in the abandonment of the trade and the establishment of the regime.

2.2 The Regime

Chapter III serves two goals: the first is analysis of the reasons underlying the formation the IDCR; the second is an attempt to explain the historical development of the drug control regime in a theoretically useful way. This chapter will form a useful historical case study of a unique and complex phenomenon as well as illuminating the interplay of normative and power concerns that create and sustain it. It will also offer some new ways to consider the development of global regimes.

The IDCR is the interrelated and coordinated counterdrug efforts of state actors, organized by a set of treaties and formal international legal institutions codifying goals and directing the behavior of states in regard to certain drugs, and the international bureaucracy that attempts to coordinate the system—for example, the United Nations Office on Drugs and Crime (UNODC), which is directed by both the UN Commission on Narcotic Drugs (CND), a policy-making body established in 1946, and also the International Narcotics Control Board, which dates back to the League of Nations but currently operates under a 1961 charter.

Also part of the regime are unilateral drug control efforts by the United States, especially the certification process, which mandates that countries wishing to receive any foreign aid disbursements from the US are required to comply with US policy on drug control. This process

creates financial incentives for third-world countries to cooperate with the United States in suppressing drugs, instead of profiting from their sale.

How did this system arise? Although Britain and the United States initially founded the regime primarily because of ideational factors, many other countries such as China and Japan did so out of material security concerns about drug addiction affecting their populace. Because of these two very different orientations which were present in the construction of the IDCR, it is necessary to examine both material and ideational factors in explaining the growth and persistence of the regime.

The most important—if too brief—work to date on the IDCR takes a purely sociological-institutional approach to the regime. Ethan Nadelmann, cited above, offers an intriguing explanation of “transnational moral entrepreneurship” for the establishment of the IDCR and other “global prohibition regimes”. Nadelmann’s analysis has laid the groundwork for understanding global prohibition regimes. But he has also described a fairly static system. A more thorough explanation of how and why the IDCR changes is needed.

A historical study of this sort runs the risk of deviating too far into history and eschewing social-scientific methods. However, this is an attempt to explain scientifically a variation over time: the existence and the scope of a regime to coordinate international drug prohibition is the dependent variable of this study. It does, in fact, vary over time: a series of treaties and organizations has sprung up and the obligations of states have multiplied and become entrenched.

Since the 1909 Commission, the Drug Control Regime has expanded greatly. Subsequent treaties were signed by most of the world’s nations in 1912, 1925, 1931, 1936, 1946, 1948, 1953, 1961, 1971, 1972 and 1988. The United Nations maintains the UN Office for Drug Control and Crime Prevention to assist in coordinating a worldwide antidrug effort. More importantly, there is a great, converging isomorphism of internal state laws criminalizing and prohibiting the drug trade.

The development of domestic enforcement of international legal obligations was a necessary evolution in the regime, since these treaties bind only state actors, and lack jurisdiction over individuals. Individuals were, so far as international law was concerned at this point, able to

perform with impunity what states were proscribed by treaty from doing. Neither did these treaties bind subnational or transnational groups—insurgents, criminal organizations, terrorist networks. (In practice, states were not always willing or able to control these groups' activities; in some cases, they actually encouraged them.) Recently, the IDCR appears to have stopped its expansion and is concerned with maintaining the status quo and using the existing legal framework to achieve its goals.

All of these major evolutions are regime-defining events, which were shaped by norms and understandings about sovereignty, morality, and security, and which in turn shape the material system in which international politics occurs. The goal of Chapter III is to offer a comprehensive description of international norms, the power dynamics of the drug trade, and how these concerns cause the regime to change—and how these changes can in turn affect norms and power dynamics.

Chapter III proposes that along with the moral imperatives expounded by moral entrepreneurs, a strategic concern for what I will call “narcocolonialism”—states using the smuggling of addictive drugs to rivals as a form of predation—focused the attention of state elites on drug traffic.

2.3 A two way street: drug traffickers adapt to the enforcement

Important to the notion of a dynamic IDCR discussed above is an understanding of drug traffickers as even more dynamic and adaptive than the bureaucrats and politicians who develop the IDCR. Michael Kenney has broken much ground on this characterization of drug traffickers, calling them “organizationally flat” and noting how they are not passive subjects of the IDCR but rather active combatants who use surveillance and ingenuity to identify law enforcement methods and exploit them. Just as terrorists adapt to counterterrorist measures to continue their struggles, traffickers cultivate a wide variety of expertise—in law, politics, propaganda, and violence, among other fields—to challenge prohibition measures and to gain a competitive advantage both over the state and over each other.

More needs to be written on this subject, since it is a vital idea not only for counterdrug officers but also international diplomats and policy makers responsible for the effectiveness of the IDCR. One

useful but largely overlooked testament to traffickers' adaptability is their use of a particular institution to maximize their profits and minimize their risk from internal competitors: branding.

Drug branding is an artifact from the pre-IDCR days, when the British East India Company worked to build brand equity in their opium. Today it is still used for many of the same reasons on every scale of illegal drug transaction, from enormous multi-ton international shipments to the smallest retail street deal. But the use of branding varies as well, as do many technologies and strategies used by traffickers in response to changing market and enforcement conditions. Its very presence is nonetheless counterintuitive, since identifiable markings on illegal drugs could create a chain of evidence that law enforcement could use to identify and prosecute traffickers that use them.

For the purposes of this dissertation, an ideal example of the institutions of drug trafficking would focus on brands used in international drug trafficking. However, this information is not readily available through declassified sources, nor from the branders themselves. Chapter IV instead uses micro-level data about brand persistence within U.S. cities to reach some initial conclusions about the use of such an anomalous method of introducing certainty into the ultimate low-trust environment.

2.4 Conclusions

The IDCRC does some things well, and some things poorly. Chapter V evaluates the IDCRC and its successes and failures, and reviews the principles that led the system to be established the way it was. Its fundamental purpose of keeping states from engaging in narcocolonialism is accomplished fairly well, as is its guarantee of licit supplies of controlled drugs for medicinal use.

Yet even the strongest norms are not inviolate. Chapter V addresses the question, "what causes states to violate the norms of against international drug traffic?" Are there common factors uniting the nations that decide to do so? Since I have described the drug control regime as a product of the world political system, one would expect to find that states engaging in drug traffic in violation of the regime would be rogues, otherwise isolated from the international system, with little to fear from international condemnation. But not in all cases; many nations otherwise opposed to the drug trade will occasionally work covertly with trafficking groups for intelligence or political ends. I call this "strategic" drug trafficking.

Instead the rogue states are the quadrant-IV states. Three of these from the latter half of the twentieth century are discussed in Chapter V: North Korea, Taliban Afghanistan, and 1970's Bulgaria. As discussed previously, this sort of revenue-raising state-sponsored drug trafficking (in the quadrant-IV sense described above in Figure 1.3) is quite rare. There are not enough solidly reported cases to allow large-*n* statistical analysis of the causes of state drug trafficking.

Another group of norm violators maintains a *de jure* policy of drug control, but instead are third-quadrant cases, nations which are complicit with drug traffickers for private, instead of public, benefit. These sorts of cases have been addressed in the Political Science literature, and accordingly there seems little point in reviewing them thoroughly since the causes of what Louise Shelley calls "narco-authoritarianism"—a corrupt takeover of democratic governments by drug trafficking cartels—are quite different from the causes of state drug trafficking as it appears in the cases I am studying above. Shelley's model, as with Jordan's, would predict that corrupt nations become human-rights violators as a result of narcostatization and subversion of state institutions by criminals. My analysis suggests that the quadrant-IV states described in Chapter V trade drugs because of a pre-existing lack of normative engagement; a profitable direction for future research will be to confirm that causation works in the opposite direction for quadrant-III states: they suffer a normative estrangement because of the drug trade.

Chapter V also examines the theoretical significance of the IDCR. Who does the IDCR benefit? Why do great powers suffer a regime that maintains a status quo that transfers resources from the first world to the third world? Realism might suggest that major powers would reclaim the drug trade and revert to the nineteenth-century narcocolonialism model. However, I contend that the IDCR is a Krasnerian means for the third world to secure and preserve an advantageous position in the world drug trade. While it is toxic to third-world democracies, the drug trade does bring in resources—either in the form of drug revenues or in the form of counterdrug foreign aid.

As the negative externalities of the IDCR—rampant drug sales by rogue states, organized crime, and insurgent groups—became clear, new measures have been taken to combat them that depart radically from previous notions of sovereignty. Jurisdiction over citizens, rights to inspect and board at sea, scrutiny over international transactions all represent a new system of expanding international control over individuals and groups. International norms of sovereignty have been repeatedly subjugated to the norm of drug control.

This insight has implications for other global prohibition regimes, as well. For example, the A.Q. Khan nuclear network out of Pakistan (which assisted Iran's nuclear program) prospered precisely because arms-control agreements and enforcers assume—wrongly in this instance—that strong sovereign states will always be willing and able to enforce their treaty commitments. If the pattern of progression of the drug control regime holds true for the nuclear regulation regime, we may predict a similar exercise of hegemony in arms control and WMD issues at an individual level, instead of just the international level. Ultimately, the NPT may follow the IDCR's lead.

CHAPTER II

NON VI SED SAEPE CAEDENDO: THE BRITISH OPIUM TRADE AND THE ROOTS OF THE INTERNATIONAL NORM AGAINST STATE DRUG TRAFFICKING

The eighteenth and nineteenth centuries saw a robust and profitable trade in opium flourish under management by the British Empire, assisted by the United States and in competition with other European powers. Opium exported from British India to China remained a crucial source of revenue and specie for England and the colonial government of India. However, despite a long dependency on opium profits, Britain reversed its policy shortly after the start of the twentieth century, and joined the beginnings of the international drug control regime that persists today.

Why would Britain do such a thing? Britain's decision was noteworthy because, as this chapter will explain, its about-face was contrary to its economic and security interests. Such a decision is therefore an anomaly in a realist model of international politics, which would predict that a state as powerful as Britain which could exploit its considerable advantages in the opium trade to maintain its position as a great world power, *would* exploit its advantages. And thus it began; Britain made the most of its capacity to organize, protect, and distribute opium into China and the Far East. Despite some moral qualms expressed by individuals involved in the trade, Britain acted as a structural realist would predict. Even as worldwide moral criticism mounted against the trade, even despite condemnations by Parliament, Britain seemed resolute in its decision to make the most of its stake in the business.

But where before it sought to maintain its position as a global empire through maximizing opium revenues, Britain changed its policy in 1906 and began to phase out its involvement in the opium trade with China. Britain even joined the new international regime dedicated to the abolition of international narcotics trafficking.

The overarching question of this dissertation is "why don't nations traffic drugs?" In the modern world, there are numerous normative pressures as well as material and legal systems designed to keep states from doing so. But I argue that Britain chose to do so not because of material concerns, but for ideational ones. Britain left the opium trade with China in response to a nascent

but powerful norm against state complicity in the sale of narcotics, one established slowly, over decades, by an international network of anti-opium activists.

The narcotics control regime itself and its expansion through the twentieth century are discussed in the next chapter. Before doing so, it is necessary to explain the promulgation of the ideas underlying the end of the India-China opium trade and leading to the establishment of the regime, and also to demonstrate that these ideas actually did have some power to constrain nations' behavior.

Other studies of powerful norms that affect state behavior have typically traced out the process of a norm's adoption. They also take pains to show cases in which the norm actually constrains state behavior and prevents states from taking action in what would be their material or strategic interests.¹² For this reason, a useful strategy for delineating the development of the norm would be to explain how the nation which did the most to promote the opium trade, and which had the most to lose by its prohibition, came to concede voluntarily to its abolition. That nation was Britain.

Such a study offers useful theoretical insight into the formation of international norms and their impact on states. Chaim Kaufmann and Robert Pape, writing about Britain's abolition of the slave trade, argue that examples of costly international actions are quite rare:

Although states, private charities, and the United Nations often engage in relatively inexpensive international moral efforts, such as development aid or disaster relief, states almost never pursue

¹² For examples of this type of study consider: Tannenwald, Nina. "The Nuclear Taboo: the United States and the Normative Basis of Nuclear Non-Use." *International Organization*, Volume 53 Issue 1 (Summer 1999), pp. 433-68. Price, Richard. "A Genealogy of the Chemical Weapons Taboo". *International Organizations* 49, vol. 1 (Winter 1995), pp.73-103 (79). Also see Ward Thomas: "Norms and Security: The Case of International Assassination", *International Security* 2000, pp. 105-133. Thomas does not use the word "taboo" but his article suggests modern states tend to hold a deep, almost superstitious prohibition on assassination of foreign leaders—even if the norm actually works to maintain the security of militarily powerful nations.

These articles share a methodological approach with this chapter, which seeks to map out the history of a norm and gives examples of its power by quoting decision-makers who describe its effects. Each author also contrasts his example with a purely-rationalist counterfactual: what sort of behavior would we expect to see if a norm did *not* bear on the decision to assassinate a troublesome leader, or to employ nuclear weapons in a situation in which they would be useful (such as a tank battle in the Iraqi desert). I follow this example as well at the end of the chapter.

more expensive international moral goals requiring significant costs in national income, lives, or risks to national security.¹³

As will become clear in this chapter, Britain's decision sacrificed considerable sums of money (though not on the order of the abolition of the slave trade) and incurred risks to national security as well.¹⁴ As one of these rare cases, then, the abolition of the opium trade deserves a closer analysis by students of the politics of ideas, and how ideas affect international politics.

An important question exists in this area as to the effectiveness of international moral suasion and activism upon national decision-makers. In analyzing the matter of an earlier (and, as I argue, closely related) case of the abolition of slavery, Kaufmann and Pape argue that such external pressure is not nearly as important as internal domestic pressure and the alignment of domestic political powers. Martha Finnemore and Kathryn Sikkink, on the other hand, advance the notion that such external pressures are crucial to the establishment of effective international norms and effecting normative change among nations.¹⁵

This chapter argues that both of these conceptions of international normative action have some merit, but neither completely captures the elements of the events described here. The international spread of the anti-opium norm to a transnational activist community over the course of decades was crucial to the eventual change of British policy. It was a necessary element, but it was not a sufficient one. International pressure from an activist community played a part, but what really began to move the British government toward exiting the India-China opium trade was not direct pressure from "moral entrepreneurs", but instead pressure from nations which had themselves adopted these ideas—specifically "critical states" America and China. This developed as Finnemore and Sikkink theorized. But internal pressure from domestic anti-opium groups played a large role as well, and as Kaufmann and Pape point out, the proper alignment of domestic political forces is also an essential element of international action. As such the conclusions of this chapter reflect a synthesis of Kaufmann and Pape's ideas about moral action with those of Finnemore, Sikkink, and Margaret Keck.

¹³ Kaufmann, Chaim D. and Robert Pape, "Explaining Costly International Moral Action: Britain's Sixty-year Campaign Against the Atlantic Slave Trade". *International Organization* 53, v. 4, Autumn 1999, pp. 631-668. p. 631.

¹⁴ The security and relative power costs to outlawing opium are discussed in greater detail in Chapter III.

¹⁵ Finnemore, Martha & Kathryn Sikkink: "International Norm Dynamics and Political Change", *International Organization*, Vol. 52, No. 4, International Organization at Fifty: Exploration and Contestation in the Study of World Politics. (Autumn, 1998), pp. 887-917.

Here is the course the chapter will follow to get there. First, the origin of Britain's opium monopoly will be described along with the history of Britain's exploitation of the opium trade with China. The second section will detail the origins of opposition to the opium trade within Britain, and how that opposition was able to spread to other nations as well, forming the basis of an international anti-opium network. The third section discusses a critical conflict between pro-opium and anti-opium forces in a period of time, 1895-1906, where the progress of the anti-opium movement, seemed to stall out before domestic and international pressure carried the day. The fourth section discusses the mechanics of ending the trade. The fifth section explores alternate hypothesis to explain why Britain might have withdrawn from the trade, and the conclusion reviews the historical importance of the change as well as the theoretical significance of the manner in which it was brought about.

I. THE RISE OF THE OPIUM TRADE

After the battle of Plassey in 1765, the British East India Company found itself in control of revenue rights to the Bengal region of Northern India, replacing a native merchant cartel from Patna as monopolists of the region's renowned opium crop.¹⁶ Opium at this time was well known as an extremely effective analgesic medicine and used as such around the world. It was also even then valued as a psychoactive drug. The intended market of Indian opium was China, and to a lesser extent Malaya and Burma. Recreational opium consumption in the Far East differed from European usage: after the introduction of tobacco in China, opium began to be smoked in pipes instead of taken orally, as remained the custom in Europe. This method rendered the narcotic effects much more powerful and reduced the risk of a fatal overdose; it was also much more addictive.¹⁷

Addiction was a widespread problem. Importing and vending opium in China had been punishable by strangulation since 1729, but this law was observed mainly in its breach. Traders had been shipping modest amounts of opium to the Chinese for hundreds of years. Occasionally edicts would be issued, and the government's wrath might fall upon a native smuggler, but until 1839 foreign opium traders ran little risk of direct interference by Chinese customs officials, who were usually complicit in the trade.

¹⁶ Owen, David E. British Opium Policy in China and India. Yale University Press, 1934. This section relies primarily on David E. Owen's still-outstanding history and follows his account of the progression of the opium trade.

¹⁷ Trocki, Carl. Opium, Empire, and the Global Political Economy: A Study of the Asian Opium Trade 1750-1950. Routledge (1999). p. 18.

It was under these conditions that an extraordinary and historic business meeting occurred. On May 23rd, 1775, after some intermittent deliberations since receiving news of some private speculation in opium by Colonial officials, the Governing Council of the East India Company met to decide the fate of its opium monopoly. The five members of the Board were faced with three options for Britain's involvement in the opium trade.

At the meeting Warren Hastings, first Governor General of Bengal, referred to an October 1773 letter in which he described opium as "not a necessity of life, but a pernicious article of luxury, which ought not to be permitted but for the purposes of foreign Commerce only, and which the wisdom of Government should carefully restrain from internal consumption." He suggested three options for the Board's consideration of the future of the trade: the Board could renounce all control over the trade altogether within British India and "lay it open to all men indiscriminately". They could seek a rent from their monopoly, and subcontract out the production of opium. Or, they could manage the trade themselves and appoint their own agents to oversee it. Hastings felt that regardless of the Governing Board's decision, a sublegal monopoly in opium would persist by "secret influence", so an official monopoly and agency should prevail.¹⁸

Hastings preferred an agency but lost the vote three to two, and local contractors were appointed to manage the trade. On the subject of opium being an object of foreign commerce only the Board was in agreement. The external trade was quite another matter. Classical liberal arguments against monopoly prevailed, as did a sort of civil rights argument of the sort later to be advanced in Hastings' impeachment trial: the native farmer, or ryot, "can have no appeal from any injustice which may be done him, if the Agency be intrusted to those who constitute the Government."¹⁹ A Company inspector for quality control was also installed as a check on potential self-dealing by the Contractor, though Hastings would soon eliminate this post when it became inconvenient to his administration.

Even among the odd Imperial-mercantile system prevailing in colonial India, there was a concern for some of the innocent victims of the opium business. At this time, these innocent victims whom opium traders felt an obligation to protect were not Chinese opium users, but rather the Indian farmers who were nominally under Imperial protection. They also saw a monopoly as a means of

¹⁸ Parliamentary Papers, 1783. *Ninth Report of the Select Committee*, Appendix No. 59a, p.268.

¹⁹ *Ninth Report*, Appendix No. 62. p.275. These are the words of Board member General Clavering, who favored a contract system.

detering domestic opium abuse and ensuring that the negative externalities of the trade were not realized within their own jurisdiction. To defend the morality of their monopoly, the Company's board of directors offered a justification in 1817 that closely parallels the argument of "harm-reduction" drug policy advocates today:

[I]t is not our wish to encourage the consumption of Opium, but rather to lessen the use, or, more properly speaking, the abuse of the drug...were it possible to prevent the use of the drug altogether,...we would gladly do it in compassion to mankind; but this being absolutely impracticable, we can only endeavour to regulate and palliate an evil which cannot be eradicated.²⁰

The decision made by the Board was fateful because it brought a new element into the trade: European corporate organization and bureaucracy. What had been a small-scale exotic trade item, largely incidental to international commerce, was now the subject of capital investments, standardization, marketing, and all the tools of modern business as well. Also worth noting is that the rule of law obtained in the Indian opium industry: state authorities would recognize and enforce contracts for opium, something that sounds absurd in the twenty-first century, precisely because governments and the IDCR are now concerned with disrupting these institutions (or their functional equivalents), instead of attempting to set them up or strengthen them. For this reason the early days of the Company's attempts to "Westernize" or "Civilize" the lawless opium trade deserve a more detailed look. One such example was the East India Company's very early attempts to introduce quality control measures to its new crop.

Equity in the East India Company's "Patna" brand was consistently seen as a long-term investment and the reputation of the company's product was to be protected. The Patna Council proposed in March 1775 that the Company ought to export the country's entire production in unadulterated form to China on its own account, rather than auctioning it. The difference in quality would cause merchants to "buy it all up annually at a price inconceivably beyond what has been hitherto given for that commodity, when every grain of it was probably...confounded with some other substance." The Council also condemned the quality-control methods already in place, based on reports from the target market: the issue of adulteration "has not been sufficiently attended to by the Manufacturers, from the bad accounts that have been lately received from China: though in future it should be our business to see no such practices are adopted." Complaints about the state

²⁰ Owen, p. 103.

of Indian opium were seconded by a Mr. Hinchman, who would testify against Warren Hastings at his impeachment.²¹

These sources show that the opium producers were not innocent of involvement with consumer markets. Although the Company would (as discussed below) seek to insulate itself from international responsibility by ceding title to the opium at the Calcutta auction, the Company was sensitive to reports from Chinese and Malay distributors and consumers.

The Patna Council also weighed in on a new issue arising from the Company's monopoly and from its taxing of opium lands: smuggling. "European Interlopers", settled in British India tempted the *ryots* to clandestine traffic. As a remedy, the Council requested that

The Custom Master be invested with authority to search all budgerows and boats of whatever kind, going to Calcutta, as it is notorious that great quantities have been smuggled down by Europeans of all denominations, for want of such a license; that we have full and absolute power to seize opium wherever we find it,...to confiscate the same; and to punish the Pycars and Assammies detected in the sale.²²

The accompanying minute from the Governor General granted this authority and as an incentive allowed the Custom Master to keep "one-half of all the opium thus seized and confiscated".²³ Philip Francis, a member of the council (and enemy of Warren Hastings) would soon criticize the customs regime as too authoritarian:

The power to be lodged in the Custom-master, seems excessive; and the punishment for smuggling too severe; the loss of goods should be sufficient; but by the proposal, seizure, confiscation, and personal punishment, are all to be inflicted by the same man, who is to have half the seizure for his trouble; and nevertheless may, for all that appears, be the greatest smuggler in the Country.²⁴

²¹ *Ninth Report*, Appendix No. 59b. p.271. Mr. Hinchman's Evidence.

²² *Ninth Report*, Appendix No. 59a. pp. 268-71. "Extract of the Proceedings of the President and Council at Fort William in Bengal, in their Revenue Department, the 15th of October 1773." p. 270.

²³ *Id.* p. 271.

²⁴ *Ninth Report*, Appendix No. 62. p.274-275. "Extract of Bengal Revenue Consultations, the 23d May 1775."

It is striking that search, seizure, and punishment—controversial aspects of modern drug prohibition regimes—were also employed in 1775 in *defense* of the national drug trade.

The tools of modern business were not always wielded skillfully by the East India Company, and their results were not always what the colonial government expected. Britain soon realized the importance of expanding its control over opium production throughout the region. When the East India Company found itself in competition with opium grown in regions of India or Pakistan not yet under its control it was not above using intrigue, bribery, or military force to protect its interests.

The first decade of the nineteenth century saw new threats to the Company's opium sales: American merchants dealt in Turkish opium, and "Malwa" opium, grown in Indian states under native control instead of under British control, was exported through Portuguese ports on India's west coast. Neither product commanded the reputation nor the premium price of Company opium, but 'illicit' Malwa was seen as a growing threat. Its price did not include the monopolist's mark-up, and therefore threatened to undercut the Company's market share. Diplomatic and military efforts failed to check the problem. The Company tried commercial warfare instead.

Simply buying up the crop of Malwa opium in 1820-1821 failed because word of this plan leaked out, causing a rash of cultivation the Company had hoped to prevent. The company then cut its own profit margin and negotiated agreements with native states to interdict the transit of opium through their territories, which they failed to do. The Company's directors feared their monopoly was becoming worthless, and tried a new tack in 1831: increasing production.

Hoping to meet the entire demand of Chinese consumers at a price low enough to force their competitors in the native states out of business, the Company opened fifteen new districts to poppy cultivation and bought more from Oudh and Nepal. When the competition was gone, the Company hoped to remain as a sole supplier for Chinese opium. Relative to the previous decade production doubled in the 1831-2 season (and profits approached £1,000,000) and had tripled five years later when more than 30,000 chests entered China.

But the Company had miscalculated. Rather than merely satisfying the Chinese demand for opium, the enormous quantities of addictive drugs pouring in expanded it. New markets within the Chinese mainland were opened which could comfortably absorb the full production of the

Company and the Native States. As a consequence opium addiction deep into the mainland became widespread—a result which soon became a political problem for China and India as well.²⁵

In addition to monopolies on the production of commodities in India, the East India Company also enjoyed monopolies on various trades with China, the most profitable of which was tea. In order not to jeopardize this relationship with the Chinese, the Company was careful not to violate Chinese sovereignty by smuggling opium on its own account or allowing it on board company ships—instead relying on private merchants called “country traders” to buy the opium in India and smuggle it to China along with other cargo. This was a policy that would continue throughout the 19th century, after the dissolution of the East India Company, and after it was nothing but the most transparent of fig leaves, but it was a custom established early on in the trade. In 1782, Company employee Thomas Fitzhugh explained the necessity of delegating the transportation of opium to the country traders:

The Chinese are very sensible of the difference between the Country ships and those of the Company; between the Company's mode of transacting business and that of all private traders: they look up to your servants as people conducting the affairs of a great Company; who, at the same time that they endeavour to prevent impositions, act with candour, regularity, and liberality. How must this opinion change, when your servants are (on the Company's account) to deviate from the plain road of an honorable Trade, to pursue the crooked path of smuggling!²⁶

Fitzhugh was in fact writing to warn the Company away from its two 18th-century violations of this principle, one of which ended badly for the Company. Of two Company ships dispatched to China bearing opium, the *Betsy* and the *Nonsuch*, one was captured and destroyed by pirates, and despite the other ship's financial success, the idea was judged sufficiently ill-advised to warrant mention within the lengthy indictment of Warren Hastings, the Company's Director responsible for authorizing the expedition. Therefore the Company stuck to sourcing and preparing the opium, inspecting it, and packaging it into 160-lb. 'chests' under the company seal, guaranteeing the product's quality. The strength of the Company's brand meant that its opium

²⁵ Owen, pp. 88-107.

²⁶ Ninth Report, p. 297. Appendix No. 77, “Copy of Letter from Thomas Fitzhugh, Esquire, to Mr. Gregory, on the subject of exporting Opium to China”. July 7th, 1782.

commanded a premium price in the intended markets. But unlike its other, less controversial products, the East India Company did not take its own opium to China.

Instead it was the standard practice of the Company to auction its opium to middlemen called "country traders": American shippers such as Perkins and Company and Russell and Company, and British concerns such as Oliphant & Co. and Jardine, Matheson & Co. In this way Britain and its proxy, the East India Company, relied on substate groups to circumvent the ostensible violation of Chinese sovereignty which direct sales would entail.

Britain could deny complicity in the trade since it disclaimed responsibility for its opium after it left the auction house in private hands. Nations were not violating each others' laws, but only subnational groups were. Although Chinese officials could see the opium entering their country was clearly stamped and guaranteed by the East India Company, Britain did not have to defend a policy of illegal smuggling, but nonetheless enjoyed the revenue of the illegal trade.

Because the East India Company was not *directly* violating China's sovereignty by defying its opium prohibition, China was able to categorize the opium trade to be a problem of criminal smugglers instead of an international affront to its sovereignty that would require a forceful response against a vastly superior military. To some degree the Emperor was content to punish smugglers and avoid such a confrontation, although not without complaining about British complicity. But eventually, for a variety of internal and international political reasons, China was unable to continue playing along, and began to hold Britain responsible for the opium entering its borders.

One of China's chief international grievances was that the opium trade's success began to impoverish China as it enriched Britain. The British saw the revenue from the opium trade as a means of reversing the flow of currency from British coffers into Chinese. Before the opium trade began in earnest, silver currency flowed into China and consumer goods, primarily tea, flowed out. The opium auctions were seen as an opportunity to offset the trade deficit; but before long opium would not only offset the deficit but actually reverse it. China came to resent the capital flight of its silver currency almost as much as the widespread addiction the opium trade caused.

Most histories of the opium trade concur that while China was legitimately concerned about the effect of opium use upon its citizenry, the economic consequences of the trade deficit it caused were of utmost concern at the Imperial Court. Cambridge historian Michael Greenberg notes the economic character of the debate within China, and quotes an 1838 Imperial edict appointing Lin Tse-hsu as a Special Commissioner to stamp out the opium trade:

Since opium has spread its baneful influence through China the quantity of silver exported has yearly been on the increase, till its price has become enhanced, the copper coin depressed, the land and capitation tax, the transport of grain and the [salt] gabelle all alike hampered. If steps be not taken for our defence...the useful wealth of China will be poured into the fathomless abyss of transmarine regions.²⁷

The British were aware of this effect as well of the "vampiric" effect (to quote one anti-opium activist) of this drain of currency. At least some British citizens recognized that there were political consequences to the drug trade, and those consequences were financially very favorable to the British Empire. Greenberg quotes an anonymous, "aggressive" writer in the *Chinese Courier*, who as early as 1833 recognized that "perhaps nothing could contribute more readily to the final reduction of the Chinese to reasonable terms with foreigners than this steady, non-ceasing impoverishment of the country by the abstraction of the circulating medium." After a relentless and unstoppable drain of specie, China would be forced to submit to foreign—especially British—demands.²⁸

The East India Company's monopoly on opium production was gradually replaced by direct British government control by 1833,²⁹ and the managerial functions of the Company were folded into the new colonial government in 1851. The Country Traders continued to act as middlemen to Chinese smugglers; they would offload the opium before arriving in Canton, the only city foreign merchants were officially allowed to enter. Harbor officials were usually bribed to look the other way but occasionally a spasm of moralism would require the public execution of a Chinese smuggler to intimidate the British and satisfy the Emperor.

²⁷ Chinese Repository, 1839. Quoted in Greenberg, Michael. British Trade and the Opening of China 1800-1842. Cambridge, 1951. p. 143.

²⁸ *Chinese Courier*, 3.4.1833, quoted in Greenberg, p. 142.

²⁹ Owen, p. 126.

When an honest opium inspector arrived from Peking to put a stop to the opium smuggling once and for all in 1839, no one took him seriously and the situation swiftly escalated into the First Opium War. The British won, and through the conditions of the treaty of Nanking they effectively crippled Chinese attempts to stop foreigners importing opium.³⁰ After a second war in 1856, British pressure to open all of China to foreign trade, especially the opium trade, led to the Imperial court to try to beat the British at their own game.

China permitted Indian imports and began its own nationalized opium industry to compete with them; either China would undersell the British and put them out of business, or China would make an enormous profit for itself instead of allowing its silver to leave the country for England. The latter course prevailed. Just as had occurred in 1831, when the British increased their own production with the intention of lowering prices and forcing their native-state competitors out of business, supply created its own demand, new markets opened, and Chinese opium addiction became rampant. European missionaries told harrowing stories of opium dens and millions of Chinese in zombie-like slavery to the opium pipe. Besides these missionary accounts and the testimony of Chinese diplomats, however, there is little direct evidence available of the consequences of widespread opium addiction in China; the British traders insisted opium was no worse than beer or tobacco and felt no compunction to test the truth of their assertion.

The 1870's and 1880's were the most profitable time yet for British opium production. Historian David Owen noted that "[a]ny feeling that, for the benefit of Chinese morals, the supply ought to be restricted had long since disappeared, and the question was decided solely on economic grounds."³¹ Revenues trickled off slightly through the 1890's, but had begun a modest rebound by the time the trade was ended (revenues are discussed in more detail below).

Production leveled off during this period as well, stabilizing at around 60,000 chests of opium produced in British India. (Production was variable and depended on the vagaries of the weather, competing crops, and the price of opium; sometimes production would exceed demand and sometimes it could not meet it.) But despite impressive efforts to scale up India's production, perhaps six to ten times that peak amount was being produced by China for domestic

³⁰ Owen is careful to point out that even though the country traders often agitated mightily for diplomatic pressure on China to legalize the import of opium, Britain did not go to war in order to achieve this result. Rather, the war was precipitated by the detention by Chinese of the crew of the British ship *Arrow*. After the war, however, Britain used its superior bargaining position to force the borders open.

³¹ Owen, p.283.

consumption.³² The Indian opium became a premium product for elite Chinese consumers, whereas the domestic opium was literally the opiate of the masses.

Historian Carl Trocki argues that opium revenue was no less than the "lifeblood" of the British Empire (and other European empires which were involved in the trade to a lesser extent) for much of the 19th century. According to Trocki, the opium trade was a key means of perpetuating and constituting the imperial system:

Opium was vital, both to the capitalist transformation of the local economies as well as to the finance of the colonial administrative structures which protected those economies... Opium created pools of capital and fed the institutions that accumulated it: the banking and financial systems, the insurance systems, and the transportation and information infrastructures.³³

The enormous degree to which the British Empire was dependent on the trade in opium makes it all the more remarkable that a successful challenge to the institution could be launched, and all the more remarkable that the challenge was not military or economic, but moral.

II. CRITICISM OF THE OPIUM TRADE

In 1783, political philosopher and MP Edmund Burke led the impeachment of Warren Hastings for gross abuse of his office by the House of Commons before the House of Lords. While Burke used every rhetorical and legal strategy at his disposal, criticism of the Company's opium policy was relatively staid. Burke called opium a "pernicious drug"³⁴, but his charges against Hastings were more complicated than a direct assault on Hastings' choice to exploit the opium monopoly.

Burke was primarily concerned with abuse of the Indian farmers Hastings had forced to cultivate opium poppies. He was concerned at the Board's decision to continue the monopoly, but not so much because it concerned opium as that a monopoly was in itself inefficient and anticompetitive, and deprived the "Native Owners and Cultivators" of their "natural right of Dealing with many

³² Owen, p. 164.

³³ Trocki, p.173.

³⁴ *Ninth Report of the Select Committee of the House of Commons on the Affairs of India*. June 25, 1783. *Reproduced in* Burke, Edmund. *The Works of the Right Honorable Edmund Burke*. Fifth Edition, Vol. VIII. Boston: Little, Brown, and Company. (1877). p. 117.

Competitors". Furthermore, Burke noted that Hastings was corrupt in the monopoly's management, assigning contracts for opium to inexperienced adventurers with whom Hastings sought to curry favor.

Burke's criticism of the Company ships *Betsy* and *Nonesuch* dispatched to China was more direct, and to some degree prescient of the form the norm against drug trafficking would take. Of these expeditions, Burke charged that even had Hastings' decision been profitable,

...no Profit attending it could compensate for the probable Risque to which their Trade in China was thereby exposed; or for the certain Dishonour, and consequent Distrust, which the East India Company must incur in the Eyes of the Chinese Government, by being engaged in a low, clandestine Traffic, prohibited by the Laws of the Country.³⁵

Elsewhere Burke attributes to this clandestine venture a "great actual loss of the said East India Company, and to the great Disgrace of the British Character in India."³⁶ Burke deplored the violation of China's sovereignty with a "contraband commodity", and he noted that Hastings further risked Chinese retaliation against the Company by arming the ships in order to resist Chinese attempts to (lawfully) seize the contraband opium:

The impropriety of a political trader, who is lord over a great empire, being concerned in a contraband trade upon his own account, did not seem in the least to affect them; but they were struck with the obvious danger of subjecting their goods to seizure by the vastness of the prohibited import.³⁷

The British were clearly aware of the deleterious properties of opium, and Burke's language in 1783 presages a norm against its traffic. If such a venture was not unthinkable in 1783, it was at least "dishonourable", "low and clandestine", and an obvious "impropriety". As far as Burke's rhetoric against Hastings goes, this is mild stuff; his objections seem to arise less from an inherent evil of the drug trade than from the specific affront to Chinese sovereignty and respect for their particular laws—and the consequent risk to British trading rights there.

³⁵ Parliamentary Papers, 1785. *Articles of Charge against Warren Hastings*, p. 477.

³⁶ *Articles of Charge*, "Article Fourth", p.701.

³⁷ *Ninth Report*. "Internal trade of Bengal: Opium". p.133, 137.

That Hastings was ultimately acquitted on all charges, in spite of clear evidence of his involvement in an immense, risky, illegal, state-authorized international drug deal, suggests that such commerce did not tote the normative baggage it would carry in the twentieth century. Burke's condemnation of the opium trade did not express a modern understanding of the normative relationship between states and drug traffic.

Over the next few decades Christian missionaries made headway into mainland China, and began to return with stories of opium addiction. Unlike the country traders, who were confined to their enclaves within port cities, missionaries were able to come into contact with the Chinese people and to penetrate cities otherwise off-limits to foreigners.

The earliest serious criticism of the opium trade I have encountered is a devastating pamphlet dated 1835, written by an anonymous minister and layman, which describes itself as the "first public call for the Abolition of the Opium Trade."³⁸ The Bodleian Library's catalog attributes the pamphlet to Robert Philip; his lay co-author was Philip's fellow board member of the London Missionary Society, Thomas Thompson, esq. Thompson was described as a merchant and philanthropist who had, in 1833,

...proposed in Exeter Hall that a movement should be made for testimony against the evils of the opium trade; but even in that place of comparatively irresponsible utterances and religious enthusiasm, the proposer found himself in a minority of one.³⁹

Philip, meanwhile, traveled extensively in China but was pastor of the Dissenting Christian Maberly Chapel in Islington from 1826-1855, where he wrote several devotional books in the early 1830's, some of which are still in print and which were widely read in America—so much so that he was awarded an honorary doctorate from Dartmouth in 1852. (Maberly Chapel was a politically active congregation that petitioned the House of Lords for the extinction of slavery in 1830.⁴⁰) A posthumous reprint of his book Manly Piety includes a memoir of his life and identifies him as co-

³⁸ Anonymous, "No Opium! Or, Commerce and Christianity working together for Good in China." London. 1835. In the Bodleian Library, Oxford.

³⁹ Tining, James Forbes B., "The Poppy-Plague and England's Crime". London: Elliot. (1876) p. vi. Available through Google Books at <http://books.google.com/books?id=6lsBAAAAQAAJ&dq>. Exeter Hall was a public auditorium in London where many anti-slavery speeches and debates were held.

⁴⁰ House of Lords Journal Volume 63, 11 November 1830 (<http://www.british-history.ac.uk/report.aspx?compid=16929>)

author of "No Opium!", and the first international anti-opium activist, directing his appeal to both Britain and America:

The atrocities of the opium traffic in China also awoke their most indignant remonstrances, and the first public appeal for the abolition of the opium trade in China was made by Mr Philip and Mr Thompson in a pamphlet published by them in 1835, entitled *No Opium or Commerce and Christianity working together for good in China*. By a Minister and a Layman.⁴¹

This pamphlet, which I have not seen referenced in similar studies of the opium trade, deserves closer examination for several reasons. It is the earliest serious attack from a moral standpoint on the opium trade, earlier than some historians of the opium trade usually place any such opposition, and the first to make explicit the analogy between slavery and opium addiction. It shows a long standing British concern for both Chinese and American opinions about British commerce, which would prove crucial to the anti-opium movement later. It shows a frustration that the trade in opium would calcify Chinese opinion against the introduction of Christianity to China. It shows both a concern for the consequences that might befall other, more legitimate British industries, and it showed a religious concern for divine retribution against the entire nation for a perceived national evil. And it anticipates several important political developments that would occur in the trade.

Philip is as concerned about the possible impact on other British industries desirous of commerce with China as was Burke with the consequences of the loss of the East India Company's monopolies and trading privileges with the Chinese government. He is also, unlike previous critics of the trade, quite forthright about the "fiendish", demonic character of the opium trade because of its ill effects on Chinese addicts. British opinion and industry, argues the author (prematurely), will not permit the opium trade to continue:

Public opinion will soon, and as surely, put down all such traffic, as it has annihilated the slave trade and slavery. Our great manufacturers themselves will not long submit to the degradation of being identified abroad with smugglers; nor to the loss arising from a system which confounds the useful products of the loom and the anvil with "accursed things," and thus keeps real goods

⁴¹ Philip, Robert. *Manly Piety, A Book For Young Men*. London: Nimmo, 1879. p.34. Available through Google Books at <http://books.google.com/books?id=GwoDAAAQAAJ&dq>

subordinate to the sale of poison...[T]here must soon be both legislative and local measures taken to protect the character of the real trade of the country [the cotton industry] from the odium and the checks thrown upon it by the illicit traffic. It is both lowered and limited in China, by its connexion with opium. The Chinese Government may be hypocritical in anathematizing that infernal narcotic, as "the *fiendish* invention of the foreigner." It is, however, fiendish, and as injurious to British character as to Chinese health and morals. It both enables and justifies the court at Peking (however much they themselves smoke opium) to placard us over the empire as *demons*, who pander to vicious appetite, and care for no welfare but their own.

This pamphleteer incorrectly assesses the power dynamic underlying the opium trade over China's objections. He despairs of an establishment of free trade in British manufactures since Chinese consent will not be forthcoming while the opium trade continues, and argues that consent is the only way free trade will occur:

Free trade cannot be forced, even by war, in such an empire as China; if war itself were not criminal. Nothing less than the *subjugation* of the empire could compel its trade; and its subjugation is, happily, an impossibility...And as to the petty war which, if not exactly called for, is all but demanded by some men,—what could it do for *free trade*?⁴²

The exchange the pamphleteer visualized, of giving up the opium trade in exchange for opening China to a wider array of British imports, proved unnecessary. Britain would indeed see two such wars fought within the next two decades. China's subjugation was not an impossibility, and the trade in opium and other British manufactures was opened in its wake.

Philip and Thompson were keen to decrease the respectability of the opium traders, many of whom (e.g. Jardine of Jardine, Matheson) were assembling tidy fortunes and accumulating influence in British politics. He quotes a former East India Company director, Majoribanks, describing opium as "that black and envenomed poison of all the sources of human happiness and well being." The

⁴² "No Opium!", p. 9. The "petty war" he refers to is a forcible taking of islands at Canton and the forts that commanded entrance there. If the author missed this assessment, he eerily predicts the cause of the Second Opium War, observing that because of Chinese resentment of the traffic, and without a missionary to keep order on the opium ships, "One reckless crew may, by a riot in any of the Chinese ports...precipitate war." p. 55.

writer further likens opium merchants to traders in chemicals used for suicide, and belittles their claims to international respectability:

They might just as well claim respect if they ministered to suicide in China, by supplying *prussic* or *oxalic* acid, as claim it at home and abroad, whilst they supply that which kills both the body and the soul at the same time. We have, therefore, no right to demonstrate our power there, until we demonstrate our justice, by the annihilation of illicit trade, or by such a national disavowal of all connexion with opium ships, as shall prove to China that the contraband is even more under the ban of our empire than of their own.⁴³

Philip quotes one American missionary's description of Chinese opium dens as "anti-chambers [sic] of Hell" which were "degrading degradation itself", taken from a letter to the New York Observer from Batavia (Asia, not New York), signed "H.L." and dated March 25th, 1834. (Philip is unclear whether this letter was printed there, or merely addressed to its editor and was circulated to him.) The Observer letter is an example of fiery rhetoric that might make Jonathan Edwards blush, but it also predicts a normative and moral backlash against the narcotics trade and those associated with it:

...the time is not far distant, when he who does not wash his hands pure from the traffic in opium, except as a *medicine*, can lay no claim to the title, Christian or Philanthropist; nay, more, he shall be an outcast from society, at whom the finger of scorn shall be pointed, with the exclamation,—There goes an enemy to his fellows; one in league with Satan!

The pamphlet quotes another anonymous American, this one a merchant (apparently of a major merchant house with whom both the pamphlet's authors and the pamphlet's addressee were familiar) and author of document entitled "Remarks on British Relations and Intercourse with China". This American's criticism is slightly more measured than the missionary's, but no less stinging. The pamphleteer bristles at his implication that "a trade of so great value cannot, however, with justice, be directly interrupted, or put beyond protection,"—noting that "the British nation will give another answer to his pointed questions!" The irony of an American criticizing Britain for engaging in an immoral traffic would have been obvious to a British audience in the wake of Britain's recent abolition of the slave trade, well ahead of America's doing so.

⁴³ "No Opium!", p. 10.

The purpose of all these quotations was to consolidate a variety of international authorities for public consumption in an area with which the wider British public was likely not, at this point, very familiar. Philip is explicit in his mission to establish a national norm, in accordance with what he perceives to be a higher level of justice, following up on the recent success of the abolition of slavery:

So little is the subject understood, that no more idea of crime is associated with supplying or smoking opium, than with supplying and smoking tobacco. It is not, therefore, unlikely, that this Letter will surprise many. The public are not prepared to believe such facts. I am, however, prepared to substantiate them, and to multiply them, until they are as familiar as the horrors of slavery and the Slave Trade. "No OPIUM!" must be made as loud and general a watch-word, as "No SLAVERY" was, if we would, as a nation, "fear God or regard man."⁴⁴

He also warns against British complacency in the wake of the recent prohibition of the slave trade, ripping into an 1832 report by the East India Company, which claimed that "if there be any gratitude left in England," Britain would stand indebted to the East India Company for its success in establishing the opium trade. Philip responds:

The fact will be "remembered for ever," whether there be "any gratitude left" in England or not...Its memorial will be as public and imperishable, as that of the Slave Trade...I would not, Sir, rouse one *unhallowed* feeling, even against the most unholy traffic on earth. There is neither need nor temptation to do so. The only chords of national feeling which this appeal will touch (for they are vibrating still,) are those which abolished Slavery; and they breathe nothing, even when they sound loudest, but "peace on earth, and good-will towards man." Neither Companies nor Private Traders have anything to fear, in the form of outrage or insult, from a nation still glowing with holy complacency, over the freedom of her African subjects, and the safety of her colonial sons. It will be in this *spirit*, and this spirit alone, that England will express her opinion of the opium traffic. She will as readily forgive this claim upon her "gratitude" as she will forget both the author and the record of the following note to the claim.

"The Chinese use this stimulant (opium) as we do wine or spirits; and with, perhaps, less deleterious consequences to their health, and less evil results to their morals."

⁴⁴ "No Opium!", pp. 55-56.

The cool effrontery of this misrepresentation will be as calmly consigned to oblivion, as were the pretences about the superior happiness of slaves to that of English labourers.⁴⁵

This abolitionist rhetoric became a constant theme of anti-opium pamphleteers: opium use was analogous to slavery, and the anti-opium crusade was tied to the just and universally accepted success of the abolition movement, setting souls free.

There is another early anti-opium writer who deserves particular mention. An anonymous British writer (identified later as a merchant) wrote a condemnation of the opium trade that was passed through a clergyman in Calcutta to the editors of the Chinese Repository in Canton, who published it in 1836. This writer produced what would become one of the most memorable soundbites of the early anti-opium movement:

There is no slavery on earth to name with the bondage into which opium casts its victim. There is scarcely one known instance of escape from its toils when once they have fairly enveloped a man.⁴⁶

This essay is also notable for its early identification of a particular barrier to an international solution to the opium problem, one that would frustrate the ending of the trade even when it appeared the author's moral statements about the evils of the opium trade had carried the day:

...[S]trange to say, the great majority of those engaged in the opium trade, admit in a measure the evils it creates, but justify their participation in the profits of the commerce, upon some such grounds as follow; "If I don't trade others will; so the evil will be the same, and I may as well profit by it as my neighbor. Really (he continues) I pity the poor creatures who are so bent on ruining themselves; but what can I do to help them? They *will* have opium in spite of every thing; and all that I can do is to promote any general efforts for their moral enlightenment which may teach them the danger of their ways: meanwhile, it is preaching to the winds, to attempt to arrest the taste for opium; and so I may as well trade in it as not, until times are changed."⁴⁷

⁴⁵ "No Opium!", pp.17-19.

⁴⁶ Anonymous. "Remarks on the Opium Trade with China". The Chinese Repository, Vol.V (May 1836-April 1837.) 297-305. Dated August 11, 1836, p.300. Available through Google Books, at <http://books.google.com/books?id=IAQMAAAAYAAJ>.

⁴⁷ Id. p. 302.

Chapter III of this dissertation will examine more carefully the implications of exactly this sort of relative power argument for international politics as well as the coordination mechanisms that were set up to overcome it. The Chinese Repository writer's solution was a redoubled moral argument; he gave the (ostensibly) factual example of a man named Benjamin Weald who was hired to murder a certain farmer by the farmer's enemies in 1763. Weald pitied the farmer and would rather have the money without shooting him, but convinced himself to commit the murder "for the man's life they would have, if not by his hand, then by somebody else's".⁴⁸

The policing and customs regime set up to prevent smuggling and diversion by the Indian farmers, which Philip Francis had criticized in 1782, also drew blistering criticism from another early opium critic, Algernon Sydney Thelwall (1839), who quoted a correspondent in India concerned with civil liberties violations imposed by the state's opium regime:

In consequence of being obliged forcibly to cultivate this highly taxed drug, the peasant is constantly exposed to a suspicion of retaining some part of the produce for private sale; the surveillance of the police is, therefore, especially directed to these unhappy creatures; and the oppressions which they are subjected to in this way surpass belief. They are exposed to every sort of annoyance which the ingenuity of the authorized plunderers (the police and the Custom house searchers) can devise in order to extort bribes. The privacy of their miserable abodes—the sanctity of their females, is intruded upon by these harpies of Government; and no redress can be given by the Government; unless they abolish the production of this accursed drug.⁴⁹

Thelwall repeated many of the arguments advanced in the 1835 pamphlet, including the commercial argument that China might open its borders to free trade if only Britain would take the first step of renouncing opium traffic. He continued the slavery analogy as well: "There is no slavery on earth to name with the bondage into which opium casts its victim. There is scarcely one known instance of escape from its toils when once they have fairly enveloped a man,"⁵⁰ he noted,

⁴⁸ Id. p. 302.

⁴⁹ Thelwall, Algernon. The Iniquities of the Opium Trade With China. London: W.H. Allen, 1839. p. 162. Modern civil libertarians will be interested to peruse that particular rant, which continues through p. 168, and offers ample testimony that governments can be just as illiberal in defense of a legal drug trade as they can be in their attempts to prohibit an illegal trade. Available online through Google Books at <http://books.google.com/books?id=aCUi2MmpAcC&dq>.

⁵⁰ Id. p. 22.

quoting an unnamed British merchant writing in the Chinese Repository in 1836. And if opium addiction equaled slavery, then the trade in opium was analogous to the trade in slaves:

If your zeal in the cause of Christian missions has been sincere; if your exertions in opposition to Slavery and the Slave Trade had their foundation in Christian principle and Christian philanthropy; if you would not have it imagined that much of this has rather resulted from party spirit; then, I say, arouse and bestir yourselves at the call of Christian humanity, to labour still more earnestly, in opposition to a yet more foul abomination—more destructive in its immediate effects—and more pernicious in its remoter consequences.⁵¹

The analogy between opium traffic and slavery showed up again in the escalation toward the first Opium War, repeating the same quotation as Thelwall:

Some of the Whigs' most strident supporters denounced the government's participation in the drug trade as immoral. The *Leeds Mercury*, a newspaper that defended the Whigs against the attacks of both the Radicals and the conservatives, lashed out against the East India Company and the British merchants in Canton for pushing the toxin on the Chinese population: 'There is no slavery on Earth to name with the bondage into which Opium casts its victims.'⁵²

More condemnation of Britain's role in the trade came from America in 1850. Nathan Allen, a Massachusetts doctor, wrote a widely circulated pamphlet about the evils of selling opium. Allen calculated that more than 500,000 Chinese opium addicts were dying each year, and blamed the English government for allowing it to continue. He also drew a parallel between anti-opium activism and Wilberforce and Clarkson's successful British anti-slavery campaign.⁵³

One quote used by Allen merits special attention (emphasis mine):

A writer, in the Chinese Repository for 1836, comparing the effects of ardent spirits with opium after enumerating several

⁵¹ Id. p. 177.

⁵² Glenn Melancon. Britain's China Policy and the Opium Crisis. (2003) Burlington, VT: Ashgate. p.101. Mellancon quotes from "British Opium Trade to China", *Leeds Mercury*, 7 September 1839, p.3.

⁵³ Nathan Allen, M.D. The Opium Trade; Including a Sketch of its History, Extent, Effects, Etc. as Carried on in India and China. 2nd Edition. Lowell, 1853. Available at Green Library, Stanford University. Also available through Google Books at <http://books.google.com/books?id=ZNT3ohiMQaMC&dq>.

points of resemblance, concludes his remarks as follows ... There is no slavery on earth to be compared with the bondage into which opium casts its victim. There is scarcely one known instance of escape from its toils, when once they have fairly enveloped a man.⁵⁴

That quote, originating in Calcutta, published in Canton, was the same one chosen by the Leeds *Mercury* and by Thelwall, and now appeared in America. Already, without even a formal organizational platform, the anti-opium movement was a transnational network which exchanged ideas and information back and forth between continents. The campaigners generated a coherent and cross-referenced literature that transcended national boundaries.

Allen's pamphlet, in turn, achieved some international notoriety of its own. It was reprinted in 1853, after it was noted in the *Bombay Telegraph and Courier* in 1852.⁵⁵ This citation was important because a paper in a city central to the opium trade affirmed Allen's arguments that smuggling violated Chinese sovereignty, and that the trade was "systematic and organized aggression against the temporal and spiritual welfare of multitudes of our fellow-creatures." It was also significant because it showed a (continuing) British sensitivity to American criticism on the opium issue.

In the Telegraph essay, the threat of divine judgment is again invoked (though less directly than in pamphlets targeted specifically at a religious audience) as is the ongoing damage to Britain's international prestige: "We declare ourselves to the world as acting from expediency, and not from law and principle. The foundations of national respect are thereby weakened."

Allen's pamphlet was also noticed by his American contemporaries. It was reviewed favorably in the *American Whig Review's* Annual of Scientific Discovery for 1850; the editors concluded from Allen's portrait of the trade that

It seems a possible thing that, by the use of this drug, the empire of China may be completely corrupted and destroyed, as, in former ages, by other vices, other nations and empires have lost

⁵⁴ Allen, p.32.

⁵⁵ "The Opium Trade". *Bombay Telegraph and Courier*, May 17, 1852. This editorial is reproduced on p. 78 of the second edition of Allen's book; the text is also available at: http://www.corvalliscommunitypages.com/asia_pacific/china/opium_trade__from_the_bombay_tel.htm.

their independence, and, finally, their place upon the surface of the earth.⁵⁶

Political economist (and later advisor to President Lincoln) Henry C. Carey quoted from Allen at length in his own 1853 work on the economics of slavery, The Slave Trade, Domestic and Foreign: Why it Exists, and How it May Be Extinguished, and he referred to the Bombay Telegraph piece as well. Carey's book was an argument against British notions of free trade, of which he considered the opium trade an especially pernicious example.⁵⁷

Carey's anti-slavery description of conditions in India was in turn cited by a pro-slavery advocate in the South. Writing in 1855, George S. Sawyer, a Louisiana lawyer, attempted to undermine American abolitionism and its reliance on the British abolitionist movement by enumerating British transgressions that he claimed amounted to cruelties far worse than those suffered by black slaves in the American South. Sawyer castigated both Britain's treatment of Indian opium farmers and the depredations of the opium traffic upon China.⁵⁸

Another noteworthy British opium opponent was a Captain H. Tyler of the Royal Engineers, whose pamphlet quixotically urged a policy of opium prohibition be included in the treaties closing the Second Opium War. Using statistics on Indian opium production, and figuring twenty grains of opium as an average amount of daily use, he computes that

[T]he Bengal Monopoly of the Indian Government would supply 3,200,000 victims, and the Bombay opium 1,500,000 more. It may therefore be estimated that the Indian opium is continually in process of poisoning 4,700,000 Chinese. The average life of an opium smoker is stated at 10 years, after he has contracted the habit; but, if twice that term of life be allowed him, it may even

⁵⁶ Wells, David A., Ed. "Critical Notices." *The Annual of Scientific Discovery, or Year Book of Science and Arts*. Published in *The American Whig Review*, June, 1850. p.666. Available through Cornell's Making of America Archive at www.cdl.library.cornell.edu/moa/.

⁵⁷ Carey, Henry C. The Slave Trade, Domestic and Foreign: Why it Exists, and How it May Be Extinguished. Philadelphia: A. Hart, 1853. Digital copy available through Google Books at: <http://books.google.com/books?id=Z1oSAAAAIAAJ>. Pp.155-6, 412-3. Carey's description of slavery was limited to the ryots of India; he did not explicitly extend the slavery metaphor to the Chinese populace although he evinced a great sympathy for them.

⁵⁸ Sawyer, George S. Southern Institutes: An Inquiry Into the Origin and Early Prevalence of Slavery and the Slave Trade: With an Analysis of the Laws, History, and Government of the Institution in the Principal Nations, Ancient and Modern, From The Earliest Ages Down To the Present Time. Philadelphia: J. B. Lippincott & co., 1859. Digital copy available through Google Books at: <http://books.google.com/books?id=oZYRAAAAIAAJ>. pp.282-284.

then be further estimated that the Indian Government, with the Bengal Monopoly alone, kills its customers at the rate of 160,000 a year, and derives a net profit of £14 from each victim during his 20 years of opium smoking existence.⁵⁹

Tyler cites "Dr. Allen's pamphlet"—presumably the surprisingly influential American doctor Nathan Allen, discussed above, for this analogy between opium to slavery will strike the attentive reader as somewhat familiar:

There is no slavery on earth to be compared with the bondage into which opium casts its victim. There is scarcely one known escape from its toils, when once they have fairly enveloped a man.⁶⁰

From Calcutta to Canton, from Britain to America, and now back to Britain, that quote was central enough to the anti-opium movement's mission to merit repeated inclusions in their literature. Capt. Tyler also revisits the theme of divine retribution and national responsibility:

Truly, the individuals who persist in this course will receive their rewards: the missionaries, for the good they have preached; the manufacturers, the merchants, and the speculators, for the evil which they have practiced; and the nation, itself, which knowingly allows this course to be continued, and neglects to employ the constitutional means within its power for stopping it, must not expect to escape the just vengeance of an avenging Providence.⁶¹

After the outbreak of the first Opium War, condemnation of the trade began to diffuse from missionary societies into different, secular avenues of discourse. William Ewart Gladstone, a bitter opponent of the opium trade, declared in Parliament in 1840 that "A war more unjust in its origin, a war more calculated in its progress to cover this country with permanent disgrace, I do not know and I have not read of."⁶² By 1849, Donald Matheson, a partner in the largest country trading

⁵⁹ Tyler, H. Indian Revenue from Indian Opium. London: James Ridgway, 1857. p.28. This pamphlet is available in general circulation in Stanford University's Green Library.

⁶⁰ Id. p. 21.

⁶¹ Id. p. 37.

⁶² Quoted in S.D. Stein, International Diplomacy, State Administrators, and Social Control. Gower, 1985. p.9.

firm, Jardine, Matheson, resigned his position with the family business to protest its role in the "intolerable" opium trade.⁶³

Widely-regarded art critic and political economist John Ruskin delivered a lecture in Manchester in 1864 that ran down a long list of hypocrisies inherent in Britain's perception of itself as a "gentle" nation, as opposed to a "vulgar" nation or a mob. Among his examples was this anti-opium dichotomy:

Neither does a great nation send its poor little boys to jail for stealing six walnuts; and allow its bankrupts to steal their hundreds or thousands with a bow, and its bankers, rich with poor men's savings, to close their doors "under circumstances over which they have no control," with a "by your leave"; and large landed estates to be bought by men who have made their money by going with armed steamers up and down the China Seas, selling opium at the cannon's mouth, and altering, for the benefit of the foreign nation, the common highwayman's demand of "your money or your life" into that of "your money and your life."⁶⁴

Pamphleteering became more intense and in 1874 the Anglo-Oriental Society for the Suppression of the Opium Trade was organized under a Quaker named Edward Pease. Anglican and Catholic churches joined in as well, and a number of similar Christian interest groups sprang up and began lobbying Parliament for an end to the trade.

Among these pamphlets was a noteworthy one by James F.B. Tinling which cited both Capt. Tyler's pamphlet and Thomas Thompson, co-author of the 1835 "No Opium!" pamphlet. Tinling extended the analogy between slavery and opium to illustrate the necessity of sacrificing revenue. Since Britain was willing to undertake a financial loss to eradicate slavery, he proposed, it ought to make a similar sacrifice for eradicating opium :

The opium trade is as exceptional as the slave trade, and too like it in its moral features and the arguments by which it is condemned; and if England thought it right, and has ever since thought it was right, to give twenty millions sterling for the emancipation of slaves who were not State property, or even

⁶³ Trocki, p. 163.

⁶⁴ This lecture was subsequently published under the title Sesame and Lilies. Ruskin, John. Sesame and Lilies. Ginn & Co., 1894. p. 36.

located, except in rare instances, on her shores, she ought to be equally ready to pay down twenty millions, if required, to wipe out as far as may be the evil system with which she has been connected for three quarters of a century.⁶⁵

The anti-opium activists reached their peak mobilization in 1891, but thereafter never quite regained the same intensity. One product of their efforts, however, was the commissioning in 1893 of an exhaustive 2500-page Royal Commission inquiry into opium prohibition, published in 1895. The terms of reference of this Commission were drafted in a way that guaranteed an adverse result for the anti-opium activists. The report concluded that “No considerable demand existed for prohibiting the growth of the poppy in British India.” The report, however, concerned itself almost exclusively with addiction within British India, where no opium problem was thought to exist, and completely ignored the Chinese problem—which was the crux of the anti-opium crusade.

Anti-opium forces called the final product a whitewash, claiming that it investigated opium addiction within British colonies (where few serious problems existed) but largely ignored problems within China. Historian John Richards gives the Commission credit for thorough work and honest reporting, though Richards’ positive evaluation of their reports is the exception among other authorities, such as Owen, who read it as an apologia for Britain’s substantial financial interests in maintaining the trade.⁶⁶

Given the Committee’s reliance on dubious science, along with their bizarre race-based justifications for British opium policy (discussed below), the report’s reasoning does not seem persuasive to modern readers. Nonetheless, it was a politically influential document in its day that served as an effective justification for preserving the *status quo*.

One of the most thorough critiques of the 1895 Royal Opium Commission report is found in Paul Winther’s *Anglo-European Science and the Rhetoric of Empire*, in which Winther examines the expansive scientific claims by the Commission for opium’s power as an anti-malarial drug. Sir

⁶⁵ Tinling, p.140. While Tinling eschewed the ubiquitous “no slavery on earth” quote, that line would reappear in at least one more anti-opium publication in 1881; a Dr. Shearer delivered a lecture to the Liverpool Literary & Philosophical Society on the question “Is Opium Use Beneficial or Otherwise to Orientals?” which incorporated the quote: Proceedings of the Liverpool Literary & Philosophical Society Seventieth Session, 1880-81 No. XXXV, p. lxxiv. Available through Google Books at <http://books.google.com/books?id=IPwAAAAAYAAJ&dq>

⁶⁶ Richards, John D. “Opium and the British Indian Empire: The Royal Commission of 1895.” *Modern Asian Studies* v. 36, 2. (2002) 375-420.

William Roberts, one of the members of the Commission, was a medical doctor and submitted a special report within the report advocating not merely the maintenance of opium production in India, but the expansion of production out of medical necessity:

Sir William Roberts' evaluation of opium relegated the debate about quantity to irrelevance. Consumption of all *Papaver Somniferum* Linn was medically justified regardless of where the substance came from, where it was processed, the legal status of its dispersal, the rationale for its ingestion, and how much was consumed. In all cases, people were defending themselves against a horrendous malady whereas abstainers had no protection whatsoever. The problem confronting the country was far too few people consuming far too little opium, licit or illicit, to do any good. This was, in Roberts' mind, a rationale for promoting greater per capita and regional consumption of the drug.⁶⁷

But although it may have analgesic properties, opium is *not* an anti-malarial drug. Winther shows that Roberts, though an accomplished medical researcher, made several major errors in reaching his conclusions even according to contemporary standards of research and medical knowledge—among several of which was regarding the symptom of fever as a disease unto itself, instead of merely a symptom of an underlying disease. Furthermore, the witnesses Roberts interviewed were often parties with an interest in the opium trade, or procured for Roberts' examination by interested parties. Winther concludes that "Roberts' intellectual stance is difficult to defend considering what was known about disease symptom and causation during the 1890's. It is not [difficult to defend] when the Indian medical establishment's theoretical preferences and the political and economic imperatives of imperial rule are taken into account".⁶⁸

Nonetheless, to Indian opium growers who faced competition from Chinese opium of increasingly high quality and lower prices, Roberts' report was a godsend:

Sir William Roberts' recommendations reduced severity of these consequences by redirecting some of the opium that the Chinese no longer wanted. Each option implicit in his argument posited an alternate destination for cultivators' [opium] latex: a portion, possibly a very large portion, of their annual production was to

⁶⁷ Winther, Paul C. *Anglo-European Science and the Rhetoric of Empire: Malaria, Opium, and British Rule in India, 1756-1895*. Lanham, MD: Lexington Books (2003). p. 299.

⁶⁸ *Id.* p. 331-2.

be used for domestic consumption and anarcotine extraction. The Government of India now had morally correct and 'medically justified' programs that, if implemented, would minimize political and economic instability in the post-Royal Commission era.⁶⁹

Winther also argues that while Roberts may have firmly believed his report about the therapeutic use of opium, colonial governors gave it no credence beyond its political significance in halting anti-opium activism:

...[N]o apologist used Roberts' proclamations about opium and 'malaria' to defend the administration's post-1895 drug policy. This suggests the Government of India did not believe *Papaver Somniferum Linn* did what Roberts claimed it could do.

This is a bold statement, but other facts support it. Despite the 50 percent increase in poppy cultivation after 1895, no government document indicates that the reason for this expansion was to obtain the opium needed for the prevention and cure of 'malaria'. Roberts' recommendation is mentioned nowhere in the literature. His evaluation also had no effect upon drug commerce after 1895.

The drug's alleged prophylactic and febrifugal capability in India did not result in massive exports to millions of people in the world who undoubtedly suffered from the lumpers' version of the 'disease'. The China trade was waning and the Government of India needed the money. The British administration had either made a mind-numbing mistake, or it knew that Roberts' opium and 'malaria' argument lacked credibility.

The Indian government's anarcotine policy after 1895 indicates the second interpretation is correct. Roberts' evaluation had provided the administration with an incentive to extract the alkaloid for India's many 'malaria' victims. It launched no such program. The man had also provided a justification to export anarcotine around the world...Heeding Roberts' recommendation about anarcotine might have restored, or even surpassed, the amount of revenue that had been lost. The Government of India disregarded the opportunity.⁷⁰

⁶⁹ Winther, p. 330.

⁷⁰ Winther, p. 337. Winther uses 'malaria' in single quotes to denote Roberts' and others' contemporary (and incorrect) understanding of malaria as a series of symptoms including fever, as opposed to the modern understanding of malaria as a disease.

In any case, the 1895 report represents the last official word on the opium trade for a long time. The inquiry was not reopened before Parliament's decision to renounce the trade in 1906. As a political delaying tactic, the report was a success: domestic anti-opium advocacy groups lost momentum after the report was published. The report was considered a "decisive check" against the anti-opium crusaders and a "stay of execution" for India. China was not, at this point, complaining about the state of affairs.⁷¹

Financial contributions to the anti-opium groups declined, along with their membership and activity. Between 1895 and 1906 the subject was not debated in Parliament again.⁷² This apparent loss of momentum represents a curious point in the narrative and one which deserves further examination. Although it did suffer some setbacks, the anti-opium campaign was not dying off, but instead evolving into an international epistemic community that would orchestrate the beginning of the end of the India-China opium trade in 1906.

III. BREAKING A STALEMATE: WHAT CHANGED BETWEEN 1895 AND 1906?

Most accounts of the opium trade agree that the key to the end of the India/China opium trade was the election of England's only Liberal government of the twentieth century in 1906. The Liberals were the anti-opium party, closely associated with the Quakers and other dissenting churches (members of which were very active in the anti-opium movement), yet there is no indication opium prohibition was a decisive or even a major issue leading to their election. And although the Liberals had passed a resolution condemning the opium trade in 1891, that same Liberal government led by Gladstone, who had himself castigated the trade throughout his career, failed to capitalize on their political power and instead took steps that impeded the domestic anti-opium movement. As with the Conservative governments, the Liberals were still very aware of Britain's economic interests and India's revenue, and did not want to saddle the British taxpayers with a buyout of the opium farmers.

Why then did opinion shift from permission to prohibition? Domestic activism had, we shall see, peaked nearly fourteen years before the Liberal government was seated in 1906. Domestic activism was certainly an important element of the change, but it is not a complete answer.

⁷¹ Owen, pp. 318, 329.

⁷² Stein, p. 16.

In Finnemore and Sikkink's (1998) account of international norm formation, major international norm adoptions typically come about because of both domestic and international pressure:

Domestic norms, however, are deeply entwined with the workings of international norms. Many international norms began as domestic norms and become international through the efforts of entrepreneurs of various kinds. Women's suffrage, for example, began as a demand for domestic change within a handful of countries and eventually became an international norm. ...Even in situations where it might appear at first glance that international norms simply trump domestic norms, what we often see is a process by which domestic "norm entrepreneurs" advocating a minority position use international norms to strengthen their position in domestic debates. In other words, there is a two-level norm game occurring in which the domestic and the international norm tables are increasingly linked.⁷³

The other essential explanatory element is that in the 1895-1906 interim, while internal pressure continued from domestic anti-opium activists, international pressure and moral suasion began to impinge upon Britain, from two sources in particular: America and China. This section will consider in more detail the works of British activists, America, and China during this critical period.

3.1 British Activism

Complicating attempts to trace the process of norm formation during this period is the decline of formal British anti-opium organizations in the period following the Commission's report. Winther says the Royal Commission's report "devastated" the most prominent Anglo-Oriental Society for the Suppression of the Opium Trade (SSOT), and "membership declined drastically". The Commission's position on the antimalarial properties of opium likewise "lessened the anti-opiumists' subsequent proclamations for terminating British involvement in any aspect of the trade".⁷⁴

However, Stein notes that the decline of anti-opium activism predated the commission, and the report cannot be considered its sole cause. Agitation had actually peaked in 1891-2, and to stave off the decline the various anti-opium groups united under a centralized "Representative Board of British Anti-Opium Societies" in 1894. Few other mentions are made of this consolidation; most

⁷³ Finnemore & Sikkink, p. 893.

⁷⁴ Winther, pp. 9-12.

other sources continue to refer to the SSOT as the largest and most politically active anti-opium group. The point remains that the advocacy scene had narrowed; rather than the diverse group of anti-opium commentators and smaller groups that had characterized early anti-opium activism, the SSOT was the most prominent advocacy group for secular and religious opium prohibition. It was also an elite group, and was less connected to the missionary field than the more populist Christian Union for the Severance of the Connection of the British Empire with the Opium Trade. Nonetheless, despite (or perhaps because of) this centralization, financial support continued to drop, as did the number of public meetings, funded lectureships, and petitions to Parliament.⁷⁵

Considering these accounts together reveals why the Report may have been an especially effective counter to the anti-opium movement. The consolidation described by Stein meant Parliament needed only to deal with a single anti-opium organization instead of the broader community of fissiparous, occasionally redundant, activist groups and individuals that it had subsumed. While the larger organization may have been more efficient, it was also more vulnerable. If one of the smaller organizations were discredited or ceased to be effective, its members could migrate to a different society and continue their activism. But a defeat for the centralized advocacy group now represented a blow to the entire movement.

The Commission's report delivered precisely this sort of blow. Originally the SSOT had called for an investigative commission to study the way out of the financial peril involved in ending the opium trade. But the Commission's terms of reference were altered by Gladstone, who, although he had been one of the opium trade's fiercest critics, took little interest in actually suppressing the trade when he became Prime Minister. By forcing the commission to concentrate on the problems of opium use inside India instead of addressing the problems arising from exports to China, Gladstone performed an astute bit of political jujitsu against the SSOT:

Gladstone's bill for Irish Home Rule was doomed in Parliament unless he could get pro-opiumist votes[.]. Long sympathetic to the anti-opiumist cause, this consummate politician was also pragmatic.

The SSOT wanted the Commission to investigate, in England and in India, *how* the trade between China and India *was* to be terminated, *how* the English opium monopoly in India *could* be

⁷⁵ S.D. Stein, 1985. p.16.

suppressed, and *how* the Indian government *might* be reimbursed for the loss of revenue...

The Commission's mission statement was reworded. It was to investigate *if* opium should be prohibited except for medical purposes, to inquire *if* opium consumption had negative physical and moral consequences. It also was to determine what measures *could be taken if* anti-opiumists' proposals were not followed, and what did the citizens of India think about prohibiting the trade? Anti-opiumists were unable to organize a united front to oppose the rewording....

The creation of a special investigative body was a hollow victory for anti-opiumists. A resolution establishing a timetable for quickly ending the onerous trade...had been transformed into a debate as to whether there was going to be anything done at all [].⁷⁶

Since the SSOT was closely linked to this reversal, a loss of membership and interest in the Society as a political lobbying group is understandable. But this is different from saying that no one cared about the issue of opium anymore.

When the issue came up again in 1906, the anti-opium Liberals held a much more solid majority than they did in 1891. Unpopular Conservative policies led to a Liberal landslide in the general election of 1906, yielding the Liberals 400 seats. With their allied parties, this gave them 511 seats out of 670.⁷⁷ Not only did the new Liberal government command a majority, 250 of their number were declared supporters of the SSOT.⁷⁸ The Liberals were no longer dependent on collaboration with pro-opium interests to advance their broader agenda. Of course, Britain was still bound (as all governments are) by prudential and material concerns that kept its approach to the issue cautious. But whereas Gladstone had to choose between garnering support for Home Rule and abolishing the opium trade, the new government faced no such domestic partisan obstacles to acting upon its anti-opium principles.

⁷⁶ Winther, p.105. Italics in original.

⁷⁷ Goldman, Lawrence: "The General Election of 1906". Oxford Dictionary of National Biography, available online at <http://www.oxforddnb.com/public/themes/95/95348.html>, visited Jan. 22, 2008. Goldman notes that the Liberal party was also concerned about the plight of Chinese laborers in South Africa, so Chinese exploitation through the opium trade may have received some further sympathy through the prominence of that issue.

⁷⁸ Owen, p. 334.

Such domestic obstacles can bar what Kaufmann and Pape call "costly international moral action", even when there is broad agreement about the morality and importance of the cause. In the earlier case of Britain's abolition movement, coordinating domestic support was a problem:

Even when an international moral cause enjoys strong support, its chances of being enacted as state policy may often depend on whether the domestic balance of political power forces one of the mainstream factions into a "saintly logroll" with the moral activists.⁷⁹

In commissioning the Report, Gladstone found that the domestic balance of power inclined away from consummating such a logroll with the anti-opium "Saints"—a condition which did not hinder the agenda of the Liberals in 1906.

While the SSOT may have been outmaneuvered, however, that is not to say that it was ineffective. Their activism and publication continued domestically until it had, in J.B. Brown's phrase, "worn defenders of the opium trade down through attrition."⁸⁰ They had succeeded in focusing international attention on the moral aspects of the opium trade, and this international pressure would soon yield success where domestic pressure alone could not.

Though they may have stalled in their attempts to prohibit opium through a direct legislative assault, the anti-opium activists were extremely effective agents of moral suasion. They came very close to achieving their goals in 1891-1895, and it seems in this time the norm had already begun to take hold. Brown suggests that the SSOT was effective in convincing Parliament of at least some of its claims about the immorality of the trade, but to no end, because in the 1880's and 1890's the SSOT could not convince anyone of China's sincerity in wanting to suppress opium as well.

By the last third of the nineteenth century, the debate over the Chinese aspect of the opium system was focused on the sincerity

⁷⁹ Kaufmann and Pape, p. 632.

⁸⁰ J.B. Brown, "Politics of the Poppy: The Society For the Suppression of the Opium Trade, 1874-1916." *Journal of Contemporary History*, Vol. 8, No. 3 (Jul., 1973), pp. 97-111. p.109. One example of the continued anti-opium effort was the publication of Liberal Quaker Joshua Rowntree's The Imperial Drug Trade, whose analysis of the Royal Commission's Report is called "devastating" by David Owen, who adds that it "did much to arouse English sentiment against the trade". (Owen, p. 371.) Owen dates the book to 1906 but Methuen actually published the first edition of Rowntree's book in 1905, so it may have revived interest in the issue in time for consideration by the 1906 Liberal government. (Rowntree's books were not available to me.)

of the Peking government in suppressing the drug. The anti-opium forces had surprisingly little difficulty in finding general acceptance for their interpretation of the original opium treaties. Few defenders of the trade bothered to deny that Britain during the 1830's and 1840's had forced the drug upon China through armed might. But supporters of the traffic, while admitting the drug's introduction had been achieved by force, stated that no Western coercion forced the Chinese to consume it. ...Opponents of the Society charged that the Chinese desired to shut off the Indian opium trade merely to remove competition from the weaker domestic drug grown in China.⁸¹

Even though China's internal opium production and consumption might not directly affect British interests, Britain was unwilling to make an altruistic sacrifice of revenue without a similar commitment from China.⁸² That commitment would have to come later.

Before it did, however, some evidence emerged that Britain was reconsidering its role in sending addictive drugs to China. In 1894, Britain negotiated a treaty with China prohibiting the transport of saleable quantities of opium (as well as liquor) across the China/ Burma border.⁸³

Historian and lawyer J.B. Eames, writing a history of British-Chinese trade relations published in 1909, noted that further extrication of Britain from the opium trade to China seemed likely (as well as desirable) and pointed not to the 1906 resolution, nor the 1907 bilateral suppression agreement, but an earlier event:

A change, however, would appear to be imminent. By the Treaty of Shanghai, the importation of morphia was, in 1903, made illegal, with the express consent of Great Britain, and China pledged herself to prevent its manufacture on Chinese territory.⁸⁴

Morphine is derived from opium poppies and, like opium, was considered to be medically useful. It was also far more addictive and represented a further threat to the Chinese populace. That

⁸¹ Brown, pp. 102-3.

⁸² For more on this barrier to ending the trade, as well as other material/security barriers and how they were overcome, see the discussion of Intransigence in Chapter III.

⁸³ *The American Journal of International Law*, Vol. 3, No. 4, Supplement: Official Documents. (Oct., 1909), pp. 328-330.

⁸⁴ Eames, James Bromley. *The English in China*. London: Isaac Pitman and Sons (1909). p.566. Wie T. Dunn attributes this prohibition to the Mackay Treaty of 1902, and notes that the tools of injection were banned with it. However, Dunn notes that the Mackay treaty would not take effect until all signatories had ratified it, so morphine and syringes were not actually prohibited by law until this clause was included in the 1907 bilateral treaty. The last party, Japan, signed Mackay's treaty in 1908. (Dunn 1920, p. 47, 65.)

Britain and China were able to agree in 1902 to control this new drug, rather than exploit it for revenue purposes and repeat the tragic history of opium, likely served to make Britain amenable to further Chinese anti-opium overtures and to take China's anti-opium rhetoric more seriously.

3.2 China

China had long remonstrated with Britain about the opium problem and its diplomats worked closely with the British anti-opium movement. Li Hung Chang, an anti-opium diplomat who successfully negotiated an anti-opium treaty with the United States in 1880, averred that the trade was a greater evil than slavery.⁸⁵ After the Second Opium War, however, as China cultivated her own very successful opium industry, such advocacy was easily dismissed by the British as hypocrisy.

In 1898 China began a sincere effort at reform and modernization, partly in response to a military defeat at the hands of Japan in 1895. The reform accelerated in response to the 1900 Boxer Rebellion. Education, imperial finance, and the armed forces were all improved, and some elective institutions on a Western model were instituted. The most intense efforts were directed at suppressing opium use, production, and importation.⁸⁶ This was an ambitious task, considering no one really even knew how vast the problem was. In 1906, the number of opium addicts in China was estimated by the American government at 2.2 million smokers, and by the Shanghai Opium Commission of 1909 at 13.5 million.⁸⁷

In large part the origins of this reform were cosmopolitan, youthful, international—and American. Hosea Morse, a contemporary observer of Chinese politics describes a strong post-Boxer anti-opium movement promulgated by a group of elite, American- and Japanese-educated Chinese students. The surprising military victory of Japan over Russia, he notes, helped predispose Chinese nationalists to emulate Japan, and “join the first rank of powers”:

...young China imposed its will on old China. The students felt that this form of vice was one which relegated their country to a lower

⁸⁵ A. Taylor, p. 17.

⁸⁶ *Id.* p. 21.

⁸⁷ *Id.* p.6, and Papers Relating to the Foreign Relations of the United States, 1909. Washington, D.C.: Government Printing Office. No. 393: Minister Rockhill to the Secretary of State: Inclosure. p. 354. This is a report prepared by the American Legation in Peking on the Chinese opium trade.

plane in the family of nations. In 1903 the students in America protested against the inclusion of opium-smoking appliances among the Chinese exhibit at the Louisiana Purchase Exhibition... [S]tudents in Japan received their inspiration from a country which absolutely prohibited...opium, and they added this to the list of causes which had brought Japan forward, while their own country had lagged behind the race of nations.⁸⁸

China's modernization, therefore, was in part an exercise in realist adaptation, strengthening the nation in response to shifting power dynamics within the international system in order to preserve its position within the rank of nations. But institutions such as elections and an end to the opium trade implied that underlying the reform was a desire for international prestige and acclaim. Certainly the enormous domestic opium industry represented a revenue source even greater than India's, but China was willing to eliminate it as a step toward the goal of modernization. Part of their strategy for entering the international "rank of first powers" was an embrace of Western norms about opium use.

Given this resurgence of the anti-opium feeling, it is little surprise that when a Chinese diplomat named Tang Shao Yi happened to engage Indian officials in a discussion of a treaty about Tibet in 1904 that the subject of opium also came up. Tang was one of the internationalized Chinese, an "American-educated Chinese who had been a professed anti-opiumist since his student days," and was surprised to hear intimations of anti-opium sentiment coming from Indian officials:

The finance member of the council, indeed, went so far as to state that the government could manage without the opium revenue. It was apparent that a joint agreement might be in prospect. To the Chinese envoy, aware of the historic attitude of the Indian administration, the news must have seemed almost incredible. Tang was persuaded that the opportunity, so long sought, must be seized with vigor....To his colleagues in Peking Tang proposed three years as the period during which the opium habit and poppy cultivation were to be stamped out. The government found him too precipitant, and ten years was finally agreed upon.⁸⁹

⁸⁸ Morse, Hosea B. (1918) *The International Relations of the Chinese Empire*, Vol. III. Longmans, Green and Co. (New York). pp. 435-6.

⁸⁹ Owen, p. 332.

Chinese political scientist Wie T. Dunn, writing in 1920, no doubt overstated the influence of Tang's report at Peking, but it is instructive that he attaches so much importance to Tang's evaluation as an excuse for China to launch its plans for opium eradication:

With this encouraging information at hand China vacillated no longer and embarked upon the scheme of complete eradication. Accordingly, on September 20, 1906, the Chinese Government issued an edict to root out the opium evil within ten years.⁹⁰

Although it was not direct diplomatic pressure, Chinese opium eradication was useful to the anti-opiumist cause in several ways. It was an example of a "critical state", to use Finnemore and Sikkink's analysis⁹¹, one whose adoption of the anti-drug norm was critical to initiating a norm cascade against the opium trade. China's adoption of the norm also worked to shame Britain, since it stood to lose a far more significant source of revenue than did India, and had not even joined "the first rank of powers", a rank Britain considered itself to exemplify. This costly commitment, however, represented a clear signal to the world that China had embraced the anti-drug norm, and its latest campaign was not just cheap talk.⁹² As such the campaign also served to allay intransigence—the concern (discussed more fully in Chapter III) that an altruistic act by Britain would not be reciprocated by China.

3.3 America

While the influence of certain Americans' activism (e.g. Nathan Allen's) on the crystallization of the norm against state drug trafficking has been noted in this chapter, the American state was initially much more circumspect about the issue. Some American corporations were involved in the opium trade during the early 19th century, mainly through the transshipment of opium from Turkey to China. The United States had officially renounced its protection of American opium traders in 1844, and began to denounce the British participation in the trade even as Americans continued

⁹⁰ Dunn, p. 43.

⁹¹ Finnemore and Sikkink, p.901.

⁹² For a discussion of costly signals in international crises see James Fearon, "Signaling Foreign Policy Interests: Tying Hands versus Sinking Costs". *Journal of Conflict Resolution* 1997; vol. 41, #1, 68-90. Fearon distinguishes between tied-hands signals and sunk-costs signals in potentially militarized conflicts. China's efforts at prohibition are an example of the latter sort.

their enterprise for at least the next decade. The trade was re-legalized after 1858, and then more firmly prohibited in 1880.⁹³

In the meantime, despite the pleas of Chinese activists like Li Hung Chang to become involved, the United States remained content to condemn the trade from a distance. Its increased interest in international opium prohibition stems from its acquisition of the Philippines following the Spanish-American War.

The Spanish had regulated and taxed the opium trade in the Philippines through a monopoly. Much as had the British East India Company in India, the United States found itself in possession of an opium monopoly along with its new territory (although this monopoly dealt with consumption instead of production). Just as Warren Hastings did, territorial Governor William H. Taft planned to continue the monopoly, though Taft at least planned to use the revenue to fund education.

However, Taft's plans were derailed by someone he had brought to the Philippines to help him govern: anti-opium crusader and Episcopalian Missionary Bishop Charles Henry Brent. Brent had missionaries deluge the White House with cables protesting the association of the American government with the opium trade. President Roosevelt stopped Taft's plans and instead appointed a commission to examine the existing opium problem among the Philippine populace as well as the wider problem throughout Shanghai and Southeast Asia. To lead this commission, Roosevelt appointed Bishop Brent.

This commission's report, issued in 1904, was critical of the 1895 Royal Commission and reached the opposite conclusions: they called for the gradual prohibition of the use and importation of opium within the Philippines. But the U.S. Congress didn't believe even these measures were sufficiently drastic, and ordered a total and immediate prohibition of non-medical opium use by Filipinos. Non-Filipinos, mostly the territory's Chinese labor force, were allowed a three-year grace period. This 1905 legislation was America's first major anti-narcotics law⁹⁴ and represented an unequivocal victory for the worldwide anti-opium movement. In passing this bill, Congress sent an unmistakable normative message to Britain about American views of what was appropriate behavior for states, and what was not.

⁹³ A. Taylor, pp. 15-16.

⁹⁴ At this point, states' rights/ Tenth Amendment considerations kept Congress from enacting a nationwide ban on all narcotics. No such bar existed to prohibiting opium in the Philippines.

Bishop Brent was the very model of one of Finnemore and Sikkink's "norm entrepreneurs" and participated in all three stages of the establishment of the norm against state drug trafficking. Brent was familiar with Chinese missionaries' complaints about the opium trade and strongly opposed it. The 1904 report, Brent wrote to Roosevelt in 1906, was read by English clergy in China and Hong Kong and being used to lobby the British Parliament to end the opium trade. He had also been notified that the report was translated into Chinese and distributed widely.⁹⁵ Brent conceived of the opium problem as a worldwide issue and wrote to Roosevelt, urging him to advocate an international solution to a truly global problem. Brent noted that his experience on the 1904 committee "leads me to believe that the problem is of sufficient merit to warrant an endeavor to secure international action".

Roosevelt approved of Bishop Brent's message and Secretary of State Alvey Adee attached Brent's letter in his instructions directing the U.S. ambassador to Britain to approach Sir Edward Grey about what would become the 1909 Shanghai conference.⁹⁶ (Roosevelt would later put Brent in charge of the Shanghai conference of 1909 and then the Hague Convention of 1912).

As distinct from British politics, where colonial officials and diplomats found themselves arguing for material concerns in opposition to the anti-opium movement's idealistic goals, American politics in general proved more permeable to religious sentiment on the issue (especially since America lacked an existing financial stake in the trade). Missionaries were already influential players in U.S. opium policy and found themselves allied with U.S. consular officials,⁹⁷ and their reasons for doing so had a clear antecedent in the decades of anti-opium activism in Britain and China. Notes historian Arnold Taylor,

It is significant...that during the course of the international opium movement in the twentieth century a prominent feature of the pleas by Americans for swift and effective action without regard to the financial considerations was the comparison to the opium problem to that of slavery.⁹⁸

⁹⁵ Foreign Relations of the United States, p.362. Letter #315, Alvey Adee to Ambassador Reid. Oct. 13, 1906. (Brent's letter to Roosevelt, dated August 20th, is attached.)

⁹⁶ Foreign Relations of the United States, p.360. Letter #297, Alvey Adee to Ambassador Reid. Sept. 27, 1906. (Brent's letter to Roosevelt, dated July 24th, is attached.)

⁹⁷ A. Taylor, p. 29.

⁹⁸ A. Taylor, p. 17.

American and Chinese diplomats advanced the discourse of opium's equivalence to slavery from the outside, even as British advocates continued to pressure the government from the inside. These combined external and internal pressures, as well as the historical accident of an overwhelming Liberal majority taking power in 1906, were not present to the same degree during much of the nineteenth century. These were the contributory forces that pushed British opium policy past the tipping point and led it—if at times a little reluctantly—into the IDCR.

IV. ENDING THE TRADE

Three distinct events mark the transition of the worldwide non-medicine opium trade from legal to illegal. In February 1906, a reform-minded Liberal government closely associated with the anti-opium movement took control of Parliament. Despite almost ten years of relative inaction on the issue, they passed a resolution in May condemning the opium trade and requesting the government bring it to a close. They estimated it would cost the people of India three million pounds in extra taxes annually, but passed the measure by a voice vote, without even calling for a division.⁹⁹ One eyewitness described the victors linking arms and marching from Parliament's lobby into the street, "singing the doxology".¹⁰⁰

This new resolution soon resulted in negotiations between Britain and China about phasing out the trade. These nations reached an agreement in 1907, which directed India to phase out opium exports to China over a ten year period, as China cracked down on its own illegal cultivation and equalized duties on foreign and native opium.¹⁰¹ In 1911, the agreement was reviewed and, China's compliance being found acceptable, the target date of 1917 was confirmed.¹⁰²

At American insistence, these negotiations expanded into the second of the three events, a wider international conference at Shanghai in 1909. The conference included representatives from the United States, Great Britain, France, the Netherlands, Germany, China, Russia, Japan, Austria-Hungary, Italy, Portugal, Persia, and Siam, most of which had either financial stakes in the opium

⁹⁹ Owen, pp. 333-335.

¹⁰⁰ Alexander, Horace G. Joseph Gundry Alexander (1921). London. Quoted in Owen at 335. Alexander, a Quaker, was an anti-opium activist, a peace activist, and also wrote a history of the anti-slavery movement in 1900, published by the "British and foreign anti-slavery society".

¹⁰¹ Owen, pp.341-3.

¹⁰² Taylor, Arnold. American Diplomacy and the Narcotics Traffic, 1900-1939. Duke, 1969. p.23.

trade, regional interests in the Far East, or both.¹⁰³ This conference was largely inconclusive, however, and after considerable pressure from American diplomats a second conference convened at The Hague in 1912. (All parties but Austria-Hungary attended.) This more formal treaty conference resulted in the 1912 Hague Convention on Narcotic Drugs, the foundation of the modern drug control regime. The 1909 Conference and the 1912 Convention and the conditions surrounding its signing are discussed in Chapter III.

The opium trade, of course, did not magically disappear with the signing of the Hague convention. Nor did the opium monopolies vanish immediately. While the Indian government retained a monopoly on opium, the trade in "Malwa" excise opium¹⁰⁴ from the native-controlled states of western India was brought to a close in 1913. With the end of the Malwa trade, the India-China opium trade ended in 1913.

All states signing the 1912 Hague Convention were expected to undertake "gradual and effective" suppression of opium use domestically. "Gradually," within the British Empire, meant nearly until World War II, as Bengal continued to supply the opium dens of Singapore along with the Empire's medicinal opium needs.¹⁰⁵ Trocki notes that in 1931 in Singapore, for example, a British monopoly factory was turning out enough opium to supply the needs of Singapore, Malaysia and Siam. Opium prohibition within Britain's own empire was not formally enforced until much of its Asian territory was "in [Imperial] Japanese hands, at a time when British law and authority were literally dead letters,"¹⁰⁶ and the trade within the colonies of an empire—as opposed to the international trade—would not be formally abolished until after World War II. But the previously legitimate trade between nations in non-medicinal opium had been dealt a sudden series of blows from 1907 to 1912 from which it would not recover.

¹⁰³ Stein, pp. 50-52.

¹⁰⁴ Native-state opium was called "Malwa" opium, and was a distinct commodity from the premium British products called "Patna" and "Benares". Rather than being produced in British factories its transportation through British territory and on the way to the factory was taxed.

¹⁰⁵ Richards, John F. (2003). Manuscript. "The Opium Industry in British India." Forthcoming in *Indian Economic and Social History Review*.

¹⁰⁶ Trocki, p. 161. Other states such as France and Holland maintained opium monopolies in their Asian colonies as well.

V. NORMATIVE ALTRUISM AND ALTERNATIVE HYPOTHESES

Was this a norm at work? Certainly the arguments against the drug trade were normative in character, but that does not prove that Britain responded to them in response to a logic of international obligation. This section will attempt to explain what that obligation was perceived to be, and refute some alternative explanations for Britain's actions.

5.1 The shape of the norm

While the simplest statement of the norm would be to say that "states should not traffic in addictive drugs for recreational use", the norm actually seems a bit more complicated than that.

The continuing sale of opium to British colonies by British colonies seems not to comport with the morality of the modern drug-control regime nor the contemporary anti-opium movements. However, the British condemnation of Imperial Japan's sale of opium within the formerly British colonies it occupied suggests the underlying norm remains consistent: a state or an empire may sell harmful drugs to its own subjects, but to sell opium (or morphine) *across the lines of sovereignty* violates a strong sense of international propriety or morality, one that persists and shapes the narcotics control regime of today.

In this sense the prohibition on interstate drug trafficking seems a truly international norm. Its unique position in history comes from its status as the successor to the anti-slavery movement, which was concerned not only with British internal emancipation but also with the prevention of international slave traffic upon the high seas. The norm is contingent upon a pre-existing framework of sovereignty, violations of which had outraged Edmund Burke in 1783 long before the stigma had attached to the sale of narcotics.

The norm also permits exceptions in the form of medicine. Opium, especially in the nineteenth century, was an effective analgesic and its derivative morphine even more so. As discussed below, the Royal Commission report went even further in claiming some decidedly unscientific medical benefits for opium. Yet even the staunchest anti-opium norm entrepreneurs recognized that there was a legitimate medical market in opium that was outside the norm. Distinguishing between illegitimate "recreational" opiates and legitimate "medical" opiates would prove to be a

challenge when it came time to codify the norm within the IDCR, and the attempts to distinguish them would leave some easily exploitable loopholes.

Loopholes aside, an important insight about the nature of opium prohibition emerges from evidence in the Final Report of the 1895 Royal Commission on Opium. The report shows clearly that Britain perceived its abandonment of the India-China trade as a response to a logic of appropriateness, not merely as an instrumental mechanism for reducing addiction.

Not only the Commission, but even several anti-opium missionaries acknowledged in 1895 that ending the traffic from India to China would do little to reverse the problem of drug abuse inside China. Before the opium wars, a moratorium on British opium might have slowed or checked the expansion of the Chinese opium problem, whereas in 1895 (or 1906) such efforts would have an effect on overall addiction only at the margins—even though India exported more opium than ever, and there were probably more Chinese opium users than ever before. Yet after thirty-five years of domestic Chinese opium being produced on a scale that dwarfed that of India, this production differential dictated that only a relatively small fraction of the immense number of Chinese opium users relied on the premium British product.¹⁰⁷

Furthermore, the users of England's premium product tended to be elite Chinese, who were less likely to face disastrous consequences from opium use than were the generally poorer consumers of cheaper domestic opium. These users would not experience any opium shortage in the event of prohibition, but could if necessary easily substitute the native product for expensive Indian imports.

Despite the knowledge that the evils of opium addiction in China would continue regardless of British cooperation, England nonetheless began in 1906 to phase out its participation in the international opium trade. Whether or not it would do any good, and absent any realistic calculation of a number of Chinese lives that might be saved, Britain was ready to wash its hands of the trade. Such behavior suggests that Britain was acting from a sense of obligation, or out of a "logic of appropriateness" rather than carrying out an instrumental strategy designed to eliminate opium use in China. Granted, when it came down to the practical matter of phasing out opium cultivation in 1907, British diplomats insisted on a gradual bilateral reduction coordinated with

¹⁰⁷ Government of Britain. Final Report of the Royal Commission on Opium. (1895). pp.52-3. Available through the Stanford Medical Center library.

and contingent upon China's own eradication of domestic opium. But this agreement followed from the 1906 condemnation; the Liberal government wanted out of the business even before they knew they could count on Chinese cooperation. The decision to withdraw from the trade suggests England had internalized the idea that international opium trading was morally unacceptable behavior for a civilized state, regardless of the severity of the consequences.

In 1918, as the Chinese government faced an internal struggle to control a resurgent internal opium market, the British editor of the *North-China Herald* wrote:

...any attempt to take advantage of a Chinese lapse from grace by suggesting a revival of the [opium] trade would be greeted with as little favour as a prospective revival of the slave trade.¹⁰⁸

In six years the norm had taken hold; despite some Chinese intransigence there was no desire to repudiate the treaty. Philip and Thompson had finally succeeded in internalizing a link between slavery and the international trade in opium within the public consciousness.

5.2 Alternative hypotheses

Are there other explanations besides this normative altruism for Britain's renunciation of the opium trade? Evidence tends to refute two alternative theories based on national self-interest. Most important is the 1895 Report of the Royal Opium Commission, which was tasked by Parliament in 1893 to investigate both the extent of the opium problem and the feasibility of eliminating it.

5.2.1 Did Britain stop the opium trade out of concern that China would retaliate commercially?

Robert Philips' *No Opium!* offered a two-pronged argument against the opium trade in 1836—part of which was normative, but part of which was commercial. Edmund Burke, before him, had advanced a version of the same argument: that by persisting in the opium trade, Britain risked having all its legitimate exports shut out by China in retaliation. This commercial argument was repeated by several of the early anti-opium advocates, but by 1906, the argument was moot: The treaty of Nanking, signed in the wake of the Second Opium War, opened China to free trade in all

¹⁰⁸ *North-China Herald*, June 15, 1918. Quoted in Owen, p. 354.

British commodities. Parliament's 1906 resolution, and the 1907 treaty, were not concessions made with China in order to secure free trade in other goods.

While on the subject of commercial warfare, it should be noted that historians differ on the degree to which the Opium Wars were economic wars to protect the opium trade against Chinese enforcement. Glenn Melancon disputes this description and instead explains the British decision for war with China in 1839—the First Opium War—to be a defense of British "national honor" against Chinese insults—though he does acknowledge the role of financially interested elites such as country trader Matthew Jardine as being influential, if not decisive.¹⁰⁹

If Melancon is correct, however, his interpretation also supports this chapter's argument that the norm against state drug trafficking had strengthened greatly between 1839 and 1906. In the escalation before the war, anti-opium critics condemned the trade as immoral, and therefore a war to defend the trade or the interests of opium traders would have been, to them, doubly immoral. (To Gladstone, it was.) "National honor" is a different sort of normative argument, but Melancon describes the demands of national honor being perceived differently by the Melbourne government in 1839. At that time, answering a perceived Chinese insult was a more compelling matter of honor than ending the trade, and the war proceeded over critics' objections. By 1906, national honor was fulfilled instead by acknowledging the immorality of the trade and taking steps to withdraw from it.

5.2.2 Did Britain stop the opium trade out of fear that opium addiction could adversely affect its own subjects?

Modern readers familiar with current worldwide patterns of drug consumption might discern another reason for Britain's willingness to forgo the opium trade: "Blowback", the potential for Britain's own population to become addicted to opium. Today, rich, first-world nations (including Britain) are consumers of illicit drugs, and the IDCR has adapted to address that condition. But politicians and even anti-opium activists in nineteenth- and early twentieth-century Britain did not concern themselves with this possibility. While aware that there was a potential for abuse of medicinal opiates, they regarded opium abuse as an Oriental vice.

¹⁰⁹ Melancon, pp.102-3.

Opium abuse did exist in England, and such prominent figures as anti-slavery clergyman William Wilberforce were addicts, not to mention more bohemian types such as Samuel Taylor Coleridge and Thomas DeQuincey. The 1868 Pharmacy Act restricted the sale of opiates within Britain, and required them to be sold through a licensed pharmacist and with a "poison" label. These simple measures proved surprisingly effective at preventing drug abuse in England up until the 1960's.¹¹⁰

But dating back to Hastings' first decisions, British colonialists also professed concern about protecting colonial subjects from opium abuse. The first monopoly was founded on the pretext of protecting poor Indian farmers from the depredations of unregulated opium production, and the "pernicious" vice of use as well. To reprise Hastings' own assessment of the opium trade, it was suitable for foreign commerce, but was something "which the wisdom of Government should carefully restrain from internal consumption."¹¹¹ Certainly, many of the decisions made in accordance with this paternalist calculus also conformed to Britain's economic self-interest. While the colonial administrators were solicitous of addiction problems of their Indian and Burmese workers, they were much less concerned about addiction among their Chinese customers. The conventional wisdom of the British government seemed to be that opium filled a niche in China similar to that filled by alcohol in England, with little greater injury to the Chinese.

The 1895 Report was limited by its terms of reference to ignore the deleterious effects of opium on the population of China, and permitted only to investigate the effects of opium use upon British subjects in India and to a lesser extent in Burma and the Straits (Singapore). This focus ignored the main thrust of the anti-opium societies' argument, that the people of China were enslaved by British opium addiction. By being forced to concentrate only on opium use within India the Royal Commission was, in effect, stacking the deck and biasing the report against prohibition.

The great majority of Indian opium was designated for export to the Far East and only a small amount remained in India, much of it used medically or quasi-medically. Furthermore, as mentioned previously, opium smoking was more addictive and was also more prevalent in China. In India, opium was usually eaten, and smoking was a "subordinate habit"¹¹². The preference of both Indians and Englishmen for taking opium orally, instead of smoking it, likely prevented both

¹¹⁰ Musto, David F. "The History Of Legislative Control Over Opium, Cocaine, And Their Derivatives". Available at <http://www.druglibrary.org/schaffer/History/ophs.htm>.

¹¹¹ Parliamentary Papers, 1783. *Ninth Report of the Select Committee*, Appendix No. 59a, p.268

¹¹² Final Report, p. 117.

the large-scale addiction that gripped China and the profusion of lurid, politically alarming opium dens on Imperial soil.

It was therefore not surprising that the Commission found no significant opium problem within India, and that the "gloomy descriptions presented to British audiences of extensive moral and physical degradation by opium, have not been accepted by the witnesses representing the people of India, nor by those responsible for the government of the country."¹¹³

The Commission could not avoid considering the fate of British subjects in Burma, however, where the native population suffered from such widespread addiction that the colonial government had cracked down and prohibited native Burmese, though not immigrant Chinese, from using opium. Rather than ascribing this difference to the method of delivery, however, the Commission's majority endorsed the Burmese government's racial explanations for the Burmese "special susceptibility".¹¹⁴

These racial—and, frankly, racist—theories of opium susceptibility were lent credence by a medical inquiry commissioned by Burma's government, which observed comparatively greater damage upon ethnic Burman opium users:

Again, the evidence before us certainly shows that the Burman who takes to opium is more often injured physically and morally than the Indian. This difference is generally attributed to a difference in mind or character. The Burman is more impulsive, pleasure loving, and reckless than the Indian. The latter has more stability of character, more industry, and much more thrift and prudence, inherited perhaps from a harder struggle for existence. These characteristics give the Indian more power of self-control than is possessed by the Burman. It may be noted that the evidence from the Straits Settlements shows a similar difference,...between the Chinaman and the Malay. There seems no doubt that the Malays are more impulsive and excitable than the Chinese, and that the Burmans are much nearer in temperament to them than to the Chinese or Indians.¹¹⁵

¹¹³ *Final Report*, p. 94.

¹¹⁴ *Id.* p. 95.

¹¹⁵ *Id.* pp. 86-87.

Unlike Roberts' idiosyncratic section of the 1895 report on opium as an anti-malarial drug discussed above, it seems that this view of differing racial affinities for opium use was taken seriously by a wide spectrum of policy makers. The racial differentiation was not merely a politically convenient smokescreen, but was widely believed. It informed not just Indian policy, but also was cited in one of the first American opium plans for the Philippines.

In fact, some traders and colonial officials claimed that opium held special virtues exclusively for the Chinese race. Jardine, Matheson, the largest and most politically influential firm of country traders, asserted that

[S]ince 1860 it has been rendered abundantly clear that the use of opium is not a curse, but a comfort and a benefit to the hardworking Chinese. As well to say that malt is a curse to the English labourer, or tobacco one to the world at large.¹¹⁶

Samuel Laing, a member of the Indian Council, noted in an 1862 financial statement that:

The Chinese, whose greatest deficiency...is in the imaginative faculties, resorts to that which stimulates the imagination and makes his sluggish brain see visions and dream dreams.¹¹⁷

Britain seemed satisfied that opium was likely to remain primarily a Chinese vice, though care was taken to prevent opium addiction among the Indian and Burmese population. As for the risk to Europeans of opium addiction, if the English feared a wave of opium addiction affecting England as it did China, they made no effort to include a study of such a scenario within the definitive 1895 Report. The Commission interviewed doctors who confirmed that Europeans were even less susceptible to opium than were Indians.

For these reasons the Chinese opium problem, when it was acknowledged by the colonial government to be a problem at all, was not regarded as likely to repeat itself in England.

¹¹⁶ Owen, p. 243. Jardine, Matheson survives today as a large Asian import/export firm, sans opium.

¹¹⁷ Quoted in Owen, p. 285.

5.2.3 Had the opium trade become financially insignificant?

Was the decision to withdraw from the India-China trade a costly moral international action? Or had ending the opium trade had become a cheap gesture? While it would not disprove the argument that this was a decision made on moral grounds in response to an emerging international norm, the assertion that the opium revenue was worthless anyway may support a realist or neoliberal interpretation of Britain's decision—that British economic interests in continuing the trade were *de minimis*, so the decision to abandon it was not economically irrational. In fact, while the trade had dwindled from its peak in the 1880's, it was still an important part of Indian revenue and the decision to abolish the trade represented a considerable sacrifice.

How important were opium revenues to British India? That was one of the questions the Royal Commission was tasked with answering. They concluded that "The finances of India are not in a condition to bear the charges for compensation, the cost of the necessary preventive measures, and the loss of revenues [that] would result from the adoption of a policy of prohibition."¹¹⁸

The Final Report writers point out that not only would prohibiting opium eliminate an enormous and critical slice of revenue, but also considerable costs would be incurred through attempts to enforce the prohibition. No estimates of this cost were presented to the Commission. Also, to avoid an angry uprising, opium farmers would have to be bought out and compensated for the loss of their livelihood, again at great government expense.¹¹⁹

A similar problem was perceived in prohibiting opium traffic from the Native States, the parts of central India still controlled by native rulers. Many of these states produced opium but signed treaties requiring them to transport it through British territory to take it to refinery and market, and therefore had to pay a pass-duty on all they produced. Two of these native states submitted estimates of the compensation they felt appropriate for suppressing their own opium trades (which the Report intimated were likely optimistic) totaling 4,580,158 rupees, "and a large part of the total sum is claimed as an annual payment".¹²⁰

¹¹⁸ Final Report, p.96.

¹¹⁹ *Id.* pp. 55-6

¹²⁰ *Id.* p. 42

Henry J. Wilson, the sole member of an anti-opium organization included on the Commission, filed a dissent to the majority Opium Commission Report that disputed some of the majority's claims about the economic importance of the trade. Wilson argued that no compensation would be legally owed to producers, and that the expense of prohibition was likely "exaggerated". He also pointed out that opium revenue had declined and it would be unwise for India's government to continue to rely on it.¹²¹

Wilson was correct about the decline of opium revenues but the decline was already halting. As a percentage of total revenue, opium revenues had fallen from an exceptional 22% of total Indian revenues in FY1857-8, down to approximately seven percent of revenues in 1895.

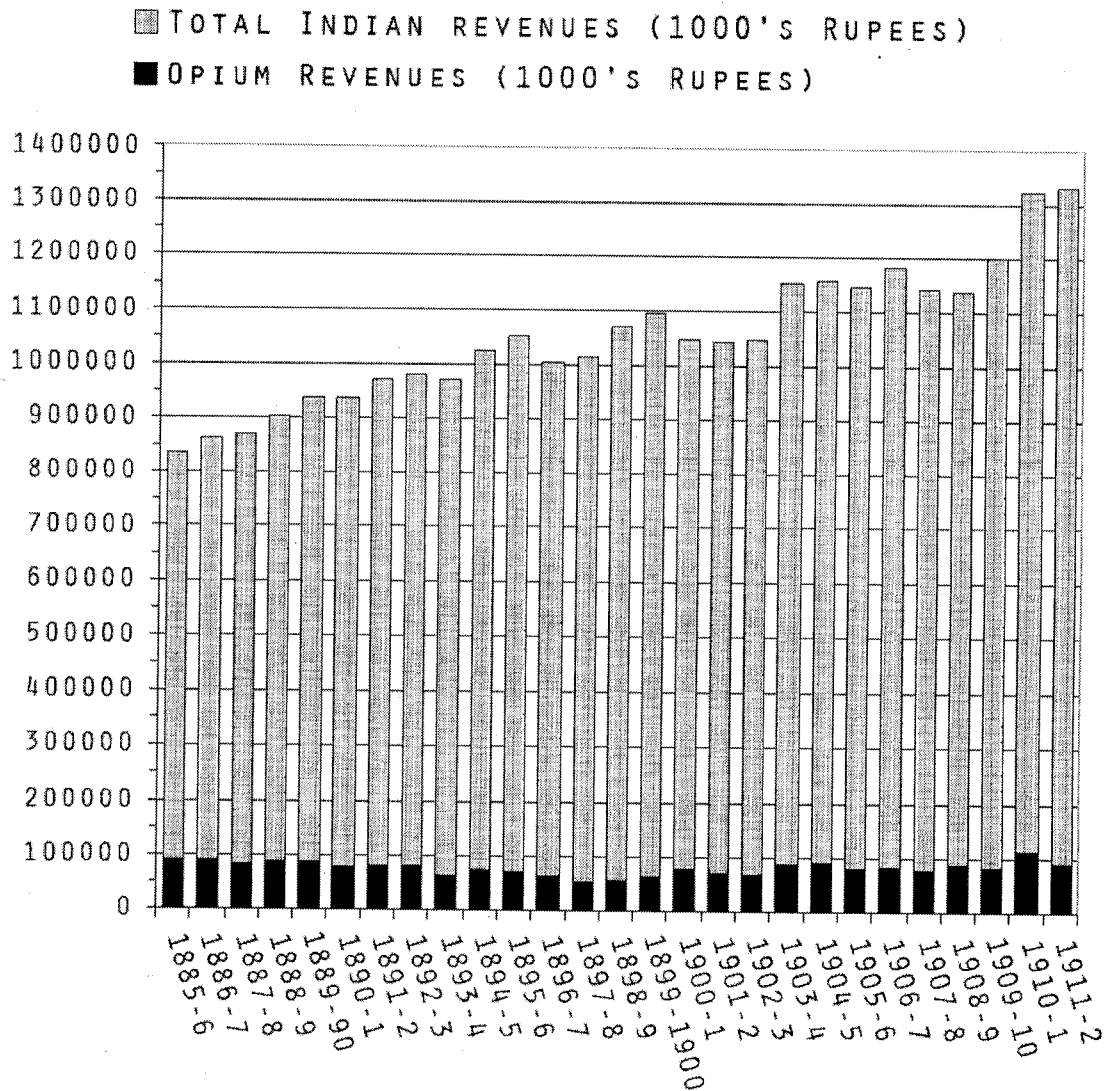
But Wilson and all parties involved were certainly aware of the opium industry's fluctuations. Although production had peaked in the mid-1880's, there was every reason in 1895 or in 1906 to assume that opium would continue to be profitable even though opium prices and production had been volatile in the past. In fact, India had taken steps to promote stability of pricing and output, including banking a reserve of opium to make up for production shortfalls and to keep gluts off the market.

Despite Wilson's warnings, in the years between the publication of the Royal Commission's report and the Anglo-Chinese agreements of 1907, and its renewal in 1911, opium revenues rebounded and continued to represent between seven and nine percent of the government of India's revenues. After a trough in 1897-8, opium revenues increased, along with the rest of India's revenue. Richards notes other sectors drove economic growth, probably as a result of capital investments initially made possible by opium revenue.¹²² In FY 1910-11, the year of the renewed Anglo-Chinese agreement to phase out the trade, and the year before The Hague convention, revenue jumped nearly 36% to 112 million rupees, or 9.32% of total revenue. (Table 2.1)

¹²¹ Final Report, pp. 150-1.

¹²² Richards, 2003.

Table 2.1: Indian opium revenue and total revenue, 1885-1912¹²³

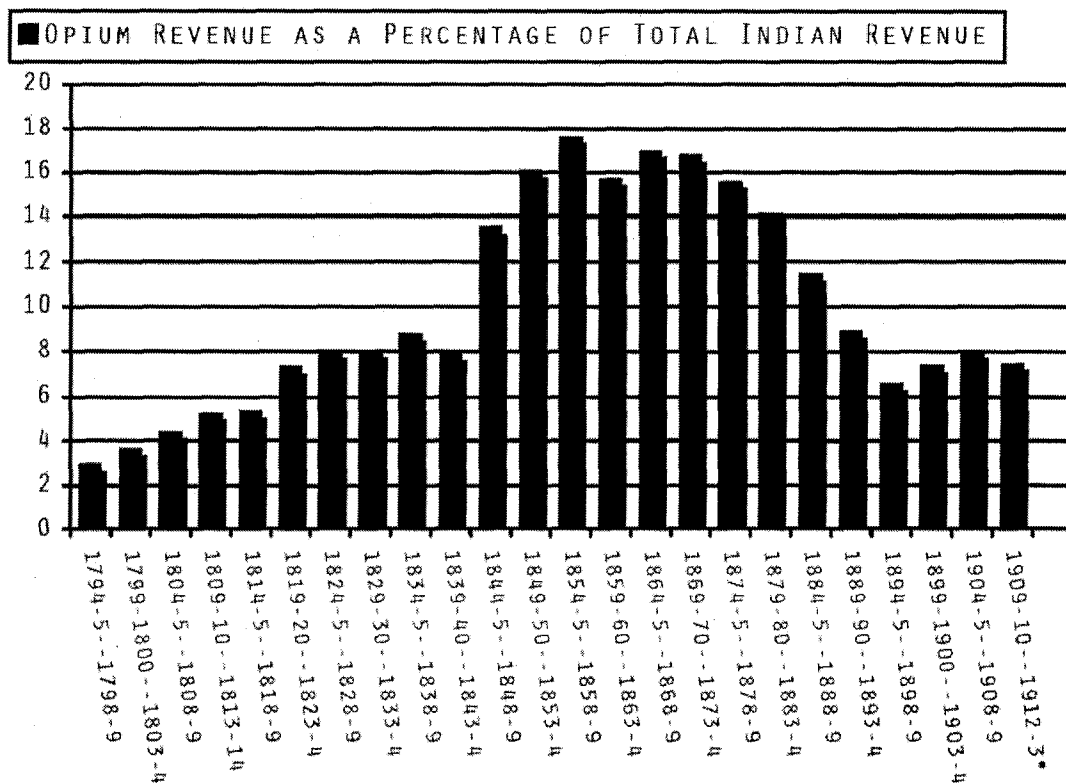


In evaluating the significance of the British financial sacrifice, it is important to bear in mind that this proportion of opium revenue to total revenue was nearly equal to the percentage for the years 1834-5 through 1838-9 (see Table 2.2), when opium revenue averaged 8.17% of total revenue. Performance from 1895-1911, leading up to and including the repudiation of the opium trade discussed above, was not too different from that of the 1830's, before Indian opium competed with Chinese opium. That was just before the First Opium War, at a time when Britain went to war

¹²³ Based on data compiled and graciously provided by Prof. John F. Richards, Dept. of History, Duke University.

with China over the opium market.¹²⁴ In other words, an item of revenue that had been worth fighting for in 1839 had maintained its market share, but by 1906 had become an embarrassment.

Table 2.2: Five-year averages, opium-to-total Indian revenue ratio, 1797-1913¹²⁵



To put the opium revenue into perspective, consider a modern example: In both FY 2002 and 2003, corporate income taxes accounted for just over seven percent of US revenues. A decision to phase out the opium trade and its associated revenue in 1906 was the fiscal equivalent of eliminating corporate taxation within the United States today, though without any of the economic

¹²⁴ As explained above, there are alternative explanations for the 1839 Opium War, but they are normative as well. If one is using a purely materialist logic to dispute the salience of this norm, it would be inconsistent to switch to a normative instead of materialist explanation for the first Opium War.

¹²⁵ Source: Prof. John F. Richards, Dept. of History, Duke University. The first average is based on incomplete data and takes in only 3 years. The last average is a four-year figure, since the period after 1912 does not concern this Chapter and revenues were artificially depressed by the Anglo-Chinese accords.

benefits that might accrue from untaxed business.¹²⁶ As such it represented a substantial sacrifice to colonial revenue, as well as a substantial blow to an entrenched sector of India's economy.

VI. CONCLUSIONS: THE OPIUM BOOMERANG

While this chapter has shown that a strong normative pressure helped pull England out of its profitable entanglement in the India-China opium trade, it would be premature to end a study of the drug trade here. Obviously, everyone did not live happily ever after. The hearts and minds of national leaders—and opium traders—did not melt at the anti-opium crusaders' outpouring of earnest goodwill. The trade in opium and worse continued through the twentieth century and into this one. Those underlying economic and security pressures that first involved England in the opium trade, and kept her there even after Parliament branded the trade as "morally indefensible", are still at work on nations today. Sometimes, though not very often¹²⁷, states have succumbed to the temptation to sell illicit narcotics to their neighbors. But usually the norm and the prohibition regime it inspired is effective in deterring nations from entering the market on their own behalf.

Power and altruism were contending ideas in the question of British opium policy. While I argue that thanks to international pressure, the altruistic norm won the day, the shape of the peace was nonetheless largely negotiated and defended by states and statesmen still concerned about the financial and security implications of relinquishing the drug trade. The unstable history of this shaky truce which altruism reached with power is the subject of the next chapter.

The norm's bloodless consolidation is a testimony to Keck and Sikkink's intuition about which activist agendas are most likely to be successful. The anti-opium movement was conceived from its beginnings as analogous to the abolitionists' struggle against the slave trade. Both were seen by the activists as struggles for "human dignity"; opium addiction was an affront to dignity, the

¹²⁶ U.S. Department of the Treasury: Financial Statements for the United States Government for the Years Ended September 30, 2003, and September 30, 2002. p.59: Table (United States Government Statements of Operations and Changes in Net Position for the Years Ended September 30, 2003, and September 30, 2002.) Downloaded at <http://fms.treas.gov/fr/03frusg/03stmt.pdf>. For FY 2003, total revenue was \$1,796.0 billion, of which corporate income tax represented \$128.2 billion, or 7.14% of total revenue. For FY 2002 total revenue was \$1,877.7 billion and corporate income tax yielded \$143.7 billion, or 7.65%.

¹²⁷ The final chapter of this study will examine some exceptions to the rule—states that choose to engage in state drug trafficking despite the norm and despite the consequences of crossing the regime.

argument went, and respectable nations should not be allowed to profit from that sort of involuntary degradation any more than they should be permitted to profit from the slave trade.

But perhaps the question of more theoretical interest to political scientists is "Why did this norm win"? Was it simply an accident of electing a Liberal government to power in 1906 which happened to sympathize with the domestic anti-opium cause, and which found itself (unlike in 1893) with the power to act on that agenda? If so, the role of international activist groups in this story is something of a red herring.

Kaufmann and Pape's analysis of the British abolition of the slave trade certainly supports this view of domestic politics driving moral international action. Their assessment was dismissive of a constructivist theory of international normative change:

Transnational influence does not appear to be critical for costly international moral action. None of the four transnational influence efforts observed here exerted meaningful influence on target state behavior, either because the internal political challenges were too difficult, or because foreignness itself delegitimated attempts at transnational persuasion.

Similarly, although cosmopolitan ideals may help explain inexpensive moral actions, they appear insufficient to motivate genuinely costly international moral action. For individuals to sacrifice a noticeable fraction of their wealth or security purely to advance the condition of a distant other would require a degree of commitment closer to the models of a perfect cosmopolitan ideal discussed by some moral philosophers than to the behavior we observe in the British case, and the paucity of other expensive international moral actions is itself evidence that this level of commitment must be rare.¹²⁸

Kaufmann and Pape's point about "cosmopolitanism" carries some weight; many of the religious activists who opposed the opium trade believed, as did the same sort of Dissenting Christians who opposed the slave trade, in a higher sort of Activist—what Kaufmann and Pape term an "an activist God who rewarded and punished people and nations according to their merit."¹²⁹ Many also maintained a paternalistic belief in the "White Man's Burden", that imperialism could be a benign force to ennoble and enlighten heathen races. Without arguing that paternalism is absent from

¹²⁸ Kaufmann and Pape, pp. 662-3.

¹²⁹ Id. p. 648.

modern transnational activism, both the anti-slavery case as well as the anti-opium case suggest that a secular, "world-culture" universalism fails to capture the motivations behind successful campaigns for moral actions, at least those of the nineteenth century.

Kaufmann and Pape are also correct about the importance of domestic political changes to the new norm. But for the election of the Liberal party in 1906, it is unlikely that international advocacy alone could have dislodged the barriers to abandoning the opium trade. And domestic advocacy was of course crucial; seventy years of anti-opium agitation was successful in informing and persuading a majority of Liberal party members to the moral imperative of extricating Britain from the opium trade.

But Kaufmann and Pape greatly underestimate the importance of an international dimension to these sorts of campaigns. Their conclusion is based on the true, but misleading fact that transnational anti-slavery activist groups had little effect on British slavery policy. However, in the case of the opium trade, and I would argue, with most modern cases of transnational activism, it is not only groups that apply pressure to states. They are not the only international moral actors; states can be moral advocates to other states as well.

As discussed in section 3 of this chapter, Britain was worried about other states taking up the trade if they were to abandon it. Such a decision could be costly for Britain if a rival were to capture the opium revenue from the Chinese market. The British were likewise concerned about Chinese commitment to ending the opium trade. Why should they refrain from "shooting the farmer" if another state would inevitably do so? Even after British policymakers had become sympathetic to moral arguments against continuing the opium trade, they were not ready to abandon it without some assurance from other states.

In the period of 1895-1906 described above, those assurances came from America and from China. These "critical states" to the trade began lobbying Britain to pull out of the trade. China offered sincere assurances of its own desire to eliminate the trade and followed up with a carefully monitored, reciprocal bilateral agreement in 1907 to confirm its own commitment to eradicating opium addiction, and the United States began to engage its own opium problem in the Philippines and also to publicize the need for a global solution to the problem instead of piecemeal and particularistic endeavors that reduced the incentive for all states to abandon the trade. This

national advocacy was moral in character, but it was also pragmatic and quite comprehensible to realists: it reduced the security risks inherent in abandoning the trade.

However, these changes in national anti-opium agendas did not arise *sua sponte*. These changes did occur as the result of a transnational activist community agitating for change on three continents. The ideas of the initial anti-opium activists in Britain spread out, mainly along religious and missionary channels, through epistemic communities and religious communities and to elite policy-makers like Charles Brent in America and Tang Shao Yi in China. Even though British activism reached a "saintly logjam" instead of achieving a "saintly logroll" in Parliament, it was ultimately able to circumvent this logjam by informing and inspiring activists in other nations.

This pattern accords almost exactly with a different theoretical model, one laid down by Keck and Sikkink in their 1998 book *Activists Beyond Borders*. They called it the "boomerang model", described primarily in terms of human rights agitation for domestic human rights issues. Opium activism shows it applies to international cases as well:

When channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks many occur; domestic NGO's bypass their state and directly search out international allies to try to bring pressure on their states from outside...On other issues where governments are inaccessible or deaf to groups whose claims may nonetheless resonate elsewhere, international contacts can amplify the demands of domestic groups, pry open space for new issues, and then echo back those demands into the domestic arena.¹³⁰

The Boomerang Model describes well the pattern of successful activism employed by the British anti-opium movement. This study offers no evidence that the *direct* influence of international activist groups upon Parliament was effective. However, their influence on Chinese and American activists was considerable, and those Chinese and American activists were in turn influential upon the Chinese and American governments. It was the Chinese and American governments, in their turn, that ultimately carried out the designs of the British activists. These states did so by normative pressure that overcame the objections of pro-opium trade faction, and also through advocating specific international initiatives that reassured British politicians who might have been inclined

¹³⁰ Keck, Margaret and Kathryn Sikkink, Activists Without Borders. Ithaca: Cornell University Press, 1998. pp. 12-13.

toward eliminating the trade but were reluctant to take a leap of faith on the issue. Indeed, because of the international security concerns about ending the trade, it was only these nations that had the power to influence Britain to abandon the trade.

Having considered what this case says about how norms are established, it is important to return to the overarching question of this study: why don't states traffic drugs? Once upon a time they did, and quite successfully. To the next logical question of why they stopped, the lingering end of the legal opium trade offers an answer. It was not, as has been suggested elsewhere, that the opium trade ceased to be profitable; nor was it that Britain feared a "blowback" epidemic of addiction starting among its own populace or even among its imperial subjects in Asia.

The cause of death for the legality and acceptability of state drug trafficking was a long-running international campaign to prohibit it. The beginning of the end for the international opium trade might be traced to Robert Philip and Thomas Thompson's 1835 pamphlet, and the subsequent activists and moral entrepreneurs, many of them with ties to Christian missionaries or missionaries themselves, who began to organize around some objections to the idea of a nation selling opium. These activists knew from the beginning that their undertaking would require a momentous effort over years to show any results; one of the first anti-opium writers held out that

It is not by one effort, or by twenty, that truth can prevail with men when their self interest, love of gain, or other base passions, oppose. The principle, *non vi sed saepe caedendo*, is never more apparent than in cases of this nature. The writer, therefore, has no other hope at present than of awakening some attention to a point too long neglected; and shall not be surprised, though he will feel grieved if even in this hope he be disappointed. When powerful patronage, general example, rooted custom, and the love of lucre, are all arrayed together in the cause of vice, the battle of truth against such a host must be a long and arduous combat.¹³¹

They thought, in summary, that the opium trade was analogous to the slave trade; they thought the sale of opium was an unfit source of revenue for civilized nations; they thought the opium trade was a bar to the evangelization of Chinese souls; and as a result of the particular religious character of this movement, they thought that nations involved in the trade risked divine retaliation.

¹³¹ Anonymous (1836) Chinese Repository, p. 298. The Latin proverb, from Ovid, reads in full, "non vi sed saepe cadendo, gutta cavat lapidem": not through force, but through constant dripping, water drills through stone.

Not every anti-opium activist shared all these views or emphasized the same ones, but these were the ideas that, broadly speaking, united the movement and persuaded the powers of the day.

Apprehension over the flight of Chinese specie into Europe was a critical concern of the Chinese government, but not of the broader community of anti-opium activists. Likewise, concerns that the opium trade angered China and closed off the Chinese market to other sorts of British exports was often advanced, but this line was usually taken by anti-opium activists for whom this was one argument among many, though not the primary reason for their involvement.

What is significant to the ongoing public debate about the drug trade and drug policy is that the anti-opium opinion leaders were not just missionaries or clergymen. Quoted in the study above are anti-opium statements from merchants, politicians, a military engineer, journalists, an art critic, and a doctor. The debate was a familiar one across professions as well as nations. One of the largest and most prominent anti-opium organizations, the SSOT, was called the more "secular" of the opium societies. Though religion is obviously a crucial element to the history of this norm, it is clearly inaccurate to paint the IDCR as the progeny of religious fanaticism, as it is often represented in the current debate.

Even the more sophisticated analysis of S.D. Stein falls short in its conclusion that the driving force behind the British anti-opium movement was that opium was a scapegoat for the failure of missionary efforts in China. It may have been so, but that was far from the whole story since the ideas behind the anti-opium movement predated this conflict that arose mainly in the 1870's and 1880's, and the ideas circulated through a broad community of opinion makers, many of whom were not closely connected with missionaries.¹³²

Another important parallel with the current debate was the misuse of medical science to justify the liberalization of drug policy. Today, the history of exaggerated claims made by some drug prohibition figures such as Henry Anslinger about the capacity of some drugs to induce psychosis and depravity are well-known, and justly derided. Meanwhile, the notion that misleading, inaccurate, or blatantly false scientific and health claims might be used to advance a pro-legalization agenda is far more controversial. Yet Paul Winther's survey of the political misuse of

¹³² Stein, p.12.

William Roberts' flawed report on the illusory anti-malarial properties of opium reminds us that exactly such a scenario has played out before.

Also discredited by the record of anti-opium activism is the canard that drug laws are uniformly racist in their origin. While a case might be made that these laws are racist in effect, and while anti-Chinese sentiment may have influenced American opium laws, the notion that the prohibition of illegal drugs grew out of racist motives is far off the mark. The premises of the anti-opium movement were, like the anti-slavery movement it sprang from, universalistic in character. The movement's proponents presumed an obligation to uphold the dignity of one's fellow man regardless of race, over and above legal obligations or national affinity. They spoke up in defense of the Chinese they perceived to be at risk from exploitation from amoral imperialism (even though many of them may have advocated a theory of *mora*/imperialism.)

When there was racism in this debate, in fact, most of it came from the opposite side. Merchants and politicians with a stake in the opium trade were often condescending and dismissive of the harm opium was causing their customers. The 1895 Report of the Opium Commission relied on bizarre and pseudo-scientific theories of racial susceptibility to excuse the opium trade to the Chinese. If the anti-opium activists were keen on enumerating the vices common to the Chinese, they laid the blame for the vice upon opium abuse, and perhaps a lack of Christian teaching, but not on some essential racial defect.

The counterargument was not a defense of Chinese virtue but rather a different explanation for Chinese vice. Stein, for example, cites a prominent British military doctor's assessment that "the Chinese were generally so depraved that opium smoking was unlikely to do them any further harm":

That a people distinguished by such characteristics as the Chinese, viz. avarice, poverty, cruelty, excessive vengery, liability to all kinds of disease, drunkenness [sic], Budhism [sic], should become addicted to opium, certainly does not appear very wonderful; for opium in its effects is exactly the agent to minister to minds so diseased...the only wonder indeed is, that opium was not sooner extensively adopted by the Chinese.¹³³

¹³³ Stein, p. 14. Quoting W.J. Moore, Deputy Surgeon-General H.M. Forces, Presidency Division Bombay, in 1882. Ellipsis in Stein.

Gradually, the universalistic arguments won out over the particularistic ones, and the anti-opium norm became truly international. The movement found partisans in China and in America. However, this internationalization of the cause was not enough to enact a change; it was not until these partisans gained influence within their own governments that the pressure became influential upon the British government.

Even so, the pressure was not especially direct or contentious, at least from the American side. There was no dramatic speech by an American politician castigating the British policy. There were very few public demonstrations against the trade and, in England, no anti-opium violence. Finnemore and Sikkink describe "inappropriate behavior" and civil disobedience as a frequent mechanism of social change, but this revolution was distinguished by its stultifying propriety.¹³⁴ Rather, the process of change was a fairly quiet, gradual one as political elites reconsidered and redefined the obligations and norms that constrain state behavior. As momentous international changes go, this one was rather dull.

In light of that dullness, it is useful to reprise the remarkable success of the anti-opium project. When Warren Hastings first began to exploit the opium monopoly in 1773, he knew opium to be "pernicious". But aside from its importation into China, the traffic in opium was not illegal or especially controversial. And aside from the developing moral condemnation, Britain incurred no serious externalities from the trade—the ill effects of the opium trade were deposited downstream, to be borne by the Chinese.

The trade produced such a vast stream of revenue for Britain that contemporary statesmen maintained Britain could not afford to relinquish the trade, and in modern times Carl Trocki has asserted that the British Empire was built and maintained on the profits of the opium trade. Yet by the end of the nineteenth century, despite the crucial revenue it produced, Britain was struggling to justify its involvement in the trade to its own people and to the world. A few years after that they would bow out of the international trade altogether.

But the anti-opium movement's effect was not limited to Britain alone. Their activism established an international norm that, though it has evolved, has largely endured intact over the subsequent century. As a result of their campaign, the unwritten rules—and more slowly, the written rules—of

¹³⁴ Finnemore & Sikkink (1998), p. 897.

state conduct changed. It was no longer acceptable for states to sell narcotics outside of their own borders. Such a change has not been without serious unintended consequences. Regardless, the anti-opium movement's largely unsung achievement represents a rare and remarkable political and social victory.

CHAPTER III

SHOOTING THE FARMER: THE INTERNATIONAL DRUG CONTROL REGIME, STARTING CONDITIONS AND DYNAMIC DEVELOPMENT

In the mid-nineteenth century Britain—a major political power in pursuit of its financial self-interest—invaded China, a weak adversary, to *maintain* the free market in addictive drugs. At the end of the twentieth century the United States—a major political power acting contrary to its strategic self-interest—invaded Panama, also a weak adversary, to *curtail* the free market for addictive drugs. This historical juxtaposition shows that while the market for addictive drugs persists and remains sufficiently important to constitute a *casus belli*, there has been a dramatic change in the political dynamics of the international drug trade over the last one hundred and fifty years. The thesis of this chapter is that this change has been brought about, either directly or indirectly, by the international drug control regime, hereafter known as the IDCR.

The IDCR is a curious institution, one that often directs states in behavior that seems against their material and security interests. It has been criticized as deleterious to states' sovereignty (especially developing states) and to human rights, both values it was, to some degree, established in order to uphold. This chapter will examine the founding and development of the IDCR in light of a theory about its founding that may bring more insight into some of those ostensibly paradoxical results. I argue that the IDCR was originally founded as a coordination mechanism between states, which for reasons discussed in Chapter II no longer wished to continue to profit from the opium trade. However, these states were also unwilling to withdraw without guarantees that other states would not take advantage of their withdrawal and sustain the drug trade. The IDCR came into existence in order to permit nations to withdraw from the trade. It persists in order to attempt to order the distributional outcomes of the drug trade. Who profits from the sale of illegal drugs? The IDCR is, I argue, a mechanism that exists to ensure that the answer is "not states". In this regard it has enjoyed some success.

However, because states do not profit, other actors do. The IDCR's initial success in limiting state participation has demanded an expansion of its mission: today it also attempts to coordinate, and even mandate, efforts between states to control transnational criminal groups who traffic drugs. This effort has been less successful. In this sense I advocate a tragic understanding of the IDCR:

because of the conditions of its original founding, because of the inherent weaknesses of international organizations in an anarchic system of states, because of the dual-use nature (both as necessary medicines and as drugs of abuse) of the drugs it attempts to control, and especially because of the extraordinary adaptability of transnational actors relative to the international system, many of the IDCR's laudable objectives can never be fully attained.

The previous chapter explored the gradual establishment of a norm against international narcotics trafficking. By emphasizing the immorality of the opium trade and its similarity to the slave trade, anti-opium advocates around the world were able to pressure Britain into agreeing to phase out its own very profitable international opium sales. The 1907 Ten Year Agreement between Britain and China was a bilateral treaty whose focus was to limit addiction in China by limiting supply both from China's own production and from Indian imports. This treaty institutionalized the norm against states shipping addictive drugs to other states for recreational use.

Subsequent initiatives to expand the scope of the IDCR were complicated by the need to allow for the development and production of medicinal opiates while disallowing opiate production for recreational use. This had not been an issue in 1907.¹³⁵ As soon as the scope of the IDCR extended beyond the geographic boundaries of China and India, one of the IDCR's self-appointed tasks was to distinguish between the legitimate and illegitimate use of drugs.

This chapter examines how the IDCR subsequently focused on three specific objectives: assuring the availability of drugs for the legitimate market, suppressing supply to the illegitimate market, and finally, in the most recent treaties, controlling addiction by limiting demand. The expansion of the IDCR's mission was linked to a growing awareness of the international scope of the drug problem. The IDCR's goals could no longer be solved by a series of bilateral agreements; an increasing number of state actors were crucial to the IDCR's success while at the same time limiting the chances of achieving meaningful agreement.

The initiatives of the IDCR have not always achieved their desired effect and they have had both intended and unintended impacts on international drug trafficking. To the extent that the IDCR successfully limited state involvement in the illicit drug trade it unintentionally increased the

¹³⁵ The bi-lateral Mackay Treaty between Britain and China, signed in Shanghai in 1902 allowed the importation of morphine and hypodermic syringes into China for medical purposes only. The manufacture of morphine in China and the instruments for its injection were banned by the same treaty (Article XI).

incentives for state actors to evade the regime and inadvertently opened up the market for recreational drugs to non-state actors. The IDCR has not succeeded in blocking the involvement of non-state actors in the illicit drug trade nor has it developed an effective system for monitoring and enforcing state compliance with the IDCR. In response to the latter problem, the United States has developed a parallel unilateral system of carrots and sticks to ensure that states live up to their treaty obligations. Non-state actors, for their part, have developed their capacity to become successful criminal innovators who adjust their own behavior and tactics in response to law-enforcement threats and the control regime.

The actions of the IDCR have provoked reactions by the political, diplomatic, business and criminal worlds. Their reactions and innovations are as much a part of the dynamic development of the IDCR as the signing of the 15 treaties. For this reason, these agents will be examined throughout the chapter alongside the analysis of the IDCR which they have changed, and were in turn changed by.

I. NARCOCOLONIALISM

The successful establishment of a norm against state drug trafficking by associating it with slavery represents only part of the story of the IDCR. This understanding, espoused by the "moral entrepreneurs"¹³⁶ who led the opium prohibition movement, was not quite the same understanding held by the diplomats and policy makers who found themselves constrained by the new norm. Although they understood and in some cases agreed with the slavery analogy, national governments were also engaged in a competitive international environment that led them to see narcotics traffic as a worldwide security threat. Complicating this calculus was the commercial dimension of the legitimate market for drugs for medical and scientific use. Thus policy makers were forced to consider the political, security and commercial implications of the opium trade alongside the moral implications that concerned the activists.

Nevertheless, the activists' rhetoric often served to illuminate the underlying political situation. One metaphor employed by anti-opium activists to describe the international trade in addictive drugs was "vampirism".¹³⁷ In an anti-opium hymn that was included as an epigram for a collection of

¹³⁶ The concept of "moral entrepreneurs" as drivers of prohibition regimes was advanced by Nadelmann (1990), and was employed again in Andreas and Nadelmann (2006). Finnemore and Sikkink (1998) use the more neutral "norm entrepreneurs".

anti-opium essays (probably written to be sung as a hymn by the mostly Christian activists), anti-opium lyricist W. Maxwell described the trade as bleeding China dry:

Alas, that greed should make us slow
To aid our neighbour's virtuous strife,
And circumvent the vampire foe
That drugs and drains a nation's life,
While sticking for such treaty claims
As Heaven adjudges to the flames!¹³⁸

A vampire's bite must have seemed an apt description of the situation from the Imperial Chinese point of view. Shiploads of silver leaving the country in exchange for a consumable product destined to disappear in smoke were regarded as a national crisis. Because of the involuntary nature of drug addiction, the transfer was automatic despite the efforts of the Imperial government to stop it. It was almost as if Britain had colonized China and demanded an enormous annual tribute—but Britain never incurred the expense of managing and defending this colony; those obligations remained the responsibility of China's Emperor.

This process might be termed "narcocolonialism", as it approximates the effect of colonizing a foreign state, capturing a portion of its resources not through conquest, but through the sale of addictive drugs. "Narcocolonialism" is not a completely original coinage; it has shown up on a few conspiracy-theory websites. But the term is used here to describe narcotics-driven imperialism, or the involuntary exaction of tribute through the sale of addictive drugs.

Colonization is a useful description of the relationship between a drug supplier and an addicted user—on the individual level or the international level. In becoming dependent, the addict remains nominally free but in reality must surrender a considerable amount of his income to support his habit. An addict exploits himself, though he no longer does so of his own will and is alienated from the products of his labor. Collectively, a population of addicts does the same thing, organizing itself to trade its labor for narcotics. The resulting capital flows from an addicted

¹³⁸ Maxwell, W. "The International Opium Crisis". (Hymn). Reproduced in Lewis, Rev. Eric, Black Opium. Marshall Bros., (1910), at viii. The "treaty claims" referred to are probably those of the 1860 Treaty of Peking, that ended the Second Opium War between Britain and China and as one of its conditions legalized the opium trade.

populace produce one of the benefits of colonialism—a steady tribute—without the expense of conquering or maintaining a colony.¹³⁹

There are reasons to distinguish narcocolonialism from other revenue-draining activities. One possible comparison is with the global energy market, in which economically advanced states such as the United States are dependent upon oil-producing states—often states that the United States would prefer not to enrich. While control of energy resources is a topic of geopolitical interest, energy is economically necessary. Abundant energy can make a country stronger and encourage development and growth. Opiates, on the other hand, are a net loss to states when used other than medically. They are, as Warren Hastings concluded in 1773, a “pernicious article of luxury”, and not at all a necessity.¹⁴⁰

Narcocolonialism is a strong negative for the addicted state. Separate from the humanitarian issues of the drug trade, narcocolonialism is a threat to sovereignty and to security and has long been perceived as such. The affront to sovereignty was especially grievous in the case of 18th and early 19th century China, where any introduction of opium into China was in blatant violation of Chinese law. China’s retaliatory strategy after the losing the Second Opium War was to begin growing and selling opium domestically, both to raise revenue and to drive out the “foreign mud”. If Chinese silver was to be spent on opium, the mandarins reasoned, it should at least stay in China.¹⁴¹ If they could not beat England militarily, China would join them in selling opium—and in doing so, Chinese officials thought, at least stanch the flow of specie out of their borders.

Japan likewise recognized the threat of narcocolonialism in the Chinese example; in fact, fear of repeating the Chinese experience was a prime reason for Japan’s policy of isolation in the mid-

¹³⁹ The previous chapter discussed how anti-opium activists were able to establish a rhetorical link between the opium trade and the slave trade. However, the colonization analogy is actually more appropriate than a comparison with slavery, because the narcotics trade involves an ongoing wealth transfer that, while involuntary, is not overtly coerced. Unlike slavery, colonization and colonialism were not regarded as an unmitigated evil by the 19th and early 20th century anti-opium activists, most of whom were colonialists in a Kiplingesque sense; that is, they felt an obligation to enlightening and educate colonized populations, especially through the introduction of Christianity.

¹⁴⁰ Similarly, not all luxury items are security risks, because they are not addictive in the same way opiates are.

¹⁴¹ Owen, p.270.

19th century.¹⁴² In 1854, after Commodore Perry's expedition, the American consul Townsend Harris used the threat of Qing dynasty China's fate to pressure Japan into a trade pact with America. Historian Bob Tadashi Wakabayashi details the reaction to the treaty by a "thinker-activist" named Sakuma Shōzan:

Sakuma railed that Harris had extorted this treaty through deceit. Harris had claimed that if Japan signed a U.S. Treaty explicitly prohibiting opium imports, this precedent would force Britain to follow suit, and Japan would avoid the tragic fate that had befallen Qing China. Sakuma claimed that this was a lie: "Even the great power Qing failed to stop British marauders from violating bans on opium; how can a weak power like Japan stop Britain with a mere treaty? ... The British break treaty provisions and commoners suffer as a result. Reason dictates that we must not victimize our own people to help foreign nations gain profits."

Wakabayashi points out that Sakuma and his fellow critic of the opium trade (and advocate for sakoku, or isolation) Yoshida Shōin "made opium smuggling their prime test case in upholding these principles of sovereignty and autonomy".¹⁴³ America's interests in this matter seemed less focused on the possibility of being the victim of a narcocolonialist power than a strong moral interest in curbing the drug trade. Nonetheless America was worried about widespread addiction in its new territory in the Philippines and may have held some security concerns based on the opium trade. Diplomatic correspondence in 1906 refers to a letter (not reproduced) from

...the Secretary of War, emphasizing the importance of the opium question and its bearing upon the beneficial improvement of Chinese and oriental civilization.¹⁴⁴

The Secretary of War's involvement suggests that the Philippine drug problem was perceived to some degree as a national security issue, not merely a diplomacy issue. In any case, the more energetic U.S. involvement in international opium prohibition at the turn of the century is an

¹⁴² Wakabayashi, Bob Tadashi. "From Peril to Profit: Opium in Late Meiji Eyes." In Opium Regimes: China, Britain, and Japan, 1839-1852. Wakabayashi and Brook, eds. University of California Press, Los Angeles(2000), pp. 60-61.

¹⁴³ Id. pp. 62-3.

¹⁴⁴ Foreign Relations of the United States, p.361. Letter No. 297—Acting Secretary of State Alvey Adee to Ambassador Reid. September 27, 1906. The letter is unfortunately not included with the letter from the Acting Secretary of State and not identified by date; however, I suspect the letter referred to is one cited by Arnold Taylor (1967) as Taft to Roosevelt, Sept. 1, 1906. An explication of the security aspects of the opium trade written by the Secretary of War in 1906 (William Howard Taft) would be of great value to this project.

unusual situation. Rather than using a moral issue as leverage for asserting material interests, as a neorealist might expect, the Roosevelt administration used its newfound material/security interest to legitimate its moral case for drug prohibition. The United States had outlawed opium sales by Americans to China since 1880. Previously the case had been ignored as a matter between Britain and Asian countries, one in which the United States lacked standing to interfere since it had neither a stake in the opium revenue, nor a population directly imperiled by the opium trade.

With its acquisition of the Philippines and a population with an opium consumption problem, that changed. Charles Henry Brent had been appointed as Anglican Bishop of the Philippines under Governor Taft and later served on the three-man Philippine Opium Commission, charged with investigating how other Asian countries had handled "the opium problem". Brent wrote a letter to President Roosevelt in 1906 urging American leadership in finding a solution to the world wide opium problem, arguing that:

...it seems to me almost our duty, now that we have the responsibility of actually handling the matter in our own possessions, to promote some movement that would gather in its embrace representatives of all countries where the traffic in and use of opium is a matter of moment.¹⁴⁵

Later that year, U.S. Ambassador to Japan Luke E. Wright echoed Brent's justification for American involvement. Reporting on a conversation with his Japanese counterpart about forming an international investigation into the opium trade (which would evolve into the Shanghai Conference of 1909), Wright wrote to the Secretary of State that "Japan...is the nearest neighbor of the Philippines, whose possession by the United States gives our Government a new and peculiar interest in the opium trade."¹⁴⁶

This assessment of the Philippines as an excuse for American assertion of a prohibitionist agenda in the worldwide opium trade is shared by Arnold Taylor, writing in 1967. But it remains difficult to disaggregate America's moral concerns from its financial and security policies because in the case of the opium trade, they were seen (perhaps wishfully and idealistically) to coincide:

¹⁴⁵ Foreign Relations of the United States, p. 362. Letter No. 297 (Adee to Reid). Brent's letter was attached.

¹⁴⁶ *Id.* p. 364. Letter No. 96. Luke E Wright to Secretary of State (Elihu Root). Dated November 8, 1908, although this is almost certainly a misprint and the correct date should be November 8, 1906.

...at the turn of the century the United States enunciated the Open Door policy. Envisaged in this policy was a strong, stable, and prosperous China able to resist the incursions of foreign powers and providing mutually profitable opportunities for trade with the West. The opium traffic was therefore regarded as a formidable barrier to the fulfillment of this policy.

It was concern for China then, within the context of the economic, political, and humanitarian considerations encompassed in the Open Door policy, which lay behind the American call for a conference on the Far Eastern drug traffic.¹⁴⁷

Narcocolonialism, then, presented a rational security and economic concern for much of the world at the dawn of the twentieth century. On the other hand, narcocolonialism was a great temptation for a hegemon like Britain, which was able to export opiates with little fear of addicting its own populace. As Carl Trocki explains, the opium trade was an important source of revenue that enabled the expansion of the British Empire, and their competitive advantage in the field was one they guarded carefully.

Despite the frequent defenses that if they did not promote and control the opium trade, then others would, the Indian government so actively protected its monopoly and so richly profited from the trade, that we must suspect either their sincerity or their awareness. Opium was the major foreign-exchange earner.

The British did not create the empire in order to trade opium, nor did the opium trade become the rationale for every major imperial policy. On the other hand, opium touched many parts of the system, and when crucial issues were decided, they were never decided against the trade or against the opium revenue until very late in the game. The interests of the trade guided the expansion of the empire by closing certain avenues and opening others. With the trade went the growth of the capitalist system...The advances of the empire in Southeast Asia and China were likewise driven by the opium trade.¹⁴⁸

While Trocki's assessment of the necessity of opium commerce to build and advance the entire British Empire overstates the case, there is little argument that it was vital to India, at least, and thus regarded as important to Britain. Certainly the rest of the world understood this to be the case; a

¹⁴⁷ Taylor, Arnold. (1967): American Confrontation with Opium Traffic in the Philippines. *The Pacific Historical Review*, Vol. 36, No. 3. (Aug., 1967), pp. 307-324.

¹⁴⁸ Trocki, p.86.

contemporary *New York Times* account of the 1909 Shanghai conference read this agenda into a British refusal of American proposals to curtail the trade:

...the American delegates...found many of their most radical suggestions opposed by Sir Clementi Smith, head of the British delegation, on the obvious ground that the American delegates were fathering the cause of China; that the United States had really no vital interest in the opium traffic, for the real, although unexpressed, reason that opium is an immense source of revenue to the British Empire.¹⁴⁹

Other power- and security-seeking states would be interested in controlling such a trade, both to increase their own power and to discourage the growth of rivals. But, as seen by the resolution to the Second Opium War, which required China to open its ports to British opium¹⁵⁰, Britain had the power and willingness to enforce its narcocolonial ventures militarily and to override another sovereign's desire to control its internal opium dependency.

In a system of security-seeking states, then, one would expect to see more of this sort of retaliatory narcocolonialism in which the militarily stronger states take advantage of weaker states. As David C. Jordan posited in *Drug Politics*,

For [Realist Kenneth] Waltz, if the structure determines that it is necessary for the units to help themselves, then all the units are compelled to behave according to the same standards: "The units of an anarchic system are fundamentally undifferentiated. The units of such an order are then distinguished primarily by their greater or lesser capabilities for performing similar tasks." ...The implication of this structural theory is that, if drug trafficking enhances a state's relative power, other states will be compelled to participate in the trafficking of drugs in order to remain competitive.¹⁵¹

¹⁴⁹ "Campaign Against Opium." *New York Times*, April 18, 1909. See also Chapter II of this dissertation for an explanation that the opium trade was still a major component of Indian revenue despite a decline in its overall importance due to Chinese competition.

¹⁵⁰ Treaty of Tientsin, 1858. Wright, Hamilton, *The International Opium Commission*, *The American Journal of International Law*, Vol. 3, No. 3, (July 1909), pp 649-650.

¹⁵¹ Jordan, David C. *Drug Politics. Dirty Money and Democracies*. University of Oklahoma Press, Norman (1999). p.12. Jordan's quote is from Kenneth N. Waltz, *Theory of International Politics*, (New York: McGraw Hill 1979), p. 97.

Narcocolonialism, then, is a political problem, and one of legitimate concern to an international order made up of security-seeking states. To understand the reasons behind the IDCR, it is necessary to understand that this predatory relationship between powerful states and smaller states is precisely the relationship the regime was designed to prevent. Despite some extremely serious unintended consequences, it has been more successful at preventing narcocolonialist exploitation than critics have credited it with.

II. SHOOTING THE FARMER: POWER CONCERNS, NORMS, AND BARRIERS TO OPIUM PROHIBITION

Even as the forces described above worked upon Britain to bring her to the negotiating table, they were opposed by two major sources of resistance to curbing the international opium trade: one an ideational, equity concern, which I term "intransigence", and another power-politics concern which might be best described as a variant of a "relative power" dilemma. These concerns affected not only Britain but every nation involved in the opium trade as a consumer, producer, or transit point.

These concerns acted as barriers to any sort of diplomatic solutions to the problems presented by the opium trade. Despite a growing awareness of the injustice of narcocolonialism, these countervailing concerns would need to be addressed by the founders of the IDCR. A look at statements of interests from the parties involved in the 1912 Hague Convention will demonstrate these concepts—intransigence and relative power concerns—at work.

In the previous chapter this study argued that religious and moral imperatives motivated anti-opium crusaders and, in turn, affected policy makers as well. Curiously, at the same time, there is a countervailing ethical barrier *preventing* states from making concessions and embracing the norm of drug prohibition.

One of the first critics of the opium trade, and (as discussed in Chapter II), one of the most widely quoted, was an anonymous British merchant or missionary writing in 1836. Not only was his rhetoric memorable, but this writer analyzed early on a key dynamic of the opium trade that kept its participants from abandoning it, even though they recognized the norm against it:

In 1763, a man of the name of Benjamin Weald was convicted of shooting a farmer through the head, having been hired to do so for £150. He had no spite at the poor farmer—never saw him

before in his life—and rather pitied the man than otherwise. He would have preferred receiving the £150 without shooting the man: but his employers told him that was impossible, and for his compunctious visitings of conscience, they were all thrown away, for the man's life they would have, if not by his hand, by some one's else's. So Weald took the 'commercial gains,' preferring on the whole that blood should be shed, and by his hand, rather than these commercial gains to go another. Was he, or was he not, a murderer? The most astonishing fallacy which the advocates of the opium trade use as a palliative to their consciences, is that if they do not trade, others will. The Court of Directors use this excuse in writing to the Bengal government (vide extracts from India state papers in the D.U.K. Almanac for 1830) and confess, that so repugnant are their feelings to the opium trade, they would gladly, "in compassion to mankind," put a total end to the consumption of opium if they could. But they cannot do this, and as opium will be grown somewhere or other, and will be largely consumed in spite of all their benevolent wishes, they can only do as they do, & c. ¹⁵²

Chapter II explained that, because of beliefs about racial susceptibility, because of the preferred method of ingestion (i.e., eating opium instead of smoking it), and because of the professed Anglo-Saxon cultural preference for alcohol, Britain was not especially concerned with the possibility of an opium epidemic striking its own subjects. India was not thought at particular risk due to the manner of opium use there and also because of the prevailing racial theories advanced in the 1895 Report of the Royal Commission. But that did not mean that Britain was willing to stand by and let another country take its hard-earned place as supplier of opium to China. After all, if country A is willing to forgo the profits of the opium trade with country C for altruistic reasons, country A might wonder why country B shouldn't do so as well. ¹⁵³

This intransigence is not, strictly speaking, economically rational, especially if instead of a security-seeking, neorealist lens, a neoliberal understanding of international relations is employed. Neoliberalism views states primarily as economic entities that seek to maximize trade. If State A cannot or will not trade opium, aggregate wealth will still be improved if State B does so, and if State B does not, State A is no worse off. In fact, the opposite may be true: since international

¹⁵² Anonymous. "Remarks on the Opium Trade with China". *The Chinese Repository*, Vol.V (May 1836-April 1837.) 297-305. Dated August 11, 1836, pp. 303-304. Available through Google Books, at <http://books.google.com/books?id=IAQMAAAAYAAJ>.

¹⁵³ This intransigence resembles the sort of barrier to conflict settlement described by Lee Ross and Robert Mnookin as an "equity" or "justice-seeking" barrier. Mnookin, Robert and Lee Ross. "Introduction". In *Barriers to Conflict Resolution*. Arrow, Mnookin, Ross, Tversky, and Wilson, eds. W.W. Norton (1995) p.11.

trade is *not* a zero-sum game, a wealthy trading partner involved in the opium trade might have more money to spend on State A's exports other than opium. Given the long-standing efforts of British merchants to import British goods other than opium legally into China¹⁵⁴, this secondary benefit was not insignificant.

Equity concerns, however, forbade making a concession that other states might not match. Part of the strength of the new anti-opium norm was that, as with the prohibition on slavery, it drew on universal and cross-cultural principles. If opposition to narcocolonialism is truly a norm based on a universal concern for human dignity and freedom, then it ought to be practiced universally as well. But for nations that sincerely wished to live up to the norm and exit the opium trade, another state's refusal to abide by the norm meant that it would be profiting from an immoral and unjust act. Hence intransigence was a reaction among several nations which might have preferred to reduce their involvement in the opium trade.

This equitable reasoning was not limited to the principals of the opium trade. A similar sentiment emerges from diplomatic correspondence over Japan's support for opium suppression in 1906. Japanese diplomats would gladly extend their support, reported an American diplomat,

...provided that they could be assured of China's bona fide cooperation; that the difficulty they feared was the grave danger pointed out in the department's dispatch—the great temptation to the Chinese Government to suppress the importation of opium, only to grow the drug to greater extent in their own territory.¹⁵⁵

Likewise, the interests of the United States leading up to the 1909 Shanghai conference were not immediate material concerns—although the U.S. "Open Door" policy did take an interest in the opium problem as it related to China. The State Department was legitimately concerned about eradicating opium use in the new U.S. territory of the Philippines, but was also seeking an equitable international solution to the worldwide drug problem. Accordingly a solution that left

¹⁵⁴ As described in Chapter II, the anti-opium movement from its beginnings claimed the opium trade was detrimental to legitimate trade. Robert Philip, writing in 1835, asked merchants to renounce the opium trade in order to deprive the Chinese of their chief excuse for not opening up the country to legitimate trade with Britain, especially for woolen goods.

¹⁵⁵ Foreign Relations of the United States, p.364. Letter No. 103—Ambassador Luke Wright to the Secretary of State. November 24, 1906. There may have been a long-standing precedent for this intransigence: Wakabayashi, *supra*, notes that Japanese anti-opium treaties signed in the 1850's were careful to insist on reciprocity and equality of obligation between the parties.

China in a stronger position to exploit its own domestic opium market was seen as unacceptable, even though opium use and sales inside China were utterly irrelevant to America's material interests. As American diplomats began to press for the 1909 Shanghai Convention, Acting Secretary of State Alvey Adee instructed his Ambassador to Great Britain, Whitelaw Reid, to prevent such an outcome:

One thing would have to be guarded against: The great temptation to the Chinese Government to suppress the importation of opium only to grow the drug more in their own territory....If the Chinese Government is to be asked to take part in an international conference having for its object the control of the opium trade she should be made to give in advance specific pledges that the Government would adopt genuine radical measures to prevent the spread of the poppy on her own soil. Otherwise the efforts of the foreign powers would only result in suppression of a trade yielding revenue to themselves, while China would take advantage thereof to increase her own production and fasten the curse more firmly than ever on her people.¹⁵⁶

Adee was concerned with the human cost of Chinese opium use, but also did not want to be played for a sucker and enrich China through a desire to protect the Chinese populace. The possibility that China might profit unjustly from other nations' altruism was identified both by Japan and America as an unacceptable outcome to these negotiations, even though China's internal consumption of opium did not affect either nation directly. This suspicion that the negotiations might leave China unjustly enriched, even if the international trade were crippled, could be dubbed an equitable concern instead of a security concern. America wanted to see China succeed, but a China that exploited its own populace by selling it opium was not defined as a success. It was no use taking the gun from Benjamin Weald, only to hand it to another potential assassin.

In addition to this equity-seeking intransigence, and largely inseparable from it, there is also a very rational calculus of power underlying the norm against state drug trafficking—a calculus which made it difficult initially for states to embrace the prohibition norm.

¹⁵⁶ Foreign Relations of the United States, p.361. Letter No. 297—Acting Secretary of State Alvey Adee to Ambassador Reid. September 27, 1906.

Many of the British Parliamentary arguments for continued involvement in the opium trade sound like "relative power" arguments—they feared that by forfeiting their share of the trade, they would not end the trade but only shift it into the domain of another power, potentially one opposed to Britain's interests. These arguments resembled relative power arguments, although they were not fully articulated as such: while the notion that conceding a vast revenue source to a potential rival would be unwise was explicated several times, the relative-power implications of the opium trade were only implied. To reprise and expand the dilemma of Benjamin Weald, not only would a rival shoot the farmer and claim the £150, but that rival could use the £150 to buy a better rifle and come after Mr. Weald. In a neorealist, Hobbesian anarchy, allowing a rival to exploit that source of revenue may diminish one's own power. If Britain were to renounce the China trade and consequently America, France, or Spain took it over, Britain's security could suffer.

Statements from British officials show these intransigence and relative power concerns at work in their prior resistance to ending the opium trade.¹⁵⁷ A consistent theme of their objections is a concern that should Britain abandon the opium trade, other states—rival states—would profit at the expense of Britain's altruism. This sentiment was most pungently stated by MP Sir George Campbell in 1881:

If the Chinese must be poisoned, we would rather they were poisoned for the benefit of our Indian subjects than for the benefit of any other exchequer."¹⁵⁸

Similarly, when first deciding to expand the British opium industry to include Native State Malwa opium, the Calcutta Board of Trade's report from 1819 justified its decision thus:

The sole and exclusive object of it is to secure to ourselves the whole Supply by preventing Foreigners from participating in a Trade of which they at present enjoy no inconsiderable share—for it is evident that the Chinese, as well as the Malays, cannot exist

¹⁵⁷ Chapter II endeavored to separate the normative concerns from the financial and material concerns driving Britain's withdrawal from the opium trade. However, in the present case, parsing out such a distinction among the statements supporting a continued engagement with the opium trade is neither possible nor necessary. Both these ideational/normative concerns (intransigence) and realist (relative power) concerns worked toward the same end. Pure constructivists or pure realists could interpret these arguments either way, but the statements seem to carry the force of both principle and expediency.

¹⁵⁸ Quoted in Owen, at p.301.

without the use of Opium, and if we do not supply their necessary wants, Foreigners will.¹⁵⁹

At a later instance, colonial officials were debating in 1869 whether or not to accept a Chinese proposal to raise import tariffs, to limit Indian opium exports and mutually to limit opium cultivation. They rejected this proposal because the Chinese might exploit their altruism, and instead increased India's production goals to a record level. David Owen summarizes their deliberation:

But if India accepted the additional duty, would the Chinese government apply an effective brake to the local industry? And if a joint agreement to limit both Indian exports and Chinese production were arranged, would not the loss of Calcutta and Bombay be merely the gain of Peking and the Provinces? Within the council there was some slight sentiment in favor of mutual restriction, but the majority held that such a policy would be inviting the Chinese to develop their own industry, while Indian trade was bound by self-imposed fetters. As the commander in chief of the army remarked, "We must not on any account allow ourselves to be led astray by Chinese proclivities, or any considerations deviating from the line of commercial and financial expediency."¹⁶⁰

Even after moral pressure from the United States was applied, intransigence and relative power concerns still reinforced British resistance to any unilateral abrogation of its interests in the opium trade, and gave rise to a degree of suspicion for multilateral agreements as well.

England was naturally sensitive upon the subject and was unwilling to have her treaties with China come within the purview of the delegates. Earl Grey said that England was willing to consider means for diminishing the opium habit if the Chinese Government intended to restrict the output of the native product, otherwise it would be useless for England to sacrifice her Indian revenues only to increase the profits of Chinese poppy-growers...¹⁶¹

¹⁵⁹ Quoted in Owen, at p. 87.

¹⁶⁰ Owen, p. 265.

¹⁶¹ Faries, John Culbert. The Rise of Internationalism. Ph.D. Dissertation, submitted to Columbia Faculty of Political Science, 1915. New York. p.149. Available digitally through Google Books: http://books.google.com/books?id=_OABAAAYAAJ

The interests of the states involved seem to be both financial and reputational: Britain did not wish to be played for a sucker, nor to make concessions which other parties would themselves exploit (especially since Britain had much more to lose than the other parties.) Likewise, China was loath to trust Britain. Despite some qualms about the morality of the opium trade, a fear that another nation might profit from an opium provider's moral qualms frustrated unilateral withdrawal from the trade as well as cooperative solutions.

Even coordination efforts were difficult. If two states wished to coordinate the end of their participation in the opium trade, what methods could they use? The 1907 treaty between Britain and China called for a slow, monitored phase-out of opium production, but ultimately it rested on the goodwill of both parties and their continued commitment to the new international norm against international opium trading. If China breached its obligations (which it eventually did as civil order broke down) England's remedy was freedom to resume selling opium. If England breached its obligations, China's remedy was, again, to resume selling opium to its own people, whether it wanted to do so or not. A breach merely returned matters to the pre-1907 status quo. While the 1907 arrangement encouraged Britain and China to reduce their production, the treaty ultimately offered no protection against a decision to re-enter the opium trade, or deterrence for doing so.

There were other potential avenues for redress, but since China and Britain were not equally powerful nations these were illusory. A consumer state could fight back militarily against a supplier state (as the U.S. did against Panama in 1990), or threaten to exclude all trade from the trafficking state. China tried both of these strategies in its relations with England. The latter strategy induced some deliberation in England, but also induced some hostility that led to calls to open China to British trade through force. The former strategy actually provided an inciting incident that gave Britain permission to do exactly that. China's efforts to prevent British opium traffic through military intervention led to the disastrous Opium Wars, and the opening at cannon-point of a defeated China to the massive legal importation of British opium.

The problem appeared intractable because even if two states could agree to prohibit opium domestically and to refrain from exporting to each other, in the real world there were always more than two states to consider. Once again, there was no guarantee that the norm which led Britain and China to enter the 1907 agreement would prove effective, or stay effective, against these other states. No matter how sincerely Britain and China wished to eradicate opium use,

another state or set of states might choose to deviate from the norm and supply China's addicts with opium.

Various twentieth century advocates of the IDCR recognized this problem was inherent in a prohibition regime of any size, noting that just a single nation defecting from the regime could undermine the success of the entire regime. In fact an argument could be made (although it does not appear to have been discussed in the early history of the IDCR) that such cooperative solutions actually increased the incentive for other parties to cheat. Not just bilateral solutions like the agreement between China and Britain, but also broader multilateral limitations to state drug trafficking might serve to increase the incentive for state drug trafficking.

To illustrate this potential hazard, let us expand upon Benjamin Weald's analogous dilemma. Consider four potential assassins A, B, C, and D—the only assassins available—have been offered an open contract, like a bounty, to shoot farmer D for £150. As originally posed by the anonymous 1836 pamphleteer, A knows that someone will make £150 from the contract, and he believes the farmer will end up shot no matter what, and decides he would rather shoot the farmer and get the money for it than to have B, C, or D do it and collect the money.

But now suppose that A, B, and C, listen to those "compunctious visitings of conscience" that bothered Benjamin Weald, and agree among themselves to refrain from shooting the farmer. They in effect form a moral cartel to restrict the supply of guns-for-hire. In doing so, they also grant an effective monopoly on assassination to D. D, being the last player, can no longer console himself with the knowledge that someone else will shoot the farmer if he will not. But the powers demanding the farmer's death must deal with D alone, and now D—less bothered by the visitings of conscience than A, B, or C—is in a position to demand a higher price for his services, since no longer must D compete with others who will do the same job for £150. Paradoxically, because of the moral restraint of A, B, and C, and D's *lack* of moral restraint, D may now profit more from his evil act.¹⁶²

¹⁶² If only A and B commit to each other that they will refuse to accept the contract on the farmer, they have accomplished nothing; C and D each know that the other will still do the deed for £150, which is effectively the same as the original dilemma since C and D may each rationalize that the crime is inevitable.

Figure 3.1: Benjamin Weald's dilemma: shooting the farmer

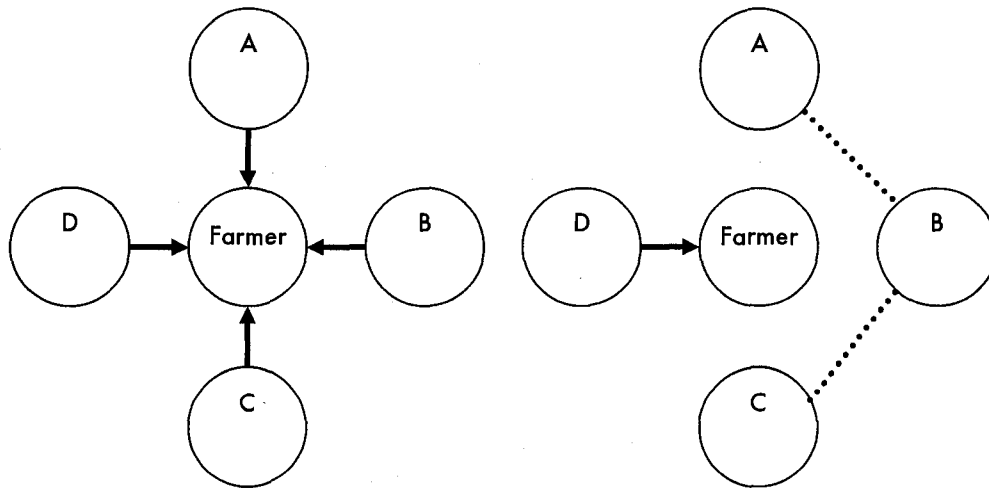


Fig. 3.1 In the left-hand illustration, since A,B,C, or D may each shoot the farmer, each party may argue that since someone else will shoot the farmer if he will not, he may as well do so. In the right-hand illustration, A, B, and C have agreed among themselves not to shoot the farmer. While D may no longer argue that someone else will shoot the farmer, this leaves D with a monopoly on the shooting.

One of the ironies of this dilemma is that after the Second Opium War, the Chinese government became so frustrated with British narcocolonialism that it began its own national opium trade to compete with the British. In the logic of Weald's dilemma, the Chinese people were the farmer, and the Chinese government took the role of Benjamin Weald. Someone would profit from selling opium to the Chinese populace; the Chinese government reasoned that it would rather profit from the exploitation of its people than allow Britain to do so.

China's decision suggests another theoretical insight into the implications of Benjamin Weald's dilemma. This possibility of narcocolonialism is also a powerful incentive against prohibiting drugs domestically, since doing so renders a nation more attractive to exploitation by a narcocolonialist rival. When a state like China outlawed opium within its own borders in 1729, opium became scarcer, and the price increased. In effect the bounty paid for "shooting the farmer" was increased, because of China's domestic prohibition. This is the problem faced by Iran today-

where more than three million opium and heroin addicts are supplied by neighboring Afghanistan despite far-reaching efforts by the Iranian government to prevent and punish drug use. Even for strong states that are able to compel other states militarily to cease exporting drugs, the fact remains that a nation's policy to increase the scarcity of illegal drugs will also increase their price.

To reiterate, these ideas about domestic prohibition policies increasing the incentives for foreign narcocolonialism, and about the perverse incentives that could arise from incomplete prohibition regimes, are theoretical extensions from Benjamin Weald's dilemma. Although they may have considered these implications, what the founders of the IDCR were definitely concerned about was the need for a truly global drug control system instead of a piecemeal system of bilateral treaties, because even one country cutting out of line could undermine the effectiveness of the entire regime. If every nation could commit to a firm refusal to "shoot the farmer", they reasoned, then the illicit opium problem would disappear. Such a regime would need more authority than mere reliance on the goodwill of the parties involved and their universal and voluntary compliance with the norm. In fact, this lack of enforcement capability would emerge as one of the IDCR's chief shortcomings.

While there have been significant unintended consequences following from international narcotic control—the rise of transnational trafficking groups, for example—this examination of the climate leading up to its drafting demonstrates that the IDCR was seen as a necessary solution to the equity and security concerns of its day.

The provisions of the 1912 Hague Convention (discussed in more detail below) certainly suggest that this is the sort of problem that its parties were attempting to solve. The discussion above about relative power concerns suggests at least that the states involved understood that opium prohibition was a zero-sum game, in that a state's decisions about domestic opium policy could be exploited by its rivals, but also that abstention from exporting opium stood to benefit rival states which would exploit opium consumers.

Contemporary commentators summed up the 1912 Convention as a response to exactly the sort of narcocolonialism dilemma described above. One of the delegates to the convention, Dr. Hamilton Wright, head of the American delegation, reviewed the results of the Convention in 1913:

Generally speaking, it may be said that the convention is satisfactory, and illustrates that the most powerful nations in the world are now agreed that an evil such as the opium evil is never wholly national in its incidence, can never be suppressed by two nations alone—as was supposed to be the case in regard to the Indo-Chinese opium traffic but that such an evil as it appears in one state is a concomitant or reflex of a similar evil in other states and is therefore international in its moral, humanitarian, economic, and diplomatic effect; that this being so, few evils can be eradicated by national action alone; and therefore only by the co-operation of all the states directly or indirectly interested can such an evil be mitigated or suppressed.¹⁶³

Likewise John Culbert Faries, a Presbyterian minister and progressive internationalist, devoted a chapter of his 1915 Political Science dissertation to the 1912 Hague Convention as a model of international cooperation:

Here, then, were the plenipotentiaries from twelve of the leading states of the world who had formulated and signed a convention whose aim was the total suppression of opium and other habit-forming drugs for other than medicinal purposes. They were convinced that nothing short of the cooperation of all the powers of the world would render their work effective. The abstention of any nation would render nugatory the effects of the convention, for that country might become the base for the supply of the drugs which the other nations, for moral reasons, had agreed to suppress. The question was how to accomplish the universalization of the project.¹⁶⁴

Faries' earnest advocacy of Wilsonian internationalism may strike a modern reader as utopian—he spends a chapter discussing the feasibility of a one-world language, even after World War I has broken out—but his analysis of the Hague convention reflects of the conflicting interests of the Convention's parties and how the treaty provisions address them. While he strongly felt a moral imperative to end the opium trade, he saw that no treaty could do that without unraveling the narcocolonialist dilemma first.

¹⁶³ Wright, Hamilton. "The International Opium Conference." *The American Journal of International Law*, Vol. 7, No. 1. (Jan., 1913), pp. 108-139. pp.132-3.

¹⁶⁴ Faries. Pp. 154-5. Emphasis mine.

III. ESTABLISHING THE IDCR

The problem confronting the IDCR was drug addiction. Any state with a large number of drug addicts compromised its national security by exposing the state to the dangers of narco-colonialism. In the early twentieth century, drug users who lived in states which did not cultivate opium, coca plants or hemp depended on international drug traffickers to support their addiction.

The elimination of international drug trafficking required a cooperative International Drug Control Regime, whose purposes were to be expressed in treaties and supported by controls. The barriers to the establishment of the IDCR, both practical and theoretical, have been discussed. We now move to the development of the IDCR and the practical problems it encountered.

The development of the IDCR can be usefully divided into three segments:

- i) The years immediately prior to World War I (1907 to 1912)
- ii) The inter War years (1920 to 1936) under the League of Nations
- iii) Post World War II (1946 to 1988) under the United Nations

Fifteen treaties were signed and ratified over this period. They are summarized in the following Table.

Table 3.1: Summary of international drug treaties 1907 to 1988

PERIOD ⇒	PRE-WWI YEARS 1907-1912	INTER-WAR YEARS 1920-1936	POST-WWII 1946-1988
TREATY DATE ↓			
1907	10 Year Agreement		
1909	Shanghai Conference		
1912	The Hague Convention		
1925		First Geneva Conference	
1925		International Opium Convention (Second Geneva Conference)	
1931		Convention for Limiting the Manufacture & Regulating the Distribution of Narcotic Drugs	
1931		Agreement for the Control of Opium Smoking in the Far East	
1936		Illicit Trafficking Convention	
1946			1946 Protocol
1948			1948 Synthetic Narcotics Protocol
1953			Opium Protocol for Limiting & Regulating the Cultivation of the Poppy Plant, the Production, International & Wholesale Trade & Use of Opium
1961			Single Convention on Narcotic Drugs
1971			Convention on Psychotropic Substances
1972			Protocol Amending Single Convention
1988			Convention against Illicit Traffic in Narcotic Drugs & Psychotropic Substances

3.1 The pre-war years (1907 to 1912)

3.1.1 The 1907 Ten Year Agreement, Peking

This agreement was the initial, bilateral effort to phase out the opium trade between India and China. In May 1906, the newly elected Liberal Government in Britain passed a resolution condemning the China trade and requesting the government to bring it to a halt. Likewise in September 1906, a Chinese Imperial edict announced a gradual suppression of domestic opium cultivation and use. These developments, discussed in depth in Chapter II, were the background to negotiations in Peking.

The agreement called for India to reduce its shipments to China by 10% each year for 10 years (based on an average of shipments from 1901 to 1905) and China to reduce its cultivation of raw opium by an equal amount. The British insisted on an inspection after three years to see if China was complying with the terms of the agreement.

The assessment was carried out in 1910-1911 by a British inspector, who, after extensive travel declared that the Chinese had met their obligations. The treaty was therefore extended until 1917. India accelerated her reduction in shipments and ceased the opium trade with China in 1913.

Throughout the first six decades of the 20th century, this Opium Treaty was considered a model of what could be accomplished between willing parties. It set certain precedents that continue to influence the IDCR and American policy makers: China accepted foreign inspection, a minor encroachment on her sovereignty (though done in the interest of preventing a greater encroachment through British narcocolonialism). More importantly, China's "opium problem" was to be solved, in part, by attacking the *supply* of opium—an approach often criticized today.

In retrospect, the outcome of this agreement was ambiguous. It started out well, but in late 1911 the Manchu dynasty collapsed and was replaced by China's First Republic. The Republic was unable to control the provinces where local warlords struggled for power, sometimes using opium to finance their military campaigns. Imports from Turkey and Persia replaced those from India, and India began to ship its opium production to Asian colonial monopolies instead. Nonetheless,

the perceived success of the Ten Year Agreement was used as an argument to encourage nations to participate in international opium agreements.¹⁶⁵

This argument failed to consider that the 1907 Peking Agreement had certain unique features that distinguished it from all the following fourteen treaties that spanned the twentieth century. The Peking Agreement was bi-lateral; it only involved Britain and China. Furthermore, it was concerned solely with addiction; the medical and scientific uses of opium were not an issue as the importation of morphine for medical use had been the subject of a separate treaty between Britain and China in 1902. Consequently there was no need to ensure a supply of opium for these purposes, neither was there any requirement to distinguish between licit and illicit uses of opium.

3.1.2 The Shanghai Opium Commission, February 1909

The Shanghai Commission also had a unique characteristic that set it apart from all other twentieth century drug treaties: its findings were non binding on the participants. Delegates could only inform their governments of the issues discussed, they could not commit to any course of action. The Commission was an American initiative, largely driven by Bishop Charles H. Brent and Dr. Hamilton Wright. The other dozen attending nations were generally reluctant participants and insisted, as a condition of their participation, that the findings of the Commission should be non-binding.

Brent had the backing of President Roosevelt and, later, President Taft. The State Department began by contacting governments who had colonies or territories in the Far East. As a result, China, France, Germany, Great Britain, Japan, the Netherlands, Portugal, Russia and Siam were initially invited. It was then suggested that the conference include opium-producing countries, so invitations were extended to Persia and Turkey. Finally, either because they wished to protect their Great Power status, or because they had "large commercial interests in the far east", Austria-Hungary and Italy were also included. Only Turkey declined to attend, on the basis that it had no diplomatic representation in the Far East.¹⁶⁶

¹⁶⁵ McAllister, William B. *Drug Diplomacy in the Twentieth Century*. Routledge, London, (2000) pp 24-27.

¹⁶⁶ Willoughby, Westel Woodbury, *Opium as an International Problem*. Arno Press, New York (1976 reprint—originally published by The Johns Hopkins Press, Baltimore [1925])

The Commission was chaired by Bishop Brent. Dr. Hamilton Wright headed the American delegation.¹⁶⁷ Wright was a medical doctor who had studied in the United States, Canada and Europe and specialized in tropical diseases. As such, he would have been aware of the dual use of opium and its derivatives. During the discussions, he proposed that "legitimate" use of opium should be confined to medical uses only. The Colonial Powers objected, due to the long cultural history of eating, smoking and drinking opium tinctured solutions within the colonies they administered. To suppress opium without an alternative would not, in their opinion, be practical.

Producing nations objected that nations whose pharmaceutical industry manufactured drugs had no governmental restrictions placed on their exports. The Colonial Powers, wishing to preserve the unregulated status quo, resisted the suggestion by the US delegation that the Commission should be followed by a plenipotentiary conference with binding resolutions.¹⁶⁸ Nonetheless the Commission managed to agree on a series of nine resolutions to lay before their governments.¹⁶⁹

In addition, some of the issues which were to dominate future conferences had been identified, notably the contentious question of 'licit' and 'illicit' drug use and whether initiatives to control the production of raw opium should be matched by similar controls on the increasingly important market for synthetically produced opium derivatives. The solution to the problems of addiction was still viewed solely in terms of restricting supply. On that issue Brent and Wright had the backing of the US Congress, who had passed a law in 1905 providing the authority for the Philippine Act No. 1761 (1908) prohibiting the importation, sale and use of opium in the Philippine Islands (except for medicinal purposes).¹⁷⁰

In general, the governments represented in Shanghai, with the exception of China and the United States, took little or no immediate action. India, under US pressure, ceased exports of opium to the Philippines. The State Department, conscious of the international dimension of the drug problem, began to pressure those countries represented in Shanghai to attend a plenipotentiary conference, if not in Europe then in the United States, under the auspices of the US government. Once more, American initiatives were met with some reluctance, but, rather than an American

¹⁶⁷ For Dr. Wright's description of the proceedings of the Commission, see *The International Opium Commission* by Hamilton Wright in *The American Journal of International Law*, Vol. 3, No. 3 (July 1909) pp. 648-673 and Vol. 3 No. 4 (Oct. 1909), pp. 828-868

¹⁶⁸ McAllister, at p. 29

¹⁶⁹ For a list of the nine resolutions, see Willoughby, pp 22-24.

¹⁷⁰ 33 Stat. L., 944, March 3, 1905, quoted in Willoughby at p. 20

dominated conference on American soil, an agreement was reached to meet in The Hague, provided the agenda for such a conference was left open rather than pre-determined by the United States.¹⁷¹

One goal of these early attempts at negotiating international solutions to narcocolonialism was merely to establish an international consensus on the issue, and demonstrate the salience of the norm against state drug trafficking. The Shanghai Opium Commission of 1909 was a clear example of this attempt to promulgate an international norm. The Commission was not empowered to draw up any sort of binding treaty, but only to draft consensus statements on the problem that might, in the eyes of some of the anti-opium diplomats, lead toward more serious commitments to ending the trade later on. Looking back at the 1909 Conference, Hamilton Wright evaluated it as a success in spite of contemporary critics' judgment that the Commission had failed because it was unable to convert anti-opium sentiment into a binding multilateral treaty:

Soon, however, this conclusion had to be modified, for within a few months from the adjournment of the commission several of the Powers more particularly interested gave the resolutions of the commission a binding effect by legislating in accord with them. This was notably true of the British Indian Government, of the governments of the British self-governing colonies and of several of the Crown Colonies; also of the French colonial governments. These actions were in accord with modern statecraft which recognizes that moral conclusions unanimously arrived at by an authoritative international body of wide representation have nearly the force of distinct pledges entered into by a conference composed of delegates clothed with the full power of their states.¹⁷²

Wright was, obviously, a strong partisan of both the Commission as well as the later Convention, yet his point about the role of international action in advancing the acceptance of the counterdrug norm is fair. America was able to force this item onto the international legal agenda, and to maintain the morality of the opium trade as an international question—one that would be revisited in 1912.

¹⁷¹ McAllister, at p. 31-32.

¹⁷² Wright, p. 871.

3.1.3 The Hague Convention of 1912

As in Shanghai, the 1912 meeting in The Hague was chaired by Bishop Brent, and Hamilton Wright again headed the American delegation. The same fourteen countries that were invited to the Shanghai Commission were invited to participate at The Hague Convention; only Turkey and Austria-Hungary declined to attend.

The United States had three major objectives. The first was to establish an international precedent for US domestic drug control objectives, which were to reduce addiction by restricting supply. The reduction of supply to the US market could only be achieved through international cooperation, which, to the extent achieved, would also help to confirm the American government's philosophy of prohibition. The second objective was to end the opium trade dominated by Colonial Powers and the third was to improve Sino-American relations through an international drug treaty.¹⁷³

To this end, the US State Department issued a proposed fourteen point agenda. The British, in response to this agenda, declined to discuss their Ten Year Agreement with China but wished to extend the scope of the Convention to include manufactured drugs such as morphine, cocaine and heroin, in order to assure access to world markets for these drugs for British manufacturers.¹⁷⁴ The commercial aspect of the "legitimate" drug trade was now an issue to be negotiated.

The 1912 International Opium Convention laid somewhat vague obligations upon its signatories; in accordance with notions of sovereignty, there was little compulsion or enforcement. Rather, almost every clause required (at Germany's insistence) only the nation's "best efforts". One analyst pointed to the "lack of an organ of administration to supervise the carrying out of the provisions of the Convention" as a serious flaw in the treaty, although "[f]ear by the powers of an international body that would infringe on their sovereignty prevented even the consideration of this step".¹⁷⁵

¹⁷³ Sinha, Jay, The History of the Leading International Drug Control Conventions. Prepared for the Senate Special Committee on Illegal Drugs, Library of Parliament, Ottawa, (2001), p. 8

The first and second of these three objectives are referred to in Dr. Wright's account of the International Opium Conference in The American Journal of International Law Vol. 7 No. 1 (January 1913) pp 134-137. The third had been a consistent aspect of US foreign policy since Secretary of State John Hay's "Open Door Policy" towards China, initiated in 1899.

¹⁷⁴ Willoughby, p. 26, Sinha, at p. 8

¹⁷⁵ A. Taylor, p. 109.

The treaty stressed the need for international cooperation toward shared goals of reducing worldwide drug abuse, especially in China. Opium dens were to be suppressed in any territories or holdings the party states held within China, and opium was to be prohibited in "places of entertainment and brothels". All signatories were required to cooperate with the Chinese Government in preventing smuggling into China.¹⁷⁶ Signatory countries were required to ban the export of opium to countries that prohibited its importation (notably China).

The International Opium Convention also expanded the scope of international drug control beyond opium to include morphine and cocaine. Thirty-four states eventually signed the treaty, including some that, like cocaine producers Peru and Bolivia, had no connection to the opium trade or the Far East. Parties were expected to use their "best endeavors" to control manufacture, export, and import of these substances, to restrict their intrastate sale and use to medicinal purposes only, and to "examine the possibility of enacting laws and regulations" criminalizing the individual, illegal possession of opiates or cocaine.

The Convention marked the global entrenchment and legalization of the drug control norm, which would continue to gain ground against the norm of sovereignty throughout the twentieth century. It was perceived as a success by contemporary commentators because "it represented a new standard of international morality in that the participating powers agreed to help each other in the solution of a problem that was beyond the control of any individual state".¹⁷⁷ Regardless of the noble intentions of the Convention, however, it did not mean the end of the opium trade, nor even the end of state-sponsored drug monopolies. On the contrary, states were offered two options by this treaty: they could prohibit the export and import of opium either immediately or as soon as possible. If prohibition was not to be immediate, regulation must be; and states must forbid the export of opium to other states that had chosen to prohibit opium.

The treaty was weak in that there was no mechanism for enforcement of its prohibitions. It depended upon the goodwill of the parties, and their adherence to the norm against state drug trafficking, to ensure cooperation with its provisions. But it was nonetheless a means for states to coordinate and overcome the narcocolonialist's dilemma described in this chapter, and offered a rational basis for refusing to shoot the farmer.

¹⁷⁶ International Opium Convention (1912).

¹⁷⁷ A. Taylor, p. 108.

The main problem with the 1912 Convention was that there was no incentive for every state to sign it. Germany, in particular, was interested in preserving a new sort of narcocolonialism: the German pharmaceutical industry's near-monopoly on the production of cocaine, heroin, and morphine.¹⁷⁸ Britain was also an exporter of morphine and was faced with another iteration of Benjamin Weald's old dilemma as The Hague conference approached:

...by early 1910 British policy makers were being pressured by local authorities in the crown colonies to do something about the morphine and cocaine trade and growing problems of addiction. The British feared that unilateral action to restrict the morphine trade would merely open the foreign market to competitors such as Germany and, to a lesser degree, Japan.¹⁷⁹

Britain enlisted American diplomatic support to pressure Germany and Japan to discuss the morphine and cocaine trade at what was only supposed to be a conference on opium. Britain made its own attendance at the 1912 convention contingent on Germany and Japan's willingness to discuss restrictions on morphine and cocaine exports and to submit reports on the scope of the industry in their country. American pressure succeeded, and morphine and cocaine restrictions were on the table.¹⁸⁰

Unfortunately, the restrictions on morphia and cocaine actually written into the 1912 Convention were a dealbreaker for Germany, even after it had already lobbied to weaken the treaty as much as possible. Germany had also agreed to attend on the condition that all parties must sign the Convention before it could go into effect, effectively granting itself a veto of the proceedings. This was vigorously—and unsuccessfully—opposed by the American delegation. While this German initiative was a practical recognition of the global nature of the drug control problem, such unlikely unanimity would effectively assure the treaty's ultimate demise. Persia, significantly, refused to accept Article 3 (a) which forbade "the export of raw opium to countries which have prohibited its entry".

The effective German veto was extended by Articles 22 & 23 of the Treaty which stipulated a further thirty four nations that must sign the Treaty before it could become effective in addition to the twelve nations present at the Hague Convention. (This effectively included all the sovereign

¹⁷⁸ Friman, H. Richard. *Narcodiplomacy*. Ithaca: Cornell. (1996). pp.15-34.

¹⁷⁹ *Id.* p.11.

¹⁸⁰ *Id.* p.10.

nations in the world at that time) If these signatures were not forthcoming by December 31, 1912, a Second Hague Conference would be called. In the event, a Second Conference was called in 1913 and the deadline extended a further year. In June 1914, a third Conference was held, also at The Hague. At that point, 44 states had signed the Treaty but only eleven had ratified it. A Protocol was opened "which might be signed by Powers desirous of putting the Convention into effect between themselves."¹⁸¹ Three days later, Archduke Ferdinand was assassinated at Sarajevo. It was not until after its defeat in WWI that Germany could be induced to ratify the 1912 document.¹⁸²

During WWI, several nations, including the United States, China, Netherlands, Norway, and Honduras did in fact put the International Opium Conference into effect between themselves.¹⁸³ The US Senate had previously ratified the treaty in 1913, and the following year passed the Harrison Narcotics Act of 1914. The Tenth Amendment to the US Constitution precluded the federal Government from imposing narcotics laws on individual states, so the Harrison Act was framed as a tax revenue measure.

The Treaty of Versailles in 1919 incorporated an obligation (Article 295) on the part of all signatories to sign the 1912 Hague Opium Convention. But the havoc wreaked by the First World War, the political, economic and social changes that were the result of that conflict, the technological, scientific advances and the huge demand for drugs created by wartime medical needs all served to make the 1912 Treaty obsolete. Addictive substances, both legal and illegal, "had moved into the mainstream flow of capital and goods." Some control was clearly necessary; the 1912 Hague Convention lacked teeth; it "urged much but demanded little."¹⁸⁴ There was evident need for a new treaty, or at least a protocol ratifying the new administrative structures. The 1912 Hague International Opium Convention was nonetheless considered a solid foundation on which future international agreements could be constructed.

Drug control was no longer a purely bilateral issue, as had been the case in the lopsided negotiations between Britain and China after the Opium Wars. The Hague Convention embodied a trend toward centralization, with the roots of a bureaucracy taking shape to administer the licit

¹⁸¹ Willoughby, p. 39.

¹⁸² Taylor, A, p. 29

¹⁸³ McAllister, p. 35.

¹⁸⁴ Id. pp. 38-39

trade. Presaging the tighter international cooperation that would mark the developing IDCR, state parties were also required to communicate their drug laws and statistics about the trade of the drugs mentioned in the treaty to each other through the diplomatic hub of the government of the Netherlands.¹⁸⁵ Although the 1912 Treaty was not ratified until 1920, the bureaucratic underpinnings and global scope of the IDCR had been established, and were now supported by international law.

¹⁸⁵ International Opium Convention (1912). Text Available at <http://www.vilp.de/Enpdf/e175.pdf>

Table 3.2 : Evolution of international drug treaties 1907 to 1912

TREATY NAME	Ten Year Agreement	1909 Shanghai Opium Commission	1912 International Opium Convention
PARTICIPANTS	Britain, British India, China	China, Siam, USA, Britain, Germany, Persia, France, Japan, Russia, Netherlands, Italy, Portugal, Austria-Hungary	Twelve countries including Britain, France, Japan, Germany, Russia, Portugal, Netherlands
DATE/LOCATION	1907, Peking	1909, Shanghai	1911, The Hague
EFFECTIVE DATE	January, 1908	None. Commission had no powers to make binding decisions	1920
MOTIVATION	International and domestic political pressure. British interests in trading with a stable China	American initiative to protect new Philippine drug policy	American coercion to achieve internationally binding agreements on drug control
OBJECTIVE	To eliminate shipments of opium from India to China	Exploratory talks with a view to a later Convention. USA initially wished to limit participants to principal Far East Powers & restrict discussions to China. Initial participants insisted all producing, manufacturing & consumer nations be invited. Turkey refused to attend	Countries only attended on condition of an open agenda
AGREEMENT	India would reduce shipments by 10% p.a. provided China reduced their domestic production of opium by an equal amount. Britain to have right to verify China's compliance after 3 years	Nine, non-binding resolutions. Talks exploratory. Resolutions regulating trade, distribution and consumption of opium smoking and restricting use of opium and morphine for medical purposes.	Restrictions on trade of raw and smoking opium. Ban on exports of opium to countries that prohibited their import measures to reduce drug traffic to China. Weak licensing, manufacturing & distribution controls
RESULTS	Nine unanimous Resolutions. India complied & voluntarily ceased all shipments to China in 1913. China complied until Manchu Dynasty fell late 1911. First Chinese Republic allowed poppy cultivation.	US wanted early or total prohibition on opium smoking. Instead, general agreement on regulation and gradual prohibition. India agreed to end opium export trade to countries that banned its importation. Subsequent to Commission, parties agreed, under threat of an American plenipotentiary Convention in Washington, to attend a Convention in the Hague.	Germany & France insisted that all sovereign countries must ratify treaty. USA, China, Netherlands, Norway, Honduras signed mutual agreements in 1915. Turkey & Portugal refused to sign. 1919 Versailles Peace Treaty made signing 1912 Opium Convention a condition of peace. Narcotics control now an institution of international law.

IV. THE INTERWAR YEARS: DOMESTIC ADJUSTMENTS AND INTERNATIONAL CRIMINAL ENTERPRISE

The Hague Convention of 1912 had a flaw even more consequential than its failure to include a mechanism for enforcement of its noble sentiments, or its failure to secure the agreement of every key nation in the international drug trade. It was a weakness shared by every narcotics control treaty and, in truth, every treaty: international law binds primarily nations, not individuals. Had every nation signed and done its best to abide by this treaty and subsequent treaties, there were other actors that could exploit the demand for narcotics. Individuals and sub-national groups could assume the role that states had played, and were quick to do so.

This is not to assert that the Hague convention and its successors had no significant impact on the international drug problem. They formed a logical first step by addressing what was seen as one of the key problems of the day: the use of narcotics as a semi-legitimate tool of state policy and a method of conquest between nations. The problem of China was seen as a problem of the power relationship between nations, and a treaty that addressed the behavior of nations was an appropriate corrective. Also, because nations and armies and courts monopolized the trade, the role of sub-national groups was less important. As nations began to abandon the field, however, the potential for participation in the trade by these sub-national groups increased.

Such a change was foreseeable in 1912. Already one sub-national group, the country traders, had played an important part in the early international drug trade, exploiting this distinction between nations and sub-national groups, and allowing British India to deny participation in an infringement upon China's sovereignty. India merely grew and packaged the drugs; it was those country traders who bought the opium (legally) and then, leaving British jurisdiction with it, the opium ceased to be Britain's problem. The 1895 Royal Commission likewise saw the rise of private smuggling as a consequence of India's withdrawal from the trade:

...if the transit of Malwa opium to the sea were to be stopped, without the enforcement in the States concerned of the prohibition of production and internal consumption, it would be a matter of the greatest difficulty, if not of impossibility, to prevent extensive smuggling of Malwa opium into British Provinces. With all legitimate outlets closed this smuggling would, no doubt, greatly increase, and the present co-operation on the part of the Native Rulers could no longer be relied on. The Government of India might possibly succeed in stopping the exit of opium in chests or packages suitable for shipping, but it would be impracticable to

prevent a vast number of small parcels from entering British districts from every side, except by the permanent employment, for a long period, of an enormous protective establishment.¹⁸⁶

The consequences of the IDCR were not, then, entirely unforeseen. However, states were still sufficiently involved in the trade in the early 20th century (through still-existing colonial monopolies, and through their legitimate production and procurement of drugs for medical and scientific purposes) that sub-national criminal groups were not able to dominate the narcotics trade in the way they do today. Though smuggling rings and organized crime existed, some of which were quite powerful, militarized groups like Mexico's Sinaloa Cartel and drug-funded terrorist groups such as the FARC were not an inevitable outcome of the drug trade in the early 20th century. Other forms of trafficking organization could still flourish.¹⁸⁷

At the end of World War I, the international drug problem was still seen as a result of surplus production for the legitimate medical and scientific markets. At the initiative of US Representative Stephen Porter, Chairman of the Foreign Relations Committee and a major anti-narcotics advocate, a Joint resolution was adopted by both Houses of Congress and approved by the President Harding on March 2, 1923. This Resolution, known as the Porter Resolution, stated in part:

That it is the imperative duty of the United States Government to safeguard its people from the persistent ravages of habit-forming drugs.

Sec. 2. That the effective control of these drugs can be obtained only by limiting the production thereof to the quantity required for strictly medicinal and scientific purposes, thus eradicating the source or root of the present conditions, which are solely due to production many times greater than is necessary for such purposes.

Sec. 3. That, in the hope of accomplishing this end, the President be, and he hereby is, requested to urge upon the Governments of Great Britain, Persia and Turkey the immediate necessity of limiting the growth of the poppy (*papaver somniferum*) and the production of opium and its derivatives

¹⁸⁶ Royal Commission on Opium (1895). p.60.

¹⁸⁷ One interesting exception during this time period was the "Kingdom of Cantú," a semi-autonomous government established in Baja California, which was alleged to profit from smuggling alcohol and opium into the United States. See Sandos, James A., "Northern Separatism during the Mexican Revolution: An Inquiry into the Role of Drug Trafficking, 1910-1920." *The Americas*, Vol. 41, No. 2. (Oct., 1984), pp. 191-214.

exclusively to the amount actually required for strictly medicinal and scientific purposes.¹⁸⁸

Within a year of the Porter Resolution, attempts were made in America to assess the degree of the domestic addiction problem. A 1924 study by the Treasury Department concluded that the embryonic IDCR was achieving some initial success, estimating the number of drug addicts in America at 215,000 in 1915, which fell to 110,000 in 1922. Arnold Taylor notes that these estimates were overly optimistic. However, a qualitative shift was also afoot:

They further noted that by 1924 the character of drug addiction had changed. Prior to the enactment of federal legislation regulating the drug traffic, smoking opium, gum or crude opium, and laudanum were the principal drugs used by addicts. By 1924 the alkaloids and derivatives of opium and cocaine were almost solely responsible for addiction. ...[T]hey ended their report with the optimistic conclusion that in the not too distant future the only users of opium would be psychopathic delinquents and persons suffering from incurable disease.¹⁸⁹

Whatever the impact of the nascent IDCR on the problem of international drug trafficking, it rarely has precisely the *intended* effect. Drug use changed in the 1920's and addicts began to use drugs more familiar to the later twentieth century: cocaine and heroin. Their methods of acquiring drugs changed with their preferences.

Most of the illicit traffic in the 1920's, write Meyer and Parssinen (1998), was accomplished through "freelancing by merchant seamen". A series of arrests of such small fry, however, might implicate a particular legitimate pharmaceutical factory as the source and lead authorities in that country to investigate connections between industry and smuggling. But this system was soon challenged by a new type of criminal that shifted the focus and would soon lead to changes within the entire IDCR:

As long as drugs were carried by anonymous seamen and other small fry, the (League of Nations' Opium Advisory) committee was more interested in stopping the flow of drugs at its source than in tracking down individual smugglers. The Humphrey case changed that.

¹⁸⁸ 42 U.S. Stat. L., 1431, quoted in Willoughby p. 123, footnote 1

¹⁸⁹ A. Taylor, pp.125-6.

European morphine, and later heroin, had trickled into China since the 1880s. This flow became a torrent after 1913, when the shortage of smoking opium forced many addicts to turn to morphine or heroin as a substitute. British, as well as German, Swiss, and French, manufacturers sent huge amounts of morphine and heroin to the China market until 1920.¹⁹⁰ In that year the passage of the Dangerous Drugs Act, as well as the adoption of the certificate system, made it illegal for British drug manufacturers to sell to known smugglers. Enormous profits were lost... Not surprisingly, Whiffen [London drug manufacturer T. Whiffen & Sons] found the temptation to maintain links to the underground drug network irresistible.

The laws created new barriers, which produced more sophisticated smugglers. The obstacles did not simply lie in getting the drug into China as before, but getting it out of Europe. The task required infinitely greater organization and capital than had previously been the case.

The 1923 arrest of H.M.F. Humphrey, a British businessman who conspired to provide opium to Hong Kong, gave Malcolm Delevigne, British Undersecretary for the Home Office and UK representative to the OAC (1921 to 1934), an insight into this newly adapted syndicate. A 1922 arrest in Hong Kong had led authorities to suspect Humphrey of arranging illicit transactions through a series of straw-man purchases by Europeans of morphine manufactured by T. Whiffen & Sons. The morphine would then pass into the hands of Japanese smugglers on its way to China:

By the early 1920's, then, the route of illicit morphine into China was circuitous. In this case, it traveled from London to Paris to Basel to China. But the potential profits made it a worthwhile business. ...Business on this scale required manpower, organization, and capital. Humphrey realized the advantages of size. ...Thus Humphrey existed at the center of a nascent international narcotics smuggling ring. In 1923, this was a new form of organization, created by smugglers to thwart the first efforts by Britain and her allies to stop the international drug traffic.¹⁹¹

¹⁹⁰ It is worth noting that these supplies of morphine and cocaine came from Europe rather than India and their provenance was private enterprise, not state sanctioned companies like the now defunct British East India Company.

¹⁹¹ Meyer, Kathryn & Terry Parssinen, Webs of Smoke. Lanham: Rowman & Littlefield. (1998) pp. 26-28.

Whiffen would lose its license to manufacture pharmaceuticals over the incident, which illustrates one of the major loopholes in the existing regime: the colonial trade. Law enforcement in Asian colonies was not as stringent as it was within Europe, and opiates delivered to Formosa or French Indochina could find their way to the Chinese market with little trouble. The loophole would not be closed until after the Second World War.

What seems surprising to a twenty-first century observer is the role of legitimate businesses in the manufacture and diversion of drugs for illicit purposes. Discovering the complicity of T. Whiffen & Sons was as surprising as it would be to see headlines in tomorrow's paper that the management of Glaxo, Pfizer, or Merck were knowingly sending its inventory to the Russian Mafia. It seems shocking now because today those illicit drugs would more likely be manufactured completely by criminals, instead of diverted from legitimate manufacturers. But in fact the IDCR's successful initiatives in monitoring the legitimate drug market had begun to shift production of illicit morphine, cocaine, and heroin from legitimate businesses into clandestine laboratories managed by criminal organizations. It became less risky and more profitable for criminal groups to cultivate the expertise and acquire the equipment to refine drugs on their own, usually in politically secure territories, than to try to divert them out of a "legitimate" pharmaceutical production line.

Such diversions of licit drugs to the illicit market still occur today, but they are largely in the realm of precursor ingredients, not finished drugs—a trade that the 1988 Convention attempted to curtail. One notable recent example was the discovery of tons of pseudoephedrine—an ingredient in cold medicine, but also a precursor in the manufacture of methamphetamine—in connection with the investigation of Zhenli Ye Gon, a Chinese-Mexican pharmaceutical manufacturer. A raid on Ye Gon's Mexico City mansion turned up more than \$205 million in cash, and he stands accused of conspiring to manufacture methamphetamine for importation into the United States. According to the BBC, as with the Humphrey affair in the 1920's, this arrest also resulted from an investigation far afield:

Prosecutors said the raid was part of an investigation into a pharmaceutical company suspected of importing chemicals to make the drugs from India.¹⁹²

¹⁹² "'Key Drugs Broker' arrested in US". BBC World News, July 25, 2007. Available at <http://news.bbc.co.uk/1/hi/world/americas/6916015.stm>. The shipment that led to Ye Gon's arrest actually originated in China; an unidentified company in Hong Kong was shipped 19 tons of a proprietary chemical similar to pseudoephedrine (allegedly under falsified documentation) through Long Beach in the

The Ye Gon case is unusual both because of its monetary scale and its international scope. It also shows an interesting aspect of the illicit drug trade: drug traffickers do not merely evolve in one direction, but often return to older, simpler business models when the circumstances are favorable. Humphrey's morphine diversion scheme and Ye Gon's alleged pseudoephedrine diversion scheme are very similar in structure, and were detected by international cooperation under the provisions of the IDCR.

V. CLOSING LOOPHOLES, OPENING NEW ONES: THE CONFERENCES OF 1925

5.1 The initiative passes to the League of Nations

The creation of the League of Nations in 1919 reflected the hope of a transformation in international relations. From the outset, the League showed great interest in the drug issue. It created an "Advisory Committee on the Traffic in Opium and Other Dangerous Drugs", known as the Opium Advisory Committee (OAC) and an Opium Control Board, to which was transferred authority for implementing the 1912 Hague Convention, previously the responsibility of the Netherlands. In addition, it created an "Opium Questions Section"; which the League Health Committee advised on medical matters.

The first objective of the OAC was to determine the extent of the drug problem. The OAC requested information from major producing, manufacturing and consuming countries about imports, exports, consumption and inventory. Based on these statistics, conservative estimates indicated that world production of opium and coca exceeded legitimate needs (medical and scientific) by a factor of 10:1. More pessimistic calculations indicated a surplus close to 100:1. The extent of the problem was evident.¹⁹³

The United States had refused to join the League of Nations but was a signatory of the 1912 Convention. This created diplomatic problems since the League was now responsible for the collection and distribution of statistical information required by the 1912 Convention and was also empowered to evaluate whether the signatories complied with their obligations. However, the

US and into Mexico, where it was intercepted. "China and U.S. probe port security", Associated Press, July 26, 2007. Available at <http://edition.cnn.com/2007/BUSINESS/07/26/mexico.drugs.ap/index.html>. Ye Gon denies involvement with illegal drug manufacturing.

¹⁹³ McAllister, p. 47.

drug issue, a major concern of the United States as well as the League, created a diplomatic opportunity to indirectly involve the United States in the League's activities. The US was invited to join the OAC; Washington agreed to send a delegation to the May 1923 session of the Committee.¹⁹⁴

International politics, the Franco-German crisis in the Ruhr, two British elections in a single year all served to deflect attention and delay negotiations over how best to control what was now accepted as a major drug crisis. Two treaties were signed in 1925 under the auspices of the League but neither produced significant, binding, international agreements. The second of the two back-to-back conferences did, however, strengthen the bureaucratic underpinnings of the IDCR through the creation of the Permanent Central Opium Board and through the adoption of clerical procedures to keep track of imports/exports, production, inventories and estimated requirements of raw opium and opium derivatives for the manufacture of legitimate drugs. Many of these administrative systems had been refined under the pressures and necessities of World War I, particularly by the British and French governments, who had been cut off from German supplies of morphine and analgesics during that conflict while simultaneously sustaining casualties of over six million wounded soldiers and three million killed.¹⁹⁵ This national expertise in maintaining a supply line of vital drugs was adopted by the IDCR and used to accelerate progress in the one area where the IDCR has had most impact: the regulation and control of the market for legitimate drugs. In the post-war era, it was not so much a matter of protecting supply lines as avoiding 'spillage' from the legitimate market to the illegitimate drug trade, but if the strategic objectives had changed, the administrative systems were similar.

By a resolution dated September 27, 1923, the League decided to call two conferences, one to consider "the effective application in the Far Eastern territories to Part II of the [1912] Conference", (which dealt with raw opium processed for smoking) the other "to examine, with a view to the conclusion of an agreement, the question of the limitation of the amount of morphine, heroin, or cocaine and their respective salts to be manufactured..."¹⁹⁶

¹⁹⁴ Willoughby, pp. 123-127.

¹⁹⁵ Encyclopedia Britannica 1971 ed. These casualties refer to those of Britain and France only.

¹⁹⁶ Resolutions V and VI respectively of the Resolution of the League dated September 23, 1923, quoted in Willoughby p. 130-132. Part II of the 1912 Conference dealt with raw opium processed for the purpose of smoking and the measures to be taken by the Republic of China to suppress that practice.

The relationship between the two conferences, the degree of overlap, and their interdependence was left unclear.¹⁹⁷ The conferences were to be limited to two weeks duration (a condition subsequently ignored) and were held in November 1924. A draft agenda was drawn up.

National politics intervened once again. The British government, over the preceding summer, had carried out an extensive survey of drug use and drug policies throughout the Empire. The Foreign Office, the Colonial Office and India House differed in their recommendations. The Cabinet, called on to decide between these conflicting opinions, vacillated. Before they could come to a conclusion, Ramsey MacDonald's government fell unexpectedly as a result of losing a motion of no-confidence in the House of Commons. Parliament was dissolved the following day and elections set for three weeks later, October 28, five days before the opening of the first Geneva Convention. Malcolm Delevingne, head of the British delegation arrived in Geneva with minimum directions for the first conference, none for the second.

The Americans were more resolute. Representative Porter headed the US delegation. He guided a funding appropriation for the delegation through the House and Senate, but the Senate attached an amendment insisting that the delegation recognize the principles of limiting addictive drugs to medical and scientific uses and also that it was essential to control the supply of raw materials from producer nations. Thus the American negotiating positions were "cast in stone" before the conference started, and Porter would brook no discussion.¹⁹⁸

5.1.1 The 1925 Agreement Concerning Manufacture of, Internal Trade in and Use of Prepared Opium

Britain, China, France, India, Japan, the Netherlands, Portugal and Siam attended the First Conference which opened at Geneva in November, 1924. It was generally conceded that the cultivation of opium in China had increased under the Republic but no figures were available to quantify that increase. The other participating nations were concerned that any excess Chinese opium might find its way into the illicit market. The British delegation stated that their colonies were being flooded with contraband opium in quantities equal to, or in excess of the actual amounts of licit opium placed on sale by the government. The system of registering habitual opium

¹⁹⁷ McAllister, pp. 57-59, attributes this 'lack of clarity' to Porter's intransigence and consequent British maneuvering to exclude the United States from the first conference in which they were not directly involved.

¹⁹⁸ Id. at pp 61-65.

users and rationing their supply of opium, which had been so successful in Formosa, was hardly practical in the context of this contraband market.¹⁹⁹

The conference then bogged down over a dispute between Japan and Britain over import certificates issued by the Japanese Opium Monopoly. Britain, prior to the conference, had accused Japan of diverting opium transshipped through British colonial territories and consequently refused to issue export certificates. (Import/export certificates were an essential element of the statistical control of the international flow of drugs.) The dispute, with its diplomatic ramifications of Japanese penetration of Chinese territory, extended the conference until early December²⁰⁰. At this point, it became known that the United States intended to raise the issue of opium in the Second Conference. This resulted in further delays for diplomatic consultations and the Conference adjourned to January 24. This meant that the second conference began without the results of the first.

5.1.2 The 1925 International Opium Convention

The second conference, larger than the first, comprising forty-one governments, met, as scheduled, on November 17, two weeks after the First Conference opened. The Second Conference found its own stumbling block in the agenda. Porter, during the early stages of the conference, introduced the US Senate proposals, which were not on the agenda. Porter also pointed out that the results of the First Conference were not before them, which were needed "in order to deal effectively with the subject of production."²⁰¹ The proposed amendment to the agenda was met with strong opposition from the British, French, Dutch, Japanese and Indian delegates.²⁰² The conference was adjourned until mid January. This provided an opportunity for six sub-committees to work on such issues as statistical reporting, a system for providing estimates and the creation of a central board to oversee the flow of information. The authority of the Board, the degree of its powers, whether it should be part of or independent of the League, were all hotly disputed.

¹⁹⁹ Willoughby, pp. 186-187.

²⁰⁰ Id. pp. 193-203.

²⁰¹ Id. p. 244.

²⁰² But with approval from the delegates of Chile, Venezuela, Bolivia, Cuba, Egypt and Italy—see Willoughby, p. 299.

The conference reconvened at the end of January 1925. There was no agreement on agenda issues. On February 6, the American delegation walked out. The Chinese followed suit.²⁰³

The first conference completed its work and made its report on February 11. Little had been accomplished except an agreement to reconvene in five years time. The second conference, reporting eight days later, succeeded, largely due to the work of its sub-committees during the recess, in the following areas:

- i) The creation of the Permanent Central Opium Board
- ii) An import/export certification system designed to track shipments in transit
- iii) Various provisions for the enhancement of domestic control measures
- iv) Restrictions on trade in coca leaves and marijuana
- v) Controls on processed drugs such as crude cocaine and ecgonine
- vi) Procedures to add new drugs to the list of controlled substances.²⁰⁴

The treaty contained many loopholes, and the Board had a weak mandate. The withdrawal of the United States had seriously diluted the impact of the 1925 International Opium Convention, which nevertheless became effective in 1928. Meanwhile, the magnitude and complexity of the drug issue had been further exposed. The signatories agreed to meet again in five years.

During the interim, many events influenced the continued efforts to develop an International Drug Control Regime. The stock market crash of 1929 and the subsequent depression made countries less willing to accept limitations on international trade. When the British promoted the idea of drug quotas, consumer countries such as Canada, voiced concerns about cartels and the difficulty of obtaining drugs for legitimate uses at reasonable prices.

Representative Porter died in 1930. One of his last political acts was to sponsor, through Congress, a re-organization of the federal drug control apparatus into a new agency, the Federal Bureau of Narcotics (FBN) as part of the Treasury Department. President Hoover appointed Harry Anslinger as Commissioner, a post which Anslinger was to hold for thirty-three years.²⁰⁵ The

²⁰³ McAllister, at pp. 67-77. For the text of the American and Chinese memoranda of withdrawal, see Willoughby at pp. 344-347.

²⁰⁴ Id. p. 76. The opinion of Willoughby, who was a Counsellor and Expert to the Chinese delegation to the Conferences (see title page to his cited work) regarding the 1925 Opium Convention is less sanguine than McAllister's. Bishop Brent was scathing: he expressed the hope that the Agreement of the First Conference "it will not be ratified or even signed,"—see Willoughby, pp 441ff. Brent's comment is on p. 446

²⁰⁵ Id. p. 89.

exigencies of the Tenth Amendment kept drug control within the Treasury and outside the direct authority of the State Department for three decades.

Table 3.3: Evolution of international drug treaties 1925 to 1931

NAME	1925 Agreement concerning Manufacture of, International Trade in and Use of Prepared Opium (First Geneva Conference)	1925 International Opium Convention (Second Geneva Conference)	1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs
PARTICIPANTS	USA, Britain, France, Netherlands, Japan, China, India	41 states including USA, Britain, Germany, Switzerland, Netherlands, China, India, France, Japan	57 states
DATE/LOCATION	1925, Geneva	1925, Geneva	1931, Geneva
EFFECTIVE DATE	July, 1926	September 1928	July, 1933
MOTIVATION	League of Nations embraces issue of drug control. (USA not a member of League) League convenes two back-to-back conferences, the first for manufacturers, the second for producers	Formalization of international drug control bodies under aegis of the League	Improve & extend international control systems
OBJECTIVE	Multiple, one of the principal being to establish statistical records for import, production & inventory of raw materials & manufactured drugs against estimates of demand	Establish Central Board, create standard import/export certification system	Estimates for manufactured drugs, control of derivatives. League issues report explaining how principles of 1925 and 1931 Conventions can be applied to disarmament.
AGREEMENT	Very little./ Major dispute between Britain & Japan. Minor modifications to domestic control systems of Far Eastern colonial administrations	Creation of Permanent Central Opium Control Board (PCOB); creation of import certificates & export authorizations to be submitted to PCOB. Trade restrictions extended to marijuana & coca leaves, manufactured drugs e.g. cocaine. America & China walk out of Conference	Creation of Drug Supervisory Body (DSB) with responsibility for analyzing & challenging estimates and creating estimates for countries not adhering to treaty
RESULTS	Insignificant	PCOB had weak mandate. Signatories could refuse to accept PCOB recommended additions of new drugs. Agreement to meet again in five years	DSB created with circumscribed powers. Different levels of control for different drugs. Determination of addiction responsibility of League Health Committee, but only after a drug is marketed.

VI. THE IDCR IN THE 1930'S: ADDRESSING THE TRANSNATIONAL ILLICIT TRADE

6.1 Picking up the pieces

The League's first contribution to the IDCR—the two Conferences of 1925—was hardly an unqualified success. The grand-standing of Stephen Porter, possibly for a domestic political audience, followed by the walk out of the American delegation he headed, was matched by a British delegation totally unprepared, for their own political reasons, for the complexities of two such important international conferences. The tangible gains of the Second Conference were primarily procedural and administrative; a specific gain of the First Conference was a unanimous agreement to meet again within five years. The motivations for the 1931 Convention therefore included a re-commitment to the League's support for the IDCR and a desire to consolidate and strengthen the procedural and administrative gains made five years previously.

To ensure, this time round, a more adequate preparation, a Preliminary Conference on the Limitation of the Manufacture of Narcotic Drugs was held in London in October 1930. The British were still advancing the idea of a quota system, limited to certain manufacturing countries. Turkey had now become a major manufacturer of drugs, much of which found their way into the illicit market. Turkey now proposed that it should be allocated one third of the licit market. This suggestion was rejected. Little came out of the conference. The British doggedly pursued their quota proposal against all odds of success. Arrangements were made for a plenipotentiary conference of 57 nations to be held in Geneva in May 1931.

6.1.1 Conference on the Limitation of the Manufacture of Narcotic Drugs, Geneva, May 1931

The Conference on the Limitation of the Manufacture of Narcotic Drugs represented the high water mark of drug negotiations prior to World War II.²⁰⁶ The desire for success was enhanced not only by an awareness of the magnitude of the drug problem but also by the hope that the International Drug Control Regime would create a template for the major issue of the day—disarmament.

The principal provisions of the Treaty were that the signatories would submit estimates for manufactured drugs, and would cease importing opium or manufacturing once those estimates

²⁰⁶ McAllister, p. 100.

were met. A new body was created, the Drug Supervisory Body (DSB), which was to act as a clearing house for information relating to these national estimates. The DSB was authorized to create estimates for those countries not adhering or party to the treaty. Stocks were to be limited to a six month supply, government stocks excluded.

At German insistence, two levels of control were established; one for opium based drugs, including morphine, heroin and cocaine, the other for codeine. The first group were considered addictive, the second less so, with a more general medical use.²⁰⁷ A proposal that the League Health Committee should check drugs for their addictive properties before they were released to the market was rejected. Drug approval for domestic markets remained a national prerogative. However, the precedent created by a lower level of control for codeine provided manufacturers with an incentive to create new drugs that might be treated more favorably under this notion of "schedules of control".²⁰⁸

The United States, in an effort to protect its exporters of licit drugs, negotiated a clause (Article 15) stipulating that countries should set up a "special administration" to regulate the legitimate trade in drugs and coordinate efforts to suppress illegal drug traffic. The precise nature of this administration was not specified. The US already had such an administration in the Federal Bureau of Narcotics (FBN), created in 1930. As Commissioner of the FBN, this Article gave Anslinger the power to choose between foreign suppliers of raw materials to the United States and which countries were legitimate export markets for American manufacturers. Anslinger also used Article 15 to justify the existence of the FBN, which remained independent of the State Department. The Commissioner was not above pressure tactics on foreign nations. Through his contacts in Congress, Anslinger arranged for a bill to require all shipments from countries not party to the Hague Convention to be searched for illicit drugs. Turkey promptly signed both the 1912 and the 1925 International Opium Conference.²⁰⁹

In yet another contribution, Anslinger arranged, while at Geneva, for secret meetings to be held among high-ranking law enforcement officials. This cooperation, never revealed to the League Secretariat, resulted in some important drug related arrests and set the context for international

²⁰⁷ May, Herbert, L. Narcotic Drug Control, Development of International Action and the Establishment of Supervision under the United Nations, International Conciliation, May 1948, No. 441, p. 336.

²⁰⁸ McAllister, p. 97.

²⁰⁹ Id. p. 98.

police cooperation through Interpol and Heads of National Drug Law Enforcement Agencies (HONLEA).

6.1.2 Agreement for the Control of Opium Smoking in the Far East, Bangkok 1931

The delegates to the 1931 Conference subsequently traveled to Bangkok for a Conference on Opium Smoking in the Far East. The US delegation attended as observers only. The Conference was unable to solve the conundrum that resulted from the difficulties of controlling illegitimate domestic drug use without eradicating drug smuggling. Drug smuggling could not be stopped without eradicating excess production. Eradicating excess production drove up the prices of drugs which made smuggling more profitable. The conference produced no solution to this problem of supply and demand, which was taken by some to be an indication of the impotence of the League and the need for American leadership.²¹⁰

The 1931 Limitation Conference was ratified concurrently by the four major manufacturing states, Germany, France, Britain and Switzerland. This diplomatically coordinated action encouraged the ratification of the treaty by the required number of countries in July 1933. Later that year, Germany and Japan began to sever their ties with the League of Nations.

The task of the drug control regime now appeared to be divided into four tasks: "regulating the legitimate drug trade, suppressing illegitimate drug manufacture, reducing excess production of raw material, attacking international drug trafficking".²¹¹ No one knew the dimensions of the last category.

From 1934 to 1937, the PCOB was confident that the output of legitimate drug trade was approximately equal to the legitimate demand for drugs for medicinal and scientific purposes.²¹² This conclusion was based on the import/export certification process, which the British had streamlined during World War I. The PCOB and the DSB were able to apply some pressure to producers and manufacturers who were not cooperating in suppressing illegitimate drug manufacture and reducing excess manufacture of raw materials. The supra-national nature of the two organizations provided some face-saving diplomatic cover for the governments of the

²¹⁰ McAllister, p. 106.

²¹¹ *Id.* p. 110.

²¹² May, p. 339.

countries where these operatives were located. In the words of Bertil Renborg, Chief of the Drug Control Service of the Secretariat of the League of Nations, writing in the *American Journal of International Law* in 1943:

The results of the system of import certificates and export authorizations have been excellent. It is a fact that the regular international trade has ceased to be a source of supply for the illicit traffic. It may sound strange to state this as an excellent result; but it cannot be denied that before the system was introduced many countries by omission or commission contributed huge quantities of narcotic substances to the illicit trade. The watertight system of certificates, combined with the international supervision, has created not only order where there was chaos but also a sense of responsibility on the part of the competent authorities. The publicity given to international collaboration, together with the strict rules prescribed by the conventions, left no doubt that carelessness or negligence in dealing with the international movement of drugs constitutes a serious offense against humanity.²¹³

However, censure, exposure and shame could only achieve so much; there was no solution for determined non-compliance or the transfer of operations to another location. Cultivation proceeded unchecked in much of Asia and the coca producing areas of South America. Persia had absorbed the reduction in Indian output and Persian production soared. Japan's incursion into China, discussed below, resulted in the puppet Manchukuo government who sold opium to its own citizens.²¹⁴ Nationalist China depended on revenues from opium sales for a substantial portion of its budget.

6.1.3 Illicit Trafficking Convention, Geneva, June 1936

As Renborg explained above, the implementation of the 1925 and 1931 treaties had caused a significant drop in the diversion of drugs from the licit to the illicit market. Negotiations were begun to limit illegal trafficking in 1929 and were met with suspicion by the colonial powers and apathy from the United States.²¹⁵ The League, anxious for diplomatic success, persisted in its

²¹³ Renborg, B. *Principles of International Control of Narcotic Drugs*. *The American Journal of International Law*, Vol. 37, No. 3. (Jul., 1943), pp. 436-459.

²¹⁴ Fuller, Stuart, Remarks at sixteenth OAC Session, 2 November 1933, quoted in McAllister, p. 105, footnote 1. Subsequently, at the Sixth Session of the Economic and Social Council of the United Nations, the Chinese representative described this policy "as a form of genocide". May, p. 343

²¹⁵ McAllister, p. 121.

negotiations and a plenipotentiary Convention was set for June 1936 in Geneva. The proposed agreement "provided for severe punishment of illegal traffickers by national authorities." The treaty also included an extradition clause.²¹⁶

The treaty achieved very little in terms of controlling illicit drug traffic. Although it required only ten signatories for ratification, it took three years to obtain these. By 1939, the advent of war in Europe had made such a treaty unworkable.

6.1.4 The advent of war

American preparations for the eventuality of war illustrate another dimension to the problems of international drug control. Opium and cannabis were placed on a short list of imported raw materials essential to national defense. Anslinger arranged to stockpile 600,000 lbs of raw opium, calculated to be four years supply. Coca imports were increased to 800,000 lbs annually and preparations were made to grow coca in Puerto Rico. Hundreds of thousands of acres of American farmland were used for the cultivation of marijuana/hemp, essential for marine cordage, under the strict surveillance of the FBN. None of these activities came under the International Drug Control Regime since government stocks were exempt from statistical reporting.²¹⁷

After the fall of France in 1940, the Secretary of the League, a Frenchman, considered moving the League's administration to Vichy France. The proposal was never carried out and key individuals, including Elliott Felkin, Secretary of the PCOB, Leon Steinig of the DSB who, after the war was to become a director of the Division of Narcotic Drugs and Bertil Renborg, Chief of the Drug Control Service with eight of his staff members were individually smuggled across occupied Europe to Spain and thence to Washington. Their exit visas from Spain were obtained by a threat from Anslinger that, in the absence of visas, requests for drugs by the Spanish authorities might be subsequently refused by the American Government. Once safely in Washington, in deference to the League's neutrality and the isolationist policies of their host country, these refugees from the League set up branch offices of their departments and attempted to continue the work of an

²¹⁶ Goodrich, Leland M. "New Trends In Narcotic Control In International Conciliation", November 1960, No 530. Carnegie Endowment for International Peace, New York, p. 184.

²¹⁷ McAllister, pp. 130-132.

international drug control regime.²¹⁸ Their prime goal was to consolidate into a single document the six previous treaties (the 1912 Hague Convention, the two Conventions of 1925, the 1931 Convention, the 1931 Bangkok Agreement and the 1936 Anti-Trafficking Convention). This project was finally realized, with one exception, in 1961.²¹⁹ While these refugees, who were some of the most knowledgeable and respected architects of the IDCR, might be considered an epistemic community, their status in Washington was hardly exalted. In the opinion of their American colleague Herbert May, a member of the PCOB from 1928 to 1964, they "represented a discredited international organization, ensconced on inhospitable soil in the midst of a global war."²²⁰

²¹⁸ McAllister, pp. 136-140.

²¹⁹ The 1936 Anti-Trafficking Convention was excluded from the 1961 Convention and was finally incorporated into and superseded by the 1988 Illicit Trafficking Convention.

²²⁰ May, H, *The Reminiscences of Herbert L. May*, OHRO, at pp 83-87, quoted in McAllister, p. 140.

Table 3.4 : Evolution of international drug treaties 1931 to 1946

NAME	1931 Agreement for the Control of Opium Smoking in the Far East	1936 Illicit Trafficking Convention	1946 Protocol
PARTICIPANTS	Great Powers, USA (observer only)	42 national delegations	15 members of the Commission on Narcotic Drugs (CND)—Canada, China, Egypt, France, India, Iran, Mexico, Netherlands, Peru, Poland, Turkey, UK, USA, USSR, Yugoslavia
DATE/LOCATION	1931, Bangkok	1936, Geneva	1946, Lake Success, N.Y.
EFFECTIVE DATE	April, 1937	October, 1939,	December, 1946
MOTIVATION	Continual increase of opium smoking in Asia	PCOB determined by 1934-35 that licit manufacture of drugs approximated licit demand. Control focus switched to illicit manufacture, particularly Persia, Manchukuo & Japan	Post-WWII reorganization of International Drug Control Regime (IDCR)
OBJECTIVE	Curb opium smoking	Craft regulations to eliminate illegal manufacture of drugs	Transfer drug control responsibilities from League to UN
AGREEMENT	Inconsequential. US push to reduce production not practical while demand initiated large-scale uncontrolled smuggling.	Persia, Japan & China continue their refusal to provide statistics to the PCOB. Western Powers mounted a successful boycott of Persian opium (1931); Persia found alternative markets. USA attempted to include provisions for criminalizing all illegal activity relating to opium and coca leaves. First provisions for extradition (Interpol)	IDCR to report directly to the Economic & Social Council (ECOSOC). New Commission on Narcotic Drugs (CND) created to replace OAC. Division of Narcotic Drugs (DND) replaces League's Opium Section. Elimination of government monopolies on smoking opium. Strict control measures to avoid recurrence of Japanese narco-colonialism
RESULTS	Confirmed for some in USA the impotence of the League Drug Control efforts & the need for American leadership	Negligible advance against illicit trafficking. Security interests of Great Powers encouraged accommodation with Japan, later with Nationalist China. Axis Powers begin withdrawing from League & OAC.	American & Canadian influence in IDCR increased

VII. IMPERIAL JAPAN AND NARCOCOLONIALISM IN MANCHUKUO

One of the major failures of the early 20th-century treaty system was the case of Japan's sale of opium and heroin in Manchuria and China in the 1930's. Scholars have reached differing assessments of Japan's complicity in this trade, but the situation appears to have been extremely influential to postwar policy both at the United Nations and also in particular to the formulation of U.S. drug policy in the second half of the twentieth century.

In the 19th century and through most of the 20th, Japan remained fiercely opposed to domestic opium use and was quite firm in its prohibition. As discussed above, Japan had observed the effects of the India-China opium trade and did not wish to see that same sort of narcocolonialism manifested against its populace. At the same time, Japan was also a manufacturer and exporter of heroin and morphine, especially within its colony of Taiwan. Colonial monopolies were still permitted under the IDCR at this point, despite the ongoing efforts of America to ban them outright. When Imperial Japan in the 1930's took control of Manchuria, and established its puppet state of "Manchukuo", it also established a revenue-earning opium monopoly as well in 1932. This monopoly supported Japan's military expansion into the rest of China, in the twentieth century's most egregious example of narcocolonialism.

John Jennings, in *The Opium Empire*, surmises that the impetus behind this particular drug industry was not the Emperor or the political sections of the Japanese government, but rather the Imperial military along with military intelligence. Their presence in China needed to be self-financing, and the best way to do so was to make the Chinese pay for their own conquest. The military's poor planning, notes Jennings, led them to turn in desperation to exploiting the monopoly. As such, opium and morphine was pushed on residents under the guise of medicine, with the intent to create as many addicts as possible. Sales to ethnic Japanese were criminalized; sales to Chinese were encouraged and officially sanctioned although still somewhat surreptitious—addicts could pay for a shot at a state-run "clinic" which really existed for no purpose except the dispensation of opiates at a profit.

Other aspects of Japanese military self-financing and consolidating its control over Manchuria were accomplished by similarly illegal means—"every means short of war", before its actual

military invasion of the rest of China commenced. The "Special Trade" in North China was Japan's euphemism for a systematic campaign of smuggling in 1936:

Actually "special trade" was nothing but organized smuggling. It was promoted by the Japanese despite the fact that the use of smuggling as a "policy of state" was not recognized in international law; was in fact identified with piracy. By depositing large quantities of goods in North China without passing them through the Customs, Japan not only further embarrassed an already harassed government, but in addition she took a long step toward completely dislocating the economy of the entire area north of Shanghai.²²¹

In light of the concurrent and officially sanctioned special trade, the accounts of central planning of the opium trade become quite credible. If they were willing to engage in smuggling and piracy, why not flout the norm against state drug trafficking? Reports trickled out of Manchuria that caused alarm in the West.

One such report was *Secret Agent of Japan*, a cloak-and-dagger autobiographical account of an Italian fascist living in Manchuria, forced to work for Japanese military intelligence but secretly a double agent for the Chinese.²²² Vespa's account is highly romanticized and self-aggrandizing, though contemporary figures vouched for Vespa's identity and many of the descriptions are actually not so far out of line with what appears in more reliable accounts.

If it were nothing but propaganda, however, Vespa's account would still be germane to this study, in the way it uses accusations of state drug trafficking to condemn the Japanese. There is no doubt that Vespa believes that Japan has transgressed an international norm in its efforts to exploit Chinese opium addicts to achieve geopolitical goals, and Vespa believed his audience would see it the same way. Vespa, in a broad study of Japanese corruption, returns to again and again to demonize the Japanese as evil, corrupt, and contemptuous of international laws and norms (he describes their attempts to avoid detection by the League of Nations), and to make the case for war against Japan.

²²¹ Inlow, Burke. "Japan's "Special Trade" in North China, 1935-37". *The Far Eastern Quarterly*, Vol. 6, No. 2. (Feb., 1947), pp. 139-167. p. 139.

²²² Vespa, Amleto. *Secret Agent of Japan*. (1938). London: The New Left Book Club.

Slightly less sensationalistic than Vespa, but still shocking, were the 1937 accounts of an American named Marcus Mervine living in Tientsin, published by the Council for International Affairs.

The Japanese Concession in Tientsin for many years has been the headquarters and the nerve center for a vast opium and narcotic industry that has spread its tentacles throughout the Far East and has direct connections with the narcotic rings in Europe and the Americas.

During the past three years this industry has grown to such an extent that the Tientsin Japanese Concession has practically become the heroin capital of the world and has led to a growing belief that narcotics are being employed by Japan as an instrument of national policy designed to weaken and debauch the Chinese race.²²³

Mervine discusses in some detail the Chinese syndicates that exported heroin to America and their relationship to the Japanese. He notes that the Japanese control the retail operation of the distribution to Chinese through Japanese-owned front companies, (including a vendor of "narcotized" candy near a school), and that while the syndicates provide the capital, they only are allowed operate because the Imperial Army guaranteed their safety.²²⁴ Mervine's connection between Japanese military power and expansion and the American drug habit was the sort of national security issue that would be picked up by postwar planners as well.

After Japan formally invaded China, an August 1939 broadside from the American Information Committee accused Japan of waging "a new means of warfare":

Those in authority seem to reason that although it costs money to destroy a nation, to make the people of that nation purchase their own destruction and become thereby the abject servants of the conqueror is not only good business but also brilliant military strategy. Opium, morphine, and heroin constitute this new means

²²³ Mervine, Marcus. Japanese Concession in Tientsin And The Narcotic Trade. *Information Bulletin*, Volume III, no. 4. (Nanking: Council of International Affairs.) 1937. This document is available in the Hoover Institution's "opium trade" file. The Council of International Affairs was, I believe, funded by Chiang Kai-Shek. However factual Mervine's account was—and as with Vespa, the broad outlines seem well confirmed—it was taken seriously enough to be cited by Inlow at 143, as an "excellent study" of Japan's narcotic trade. Postwar scholars and policy makers relied on these accounts of Japanese perfidy in drafting up the postwar IDCR.

²²⁴ *Id.* pp. 84-5, 95.

of warfare, and millions of unfortunates thereby become Japan's tools as well as her victims.²²⁵

After the war, confirmation of Japan's activities continued to trickle in. One document included in the Hoover Institution's files on the opium trade is the affidavit of Peter J. Lawless, probably prepared for his testimony before the International Military Tribunal for the Far East in 1946. Lawless was a British Chief Inspector of the British Police in Tientsin until 1938, at which point he became Chief of Police at the diplomatic legation in Peking until his capture by the Japanese in 1941. In his capacity as chief inspector he became familiar with Japanese narcocolonialism, and noted an increase in Koreans selling drugs in 1935, many of whom were reusing syringes and spreading syphilis.

When Lawless arrested these Korean dealers, he was required to surrender them to the Japanese in Tientsin, who refused to deport them. That year he also began raiding large-scale heroin factories whose workers invariably claimed the opium they were processing came from sources within the Japanese concession (district). When he moved to Peking he saw the pattern repeated and again found his investigation stonewalled by Japanese authorities, who on one occasion released the street dealers again with their opium paraphernalia. Lawless also observed that "the only transportation was military vehicles so that the transportation of opium could only be done with these military vehicles."²²⁶

Japan continued to insist it was fighting opium addiction in China, but the pretense was hard to maintain considering they even put an opium poppy on Manchukuo's new coins.²²⁷ The League of Nations was extremely critical of Imperial Japanese trafficking and issued several strong statements against the practice, but they were easily ignored and Japan withdrew from the meetings of the League's Opium Advisory Committee in 1938. (Japan had already withdrawn formally from the League in 1933). The trafficking continued into the war. Japanese monopoly opium was typically grown in Korea or Persia and shipped to Japanese-controlled Manchuria, although they also began raising opium in Manchuria as well. Korea served as a production colony for Japanese opium, but as had occurred in British India, the morphine was mostly not

²²⁵ American Information Committee: "Narcotic Trafficking and the Japanese Army", Shanghai, March 8, 1939. Available in the Hoover Institute's "Opium trade" file.

²²⁶ Peter J. Lawless, "Lawless Affidavit". June 21st, 1946. Available in the Hoover Institution's "Opium Pamphlets" file.

²²⁷ McAllister, p.110. Quoting Stuart Fuller in 1933.

consumed there in Korea. Instead, over ninety percent was exported—either to Japan (for wartime medical stockpiles), or to China.²²⁸

Iran met the demand that Korea could not. One Japanese Army intelligence unit cornered the lucrative Shanghai market with a shipment of 200,000 pounds of Iranian opium, which arrived in two shipments in 1938 and 1939. Part of the revenue from that enormous international drug deal went to establish a new colonial government in Nanking, the “Reformed Government of the Republic of China”.

But Japanese administrators began to realize that while narcocolonialism was profitable short-term proposition, it was not at all profitable over the long term when they actually had to *govern* the territory in which their opium was being consumed. Corruption and opium addiction crippled China’s economy and degraded its human capital. A futile ten-year plan to control drug use was introduced in 1938, but the corruption and addiction were far out of hand by then.

Meanwhile, as Japan expanded into Southeast Asia, it sold off opium found abandoned by the British and took over the factories. Once again, Japan drew up plans to profit from its new-found opium monopoly. In 1942 they drew up a plan for a centralized opium monopoly that would control distribution throughout the region, sourcing the opium from their colonies in Manchukuo and Mongolia instead of from British India and neutral Iran. As American delegate Stuart J. Fuller explained to the League’s Opium Advisory Council, “Let us face facts. Where Japanese influence advances in the Far East, what goes with it? Drug traffic”.²²⁹

Also as the war progressed, the Japanese military began to rely on opium (along with gold) as currency to purchase war materiel from collaborators in China. Inflation and uncertainty rendered Japanese notes and Manchukuo’s poppy-decorated scrip worthless, but opium was inherently valuable and portable—and readily available to the Empire for barter.²³⁰ (Direct drugs-for-guns barter is a concern of modern counterterrorist research, but as with most aspects of the narcotics trade, it has a historical precedent on a vast scale.)

²²⁸ Jennings, John M. The Opium Empire: Japanese Imperialism and Drug Trafficking in Asia, 1895-1945. (1997) Westport, CT: Praeger Publishers. pp.37-8.

²²⁹ *Id.* pp. 91-103.

²³⁰ Kobayashi, Motohiro. “An Opium Tug of War: Japan Versus the Wang Jingwei Regime.” In Brook, Timothy and Bob Tadashi Wakabayashi, Opium Regimes: China, Britain, and Japan, 1839-1952. Berkeley: University of California Press (2000). pp. 344-359, pp. 350-352.

After the war, the remnants of the League of Nation were not at all forgiving of Japan's conduct. In the first meeting of the new United Nations Commission on Narcotics, Allied delegates took a rather punitive stance.

The United States delegate announced that proof had been found in Japan that the government had knowingly submitted to the Permanent Central Opium Board false and fraudulent reports, grossly understating and thereby concealing their actual production of narcotic drugs, particularly heroin. Two sets of records were maintained by the Japanese Government, one false which was furnished to the Board, and another containing the true production figures. As the French delegate wisely remarked, drugs were used by Japan as a weapon of war, and Japan is now to be disarmed. It was the unanimous verdict of the Commission that Japan should never again be trusted to produce this particular weapon.²³¹

The Committee debated ways to allow Japan access to medicinal narcotics in case of earthquakes. The Chinese urged a U.N.-administered stockpile be established in the Far East, which Japan would be allowed to access in the event of a disaster, and also urged that Japan lose its right to export opium and that supranational scrutiny be placed on its imports. A stricter scheme received more votes, incorporating the export prohibition but adding

...a United Nations Inspectorate...in Japan, to which the Japanese Government must apply for permission to import drugs. No government order would be valid without the signature of the United Nations Inspectorate. A manufacturing country would not permit an order from Japan to be exported from its territory without first ascertaining that the order had been validated by the Inspectorate. Thus there would be a double check, first by the Inspectorate before the order left Japan, second, by the government of the country whose manufacturer received the order.

Both recommendations were forwarded to the U.N Economic and Social Council, along with similar plans for Korea.²³²

²³¹Moorhead, Helen Howell. "Narcotics Control Under the U.N." *Far Eastern Survey*, Vol. 16, No. 5. (Mar. 12, 1947), pp. 55-58. p. 57.

²³² *Id.* pp. 57-8.

A Chinese delegate would later condemn the Japanese policy before ECOSOC as "a form of genocide".²³³ These horrors of Japanese narcocolonialism led to a more substantial change within the IDCR. During WWII, the Western powers finally conceded to the Americans their longstanding issue of eliminating opium monopolies, agreeing not to re-establish monopolies within their colonies after the war and to seriously undertake the eradication of the opium habit.²³⁴

Japan's policy also demonstrated to the world that narcotics trade could be employed as a weapon of unconventional warfare. The case of Manchukuo would be used by American policy makers like Harry Anslinger to frame the narcotics issue as a national security problem, not just a human rights problem.²³⁵ The risk of a situation like Japan's repeating itself during the Cold War was taken very seriously—in fact, as critics of Anslinger point out, the fear of communist subversion through narcotics was shamelessly exploited.

Japanese narco-colonialism also exposed the essential weakness of consensus-based international regimes to control international narcotics traffic. Such a regime depends on maintaining a norm against state drug trafficking, upon the esteem nations receive by complying with the norm and upon the shame of failing to live up to it. But a nation like Japan, more interested in territorial expansion and revenue than honoring the norm, could ignore, dissemble, and subvert the international process with impunity. Likewise, Iran—which supplied much of the opium Japan would sell to the Chinese—felt itself beyond the reach of international law. Even after the war, Iran's attitude was unchanged and continued to exasperate the American delegation:

Unchanged and unchanging remains the position of Iran, outside the network of international obligations, continuing her age-old policy of selling opium to all and sundry, no questions asked.²³⁶

When evaluating the United States' subsequent shift toward a more muscular bilateral and unilateral strategy of enforcement, eradication, and interdiction in the later twentieth century, one must surmise that the League's weakness in the face of Japanese and Iranian defiance was an important reason for American realignment. As is the case with most international institutions, the

²³³ May, Herbert L. "The International Control of Narcotic Drugs". *International Conciliation*, no. 441. (May, 1948), pp. 301-373. p. 343.

²³⁴ Moorhead, p.55.

²³⁵ Anslinger, Harry and William F. Tompkins. The Traffic in Narcotics. New York: Funk & Wagnalls (1953). pp. 8-10.

²³⁶ Moorhead, p. 58.

IDCR lacked the power to enforce its laws and regulations against an uncooperative sovereign. The United States would soon adapt its own policies to correct that shortcoming.

VIII. REBUILDING THE IDCR AFTER WWII

8.1 The rise of American influence in the IDCR

The postwar period marked a stronger American influence in the workings of the IDCR as it was reconstituted under the United Nations. In many ways, the new IDCR was an attempt to reconstruct the best elements of the older League of Nations system on a new foundation in a world radically altered by the war. Unlike the League, which America had refused to join, the United Nations was promoted by the United States, who was a permanent member of the Security Council and *primus inter pares* in a new international organization, located on American soil and no longer dominated by European powers.

Much of Europe had been reduced to rubble and was dependent on American support—generously given but with the political leverage that inevitably accrues to financial aid provided on such a massive scale. Germany, Italy and Japan had lost their colonies at the end of the war, the Netherlands never recovered Indonesia, and Britain and France and were now under pressure from Roosevelt's anti-colonial policies.

Japan was universally condemned for using drugs in Manchuria as a weapon of war and in the long slow process of liberating Japanese occupied territories, "Holland, Great Britain and France had announced that the government monopolies for opium smoking would not be re-established when the territories in question were restored to their control. This again reduced the postwar market for raw opium."²³⁷ The supply of raw opium had become much more plentiful due to technical advances during the war:

The technique of processing morphine direct from poppy heads, as well as from the straw of the whole plant, had been perfected during the war. Germany supplied all her military and civilian medical needs during the last two years of the war by this method. Any country whose climate permits the ripening of

²³⁷ Moorhead, Helen Howell, *Narcotics Control under the UN*, Far Eastern Survey, Vol 16, NO. 5 (March 12, 1947. pp. 55.

wheat can now grow its own raw material, thus reducing the export market for raw opium which in the past had been in the hands of a few countries whose dry climate at harvest time and cheap hand labor had made profitable the old method of collecting the gum from the poppy seed heads incised by hand. New synthetic drugs such as demerol have been developed, replacing in medicine to an increasing degree the use of morphine and its derivatives.²³⁸

In summary, the colonial opium monopolies were being disbanded and new methods had been discovered to extract opium from poppies. In addition, synthetic drugs had been developed which were not opium dependent. The newly re-constituted IDCR needed to respond to these political and technological changes. It also faced the challenge of preventing a repetition of Japanese World War II narcocolonialism.

The reconstruction began in a positive and cooperative manner but, true to form, the rebuilding and re-organization of the IDCR was a contentious and protracted process, marked by clashing personalities and international suspicions, stoked by the new Cold War.

8.1.1 1946 Protocol, Lake Success, USA

Work began on creating a more efficient bureaucracy to handle the drug issue within the nascent United Nations. The first step was the creation of the Economic and Social Council (ECOSOC), part of whose function was "the control of the traffic in, and suppression of uses of opium and other dangerous drugs." At its first session, in February 1946, ECOSOC established the Commission on Narcotic Drugs (CND), which replaced the League's AOC.²³⁹ A protocol transferring the responsibility of drug control from the League to the United Nations was signed at Lake Success in 1946 and a further new entity, the Division of Narcotic Drugs (DND) replaced the League's Opium Section. There were now three bodies responsible for International Drug Control:

1. The CND, which took over from the OAC. Its function was to act as an advisory organ to ECOSOC and to act as "the policy formulating body on all questions relating to the control of narcotic drugs."
2. The PCOB. This body was created by the Geneva Convention of 1925 "to watch the course of international trade in drugs" and was consequently responsible for collecting statistical evidence and estimates of production and demand.

²³⁸ Moorhead, p. 55.

²³⁹ May, pp. 345-347.

3. The Supervisory Board. The Board created estimates for those countries which failed to submit them and also had "the right to make recommendations to governments with a view to reduction of their estimates."²⁴⁰

8.1.2 1948 Synthetic Narcotics Protocol

New analgesics, independent of opium, had been created by pharmaceutical companies under the pressure of wartime needs. Demerol and Methadone, extracted from coal tar, were the most successful. The newly constituted CND took immediate steps to place these and similar substances under the same statistical reporting and estimating requirements as narcotic opium-based drugs, thus broadening the scope of the IDCR.²⁴¹ Article 1 of the Paris Protocol of 1948, made the Drug Dependence Expert Committee of the World Health Organization (WHO) responsible for deciding what substances were addictive and should be brought under control and how they should be classified within the existing drug control structure.²⁴²

8.1.3 1953 Opium Protocol

The Director of the DND, Leon Steinig, had proposed during the 1948 Synthetic Narcotics Protocol that a feasibility study be undertaken to evaluate the possibility of an International Opium Monopoly. Steinig envisioned a separate agency, which would be a precursor to an International Nuclear Material Monopoly.²⁴³ The British, American and Canadian delegations were against the idea of an Opium Monopoly, preferring that the Department's energies be directed towards a Single Convention to replace the six pre-World War II treaties. Nonetheless, Steinig's proposal passed by one vote and Steinig pursued his vision against all odds until the Sixth CND Session in April-May 1951. During that meeting, the Americans, Canadians, British, Dutch and French formally rejected the concept and cut off all further discussion.

The French delegate, Charles Vaille, offered an alternative plan: the producers of opium should be subject to the same stringent controls as had been enumerated in the 1931 Convention for manufacturers of drugs. This would involve limiting agricultural production, reporting crop plantings and yields and stringent controls on stockpiles, all of which would be subject to

²⁴⁰ May, p. 351-357.

²⁴¹ McAllister, p. 164.

²⁴² Sinha, p. 12.

²⁴³ Steinig had previously worked for several years as special technical advisor to the International Atomic Energy Agency (IAEA). McAllister, p. 138.

inspection by the PCOB. The exporting countries would be limited to Yugoslavia, Turkey, Iran and India, later expanded to include the USSR, Bulgaria and Greece. Vaile's proposals were discussed at a plenipotentiary Convention in May 1953. A treaty was hammered out and signed in five weeks. Article 21 stipulated that the treaty would not come into force without ratification by three of the designated producing states.²⁴⁴

The questions now to be resolved were: would the 1953 Treaty be ratified and, if so, would it be incorporated into the much-awaited Single Convention? India ratified the 1953 Opium Protocol in 1954, Iran in 1959. Bulgaria and the USSR refused on the principle of sovereignty, rejecting the idea of any on-site inspections. Greece and Yugoslavia refused to sign unless Turkey did so, but Turkey hoped to weaken the requirements of the Single Convention by threatening to flood the world market with illicit opium.

8.1.4 1961 Single Convention on Narcotic Drugs

Seventy three delegations assembled in New York to negotiate a treaty unifying the six pre-war Conventions. The document had taken thirteen years to draft. It was negotiated in the shadow of the 1953 Protocol, a much more stringent agreement, which was still not in force, lacking the required third vote of the designated producing nations.²⁴⁵

The British and European delegations sought to protect the status quo, soften the exigencies of the 1953 Protocol and produce a treaty which would gain general acceptance. Their endeavors were largely successful. The producing states had to accept new obligations: each was obliged to create a national agency that licensed growers and would be responsible for the purchase, storage and sales of the harvest. Statistics thus generated would be reported to a new United Nations Board, known as the International Narcotics Control Board (INCB), which effectively consolidated the old PCOB and DSB. A tiered level of control was maintained with coca and cannabis producers subject to less stringent controls than opium.²⁴⁶

The Single Convention required its signatories to adopt "increasingly punitive domestic criminal legislation", preferably imprisonment, for a whole range of drug related activities, including

²⁴⁴ McAllister, pp. 174-184.

²⁴⁵ Id. pp 205-211.

²⁴⁶ Id. p. 209.

cultivation, production, manufacture, distribution, importation and exportation. Granting extradition was considered "desirable", but not yet mandated—a loophole not addressed until 1988 and which still remains contentious today.²⁴⁷ It also extended the scope of control to other drugs such as cannabis and coca leaves²⁴⁸. Nonetheless, the major achievement of the 1961 Convention was to consolidate nine of the previous treaties into a single document. (The 1936 Illicit Trafficking Act was not included since agreement could not be reached on what provisions to include.) Previous treaties would be terminated, including the 1931 Convention. Article 15 of that treaty stipulated that each signatory nation required an independent agency to deal with the drug issue; the 1961 Convention merely required signatories to maintain a special administration. This removed Anslinger's justification for the FNB. In addition, the 1953 Protocol, as already noted, was the most stringent of any treaty negotiated, whereas the 1961 Convention was largely a consolidation of prior treaties into one, single document.

Faced with these consequences, Anslinger attempted to ensure the ratification of the 1953 Protocol and the demise of the Single Convention. Through his contacts in the Foreign Relations Committee, he persuaded Congress in 1962 to reject the 1961 Convention and then encouraged Greece to ratify the 1953 Protocol in March 1963, thus making it effective as of that date. The United Nations launched a diplomatic counter-offensive promoting the 1961 Single Convention, which was ratified by eighty one Nations and came into force in 1964. This left the United States in an isolated position, seriously undermining its ability to pressure other nations to comply with international norms. Congress reversed its decision and ratified the 1961 Single Convention in May 1967. The FNB ceased to exist a year later being subsumed by the Bureau of Narcotics and Dangerous Drugs (BNDD) under the aegis of the Justice Department.²⁴⁹

The 1953 Opium Protocol was a step backwards in the general consolidation of the IDCR in the immediate post-war years. Driven largely by Steinig, Vaille and Anslinger, pursuing their own personal and political agendas, it was an effort to enforce even more stringent controls on drug supply, controls which the large majority of member nations of the UN were not prepared to adopt. It resulted in an embarrassing *volte-face* by the US Congress and contributed to the more than two decades it took to consolidate the six pre-war Conventions. Since the 1953 Protocol had

²⁴⁷ Sinha, p. 14.

²⁴⁸ Bayer, I. & Ghodse, H. (1999) Evolution of International Drug Control 1945-1995. In Bulletin on Narcotics, Volume LI, Nos 1 & 2, New York, United Nations, p. 9.

²⁴⁹ McAllister, pp. 216-218.

been rendered obsolete by the 1961 Single Convention, the concept of opium monopolies, extended by Vaillat to its ultimate apogee—a single International Opium Monopoly—was effectively laid to rest, its ultimate demise assured by the ease in which raw opium could now be extracted from poppies.

By contrast, the 1961 Single Convention was the culmination of fifty years' work in international drug control. The ratification of the Convention by the US in 1967 marked the end of dominant, individual personalities imposing their personal agendas on the IDCR. The organization had matured and come of age. It was none too soon as the drug market had meanwhile changed in at least two respects.

The use of drugs exploded in the 1960s and new, psychotropic, non-narcotic drugs were introduced to the market. Pharmaceutical companies argued that these drugs (mainly stimulants and depressives) were not addictive; addiction was generally defined in the treaties as "effects similar to those generated by opiates or coca products", whereas psychotropic synthetic drugs acted on the central nervous system. It was soon apparent that this claim of non-addiction was not true and, during the sixties, the WHO, who had been authorized by the 1948 Protocol to determine the question of addiction, began to issue reports that some amphetamines produced effects similar to cocaine and some hallucinogens similar to cannabis.

Concurrently, as drug use spread, public opinion, notably in North America and Western Europe, began to demand some more effective form of drug control. In 1967, the INCB, with the support of the WHO, called for a new treaty on psychotropic drugs, stating that the issue was too complicated to permit a simple application of the 1961 Single Convention to these new kinds of non-narcotic substances.

Table 3.5: Evolution of international drug treaties 1948 to 1961

NAME	1948 Synthetic Narcotics Protocol	1953 Opium Protocol	1961 Single Convention on Narcotic Drugs
PARTICIPANTS	15 members of the Commission on Narcotic Drugs (CND)—Canada, China, Egypt, France, India, Iran, Mexico, Netherlands, Peru, Poland, Turkey, UK, USA, USSR, Yugoslavia	34 states plus 7 observer states. USSR declined to attend	149 states
DATE/LOCATION	November 1948, Paris	May 1953, New York	January 1961, New York
EFFECTIVE DATE	December, 1949	March, 1963. Ratification required three of seven producing states. India (1954), Iran (1959) Greece (1962) ratified	December 1964. USA rejected treaty (1962) then reversed decision & accepted treaty (1967)
MOTIVATION	Development of non-opium based analgesics during WWII. Not practicable to amend the 1925 & 1931 agreements	Desire to increase stringency of contemporary controls on licit production of opium. Limit number of producers.	Need for a workable, post WWII treaty
OBJECTIVE	Regulation of synthetic substances. Extension of reporting/estimate schedules to cover synthetic narcotics	Limit authorized exporters of opium to Yugoslavia, Turkey, Iran & India. Establish international opium monopoly.	Consolidation of all pre-war treaties (except 1936 Illicit Trafficking) into a single document
AGREEMENT	Same estimates of need and statistical reporting as those in force regarding opium-based narcotics	1931 Treaty reporting procedures for manufacturers extended to producing countries. USSR, Bulgaria & Greece added to original four designated opium exporters. On site approval required agreement of targeted country. Military stores exempt from reporting procedures.	Reporting, estimating & licensing procedures unchanged. Schedules of control extended from two to four. Controls extended to cannabis and coca leaves. No quotas, no monopolies. Treaty aimed at preventing diversion of legally produced drugs to illegal market
RESULTS	Drugs no longer defined by chemical formulas (1925 agreement) nor by plant origin (1931 agreement) but by whether they are addictive as decided by WHO. Widespread acceptance	Most stringent provisions yet in international drug treaty. Most manufacturing sites signed on; treaty never in force, terminated by 1961 Single Convention.	Simplification. Nine previous treaties terminated (including 1953 Opium Protocol). PCOB and DSB combined into International Narcotics Control Board (INCB)

IX. SKIRTING THE IDCR AGAIN: POSTWAR INTERNATIONAL CRIMINAL ENTERPRISE

The postwar era also brought some measure of disfavor on drug trafficking domestically as well. Even some branches of American organized crime made a show of avoiding the drug trade, establishing a "law" within La Cosa Nostra against participating in it in 1948. Mob informant Joseph Valachi testified before the Senate's Kefauver Commission about a drug deal he undertook in 1952 despite the rule. Word of the deal reached Valachi's higher-ups, and he testified to a personal rebuke by Family boss Vito Genovese for engaging in the deal against the Family's rule. An underboss told him to ignore Genovese's rule and continue importing heroin from France.

Genovese, despite his reluctance to become involved with narcotics, nonetheless took much of the profit from Valachi's deal and eventually Italian organized crime groups, which had already taken over the narcotics trade from Jewish organized crime in the 1920's, would reassert themselves as the principals in the narcotics importation and distribution business within the United States. In 1948, it was still cheap for Genovese to be virtuous. Supplies of opiates were extremely scarce during WWII and great profits were not at stake. But smuggling networks soon were re-established, and the possibility of substantial drug revenue became an issue.

Criminal organizations like the Genovese Family were in the same conundrum as states with regard to the narcotics trade: even if they honestly had wished to forgo drug trafficking, they could not afford to abandon the trade to competing organizations and cede a relative power advantage to them. Just as the community of nations had been at the turn of the century, the Mafia families in the early 1950's were faced with Benjamin Weald's ancient dilemma. Whereas the community of nations was able to limit itself to prevent narcocolonialism, however, organized crime groups were unable and unwilling to do so.²⁵⁰ Despite their immense capacity for innovation and adaptation, this was one problem that organized crime groups were unable to solve.

While a history of every adaptation and innovation of the drug trade is beyond the scope of this chapter, one example from this time period is worth mentioning because it illustrates the

²⁵⁰ United States Senate. Hearings Before the Permanent Subcommittee on Investigations of the Committee on Government Operations. Eighty-eighth Congress, First and Second Sessions. October 29, 1962; July 28, 29, and 30th, 1964. pp.630-40. The tension between Mafia families over the drug trade is alluded to in the 1972 film *The Godfather*, in which a gang war erupts over whether or not the families should sell drugs even though they consider it a "dirty business". Real life proved more Hobbesian and the Mafia's idealism far less unyielding.

relationship between drug traffickers and international law, and especially the ability of drug traffickers to identify and exploit conflicts and weaknesses within the IDCR. During the 1963-4 Kefauver Hearings on Organized Crime, Deputy Commissioner of the Federal Bureau of Narcotics George Gaffney described the arrests of three heroin smugglers who supplied New York mobsters through an unusual gambit: taking advantage of international norms of diplomatic courtesy and diplomatic immunity.

In 1960, FBN officers surveilling a suspected French heroin dealer noted that his travelling companion was the ambassador of Guatemala to the Netherlands and Belgium. The ambassador, Mauricio Rosal, was not subject to the usual inspections as a matter of diplomatic courtesy. While Rosal's luggage could not be opened, however, suspicious agents weighed it and found it one hundred pounds lighter as he left the country than when he entered. Rosal held diplomatic immunity from arrest since he was traveling between his post and his home country. But on a subsequent trip, when Rosal canceled his reservation to continue to Guatemala, Gaffney's investigators decided he had waived his immunity and arrested him. They found cash and 100 pounds of heroin in his luggage.

Similar investigations soon led to arrest and convictions of two other diplomats for similar crimes: the Mexican ambassador to Bolivia, and the Uruguayan Ambassador-designate to Colombia. These arrests never led to a concurrent adaptation in international law, but they did lead to an awareness of potential abuses of diplomatic privilege.²⁵¹ As a smuggling tactic this method still enjoys some success; North Korea's embassies have been accused of systematically abusing diplomatic privileges for smuggling, possibly with state complicity.²⁵² But there are simply not enough corrupt diplomats available to smuggle enough drugs (certainly not in regular 100 pound shipments) to rate a change to well-established international law and long established norms about the privileges of diplomatic personnel.

²⁵¹ U.S. Senate, Hearings. July 30th, 1964. pp.899-902.

²⁵² Chestnut, Sheena E., "The "Sopranos State"? North Korean Involvement in Criminal Activity and Implications for National Security." Honors Program Thesis, CISAC, May, 2005. Available at <http://www.nautilus.org/fora/security/0605Chestnut.pdf>.

X. THE IDCR IN THE 1970'S AND 1980'S

10.1 The reaction of the IDCR to the changing world of drugs

As drug use spread, public opinion, notably in North America and Western Europe, began to demand some more effective form of drug control. In 1967, the INCB, with the support of the WHO, called for a new treaty on psychotropic drugs, stating that the issue was too complicated to permit a simple application of the 1961 Single Convention to these new kinds of non-narcotic substances.

10.1.1 The 1971 Convention on Psychotropic Substances (Vienna)

The treaty was mainly a success for manufacturing states. Hallucinogens were placed under fairly strict control but the more widely used stimulants and depressants, products of the licit pharmaceutical industry, were subject to less stringent restraints. The treaty also included a provision whereby states were obligated to ensure an adequate supply of legal drugs for medical and scientific purposes²⁵³

In general, the treaty provisions were weak and allowed governments to make their own reservations about key issues. The pharmaceutical companies conducted a sustained and largely successful lobbying campaign in Vienna during the Convention. Whether by accident or design, the schedules attached to the treaty contained no mention of derivatives, which had always been incorporated into previous agreements. The absence of this schedule meant that only 32 substances, perhaps 5% of the products created by the pharmaceutical companies, were covered by the treaty.²⁵⁴

Nonetheless, the treaty created a precedent by incorporating psychotropic drugs into the jurisdiction of the international drug control regime. Article 20 of the treaty calls for the signatories to take steps to prevent misuse of these drugs and to calls for the signatories to take steps to prevent misuse of these drugs and to identify, treat, educate and rehabilitate abusers, thus

²⁵³ Bayer & Ghodse, p. 11.

²⁵⁴ McAllister, p. 233.

finally addressing, although in a vague and hortatory manner, the issue of demand as well as supply. The treaty went into force in 1976.

Implementation of the Convention became problematic due to the omission of derivatives in the schedules attached to the treaty. As a result, the DNB and INCB secretariats began a campaign to persuade states to accept voluntary controls on derivative substances. This resulted in some success with those nations favoring strict control. The WHO and DNB also declared that this missing schedules of derivatives should be included in the treaty, which then became part of customary international law. These initiatives were subsequently challenged by pharmaceutical companies.

The 1971 Vienna Convention coincided with President Nixon's declaration of a "War on Drugs." The United States initiated an aggressive international campaign against drug addiction. Some success was achieved in reducing excess production in Turkey, but the explosion of illegal production in Southeast Asia more than compensated for this reduction. The BNDD, anxious that the 1971 Convention on synthetic drugs should not be allowed to distract from what was considered the main thrust of the IDCR—natural substances—began a campaign to strengthen the 1961 Single Convention.

10.1.2 Protocol Amending the 1961 Single Convention, Geneva, March 1972

Some notable achievements of this protocol included an amendment to apply the Single Convention to synthetic narcotics.²⁵⁵ The Treaty also called upon states to pursue rehabilitation and treatment as an alternative to incarceration for drug offenses.²⁵⁶ Concurrently, the United States persuaded the United Nations to create a "UN Fund for Drug Abuse Control" (UNFDAC). This was a crop substitution program largely funded by the US. The global drug regime now resembled a three legged stool with "CND as the executive and policy making body, the INCB providing oversight and quasi-judicial functions and the UNFDAC funding programs to achieve regulatory goals".²⁵⁷

²⁵⁵ McAllister, p. 236

²⁵⁶ Sinha, p. 18.

²⁵⁷ McAllister, p. 238.

10.1.3 United Nations Convention Against Illicit Trafficking in Narcotics, Drugs, and Psychotropic Substances Convention, Vienna, 1988

This treaty was an attempt to bring up to date the moribund 1936 Illicit Trafficking Treaty. As such, it is "essentially an instrument of international criminal law."²⁵⁸ It contained provisions "to criminalize illicit trading in precursor chemicals, the laundering of assets and international trafficking".²⁵⁹ It also called for national legislation to provide for confiscation of illegal assets and, under certain circumstances, extradition. The potential for international police cooperation was broadened. The treaty required states to offer mutual legal assistance, share information, and cooperate in law enforcement efforts. The Convention was ratified within two years. Ratification required acceptance and implementation of the 1961 and 1971 Conventions.

At this juncture, note analysts Bayer and Ghodse, it was clear that "the time when the world was divided into producing countries and consuming countries was now over. Drug abuse had become a global phenomenon and illicit cultivation, production and manufacture were no longer limited to a small number of countries."²⁶⁰ Although the globalization of the trade has occurred, there are still certain states and regions in which the production, manufacturing, and shipping components of the industry are located—especially drugs with an agricultural component such as marijuana plants, opium poppies or coca bushes.

Synthetic drugs could theoretically be manufactured anywhere, but even so, they are not. They still go where the political and economic climate is best for their production. As described above in the Ye Gon case, nineteen tons of a pseudoephedrine analogue passed through an inspection in Long Beach, California on their way to Mexico for the (alleged) purpose of manufacture into methamphetamine—which Mexican cartels would then smuggle back into the United States. Although through the 1990's the United States faced a burgeoning methamphetamine-manufacturing crisis, it was able to enact and enforce domestic precursor-control measures (usually at the state level) that sent much of the production stage south of the border. The drug trade is still drawn to places where the rule of law is weakest, and where the force of international law is minimized. However, international law is not the only method of international drug control.

²⁵⁸ Sinha, p. 20.

²⁵⁹ McAllister, p. 243.

²⁶⁰ Bayer & Ghodse, p. 13.

Table 3.6: Evolution of international drug treaties 1971 to 1988

NAME	1971 Convention on Psychotropic Substances	1972 Protocol Amending the Single Convention	1988 UN Convention against Illicit Traffic in Narcotic Drugs & Psychotropic Substances
PARTICIPANTS	71 states plus 4 states who attended as observers	121 states	106 states
DATE/LOCATION	January 1971, Vienna	March 1972, Geneva	1988
EFFECTIVE DATE	August, 1976	August, 1975	November, 1990
MOTIVATION	Explosion of synthetic drug use in 1960s	Response to President Nixon's "War on Drugs"	To update 1936 Illicit Trafficking Treaty
OBJECTIVE	Producer states wanted similar controls on synthetic as narcotic drugs; manufacturing states wanted to avoid stringent controls. (traditional roles reversed)	Application of Single Convention to synthetic drugs. Control of illegal cultivation of opium poppies. To create incentives for more active drug control	To criminalize illicit trading in precursor chemicals, laundering of assets and international trafficking.
AGREEMENT	Strict controls for hallucinogens, weaker controls for stimulants and depressants. Manufacturing states largely achieved results they desired. Heavy lobbying by pharmaceutical companies	General agreement on all three objectives plus provision for demand reduction.	Objectives incorporated into treaty, met with some resistance by important states, then more widely accepted. Implementation of 1961 & 1971 Conventions part of treaty obligation of 1988 Convention
RESULTS	Precedent set for controls on psychotropic drugs. Drug derivatives not included for first time, which excluded 95% of manufactured drugs. Later adapted by some states voluntarily. Article 20 calls for "prevention of misuse" i.e. demand control	Creation of largely US funded "UN Fund for Drug Abuse Control" (UNFDAC). Some shift in emphasis to including demand as well as supply control	States to introduce legislation covering conspiracy, confiscation of assets, extradition. Reference to potential of illegal drug market to corrupt governments. Cultivation, production & manufacturing of drugs global-no longer country specific.

XI. AMERICAN POSTWAR BILATERAL AND UNILATERAL FOREIGN POLICY

As the Senate worried about organized crime within the United States and domestic drug use, there was an ongoing concern about the global drug situation as well. Drugs were seen as an ongoing security threat to the United States, and the threat of narcocolonialism weighed on the minds of American policymakers. At the Senate Organized Crime & Illicit Traffic in Narcotics hearings at which Joe Valachi testified in 1964, the Subcommittee's Chairman, John L. McClellan of Arkansas, offered a prediction about the course of the investigation:

I surmise that we are going to find, before we are through, that there is a very close relationship between the narcotics trade and the international Communist conspiracy, because from my own work in this field I know that the Communists utilize this type of activity to help break down the morale and the morals of a free country. If they can break down the morals of young Americans, they are on the road to helping destroy their patriotism and to lure them into the Communist camp.²⁶¹

These fears were stoked by Harry Anslinger's agitation. Anslinger's long and influential career guiding U.S. counterdrug policy at home and abroad has been widely discussed and he was, to say the least, emphatic on the threat of subversion posed by the drug trade. Anslinger called opium an "effective and subtle tool of war"²⁶², in his 1953 book on the subject, and warned that

For centuries the poppy has been the symbol of a dangerous instrumentality—of traffic fraught with evil, of unprincipled men who satisfied by it their lust for wealth and power, of amoral nations who compromise for economic reasons and of a potent weapon of aggression. And today it is the Communists of Red China who are exploiting the poppy, who are financing and fostering aggressive warfare through depravity and human misery.²⁶³

Anslinger's advocacy has drawn no shortage of justifiable criticism. He exaggerated the psychological consequences of drug use. His bureaucratic machinations were ruthless and often dishonest, calculated to keep himself in power and maintain his influence. The Chinese Communist angle to the drug trade he espoused has been relentlessly deflated—in the 1970's by Alfred

²⁶¹ U.S. Senate, Hearings. July 28th, 1964. p. 641.

²⁶² Anslinger and Tompkins, p. 8.

²⁶³ *Id.* p.11.

McCoy, who instead argued that Chinese heroin exports instead originated with the remnants of the nationalist Chinese army, and subsequently by other authors.²⁶⁴

There is no need to defend Anslinger's excesses in order to acknowledge that his concerns about narcocolonialism were not groundless. America was aware of the excesses of Japan in Manchukuo before the war and did not wish to see the tactic repeated. As will be discussed below, the idea of Communist subversion through the drug trade was not as farfetched as some of Anslinger's critics might pretend. He was correct about the method, but the source would be Bulgaria instead of Red China.

Aside from Anslinger's specific concerns, however, the limits of multilateralism were obvious to Americans who attempted, through bilateral aid and technical assistance, to eradicate opium production in Iran and Turkey. Helen Moorhead's frustration with Iran's dissembling at the 1946 conference had ample justification. As Herbert May explained in 1948, reprising the dilemma described above,

In the case of narcotic drugs the existence of the effective demand of the drug addicts will be a constant incentive to the illicit trafficker, who will be always seeking new methods whereby he can circumvent the existing restrictions. A loophole in the control in any one country inevitably has repercussions over the whole world.²⁶⁵

The "loopholes" May identified could manifest themselves in a number of ways—as a loophole in the popular sense of a defect or inadequacy within a nation's domestic law, as a failure of state capacity, as a corruption through drug money of the law enforcement and political apparatus, or even (in rare cases) the deliberate and systematic defiance of the international norm. Ultimately the IDCR, as most international regimes do, depended on the goodwill and the voluntary compliance of the member nations. If a state was deficient in its drug control obligations, the IDCR had only two sources of leverage. The first source was the Opium Control Board's power to control legitimate international trade: it could direct other member nations to refuse to import or export narcotics to or from a state in violation of its treaty obligations. But for a country

²⁶⁴ E.g. McAllister (2001), and Meyer and Parssinen (1998) thrash Anslinger thoroughly. However, see Chang, Jung and Jon Halliday. *Mao, the Unknown Story*. Anchor Books (2006) p. 276. The authors assert that Mao was involved in opium production as well; the disposition of this opium may be an interesting angle for further research.

²⁶⁵ May, 1948, p. 358.

determined to manufacture its own opium and refine it into heroin, this leverage was no leverage at all.

The second source of leverage is shame. Shame works well with nations that have a national sense of shame, that aspire to operate in accordance with international norms and are amenable to criticism for their failures to live up to them. But not every state works like that, and the capacity of shame to discipline nations is limited. Besides, nations wishing to circumvent the norm against international drug trafficking and divert criticism could make a show of compliance and claim they simply lack the capacity to control the problem.

Both of these "levers" had been rendered less effective by the shift over the twentieth century from nationally-ordered trafficking to outlaw sub-national groups responsible for trafficking. International law binds nations, and sub-national traffickers are by and large out of the jurisdiction of the IDCR; if criminal groups sometimes develop rules, institutions and even ethics—e.g., the Genovese example discussed above—these rules are evanescent and protean, and in any case they are designed to facilitate the business that the IDCR's member nations attempt to disrupt. Yet the presence of these criminal groups can actually permit a state to avoid its obligations under the IDCR. A state deprived of its right to export drugs legally can still look the other way as transnational smugglers handle the exporting, just as the country traders did for British India. And the shame attached to state drug trafficking can also be diverted by blaming the transnational groups responsible—as Manuel Noriega did for Panama, winning awards from the United States for drug interdiction even as he charged protection money to the Colombian cartels.

A broader shift was also occurring across the world during the twentieth century that underlay the new American postwar unilateralism—a shift in who *consumed* the drugs, and who profited from them. In the nineteenth century, opium was grown in colonies, in a partnership between the developed world and the undeveloped world, and shipped out for consumption in China and Southeast Asia. At the beginning of the twentieth century, German and Japanese heroin, cocaine and morphine were manufactured in Europe and sent or diverted mostly to be consumed in addicts in the Far East. Bishop Brent, railing against the failure of the First 1925 Geneva Conference meaningfully to address this discrepancy, pointed out to the delegates the enormous divide in colonial producers versus colonized consumers:

Unless something is done color will be given to the charge that Western nations having eastern possessions are callous to the vital interests of the very people upon whom the welfare of such possessions depends, and to the further charge that we of the West have a law of exploitation for those who ought to be counted our friends when they are not our wards. Most of all to be deplored is the fact that Christ and His religion are brought under reproach and put to open shame. How is it going to look to the world, if we continue with our programme as at present constructed, safeguarding our own national interests and leaving a vast section of the great Orient unaided and alien? Is it just for an International Conference of such weight and solemnity as this to deal with the 10 per cent of the subject which affects Europe and America, leaving almost untouched the other 90 per cent which affects Asia?²⁶⁶

But the success of the IDCR meant that first-world nations were divorcing themselves from the revenue of the illicit narcotics trade. Now the drugs were being grown in the Third World. Narcotics were no longer being manufactured by T. Whiffen or the Bayer pharmaceutical factory and then diverted to the Third World, but instead refined in clandestine laboratories around the world and shipped to where the demand had become the greatest: the first world. Benjamin Weald's dilemma of "shooting the farmer" had suddenly become more complicated, because the population of drug consumers had shifted and the target market was now the residents of prosperous first-world countries instead of (or in some cases, in addition to) the third world. Bayer and Ghose summed up the transition in this fashion:

The explosion of the abuse of cannabis (in the 1960s), heroin, (in the 1970s), and cocaine (in the 1980s) has changed the world; countries in the western hemisphere became the major consumers of drugs, leading to the development of an international illicit supply network, while in many developing countries, the traditional use of some narcotic drugs has been replaced by "Western" types of drug abuse. The shift from opium to heroin and from eating or smoking to injection of drugs are examples of that frightening trend.²⁶⁷

American gangster Willie Sutton was (apocryphally) asked why he robbed banks, and was said to have answered, "Because that's where the money is". International drug traffickers think the same way, and work to get their product to where it will command the highest price. For example,

²⁶⁶ Quoted in Willoughby, p. 447.

²⁶⁷ Bayer & Ghodse, pp.14-15.

cocaine has recently begun flowing from South American trafficking organizations into the poor African nation of Guinea Bissau; however, it does not go there to entertain the residents of Guinea Bissau. Guinea Bissau is used as a way-station for eventual transportation of the cocaine, one with favorable geography for smugglers and an accommodating army that has been accused of complicity in the trade. Europe's consumers are the final destination.²⁶⁸

This cocaine began in the Andes and passed through Africa on its way to Europe. Not only has the developed world become the farmer under contract, but the third world has, over the course of the twentieth century and due to the pyrrhic success of the IDCR, become Benjamin Weald and taken up the gun. This new dynamic—a worldwide reversal of which countries produce illicit drugs and which countries use them—explains American frustration at international solutions and resolve to explore unilateral options to disrupt the drug trade. Two of those unilateral ventures are discussed below. Both are still intended to motivate nations, instead of applying directly to individuals or transnational groups.

11.1 Foreign aid and certification (the "Majors List")

America has long donated billions of dollars worth of foreign assistance to allow other nations to oppose illicit drug production and trafficking. Such aid may take the form of assistance to a nation's military or law enforcement agencies, to infrastructure repair, technical assistance and training, or crop substitution and alternative development programs. "Plan Colombia" is a name for a controversial ongoing initiative designed to strengthen Colombia's military capabilities in order to combat both the FARC insurgency and the cocaine business that sustains them, but U.S. counter drug aid projects have occurred since the 1920's in an effort to assist Iran and Turkey's halfhearted anti-opium efforts. 2007 saw another security and law-enforcement aid package, the Mérida Initiative, being discussed to strengthen Mexico's ability to confront its own cartels.²⁶⁹

The idea behind assistance is clear enough, especially since U.S. foreign policy makers tend to focus on a capacity-building approach to foreign drug control assistance. However, policy makers

²⁶⁸ Dabo, Alberto. "Guinea-Bissau probes state complicity in drug trade", Reuters. June 1st, 2007. Available at <http://www.alertnet.org/thenews/newsdesk/L0135813.htm>.

²⁶⁹ Cuellar, Henry, Robert "Bobby" Charles, Roberta Jacobson, Armand Peschard-Sverdrup, and Ted Brennan: "Five Perspectives on the Mérida Initiative: What It Is and Why It Must Succeed". American Enterprise Institute, *Latin American Outlook*, No. 1, March 2008. Available at: http://www.aei.org/publications/pubID.27601/pub_detail.asp.

began to appreciate that a lack of capacity is not the only barrier to drug enforcement; a difference of domestic priorities within the recipient country may prevent foreign assistance from being used effectively. For example, Clawson and Lee described the situation in Peru in the in 1990's:

During the 1990's, there have been many episodes—at times a general pattern has appeared—of military cooperation with drug traffickers. Sometimes that cooperation has been part of a strategic doctrine of building a broad united front against the Shining Path, including coca growers and at least low-level drug traffickers. At other times the cooperation has been straightforward corruption, with the military reportedly offering protection to traffickers in return for money and intelligence information. Such protection includes keeping the Peruvian antidrug police and the DEA away from trafficking zones or informing traffickers about impending aids on airstrips or laboratories.²⁷⁰

As a means of focusing aid recipients' national will on drug control, Congress devised a system of evaluating their efforts in that field. However, rather than merely conditioning counterdrug aid upon adequate counterdrug effort, Congress in 1986 made *all* foreign aid contingent upon a satisfactory evaluation of counternarcotics efforts. While the responsibility of determining which countries are at risk of losing their funding has shifted between Congress and the Executive, the "certification" process remains an annual reminder of the priority America places on worldwide drug control:

The Anti-Drug Abuse Acts of 1986 and 1988 link the cooperation of source countries (drug-producing and/or -transiting countries) with the United States in controlling this traffic to the eligibility of those countries for US foreign aid, and under certain circumstances, for US trade benefits. This process, commonly referred to as "certification," requires the president at the start of each fiscal year (1 October) to withhold 50% of US foreign assistance designated for the given country, pending a determination of certification on, or after, the first of March.

Then, on 1 March of each year, the president sends to the Congress a list of those countries (who are major producers of, or transit points for, illicit drugs which he has certified as eligible to receive full US assistance. At that point, the Congress has 45

²⁷⁰ Clawson, Patrick L. and Rensselaer Lee. The Andean Cocaine Industry. New York: St. Martin's Griffin, 1998. p. 183.

days of continuous session in which to evaluate the determinations of the president and, if it should so choose, to enact country-specific resolutions of disapproval.

In practice, certification may be justified on the basis of "vital national interest", a current example being the DPRK, or because the country in question has "cooperated fully" and taken "adequate steps on its own" to curb all aspects of illicit narcotics within its national boundaries.

If millions of dollars in aid and weapons represent a carrot to induce compliance with American counternarcotics goals, the "majors list" is the corresponding stick. However, although the U.S. may demand that other nations make compliance with counterdrug norms a top priority, the law does not prevent the U.S. from seconding narcotics evaluations to other concerns, such as nuclear proliferation. Officials admitted as much with regard to the case of North Korea in 2005:

Through the 1990s, the U.S. government tended to downplay allegations of North Korean involvement in distributing narcotics and counterfeit currencies. Washington's primary agenda of dismantling Pyongyang's nuclear and missile programs was seen as at risk of being undermined by any attempt to combat North Korea's alleged involvement in illicit businesses.

A formal labeling of North Korea as a narcotics-producing country, U.S. officials say, would force the U.S. to stop shipments of nonhumanitarian aid, causing it to lose a potential tool in bargaining with the North Koreans.²⁷¹

11.2 Unilateral enforcement and military action

Throughout the late 1980's there was a growing frustration with countries perceived to be wholly-owned subsidiaries of drug traffickers. Such narcostates were a particular focus of a series of Senatorial inquiries which focused on the Latin American cocaine trade.²⁷² Without mentioning particular states (though it had dealt with several in detail), the Kerry Commission in 1988 headed its final report with the following recommendation:

²⁷¹ Solomon, Jay, and Gordon Fairclough. "North Korea's Counterfeit Goods Targeted," *The Wall Street Journal*, June 1, 2005. p.1. Available at <http://online.wsj.com/article/SB111756528456047297.html>

²⁷² Less emphasis was placed on state drug trafficking out of Bulgaria, which occurred throughout the 1970's and 1980's and which will be discussed in more detail in this dissertation's concluding chapter.

1. International drug trafficking organizations are a threat to U.S. national security. Our government must first acknowledge the threat and then establish a more consistent and coherent strategy for dealing with it.

Hearings before the Subcommittee on Narcotics and Terrorism established that the international drug cartels constitute a serious threat to the national security of the United States and, indeed, to the stability of many of our friends in the Western Hemisphere. In the United States illegal narcotics exact enormous costs in terms of increased crime, lower economic productivity, and general health problems. In Latin America, the cartels not only create social and economic instability as a result of their operations, they have also demonstrated the capability to undermine government institutions through corruption and violence.

The drug cartels are multinational in scope and operation. In many instances, such as in the case of Colombia, they use the sovereignty of foreign governments as a shield to protect themselves from law enforcement activities directed at their operations. In the past, when the United States has pressed for action on such matters as the extradition of cartel leaders, the traffickers have been able to demonstrate, through the use of corruption and violence, that there is a price to be paid for cooperation between governments on criminal and legal matters.

The scale of the cartels' operations and the dimensions of their economic, political, and military power make these organizations far more dangerous than any criminal enterprise in U.S. history. They have access to sophisticated weapons and intelligence. They have fielded their own armies and have even entered into alliances with a variety of revolutionary groups and military institutions in the hemisphere. In many respects, they have taken on the attributes of sovereign governments.

The United States government needs to recognize the enormous threat these organizations pose to the vital national interest of our country. The government should consider how to utilize more effectively the various political, economic, and, if need be, even military options in order to neutralize the growing power of the cartels.²⁷³

The Committee's words would soon prove prophetic in the matter of a state which had come in for some of their fiercest criticism: Panama. Manuel Noriega maintained strong support of the

²⁷³ Kerry Report, p. 134. Emphasis mine. United States Senate, "A Report Prepared By The Subcommittee on Terrorism, Narcotics, and International Operations of the Committee on Foreign Relations." 100th Congress, Second Session. December 1988.

American intelligence community and the DEA, as he provided valuable intelligence about drug trafficking and events in Cuba and Nicaragua. At the same time other groups within the United States became aware of the scope of Noriega's own involvement in the drug trade.

After Noriega was personally indicted by a U.S. District Court for drug trafficking in 1988, it became more and more difficult for the federal bureaucracy to ignore mounting evidence of the central role his regime played in the transport of cocaine to the United States. The tide turned against him, leading to the United States invasion of Panama and the end of his regime in 1990. In his account of the dissolution of the U.S.-Noriega relationship, Frederick Kempe concludes that but for Noriega's involvement in the drug trade, the U.S. support for him would have continued.

No, desire for democracy didn't turn the Reagan administration against Noriega. Drugs did. In "just say no" America, Noriega's two indictments on drug charges in February 1988 transformed him from a disagreeable dictator to a domestic political problem. In one judicial stroke, carried out in Florida, apparently without foreign-policy considerations, Noriega became untouchable. He had become a political symbol, a stereotype easy to hate and impossible to accommodate: a drug-dealing dictator. ...

The papal Nuncio, Monsignor José Sebastián Laboa, has good reason to be convinced that certain U.S. institutions would have happily continued the relationship with Noriega, had not the indictments and senate hearings brought the problem to the attention of the American public. ... "The problem is that your institutions aren't as moral and ethical as your people. Had not this reached the American public, this situation would have gone on."²⁷⁴

Indeed, Noriega's Panama was an archetype of the deceptive state described above, as it became apparent that he was playing each side against each other and working closely with Colombian cartels. Even as he collected awards and regular payments from the DEA and the CIA for his counterdrug activities,²⁷⁵ Noriega used the Panamanian army to offer "protection" and extort money from traffickers bringing cocaine, marijuana, and precursor chemicals through the Panama.²⁷⁶ Those who refused to pay risked being sold out to American law enforcement.

²⁷⁴ Kempe, Frederick. Divorcing the Dictator: America's Bungled Affair With Noriega. New York: G.P. Putnam's Sons (1990). pp.421-2.

²⁷⁵ *Id.* pp. 122, 224, 203-206

²⁷⁶ Kempe, pp. 254-5.

In retrospect, the invasion of Panama remains a curious event. Even congressional liberals like John Kerry supported the invasion and seemed relatively untroubled by the unilateral nature of the attack and its difficulty to reconcile with international law. But in the 1980's the nation was united in an effort to disrupt the illicit drug trade, and Noriega offered a tempting target.

Wars happen for many reasons, and one of the United States' declared goals of the Panama invasion was the restoration of democracy and the protection of human rights. But it is also true that, at the very least, Noriega's connection to the drug trade was used to justify his overthrow. Noriega's downfall was an example to dictators who thought too much of exploiting the illicit drug trade. His regime was well outside the norms constraining what "legitimate" nations do, and although it took some persuasion by politicians on both sides of the aisle (Jesse Helms also supported the invasion), the United States was willing to forgo the strategic benefits of alliance with Noriega in favor of the perceived value of overthrowing a narco-state. Some of that value may have come from a public demonstration that the norms preventing state drug trafficking would be given effect not just through the United Nations, and not just through granting and withholding foreign aid, but—in the gravest cases—through military force.

XII. CONCLUSIONS

12.1 The impact of the IDCR

The impact of the IDCR in the twentieth century has been significant although, as noted earlier, many of its actions have resulted in unintended consequences. The more significant impacts, both positive and negative, might be summarized as follows:

1. The IDCR recognized that drug addiction was an affront to human dignity, a waste of human capital, a threat to national security and a potential weapon of war.
2. The regime propagated a norm that it is unacceptable for states to ship addictive drugs to other states for recreational use.
3. The IDCR has succeeded in limiting narcocolonialism
4. The IDCR recognized that there was a legitimate need for addictive drugs for medical and scientific purposes

5. Recognizing the size and extent of this legitimate market, the IDCR provided an international forum to assure that nations that complied with the norm were not placed at a financial disadvantage by nations who failed to do so and who attempted to exploit the norm to their own advantage. (The IDCR enforcement mechanisms were restricted to diplomacy, publicity and the threat of expulsion from the international community.)
6. The IDCR worked to maintain a stable, controlled supply of drugs for this legitimate market
7. The consistent policy of the IDCR has been that the solution to drug addiction is cutting off supply.
8. The IDCR has failed in its (largely symbolic) efforts to reduce demand.
9. The success of the IDCR in reducing "spillage" from the legitimate to the illegitimate market and the failure of the IDCR to reduce demand has created a shortage of supply, providing an incentive for non-state actors to enter the illegitimate drug market.
10. The IDCR is a victim of its own success: as efforts to reduce supply to the illicit market become more effective, the price of drugs goes up and the incentive for criminals to enter the market increases.
11. The expansion of the illegitimate drug market has had the effect of transforming drugs into a de-stabilizing political force, which has been used to finance terrorism and corrupt governments.

12.2 The limits of the IDCR

In 1998, the United Nations held its 20th General Assembly Special Session on drugs and reviewed their progress. There was no urgent call for further conventions or treaties to advance the IDCR. Instead, in the face of some calls from delegates for reconsidering international prohibition, the gathered diplomats urged a greater rededication to the current system:

This divide became increasingly apparent during the 3 days, with several delegates stressing the need to "restate commitment", "reinforce" and "strengthen" the current system. In the words of the UK delegate, Mr. Richardson: "We have the machinery; we need now to make it work better. In particular, we need a more solid international front in support of the 1988 United Nations

Convention. This is an instrument with teeth, and we need to make it bite.²⁷⁷

The 1998 United Nations Special Session [UNGASS] also called for “eliminating or significantly reducing the illicit cultivation of the coca bush, the cannabis plant and the opium poppy by the year 2008”, which suggests those teeth may not have been so sharp as Mr. Richardson had hoped.²⁷⁸ Yet while it would be difficult to say that the 1988 treaty “perfected” the IDCR, twenty years later no one is rising to contradict Mr. Richardson’s sentiments. The IDCR may have simply reached the limits of what international law may be expected to accomplish. Under current conceptions of sovereignty, there is little room left for the IDCR to expand, and little demand for it to do so.

Besides these inherent limits in the IDCR, two significant factors are assisting the current lethargy. One source of inertia is the September 11, 2001 terrorist attacks in New York City. Governments of the world re-examined their security priorities in the aftermath of the attacks. The United States, especially, began to allocate personnel and resources away from drug control and toward the prevention of terrorism and the proliferation of nuclear weapons. Counternarcotics operations continue, of course, but often their importance is justified in terms of their connection to terrorism and terror funding, of which there are many, or of nuclear proliferation risks, which also exist.

This situation often produces tensions, as for example in the current Afghan theater, where policy makers debate how and to what degree the United States and NATO forces ought to engage in counternarcotics work while they fight a war inside the world’s largest producer of opium poppies. There is a division of opinion about whether opium poppies should be eradicated on the ground, and speculation as to whether this would help defund the resurgent Taliban, or turn the Afghan population irrevocably against NATO forces.²⁷⁹ That this debate is occurring suggests the priorities of the nation have changed—or possibly even that the power of the norm may have waned somewhat since the invasion of Panama. When Noriega was toppled, the democracy installed in his place was expected to sever ties with the drug cartels. Post-Taliban Afghanistan is

²⁷⁷Jelsma, Martin. “Drugs in the UN system: the unwritten history of the 1998 United Nations General Assembly Special Session on drugs”. *International Journal of Drug Policy*, 14 (2003), 181-195. p. 183.

²⁷⁸Id. p. 192.

²⁷⁹Penketh, Anne and Ben Russell. “Record opium crop helps the Taliban fund its resistance”, *The Independent*, August 28, 2007. Available online at <http://www.independent.co.uk/news/world/asia/record-opium-crop-helps-the-taliban-fund-its-resistance-463283.html>.

not directly comparable, especially since the resistance continues in force and the poverty in Afghanistan permits few alternative sources of income for its citizens. The question being asked now is how stopping the drug trade will affect the war, not how the war will affect the drug trade.

Nonetheless, the knowledge and expertise gained from the "War on Drugs"—including missteps—have influenced the way the United States is fighting the "War on Terror". It has informed counterproliferation strategy as well. Opiates are, after all, a "dual use" technology, with important legitimate medical uses as well as a deadly potential for abuse. These applications will be discussed in greater detail in the concluding chapter.

The other factor in the IDCR's lethargy is the rise of a prominent and well-funded advocacy movement for the decriminalization or re-legalization of narcotics. There have been critics of American drug policy all along, notably Dr. Alfred Lindesmith, as well as cultural critics of drug prohibition (especially in the 1960's). But the 1990's saw a better-organized movement that became more integrated into the mainstream. This movement drew support from critics across the political spectrum—ranging from the conservative *National Review* to liberal financier George Soros.

Soros' case is an interesting one because of the immense scale of his counterdrug philanthropy as well as his transnational activism. His support and that of similar financial elites—which David Jordan terms the "overworld"—rival or exceed the financial capacities of smaller states and supranational institutions to influence policy and loyalties:

The amount of money created outside the control of individual states is enormous. It is capable of forcing devaluations and making huge profits on bets against national currencies. This global capital should not be considered as just a wealth-creating phenomena but as power in itself, a power that can devalue currencies, discipline governments and companies, and shelter profits from state taxes. ...

One of the most interesting aspects of this overworld money has been its support for "alternatives" to the drug war, as they are euphemistically called. Transnational capitalist interests can operate locally and globally to weaken state resistance to drug trafficking. Because the supranational organizations and NGO's are too weak to deal with the narcotics problem, the state and its

uncorrupted institutions are the principal means for combating trafficking.²⁸⁰

Whether this new set of transnational activists will be able to accomplish the sort of international counter-revolution that anti-opium activists achieved in the 19th and early 20th centuries remains to be seen. They are struggling against what remains a pervasive and long-established norm about what is appropriate state conduct.

Their efforts to break down barriers against the free flow of narcotics do, however, have something in common with another long-ago justification for the expansion of poppy cultivation in India: a compassionate and philanthropic motivation.

After all, we must observe that it is our wish not to encourage the consumption of Opium, but rather to lessen the use, or more properly speaking, the abuse, of the drug...Were it possible to prevent the use of the drug altogether except strictly for the purpose of medicine, we would gladly do it in compassion to Mankind, but this being absolutely impracticable, we can only endeavour to regulate and palliate an evil which cannot be eradicated.²⁸¹

Someone will shoot that farmer, as the anonymous 1836 pamphleteer observed when quoting this same letter, and thus decriminalization advocates urge the world to make the shot as painless as possible. But the IDCR was originally conceived as a means of coordinating states which wished to avoid narcocolonialism—either as colonizer or colonized, but who feared that if they abandoned the trade someone else would take it up. It was a plan for states to avoid “shooting the farmer” by divorcing state treasuries from the revenue of the international drug trade. As such, judged solely by its effects on *states*, and with a very few notable exceptions, the IDCR has been fairly successful. In fact, the IDCR’s success in this regard has been the cause of a wider failure in the efforts to control the use and traffic of illegal drugs: as states and their legitimate actors (such as pharmaceutical corporations) left the market, transnational criminal groups stepped up to take their place, undeterred by the norm against state drug trafficking.

²⁸⁰ Jordan, pp. 4-5.

²⁸¹ Letters from the Court of Directors [of the East India Company] to the Governor General, Oct. 24, 1817. Quoted in Trocki, p. 75.

Though it may not receive the same degree of scholarly and media attention as it did in the 1970's and 1980's, and today only opponents of drug prohibition actually refer to counternarcotics efforts as the "War on Drugs", the norm abides. It is understandable that the discourse has mellowed since the days of the IDCR's founding, when norm entrepreneurs like Hamilton Wright and Charles Brent were urging the adoption of a radical new system. As Martha Finnemore and Kathryn Sikkink predicted of a norm's life cycle, the internalization of a norm means that it is spoken of less in normative terms and largely taken for granted:

At the extreme of a norm cascade, norms may become so widely accepted that they are internalized by actors and achieve a "taken-for-granted" quality that makes conformance with the norm almost automatic. For this reason, internalized norms can be both extremely powerful (because behavior according to the norm is not questioned) and hard to discern (because actors do not seriously consider or discuss whether to conform). Precisely because they are not controversial, however, these norms are often not the centerpiece of political debate and for that reason tend to be ignored by political scientists.²⁸²

While the strength of the norm against state drug trafficking is difficult to gauge, and the norm is under attack, it does not seem likely to change suddenly. It is still taken for granted that narcocolonialism is just something good states don't do.

The underlying security dilemma abides as well. If the IDCR were to be radically altered, what new method would be used to restrain powerful states from returning to narcocolonialism, other than their own internalized normative restraints? For its shortcomings, the IDCR does act as a barrier against the harder edges of Hobbesian international society, in which the strong states do as they like, and the weak do as they must.

²⁸² Finnemore & Sikkink (1998) p. 904.

CHAPTER IV

"THE LAWLESS MERCHANT": HOW HEROIN BRANDING CREATES ORDER IN SPITE OF LAW

Despite near-universal illegality, despite an international norm against it, and despite billions of dollars spent on enforcement, worldwide narcotics traffic thrives. The highest estimates have claimed it represents a \$400 billion annual business, roughly equivalent to the worldwide textile trade.²⁸³ But because of its illegality, researchers understand very little about how and why this market is sustained. One source of data that remains largely unanalyzed is the institution of brands and labels to identify the source of drugs.

One theme of this dissertation is the dynamic nature of the drug control regime. While the underlying norm remains constant, the legal institutions that sustain it are constantly evolving to keep up with the latest organizational or technological innovations used by the drug trade. At the same time, functional improvements in the law-enforcement and prevention side drive innovation and adaptation in the narcotrafficking side. The previous chapter outlined the evolving nature of the drug control regime. This chapter will outline an important adaptation on the other side: the use of a particular technology, brands and trademarks, to sell illegal drugs.

Brands serve a well-documented function in legitimate commerce, but, when they are used in the illicit economy, they carry a risk of attracting prosecution as well as a risk of infringement by competitors. So why use them?

The broader focus of this thesis is the creation and persistence of an international norm and the mechanisms that sustain it. But to look at branding technology we will need to focus on a much smaller, domestic scale. Branding has been used in the international narcotics trade for hundreds of years, but the descriptions of brands used in international trafficking tend to be anecdotal and scattered. Therefore, to trace the adaptability and applicability of branding technology, I will examine the somewhat more systematic and thorough data available on street-level trades, and base some theoretical models on those transactions. These smaller-scale transactions are micro-

²⁸³ United Nations International Drug Control Programme, *World Drug Report (1997)*. New York: Oxford University Press. p. 124.

versions of the larger-scale international trade, and dealers at both levels are faced with similar risks and uncertainties—violent competitors, a lack of courts to enforce contracts, and hostile law enforcement. Both street corner deals and the international trade demonstrate the fast-moving, adaptive, dynamic nature of the drug trade.

In addition to the policy utility of such research, it offers insights into the institutions that arise to guarantee rights the state has repudiated. Past researchers of branding regimes have sacrificed breadth for depth, limiting themselves to the branding of heroin in the New York market. This study instead considers local-market data published by the Office of National Drug Control Policy, which suggests a connection between effective law enforcement and the proliferation and persistence of dealer labels. The ONDCP's reporting is inconsistent and inadequate, and needs to be supplemented by more rigorous methods of data collection. But the data does suggest that the number of heroin brands increase after shocks to the market (for example, the disruption of a major supply network by law enforcement) as a means of re-establishing relationships with customers.

It also suggests that while adaptations of the drug control regime move in a linear, predictable fashion away from competitive sovereignty and toward multilateral prohibition, the entrepreneurial nature of the drug marketplace makes its changes more difficult to predict. The contrast between the constraints on the two sides is enlightening. Whereas the methods and procedures used by states and supranational enforcement groups are constrained by laws, treaties, and norms, drug dealers are free to act swiftly and pragmatically, without bureaucratic pressures or concerns about accountability. Whether or not dealers in a particular locale decide to use brands appears to be a decision based on both the competitive conditions within the market—for example, how violent and how crowded it is, and whether there is a monopolist gang dominating the local market—and also the intensity of law enforcement efforts outside the market. Nonetheless, we can observe a few patterns and trends in the technologies and conventions traffickers use that can be possibly predicted as responses to market conditions.

I. THE PUZZLE OF DRUG BRANDING

Information is crucial to the illegal drug market. Where a legitimate business owner risks, at worst, bankruptcy, a drug dealer risks prison, robbery, injury, or death should he enter into the wrong transaction. Fearing poisonous adulterants, fake drugs, or robbery, both individual drug users

and buyers of large shipments are likewise dependent on proper information about the drugs they consume and the dealers they choose.

Information is scarce, however, because secrecy and anonymity are necessary tools to avoid jail or robbery. No court will enforce contracts for illegal drugs. Advertisement is, of course, nearly impossible, since any message that customers can decipher will also attract law enforcement.

Yet across several levels of the illegal drug market and at various points in time, sellers of all kinds of drugs have identified their products with distinctive labels and packaging. Whether in legal or illegal markets, the mutual benefits of branding goods are manifest: it allows sellers to charge a premium and retain customer loyalty, while it conveys information about product quality to consumers.

This situation poses two problems. First, competitors could adulterate or counterfeit a successful brand, and drug dealers cannot turn to the legal system to enforce their trademarks. Second, brands offer a clear chain of evidence that could lead law enforcement right back to the seller. Given these countervailing incentives, what causes drug brands to proliferate, persist, or decline?

II. THEORIES OF INFORMAL ORDER

Spontaneous non-state institutions that sustain and revive trade have been the subject of considerable analysis by political scientists, economists, and lawyers. Milgrom, North, and Weingast showed how the "Law Merchant", the informal precursor to commercial law, allowed international traders to punish and stigmatize cheaters. They contended that "an enduring pattern of trade over a wide geographical area cannot be sustained if it is profitable for merchants to renege on promises or repudiate agreements."²⁸⁴ At first glance, the illegal narcotics market might seem to be an exception to this rule. Most types of institutions that allow legitimate trade to flourish (such as contracts and advertising) are impossible to sustain in the face of a hostile state. But even within the narcotics market, alternate institutions such as ethnic ties, violence, and branding serve to provide information and predictability.

²⁸⁴ Milgrom, North, and Weingast, *The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs*, *Economics and Politics*. (March 1990)

But under Douglass North's theory of institutions, the success of the narcotics market looks extremely improbable. For example, ethnic and family networks, which sustain many drug trafficking organizations, are considered quaint and informal institutions. Enforcement of property rights by political and judicial organizations characterizes modern and efficient states. Other forms of economic organization might persist, e.g. the *suq* bazaar, but North sees them being rendered progressively more irrelevant by more efficient institutions. One reason for their stagnation is that they do not carry the self-perfecting incentive structure the Anglo-American model boasts.²⁸⁵

But self-reinforcing institutions exist in economies without reference to state enforcement. Robert Ellickson's *Order Without Law* discusses one such exception to North's assessment. Ellickson describes a system of mutual reliance between ranchers in Shasta County, California in which ranchers promulgate a set of obligations different from that which the law requires, doing so peacefully through social sanctions and by withholding help from violators of the norms.

Scarce information and high risks cause informal markets to develop unique institutions that give them order and resilience. Ellickson concludes that communities may pragmatically develop rules that exist entirely outside the law—in other words, a particular rule of decision promulgated by legal authorities may be irrelevant to the rule a community actually decides to use. For example, Shasta County's informal ranching norms exist mostly parallel to the legal system, and not because of it. The market for heroin is an extreme illustration of his thesis, as it is a community that has organized itself both outside and in opposition to the legal system. For this reason the system of buying and selling heroin can be said to occur within a politically constituted, informal order which is adverse to the law and beyond conventional enforcement mechanisms. If heroin were legal, the narcotics community and its institutions would be constituted completely differently.²⁸⁶ So, in an extension of Ellickson's thesis, where the law is hostile to a community, that community's norms evolve parallel to the legal system and develop in unexpected ways.

Ellickson's system of norms assumes a close-knit, interdependent community of neighbors responsive to shame and gossip. The risks of misplaced trust are high among ranchers, but even higher in the illegal drug market. "Order without law" flourishes in a high-trust environment; order

²⁸⁵ North, Douglass C. (1990) *Institutions, Institutional Change, and Economic Performance*. (Cambridge: New York)

in spite of law must function in a low-trust environment, in which the participants are by definition willing to flout laws and norms.

Drug sales must be conducted in dangerous, amoral environments. Instead of relying on normative sanctions, dealers must rely on institutional mechanisms to maintain their reputation and security, and to keep all participants honest. In this sense, the mechanics of narcotics sales more closely resemble the workings of Milgrom's suspicious "Law Merchant" than Ellickson's neighborly cowboys. This study will attempt to extend Milgrom's, North's, and Ellickson's line of institutional inquiry into the market for heroin, and into one particular institution which sustains it.

III. WHY BRAND HEROIN?

The branding of opiates actually predates their illegality. Opiates have been branded since at least 1701, when a Dr. John Jones of Jesus College, Oxford catalogued sixteen brands of opium-based tonics and patent medicines for sale in London. Though legal, opium preparations were dangerous and little understood. Death and addiction were frequent side effects. Adulterants included such unsavory additives as "mummy" and "benjamin"—either ground up human mummy, or its substitute "pissasphalt" (bitumen). Jones' book, *The Mysteries of Opium Reveal'd*, aimed to take the dangerous guesswork out of opium and its medicinal use.²⁸⁷

The tradition of marking opium to guarantee its quality may have begun with the British East India Company, which began exploiting its colonial monopoly over Indian poppy fields in 1773. The Board of Governors discussed the poor quality and reputation of Indian opium, and they resolved to save the profitability of the crop. To do so they introduced a wide variety of business reforms into the production of opium; one of the most successful and persistent of these was designating various regionally-based brands.

The Company's "Patna" premium opium was produced with strict quality control and was packaged in chests with the Company's seal to guarantee purity. Another successful designation was the second-rate "Malwa". Because China barred the importation of opium at the time, the shipment of the Company's merchandise into China was a transaction in spite of law. The

²⁸⁶ Brands would probably be used more in a legal market than they are in the illegal market.

Company's branding of its Indian opium guaranteed its quality even though buyers would have no recourse against them in Chinese courts. The British East India Company further removed the opium trade from conventional legal structures by using independent contractors called "country traders." The country traders purchased chests of opium at auction, and then shipped it into China, in blatant violation of Chinese law. This system offered Britain a fig leaf of deniability even as their plainly marked opium flooded Chinese markets.²⁸⁸

These historic examples demonstrate two levels of transactions assisted by the branding of drugs; one was done at the consumer or street level, while the other happened at all the phases leading up to the final sale—from producers to smugglers, smugglers to distributors, and from distributors to retail outlets.

The practice persists occasionally in major shipments—often internationally—of various sorts of drugs with distinctive labels and packaging. In the autumn of 2007, police intercepted a massive 2.2-ton shipment of cocaine in Cartagena, Colombia, in which each of the 1800 tightly wrapped parcels was numbered and affixed with a Union Jack label.²⁸⁹

However, branding seems to be more common in large heroin shipments. The brands are occasionally quite durable. Some brands of Asian heroin mentioned half a century ago are still around today. For example, in 1953, U.S. Commissioner of Narcotics Henry Anslinger accused Communist China of sponsoring a nationalized drug trade, under the "Red Lion" label.²⁹⁰ Anslinger attempted to tie together several interdictions of "Red Lion" heroin in different nations to prove a Communist conspiracy to distribute drugs to the capitalist world.

This Red Lion brand still exists. The "Double UOGlobe" brand, which today is believed to originate in the Shan state in Burma and features two red lions, may have had an ancestor in the Chinese city of Tientsin. A shipment of heroin discovered in 2003 aboard the North Korean

²⁸⁷ Jones, John. (1701). *The Mysteries of Opium Reveal'd*. A copy is available in the Bodleian Library, Oxford.

²⁸⁸ Owen, David E. (1934) *British Opium Policy in India and China*, New Haven: Yale.

²⁸⁹ "UK-bound £25m haul of cocaine stamped with the Union Flag", The [London, UK] *Daily Mail*. October 3rd, 2007. Available at: http://www.dailymail.co.uk/pages/live/articles/news/worldnews.html?in_article_id=485450&in_page_id=1811. Colombian authorities would not confirm whether the flags indicated the shipment was intended for the U.K.

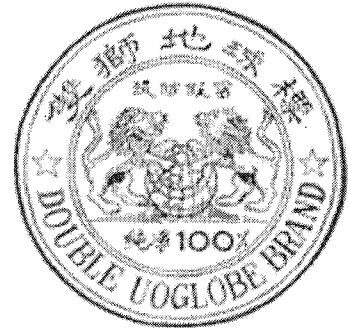
freighter *Pong Su* bore the Double UOGlobe label as well.²⁹¹ On the other hand, the Taipei Times in 2002 described heroin with a similar label on two ships returning to Taiwan from North Korea; the article claims the drugs originated in the Chinese province of Yunnan.²⁹²

Why is the Red Lion being attributed to so many producers? A cynic might suggest the labels are being ascribed recklessly to each nation's political enemies, just as Anslinger is accused of doing against Communist China. What seems more probable is that different trafficking groups in different nations are capitalizing on the reputation of this venerable brand, but have no way to deter each other from "trademark infringement".

Figure 4.1: SE Asian Double UOGlobe Heroin (DEA)



Half units of Double UOGLOBE brand-marked heroin



Double UOGlobe (Double Lion) heroin logo of Southeast Asia

British authorities have also intercepted major heroin shipments with distinctive labels, reproduced in Figure 4.2. These examples all bear Arabic script and appear to hail from SW Asia; Mohammed Iqbal is a Pakistani nationalist poet, which suggests the heroin was packaged there. Dahar is the name of several villages in Pakistan (and also one in India). The marketing appeal of "Camel Flavor" is less than clear, although two of the Chinese brands mentioned by Anslinger in 1953 were "No.1 Camel" and "Special Camel".²⁹³

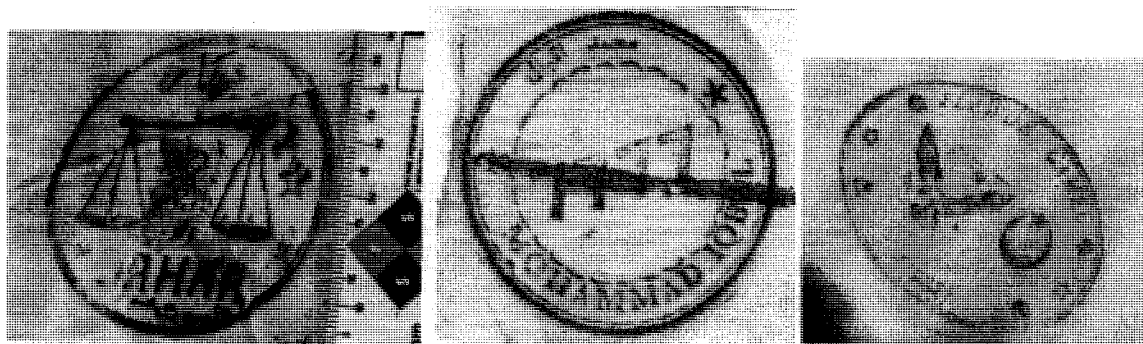
²⁹⁰ Anslinger, Harry and William Tompkins (1953). *The Traffic in Narcotics*. New York: Funk & Wagnalls. Ch. IV.

²⁹¹ PBS Frontline—"Transforming Opium Poppies Into Heroin." Available at <http://www.pbs.org/wgbh/pages/frontline/shows/heroin/transform/>. For an account of the Pong Su incident see <http://www.washingtonpost.com/ac2/wp-dyn/A43159-2003May11?language=printer>.

²⁹² <http://www.taipetimes.com/News/taiwan/archives/2002/07/03/146815>.

²⁹³ Anslinger, p. 78.

Figure 4.2: Wholesale heroin labels, UK, 2001.
(Author; Courtesy of the UK Forensic Science Service.)



Perhaps the most interesting thing about these labels is that each contains an English-language element, in Roman script, for English speakers. They are not cryptic signals decipherable only by the intended buyer, but rather brazen advertising for whatever parties might run across them. Their packagers must operate with sufficient impunity that they believe they can get away with advertising. At the same time they expect their products to be consumed all over the world, and so rely on a language of wider communication to proclaim their message.

Branding is more specialized and serves different purposes among drugs packaged for retail consumption; at the retail level only Ecstasy, SE Asian methamphetamine, and heroin other than Mexican "brown" or "black tar" heroin are regularly differentiated by labels.

Research on the marketing and branding of heroin at street level provides a useful starting point for analyzing retail branding. Heroin, like its precursor opium, carries a risk of overdose if improperly used. It is therefore critical for users to have information about the purity of the drug they are using.²⁹⁴ Dealers, meanwhile, wish to stretch their heroin as thin as possible, and adulterate it with cheaper materials. Some of these adulterants, like caffeine, scopolamine, or quinine, will affect the narcotic properties of the drug. Usually, however, cornstarch, milk sugar, or similar inert ingredients are used to cut the product.

²⁹⁴ It is usually, but not necessarily, true that heroin addicts always seek the highest level of purity available; Wendel and Curtis, *infra.*, report some merely seek to keep themselves functional- "straight" as opposed to "high". In this case they do not necessarily need the highest purity available, but still require information about the purity of the product.

Usually price does not vary within a local market as prepackaged units are sold at a pre-negotiated price; for example, "dime bags" which cost ten dollars, are the standard in many markets. This is because leisurely negotiations and custom orders are not feasible on the street, as they take time and attract attention. Therefore most competition between dealers takes place on purity, not on price.

An ethnography of New York street-level heroin dealers describes how they began to differentiate their products in the 1960's, using only the folds of the package and the color of sealing tape to differentiate them.²⁹⁵ But colored sealing tape can be purchased at any stationery store, and counterfeiting soon occurred. A heroin mill worker explained that the industry moved toward stamps because they were more difficult to counterfeit.²⁹⁶ Since stamps can be carved out of a bar of soap, they likely represented the cheapest, simplest level of technology capable of producing a somewhat unique signature.

Researchers explain the proliferation of brands in New York in different ways. Goldstein attributes their rise to three factors. A sudden abundance of heroin created a buyer's market and demanded competition between dealers, the number of which proliferated as well. Stricter law enforcement prompted dealers to dissociate their own names from their product (e.g., instead of having customers ask for "Bad Ronnie's stuff", "Bad Ronnie" might prefer to employ an anonymous brand name). Finally, consolidation of a Harlem syndicate yielded new overseas connections which they wished to publicize. The first and third explanations seem contradictory, as both diversification and consolidation of suppliers are proposed to explain the same outcome.

A more recent analysis of New York heroin branding²⁹⁸ largely concurs but offers an additional explanation for the establishment of branding as the norm for New York heroin. In 1979 Nicky Barnes, the near-monopolist of New York's heroin market, was arrested; new distributors sprang up to fill the vacuum, many of whom were "beat artists" who tried to sell diluted or fake heroin.

²⁹⁵ Goldstein, Lipton, Preble, Sobel, Miller, Abbott, Paige, and Soto (1984) "The Marketing of Street Heroin in New York City". *Journal of Drug Issues*, Summer 1984 (553-566.) The first two brands were "Goldfinger", with gold tape, and "007" with dark tape.

²⁹⁶ *Id.*

²⁹⁸ Wendel, Travis and Ric Curtis. (2000) "The Heraldry of Heroin: "Dope Stamps" and the Dynamics of Drug Markets in New York City." *Journal of Drug Issues*, Spring, 2000 (p. 225-259.)

³⁰⁰ See www.thesmokinggun.com/archive/binladen_heroin.html.

There were enough beat artists to introduce uncertainty to the market. Brands emerged as a response to this uncertainty.

Another driver of branding is the relative time constraint faced by the purchaser. Wendel and Goldstein both note that the *average* purity of heroin on the market is irrelevant to a purchaser, who cares only about that of the specific bag being purchased. Driven by addiction, users have an extremely short time horizon and cannot take a long view of market conditions. If a dealer is also an addict, as many are, desperation for the money to buy drugs may overcome long-term concerns about reputation and drive them to dissemble. Common knowledge about how drug use affects dealers' time horizons decreases trust among buyers, and increases the demand for institutions like branding that compensate for drug-using dealers' desperation.

And, as with more conventional sorts of branding, non-economic factors help explain the "heraldry of heroin". Interviews with consumers indicate they enjoy the iconography, and receive some satisfaction from trusted brands or edgy iconography and clever wordplay, some of which reflects contemporary fads and events, e.g. "Bin Laden" brand heroin in New York.³⁰⁰

Wendel describes the branding phenomenon as tapering off steadily in New York since 1995. Since the 1970's, literally thousands of brands have come and gone in New York. One reason given for the change was the pressure of more intense and sophisticated law enforcement in the late 1990's, which prompted a shift to more secure "delivery" and "house connection" (indoor) business models. Technology also played a part: pagers and cell phones have permitted dealers and clients to arrange a secure location and negotiate prices and amounts, rather than relying on surreptitious, pre-negotiated deals. But the tapering off seen in New York is not a nationwide constant. In other markets, ONDCP data suggest street-level heroin branding waxes and wanes, though it generally appears to be on the decline across the country since 2001.

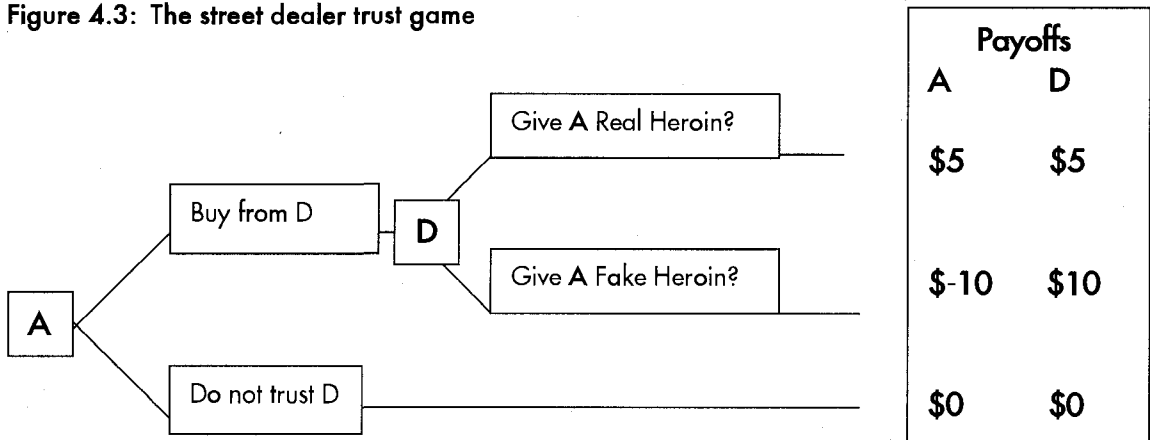
Goldstein's ethnography, as well as that of Wendel and Curtis suggest several testable hypotheses about drug dealer behavior. First, however, a simple model of the system will illustrate some of the mechanisms that keep these markets self-sustaining in spite of their inherent inefficiencies and incentives to cheat.

IV. MODELING THE HEROIN MARKET

A simple model of branding might fail to capture the altered logic that sustains heroin brands. Consider a customer who buys a can of chicken soup at the supermarket. Such a purchase usually does not require consulting one's network of friends. There is little chance a can of chicken soup will turn out to be inedible or poisonous, no matter how inexpertly the customer prepares it. The time horizons of most merchants are sufficiently long that many will offer a money-back guarantee on chicken soup, preferring instead to compensate a customer in order to keep his future business.

Furthermore, the reputation, and future income stream, of both the manufacturer and the retailer are susceptible to bad word of mouth and bad publicity. Disgruntled customers will easily find plaintiffs' attorneys to take their case and sue the negligent manufacturer and seller. In short, a vast network of taken-for-granted institutions aligns the interests of manufacturer and merchant with those of the customer: even a greedy, self-interested corporation is usually better off producing tasty chicken soup that a customer will enjoy than taking shortcuts.

Figure 4.3: The street dealer trust game



These reinforcing institutions are not available for the heroin user.³⁰¹ The interests of the seller are naturally opposed to those of the user; it would be cheaper for the seller to deceive his customers by giving them a bag of flour instead of expensive heroin. Consider this simple trust-game model³⁰² (Figure 4.3) of a street transaction in which drug user A hands dealer D a \$10 bill, and

³⁰¹ Drug Dealer Liability Acts are a recent attempt to bring the power of the plaintiff's bar to bear on the drug market. Typically designed to compensate the victims of drug-related crime and accidents, some states also allow heroin users to recover for their own injuries. See the discussion of policy relevance, *infra*.

³⁰² This is adapted from David M. Kreps, "Corporate Culture and Economic Theory," (1990) in Rational Perspectives on Political Science, David Alt and Shepsle, eds., p. 100.

D hands back an unmarked envelope of white powder. User A must later assay the powder to see whether it contains acceptable heroin or 'trash.'

This game would suggest the drug problem solves itself, since dealers are given motive and opportunity to defraud their eager clients. This scenario occurs fairly often, according to ethnographers, since some dealers sell to support their own habits, and care more about making enough money for their next hit than the long term consequences to their future stream of revenue.³⁰³ But since most dealers seem to care about their reputation, most of the time, a repeating game is necessary.

Especially in larger urban markets, there is usually not only customer A, but rather A₁, A₂, A₃, etc., and information sharing between themselves is the norm. Therefore A₂ may ask A₁ whether D cheated him or not, and decide not to buy if he thinks D is selling bad dope. A₃ may ask A₂, and so forth. Since heroin is often sold in concentrated urban districts, this brings buyers into proximity and facilitates their sharing of information through a "grapevine". The exchange is usually simple and practically costless; a few words will do the trick. (Costless for the buyers, that is: if D's name is mentioned too freely as a reliable connection, the new customers he attracts may include the vice squad.)

Because word of mouth among buyers discourages sellers from cheating buyers, the heroin market can support repeated iterations. But this same word of mouth could still lead to the arrest of sellers fairly quickly, assuming competent law enforcement exists. To avoid law enforcement, dealers need to de-couple their professional reputation from their juridical, personal identities. The answer is branding. Police can track down and arrest "Nicky Barnes", but they cannot arrest his contemporaries "Santa Claus" or "Tricky Dick"³⁰⁴ for they are just ideas, cheaply reproduced images on glassine bags, and a shorthand history of past transactions maintained within the collective memory of the community of heroin users.

Besides providing dealers with some insulation from law enforcement, brands have other benefits as well. For instance, they make a good reputation fungible. Buyer A may know nothing of

³⁰³ Violence is another institution that regulates the illegal drug market. In addition to the reputational model discussed in this paper, dealers may be swayed toward honest dealing by the significant chance a scorned customer will return with a baseball bat to alter the payoffs.

³⁰⁴ Goldstein, p. 556

dealer D_2 , but may recognize that he has D_1 's name-brand heroin for sale, about which A *does* have information. Alternatively, rumors about a superior brand can tempt buyers away from a regular dealer's merely satisfactory product.³⁰⁵ This is as close to advertising as heroin can get.

However, brands introduce new complications as well. Brands provide an evidentiary chain for police to track down and prosecute dealers. Also, the packaging can be counterfeited (or simply reused), and then diluted or filled with fake dope by a competitor. A ruthless rival could even attempt to poison the users of a rival brand (about which more will be said below).

Counterfeiting is common, and in response, dealers simply bring out a new brand at minimal cost. But Goldstein reports that the major deterrent to counterfeiting is the knowledge that "counterfeiters would be, and have been, threatened, assaulted, and killed by the real dealers of that particular label." This suggests another incentive for dealers to cultivate a competence in violence: not only do they need to defend their stockpiles and cash from physical hijacking, they also need to defend their intellectual property from copycats.

Decisions about whether to brand heroin or simply offer unlabeled "commodity" drugs, and whether to sabotage competitors' products, will be affected by the likelihood of retaliatory violence and by law enforcement. Marketing strategy can be represented as the result of a normal-form game between two rational dealers. Doing so yields some interesting insights into the dynamics of the market, and especially the prevalence of branding and of counterfeiting.

Underlying such an analysis is the assumption that drug dealers are economically rational, an idea that is not without controversy. After a thorough analysis of a Chicago drug gang's balance sheets spanning several years, Steve Levitt and Sudhir Venkatesh concluded that for most members of the gang, when the risks of arrest and violence were factored in, selling drugs was less lucrative than a full-time job at minimum wage would be. Still, the top levels of these gangs were able to prosper. Presumably important strategy decisions, such as those about marketing, are not made by the less economically rational foot soldiers, but at a higher level within the gang.³⁰⁶

³⁰⁵ *Id.* p. 560.

³⁰⁶ Levitt, Steven, and Sudhir Alladi Venkatesh. (2000). "An Economic Analysis of a Drug-Selling Gang's Finances." *Quarterly Journal of Economics* 13(4): pp. 755-789.

Consider a game involving two dealers, A and B. Each must decide whether to brand his own heroin, and whether or not to cheat the other player. This cheating could take the form of seducing or intimidating customers away, threatening or informing on the rival dealer, or counterfeiting, adulterating, or poisoning his brand. These decisions can be represented as a 4 X 4 normal form game.

The *best* possible outcome is to simultaneously sabotage a competitor and invest in a reputable brand of one's own, thereby damaging his reputation and taking away his market share while cultivating one's own reputation. Almost as good is to maintain a brand without sabotage.

Commodified drugs are, by their nature, largely immune to sabotage. A dealer selling a commodity drug is indifferent between alternatives, whether a competitor defects or doesn't defect, he gets a modest payoff either way. The *worst* possible outcome is to invest in a brand and have the competitor defect. If both players choose to build up a brand and defect, then both take the "sucker payoff".

Consider, then, the first model. In this case law enforcement is overworked, lazy, or corrupt, and does not focus on branding enough to impose a particular cost to dealers who use it. Similarly, there are no costs to cheating an opponent. In this respect the competitors are symmetric—the rules affect each party in the same way.

Figure 4.4: Symmetric players branding game, costless branding and cheating

	Don't Brand and Don't Cheat	Brand, but Don't Cheat	Don't Brand, but Cheat	Brand and Cheat
Don't Brand and Don't Cheat	1,1	1,5	1,1	<u>1,5</u>
Brand, but Don't Cheat	5,1	5,5	-5,1	-5,6
Don't Brand, but Cheat	1,1	1,-5	<u>1,1</u>	1,-5
Brand and Cheat	<u>5,1</u>	6,-5	-5,1	-5,-5

This game yields a great degree of uncertainty. It has three potential Nash equilibria, which are likely strategies for rational players to choose if they know the other player's strategy. All of them involve cheating the other parties, however, which points to an ultimately inefficient market.

Now consider the effect of retaliation upon the same game. If each dealer is capable of inflicting the same degree of retributive cost when the other decides to cheat, the market yields much more certainty:

Figure 4.5: Matched players branding game, cheating penalty = (2,2)

	Don't Brand, Don't Cheat	Brand, Don't Cheat	Don't Brand, Cheat	Brand, Cheat
Don't Brand, Don't Cheat	1, 1	1, <u>5</u>	<u>1</u> , -1	<u>1</u> , 3
Brand, Don't Cheat	<u>5</u> , 1	<u>5</u> , <u>5</u>	-6, -1	-5, 4
Don't Brand, Cheat	-1, <u>1</u>	-1, -6	-1, -1	-1, -7
Brand, Cheat	3, <u>1</u>	4, -5	-7, -1	-6, -6

Under these conditions, the dealers are drawn toward a single Nash equilibrium by maintaining their own brands and not interfering with each other—a stable and efficient market. All other strategies, in fact, are strictly dominated. This peaceful situation most resembles legitimate commerce: revenue can be maximized by orderly and neighborly behavior. It is also obviously very rare, although certain cases such as the Baltimore heroin market discussed in the section below may approach it.

Consider also a system of law enforcement which is able to affect the payoffs of branding by tracking down brands and arresting the occasional dealer. In other words, the decision to brand carries a risk of arrest, expressed as a penalty. First, consider a market in which law enforcement is weak, but is nonetheless able to impose a penalty on branding. Figure 4.6 shows such a system; it is still more profitable to brand than not to brand, and the dominant strategies are the same:

Figure 4.6: Symmetric players branding game, no cheating penalty but branding costs 3,3 due to some law enforcement

	Don't Brand and Don't Cheat	Brand, but Don't Cheat	Don't Brand, but Cheat	Brand and Cheat
Don't Brand and Don't Cheat	1,1	1,2	1,1	1,2
Brand, but Don't Cheat	2,1	2,2	-8,1	-8,3
Don't Brand, but Cheat	1,1	1,-8	1,1	1,-8
Brand and Cheat	2,1	3,-8	-8,1	-8,-8

But there exists a tipping point; if law enforcement is more scrupulous in pursuing brands and tracks them down assiduously, punishing the dealers who decide to use them, then the incentives to sell branded drugs disappear and align in favor of commodified, unlabeled drugs.

Figure 4.7: Symmetric players branding game: strong enforcement yields very costly branding (10,10), no cheating penalty

	Don't Brand and Don't Cheat	Brand, but Don't Cheat	Don't Brand, but Cheat	Brand and Cheat
Don't Brand and Don't Cheat	1,1	1,-5	1,1	1,-5
Brand, but Don't Cheat	-5,1	-5,-5	-15,1	-15,-4
Don't Brand, but Cheat	1,1	1,-15	1,1	1,-15
Brand and Cheat	-5,1	-4,-15	-15,1	-15,-15

At this level of enforcement, branding is a strictly dominated strategy, and an economically rational player will never choose it. Since branding is still a rare phenomenon, one might conclude that these conditions obtain in most illegal drug markets, with most drugs, in most places. The insight that brands flourish where law enforcement can't impose penalties isn't quite as trivial as it may first sound. These games are high-stakes games of expectations, and the risks of jail are very serious. A dealer chooses his strategies based on his assessment of the law enforcement threat to him. If he thinks law enforcement is incompetent or corrupt, he may attempt to brand his goods.

In other words, it appears that branding is the local drug market's assessment of the threat law enforcement poses. Widespread branding would mean that the dealers believe they operate with sufficient impunity that the risk is justified. This does not mean that a lack of branding necessarily indicates effective enforcement. As mentioned previously, other technologies or institutions exist that can address some of the problems branding does. But it does suggest the converse: that *where illegal drugs are branded, it is because law enforcement is not effective.*

Finally, it is useful to consider an asymmetric market in which one major, established dealer can retaliate against a minor dealer, but the less powerful dealer cannot punish cheating by the monopolist:

Figure 4.8: Asymmetric players branding game, cheating cost = (-1,0), branding costs (0,0)

Monopolist →	Don't Brand, Don't Cheat	Brand, Don't Cheat	Don't Brand, Cheat	Brand, Cheat
Don't Brand, Don't Cheat	1, 1	1, <u>5</u>	<u>1</u> , 1	<u>1</u> , <u>5</u>
Brand, Don't Cheat	<u>5</u> , 1	<u>5</u> , 5	-5, 1	-5, <u>6</u>
Don't Brand, Cheat	0, <u>1</u>	0, -5	0, <u>1</u>	0, -5
Brand, Cheat	4, <u>1</u>	<u>5</u> , -5	-6, <u>1</u>	-6, -5

In this market only the monopolist has an incentive to brand his goods. This is typical of the Harlem heroin market before 1979, under Nicky Barnes' monopoly, when his name and his lieutenants' were synonymous with "a good bag".³⁰⁷

These elementary models of heroin markets suggest that, in keeping with observations of the New York markets, all dealers are discouraged from using branding when law enforcement is willing and able to investigate and punish the sources of branded heroin. It also suggests that branding will flourish in symmetric markets, but that a powerful syndicate such as Nicky Barnes' will reduce incentives for other dealers to brand. However, should a syndicate or cartel be dismantled, brands become profitable and proliferate once again. Given more thorough and regular data

³⁰⁷ Wendel and Curtis, pp. 229-230.

collection, comparative empirics in different markets could test these intuitions. The next section offers one look in that direction.

These intuitions should apply to large-scale shipments and international shipments as well. Branding succeeds as a method of ordering illicit markets, large or small, precisely because it is a *scalable* technology. It can be applied to multi-ton international shipments of narcotics, or street-corner retail sales of a few grams. The incentives are similarly structured, in that the seller has a short-term incentive to cheat a customer if he can, by skimping on quality. Buyers would like some guarantee of quality, but in a low-trust environment, they would ordinarily have little recourse if they are defrauded. And as with local markets, branding can serve to reduce uncertainty on the part of a wholesale buyer and thus enable a future stream of income through repeat business for the seller.

A smuggler—an intermediary element present in international exchanges but absent from street deals—also has an incentive to steal from his cargo or substitute an inferior product. Perhaps the presence of familiar labels and seals—like the old Patna opium chests sealed by the British East India company—provides some assurance for both the buyer and the seller that the delivered product is of the agreed-upon quality, and not an inferior grade switched in by a middleman.

Another reason to brand international narcotics shipments is the power of many trafficking organizations relative to law enforcement within their countries. Cartels that operate with impunity have every reason to advertise their ownership of a particular shipment. This way police or border guards know that certain shipments are “protected”, and interfering with them would incur political or personal consequences.³⁰⁸

Under such conditions, the game described in Figure 4.8 would apply, and branding would therefore be an optimal strategy for a well-armed trafficking organization—above and beyond its function of intimidating law enforcement.

³⁰⁸ This impunity may not be limited to the third world. An anecdote related to me by a criminal defense attorney concerned distinctive stickers on large bags of cocaine her client was accused of transporting from Mexico. She asked what the stickers meant, and her client replied they were to “let the border guards know to let this one through.”

The purpose of these abstractions has been less to make specific claims about particular drug markets than it is to make a broader point: one can use these principles deductively to assess the state of particular drug markets, and of law enforcement as well.

V. DATA ON DRUG BRANDS

Besides the two ethnographic surveys of the New York market, there have been little data systematically collected about the phenomenon of branding. But those examples, as well as the models proposed above, suggest that observing changes in branding might be a valuable indicator of the structure and dynamics of illegal drug markets as well as of the effectiveness of law enforcement.

In 1995, the Office of National Drug Control Policy—the “Drug Czar’s” office—began publishing an annual report describing the condition of the illegal drug market in eighteen American cities. Called “Pulse Checks”, these monographs contained data from law enforcement, ethnographers, and treatment providers within each city. In 2000 the Pulse Checks became biannual and began to include within their discussion of heroin a listing of the brands reported in each city by their sources—including law enforcement, treatment professionals, and drug users. In this way it has become a useful source to monitor changes in drug markets within particular cities over time. While there may be variations in the way data are gathered in each city, the sources used to compile the Pulse Check assessment within each city are consistent over time, and useful for a longitudinal look at local drug markets. Comparisons between Pulse Check cities may be inapposite, but trends within cities are useful.

Among many other questions about drug use in their market, the Pulse Check sources were asked to list any brands, dealer names, or distinctive packaging in use in their area. In many cases only an overall increase or decrease in the presence of branded drugs was mentioned. The information is not sufficiently systematic in its collection, but it is at least possible to observe upward and downward trends in the number of brands across the various cities, as well as the persistence of particular brands.³⁰⁹

³⁰⁹ The Pulse Check reports referenced in this chapter are available for download in .pdf format through the ONDCP’s website, at this index of publications:
<http://www.whitehousedrugpolicy.gov/publications/asp/topics.asp?txtTopicID=1&txtSubTopicID=0#P>

At this writing the Pulse Check data offers only four data points, although information about whether brands increased or decreased in the previous period can sometimes be inferred from the descriptions. The data show some unusual trends. (Figure 4.9, below) The number of brands in New York continues to fall, even as the number in Philadelphia climbed and peaked at 104 brands in April of 2002. Most of the markets in which branding was present followed the same general trajectory, but rarely displayed more than single-digit totals.

The biannual sample does not catch more rapid variations, however. The limits of this infrequent sampling are most visible in reference to the market in Baltimore. The Baltimore drug market has evolved in a unique way to include "touters" who direct customers to particular dealers or brands, and brands (which in Baltimore are often just a particular color of vial) that change weekly or daily to avoid police attention. For this reason, the Pulse Check data on Baltimore likely to underreport the volatility in that market.

ONDCP has discontinued the collection and publication of branding data within the Pulse Check series, citing the expense of collection and its "lack of applicability to policy making".³¹⁰ After the final publication of branding data in November 2002, and a final Pulse Check issued in January 2004 (which, though it reached some conclusions about branding, did not include any new city-specific branding data), the series fell dormant.

VI. HOW THE PULSE CHECK SERIES SUGGESTS LOCAL DRUG MARKETS USE BRANDING

6.1 When is branding useful to heroin dealers?

Limited though it may be, the existing Pulse Check data does offer some useful insights. One interesting fact revealed by the Pulse Check data is that while heroin branding does occur in cities outside New York, it appears to be confined to cities east of the Mississippi River. The Pulse Check editors speculate this is because these cities' markets are sourced from purer Colombian and Asian heroin which is susceptible to "cutting" and manipulation. Cities in the western United States

³¹⁰ Personal communication via e-mail: Michele Speiss, ONDCP Clearinghouse. March 12, 2003. The assessment that the series lacked "applicability to policymaking" is premature. I would instead argue that a serious effort has not yet been made to apply this data to understanding why branding exists and what causes its decline, and that ONDCP or another organization should instead work on training and expanding the network of Pulse Check sources, and systematizing their reporting and collection methods. Ideally, it should operate internationally as well.

instead largely rely on Mexican brown or black tar heroin, which cannot be improved or diluted, so heroin there must be sold as a commodity.

6.2 Does drug branding help dealers avoid arrest, or increase their risk of arrest?

Another question relevant to this analysis is whether drug branding actually does expose dealers to greater risks of arrest from law enforcement, or whether it insulates them. Goldstein et al. thought that brand names actually frustrated law enforcement to a degree by making drugs anonymous, and substituting a brand name for a real person's name—consumers speaking about "Bad Ronnie's Stuff" might lead the police to its vendor, "Bad Ronnie", whereas an anonymous brand name like "Goldfinger" betrays less about its source. Nonetheless, since branding provides police more of an evidentiary chain than unlabeled, commodified drugs do, one would suspect it makes it easier for law enforcement to track down the source.

The January 2004 Pulse Check surveyed law enforcement sources as well as epidemiological (treatment professionals) and ethnographic (users or those who study them) sources about the effectiveness of branding and unique packaging in frustrating law enforcement. They concluded that "detection and disruption efforts have not been hampered much by dealers using unique packaging or by their increased or decreased use of brand names."³¹¹ In fact, "fewer brand names", "more or changing brand names", and "unique packaging" were all ranked (in that order) as the market innovations that complicated law enforcement the least, when compared with other innovations such as the Internet, throwaway cell phones, and "tighter" dealer organizations.

On balance this may be the case for all drugs and in all cities, but as discussed above, branding never was pursued as aggressively in cities that sell mainly Mexican heroin. What's more, respondents in the cities with the highest number of brands disagreed about the usefulness of branding. In Philadelphia, the city with the greatest number of drug brands (see Figure 4.9, below), the ethnographic/ epidemiological respondents were asked, on a scale of 1 to 5, whether "fewer brand names" "complicated disruption and detection efforts." The Philadelphia respondents ranked fewer brand names as a 5—"extremely" complicating. New York respondents ranked it 4, and Boston a 3. This suggests that market participants in these cities may perceive branding as a shield against law enforcement. However, this perception is probably unrealistic, as

³¹¹ *Pulse Check*, January 2004, p. 23.

law enforcement respondents in the same cities dismissed a decline in the number drug brands as “not at all” disruptive to law enforcement.³¹²

A loose correlation appears: in cities where dealers perceive that branding reduces their exposure to law enforcement, more brands are employed. And, whether rooted in reality or not, the perception that branding offers them an advantage against law enforcement could induce dealers to use the technology. Still, avoiding law enforcement is not the primary reason for branding: as argued above, conveying reputational information to consumers is.

6.3 Why isn't there more counterfeiting or sabotage of rival brands?

Pulse Check data can also illuminate an apparent loophole in the logic of dealer strategies: why can't rivals counterfeit and poison a successful brand in order to drive customers away, and perhaps toward their own brand?

Anecdotal evidence describes market reactions on a few occasions when someone dies from using a particular brand of heroin. For example, in 1996 Jonathan Melvion, keyboardist for the band The Smashing Pumpkins, overdosed on heroin. A heroin bag found at the scene was labeled “Red Rum”, and this fact received some media coverage. Instead of avoiding “Red Rum”, however, heroin users clamored for the brand.³¹³ Goldstein and Wendel both include similar anecdotal accounts. Paradoxically, it seems users took lethality as an indicator of purity; either they planned to dilute it, or they believed that they had developed such a resistance to the drug that it would not be fatal.

By this logic it would be counterproductive to poison a competitor's products, since it would only increase the demand for it. (If anything, a dealer would have an incentive to poison his own drugs instead of his rival's.) But does poisoning a product really act as a perverse form of advertising?

Apparently it does. In 1996, “Homicide” and “Super Buick” brands of heroin sent 116 users to Philadelphia emergency rooms. The victims were suffering from symptoms caused by the high

³¹² *Pulse Check*, January 2004, p. 30.

³¹³ “Smashing Pumpkins' Keyboardist Dies of Heroin Overdose in New York Amid Industry's Anti-Drug Drive”. Summer 1996. National Drug Safety Network. Available at <http://www.ndsn.organization/SUMMER96/MUSICARE.html>.

percentage of scopolamine used to “cut” the drug. (Doctors speculated that the supply was poisoned as an act of revenge against a particular dealer.) Common sense dictates that if the anecdotes were false about lethality providing a “proxy variable” for information about purity, then users would avoid reputedly poisonous drugs. It would be surprising to see these brands persist in the Philadelphia area.³¹⁴

However, Pulse Check publications since 2000 confirm that “Homicide” and “Super Buick” were alive and well in Philadelphia. This is actually an unusual length of persistence for a single retail brand. Perhaps a large-scale poisoning does in fact work to cement a brand name’s reputation as good value for money. Maybe there really is no such thing as bad publicity.

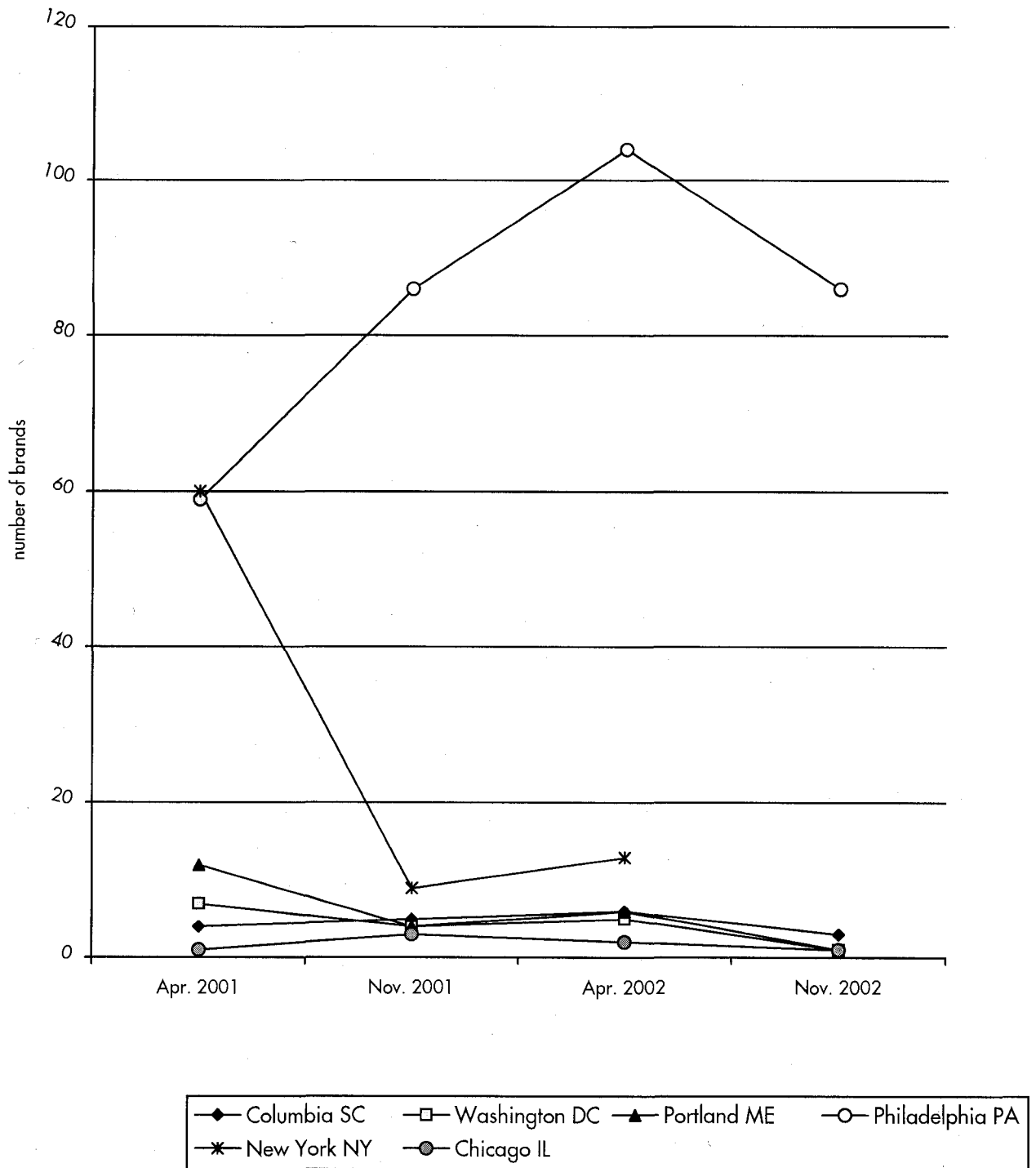
6.4 Does a change from a monopolized local drug market into a free market affect the decision to use branding?

Trends in Philadelphia show a proliferation of branding, atypical of other markets at that time (see Figure 4.9). The number of brands in Philadelphia skyrocketed in the months following Operation White Horse.³¹⁵ This tends to confirm the hypothesis that brands proliferate as the market restructures itself. Unfortunately there is no way to confirm that the increase in brands had not already begun before the arrests in Operation White Horse began. And curiously, one the brands spotted on the street in the November 2002 Pulse Check brand description is the same “Titanic” targeted by authorities in Operation White Horse.

³¹⁴ “Potent Heroin Brings Chaos to Philly Hospitals.” (AP). May 11, 1996.

³¹⁵ In January 2001, several federal agencies concluded “Operation White Horse”, a very successful investigation aimed at an elaborate syndicate that transported Colombian heroin to Philadelphia and New York. The syndicate used the “Titanic” brand for street sales in Philadelphia. At the time of the press release, officials had made 111 arrests and seized sizable amounts of drugs, guns and cash (DEA press release). Available at <http://www.usdoj.gov/dea/major/whitehorse.htm>

Figure 4.9 Number of heroin brands in eastern Pulse Check cities over time



³¹⁸ Pulse Check 2004, p. 68.

6.5 What effect do competing technologies, such as cell phones, have on the decision to brand narcotics?

Brands were introduced to local-market heroin trading to address the variability of product purity and a lack of redress by customers. The dangers surrounding street trade in heroin, including the threat of law enforcement surveillance, mean that there is no time to test for purity, negotiate prices, or measure amounts. Therefore transactions are clandestine and rapid, usually involving a pre-negotiated amount of heroin in exchange for a set price. Besides branding, other technologies exist to insure against the uncertainties of street trade. As one law enforcement source in Baltimore explained to the 2004 Pulse Check editors,

The proliferation of cellular phones over the past decade has caused more problems than anything else in law enforcement efforts to disrupt drug activity. It has changed the ways that law enforcement can intercept transactions and provides sellers with a degree of protection.³¹⁸

By 2004, in almost every city tracked by the Pulse Check series, cell phones were undermining the open-air markets used for heroin transactions (and other drugs as well). Unlike branding, using cell phones to arrange meetings at a secure location actually offered security from law enforcement surveillance rather than increasing exposure. The 2004 report describes a radical restructuring of street-level dealing, and the introduction of a new, more secure model in which dealers and sellers rarely needed to interact with someone about whom they had no prior information. Through cell phones—especially disposable cell phones—meetings could be arranged with less risk. At the same time, reputational information could be transmitted more privately and securely, by word of mouth and within trusted networks, instead of through brands.

Within the law-enforcement structure of the United States, cell phones offer some privacy and security that open-air sales never could. An open-air transaction can be observed by a rival, a concerned citizen, or a policeman and give rise to an investigation. However, law enforcement would generally need to show probable cause and obtain a search warrant to monitor a domestic cell phone. Cell-phone arrangements also allow the actual exchange of money for drugs to take place in a private location. According to the 2004 Pulse Check, drug transactions are now usually scheduled for a private location such as someone's home that enjoys Fourth Amendment protection from warrantless law enforcement surveillance.

Also, while cell-phone monitoring might occur incident to an investigation opened for other reasons, it is unlikely that the mere act of negotiating a deal over the phone would give rise to suspicion and arrest in the way an exchange of money for drugs in an alley or shooting gallery could.

Michael Kenney, in his comparative study of terrorists and Colombian drug traffickers' organizational learning, noted that such learning is a process, but not always progress. Adaptations and assessments are not inevitably accurate or beneficial.³¹⁹ Yet judging by the near-unanimous complaints by law enforcement about the difficulties presented by drug dealers using cell phones, it looks like this ongoing, collective adaptation genuinely reduces the risks for the illicit market.

But it is not clear whether this adaptation will ultimately prove more profitable for the vendors. Reduced exposure to law enforcement may save a drug dealer money, not only because it avoids costs such as legal fees, fines, etc., but also because jail time interrupts a dealer's revenue stream. Nonetheless, while arranging private meetings by cell phone may be more secure than an anonymous exchange in an open market, it is not as efficient.³²⁰

Whether it is due to risk aversion or efficiency calculations, cell phones have changed the way Americans buy drugs. While it is doubtful that cell-phone transactions will replace open air drug markets completely and eliminate the need for branding, it seems that they will continue to transform the way that illegal drugs are sold on the street and eclipse the use of branding. This is one explanation for the decline in branding seen in most cities, the first stages of which were indicated by the trends in Figure 4.9.

These changes are occurring at the micro-level. In the large scale markets, however, cell-phone technology offers very little advantage, especially given the possibility of government surveillance of international calls. As they have done for hundreds of years, it is likely that the narcotics industry will continue to use brands to bridge the information gap between producer, smuggler, and wholesaler.

³¹⁹ Kenney, Michael: From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies, and Competitive Adaptation. University Park: Pennsylvania State University Press (2007). pp. 5-6.

³²⁰ Insofar as a fear of law enforcement forces sellers to adopt less efficient but more secure technology for structuring their commerce, law enforcement can be said to have had an impact on the illicit marketplace.

VII. SOCIAL AND POLICY IMPLICATIONS

Heroin branding is of interest to a wider community beyond those just interested in the study of informal economic institutions. The collection and analysis of information about drug labels is likely to serve policy objectives as well. Ideally, local and international labels could be mined for information, and the institution that sustains the market could be used to subvert it. For example:

7.1 Denying efficient markets

Drug organizations are organizationally "flat" and able to adapt rapidly to changing market conditions—they are, as Michael Kenney describes them, "light on their feet".³²¹ They may react to law enforcement's attention to labels by replacing them with some new system to transmit reputational information.

Where such a shift could be induced, it would represent a victory for law enforcement, because it denies drug dealers the use of one of the most simple and efficient methods for conveying the information necessary to enable repeated transactions. Some dealers may eschew brands for unlabeled "commodity" drugs, but they will sacrifice a premium with all but their most trusted customers. Advanced technology such as cell phones and pagers may substitute for brands, but lack the efficiency of a rapid, simple, open-air exchange. Any change away from branding probably represents an increased cost to both the buyer and seller of illegal drugs.

7.2 Drug dealer liability laws

Thirteen states currently permit lawsuits against drug dealers by private or state parties injured by drug-related accidents and violence. Under these underutilized laws, joint and several liability ascends the "stream of commerce" and can stop anywhere there is a culpable party with sufficient funds to compensate a victim.³²²

³²¹ Kenney, p. 7.

³²² Taylor, Clinton. (1999) Comment: "A Civil Remedy for a 'Victimless' Crime: Oklahoma's Drug Dealer Liability Act." *Oklahoma Law Review*, Vol. 52, No. 2. These are different from civil forfeiture actions, which benefit only law enforcement agencies and target instruments such as guns, cars or boats actually used in trafficking. These laws underscore the themes of this article in that they are designed to utilize and

Unfortunately, there is a crucial shortage of information in tracing the course of illegal commerce past the (usually impoverished) street-level dealers and up into deeper pockets. A thorough, time-linked index of drug brands would be an invaluable tool in pursuing these lawsuits and identifying a clear chain of evidence.

7.3 Drug intelligence

By a more rigorous accounting of where and with what frequency particular brands are discovered, it is possible to plot their movement on a national or international scale. Patterns will likely emerge that would otherwise remain hidden, and informed guesses can be made about trafficking routes, organizational structures, and linkages between dealers and syndicates.

The capacity already exists to identify the geographical origin of many types of illegal drugs through forensic analysis. But a scientific conclusion that a particular bag of heroin is from Southeast Asia instead of Southwest Asia is of limited utility. Tying a seized quantity of heroin to a particular laboratory on the other side of the globe, however, might be quite valuable.

Consider instead a police officer in New Orleans who finds a packet of heroin in an arrestee's pocket. The defendant refuses to discuss his supplier, but the packaging bears a distinctive stamp. The officer, as part of the standard paperwork for the arrest, checks the stamp in a secure national database and finds that identical packets have turned up recently in Boston. The officer knows certain local dealers have family ties in Boston and is able to alert New Orleans' narcotics division to focus their investigation on the local dealers and their movements to Boston. They in turn alert Boston and DEA that similar brands are showing up in New Orleans and cooperate in investigating the link between the two cities.

In this way a simple possession arrest might lead to disruption of a major interstate ring, even without any cooperation or testimony from the arrestee; without a thorough index of brand names the connections would have been missed. The same sort of investigation could be scaled up to coordinate between law enforcement agencies across national borders. In short, a thorough, up-to-date database of drug brands would permit proactive, intelligence-based counterdrug

subvert the institutions which perpetuate the drug trade. Any means of attaching reputation to a series of transactions could theoretically serve as evidence in a DDLA action.

operations coordinated between different jurisdictions—between states, or even between nations. The “war on drugs” is widely regarded to be a failure. But that outcome may be less a result of the grim, inescapable economics of prohibition than a result of willfully fighting blindfolded. Before either surrendering or continuing further along the same unproductive paths, it would make sense to exploit this convenient source of useful data, one which may be garnered without further compromise of civil liberties. If branding provides useful information to heroin users, it may do the same for academics, policemen, and policy makers seeking to understand how the narcotics industry adapts to competition and enforcement.

VIII. CONCLUSION

The satirical newspaper *The Onion* once ran an article headlined “Undercover Cop Never Knew Selling Drugs Was Such Hard Work”.³²³ There is a great deal of truth behind this joke—markets do not operate by magic but through considerable entrepreneurial ingenuity. As with legitimate markets, however, institutions keep the heroin trade running more efficiently, and more predictably. By necessity these institutions must be informal, decentralized, and independent of altruism.

This study has surveyed one of those institutions at both the macro- and micro- levels, and offered an explanation of why it works. Branding meets the requirements of a market-making institution, but carries significant risks of retaliation from law enforcement and from other dealers. Therefore new institutions that reduce these risks are advancing to take its place. Time will tell whether technology will offer alternatives superior to branding, or whether an elegant solution that has been around since before 1701 will remain relevant to the trade. What is clear now is that, just as the institutions of the international drug control regime respond to changes in technology, the structure of the illegal drug market responds both to new technology and changes in law enforcement. It adapts and evolves over time, and thus perpetuates a cycle of competitive adaptation between narcotics sellers and the enforcers of drug prohibition.

³²³ <http://www.theonion.com/content/node/27935>.

CHAPTER V

CONCLUSIONS: WHY STATES DON'T TRAFFIC ILLICIT DRUGS, AND WHY THEY DO

This dissertation examines the development of a norm against nations exporting illicit drugs to other nations and the incremental growth—despite strenuous and agile opposition—of the regime that reinforces that norm. Chapter V summarizes the development of both the norm and the regime; furthermore, it analyzes the strengths and weaknesses of the International Drug Control Regime (IDCR), the failures of the IDCR at preventing drug trafficking by non-state actors, and the significance of the IDCR to the discipline of political science.

I. THE DEVELOPMENT OF THE NORM AND THE REGIME

Two early criticisms of the international trade in drugs for non-medical purposes emerge as unusually influential and perceptive. One, Philip and Thompson's 1835 pamphlet, "No Opium!", established a new normative basis for states to remove themselves from the drug trade. Among the most powerful and trenchant of their normative arguments was an analogy between the opium trade and the slave trade, which Britain had just recently abandoned. Theirs was a moral argument about the limits of appropriate state behavior. Although they may have not been the first to connect drug use with slavery, theirs was the first connection of the drug trade and the slave trade as something which good, admirable, civilized states do not do.³²⁴ Though their names have largely been forgotten, this dissertation shows that their idea was extraordinarily influential.

The second criticism was by an anonymous, but much-quoted, writer in the Chinese Repository of Canton in 1836. This writer identified the coordination problem that made it so difficult for states to traffic in illicit drugs—a problem which the writer analogized to an assassin who rationalized his contract to shoot a particular farmer by reasoning that someone would profit from the farmer's death, so it might as well be him. In answer to this problem, and after considerable international pressure upon England to renounce the opium trade, a coordination regime emerged that aimed

³²⁴ The opening epigram of this dissertation is a caution from 1749 by an Indonesian emperor, warning his subjects against subjecting themselves to the "slavery" of opium offered by the VOC, the Dutch equivalent of the East India Company. Translation via Scheltema, J.F. *The American Journal of Sociology*, Vol. 16, No. 2. (Sep., 1910), pp. 213-235, p. 234.

to keep states from becoming involved in the drug trade by guaranteeing that other states would not cheat.

That regime, which I refer to as the International Drug Control Regime, persists today and supplements the normative exhortation against state drug trafficking with material consequences. Why don't states traffic illicit drugs? Most believe it would be wrong to do so, but if they are tempted to do so anyway, an international regime exists to keep them in line. Supplementing the IDCR, the United States maintains a parallel program of diplomatic incentives and disincentives—including, in one case, invasion and regime change—to discourage deviations from the norm.

As against states, these measures have proven reasonably successful. While some states have decriminalized the use of some drugs within the state, very few states today will openly collaborate in the distribution of controlled drugs to other nations. Peter Andreas evaluated the situation thus:

Open defection from the drug prohibition regime would also have severe consequences: it would place the defecting country in the category of a pariah "narcostate", generate material repercussions in the form of economic sanctions and aid cutoffs, and damage the country's moral standing in the international community. Even if their control efforts have a limited impact on the drug trade, leaders across the globe repeatedly pledge their commitment to the battle against drugs. Regardless of whether they are "true believers" or simply trying to pacify international critics, for drug-exporting countries to openly defect by officially advocating drug legalization would be unthinkable, not only because it would draw the wrath of the United States but also because their advocacy would be universally condemned and would openly violate their pledge to uphold UN-based antidrug treaties.³²⁵

While the norm and the regime that sustains it have proven effective at deterring states from trafficking in illegal drugs, the very effectiveness of the IDCR has created incentives for non-state actors to take over the trade. The tragedy of international drug control is that its initial success in limiting state drug trafficking has enabled the rise of substate traffickers—a much more resilient and adaptable opponent than states were, and one which has the power to subvert and corrupt the

³²⁵ Andreas, Peter. "When Policies Collide: Market Reform, Market Prohibition, and the Narcotization of the Mexican Economy". In Friman, H. Richard and Peter Andreas, eds., The Illicit Global Economy & State Power. Lanham, MD: Rowman & Littlefield (1999). 125-142, pp. 127-8.

institutions of legitimate states. Ironically, this subversion and loss of order within states was precisely the sort of evil the IDCR was originally designed to prevent.

In hindsight, these developments appear inevitable. States, after all, are complex institutions not just in terms of their hierarchies, but in terms of their interests. The broad methodological divisions within International Relations are fueled by different views of how nations formulate their goals and their interests. This dissertation has sought to integrate two such orientations to research: constructivist analysis to explain the impact of ideas and social constructs upon the international system, and neorealism to illustrate why self-interested, security-seeking nations built the regime that exists today.

States were originally reluctant to limit their own participation in the drug trade in part because of relative power concerns. Even when they did come to negotiate treaties to end the drug trade, they did so with attention to various other competing economic and security interests. For states, controlling the drug trade is one concern among a wide variety of military and diplomatic interests and obligations, many of which can conflict with or diverge from the agenda of the IDCR. For instance, while diplomats in the IDCR may wish to end bank secrecy laws to detect money laundering, countries such as Switzerland or the Bahamas may wish to maintain their regime of bank secrecy to protect their domestic banking industry. Allowing foreign aircraft to pursue drug smugglers into a country's airspace might assist the IDCR's goals of drug control, but such incursions are problematic because they have implications for sovereignty and security as well. Drug control may be an important priority for states, but it is one of very many priorities.

If the interests of states in the IDCR are manifold, the methods they may use to pursue drug traffickers are comparatively few and sharply constrained. Law enforcement is subject to its own protocols and norms, which vary from state to state but most often restrict the capabilities of law enforcement agencies in the interest of protecting civil liberties. The permissible methods of law enforcement are regulated and limited. Likewise international cooperation between different nations' law enforcement and intelligence agencies is a rule-bound and bureaucratically constrained affair. While such cooperation exists, it must occur in ways that accord with international law and protect states' other security interests.

Traffickers are, if anything, the mirror image of states in this regard. Their agenda is simple and their conflicting agendas are few; by virtue of operating outside the law no methods are forbidden them or even regulated. They are not burdened by complex agendas or histories to the degree that nations are: today's drug trafficking organizations wish to make money, and enjoy it securely. In pursuit of this agenda they may use whatever tactics they believe will work most efficiently, including violence and deception. They may organize and reorganize themselves how they see fit, and ally with or compete with other drug traffickers as prudence and efficiency dictate. No bureaucracy constrains their decisions, no plebiscite or tribunal reviews their performance, and no constitutions, no ethics, and no logic of appropriateness need impinge on their planning and execution beyond what is necessary and efficient for doing business.³²⁶

Michael Kenney has detailed that these trafficking organizations do tend to resemble each other. Rather than top-heavy bureaucracies or military chains of command, the illegal drug trade, especially in Colombia, has organized itself into a network of smaller cells that are organizationally "flat". This is no accident; Kenney notes that these groups undergo a process of "competitive adaptation" in which inefficient or vulnerable organizations learn about their competitors and model themselves on others' successes, or they are weeded out by law enforcement. As discussed in Chapter IV in relation to drug branding, the tactics and technology drug traffickers use are not always cutting-edge innovations, but they often incorporate some very old and well-established techniques that are used in legitimate trade as well.³²⁷

The dissertation has shown a long-term process of competitive adaptation by drug smugglers, one which has been ordered in spite of law. The research, though focused on the founding and adaptations of the IDCR, has also examined countervailing adaptations by drug traders in response to the IDCR's innovations. Two examples stand out and illustrate the shift from legitimate transnational corporations to substate and transnational criminal groups. As described in Chapter II, the British East India Company could not send shiploads of opium directly to China because it was diplomatically dangerous and conflicted with other national priorities, such as maintaining the trade in other goods with China. As a result, there was a division of labor in India between state-

³²⁶ Attempts to impose normative obligations across criminal organizations tend not to be effective, as noted in the example given in Chapter III of Vito Genovese's attempt to promulgate a rule against drug trafficking within La Cosa Nostra.

³²⁷ Kenney, Michael. From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies, and Competitive Adaptation. University Park, PA: The Pennsylvania State University Press. (2007). pp. 25-47.

controlled production and private "country traders" who took over the smuggling end of the business in the interest of preserving Britain's legal deniability. Similarly, as described in Chapter III, when the medical exigencies of the World War I spurred the growth of the trade in opiate-based analgesics, legitimate corporations, such as British pharmaceutical maker T. Whiffen & Sons, reaped greater profits and expanded their output by diverting their legitimate production to illegitimate markets. The IDCR, however, re-organized itself in the 1920's and achieved a certain degree of success in curbing this avenue of the trade. As a result of its success, the initiative in drug trafficking shifted again, from legitimate transnational corporations to substate and transnational criminal groups.

Such groups were always active and necessary players in the illegal drug trade, and they continue to use legitimate businesses as instruments of their trade, as cover for smuggling or for money laundering. But the situation has changed. As discussed in Chapter III, today illicit drugs are not produced in major European pharmaceutical companies; instead, scrutiny and sanctions have shifted such production to illegal clandestine laboratories that must smuggle out their exports. This is a change in the market brought about in response to successful innovations and adaptations by the IDCR.

II. THE STRENGTHS AND WEAKNESSES OF THE IDCR

The IDCR, in its efforts to control both the licit and the illicit drug markets has had some successes, some tragic unintended consequences and in the course of its creation and development, demonstrated the limits of its power.

The early successes of the IDCR were in two fields. The first was the creation of an international forum where treaties could be negotiated and problems discussed. The original purpose of the regime was to provide assurance that if a state, such as Britain, relinquished the drug trade with another state such as China, other states would not attempt to capture and exploit that market. The IDCR offers some guarantee that states will not cheat.

The weapons at the disposal of the IDCR are limited to public shame and political obloquy, so their success rate has not been complete. But occasional deviation from a norm does not prove the norm never existed. In this a parallel can be made with international efforts to codify and enforce

Human Rights. The inevitable fact that such codes will never be universally accepted or enforced does not nullify the validity of their respective missions nor condemn them on the basis that their success is only partial.

The second field of success of the IDCR was to make a clear distinction between two separate markets: drugs for licit medicinal use and drugs for illicit recreational use. The former were included in early treaties as almost an after thought. Mention was made in Chapter III of the Mackay Treaty of 1902 between Britain and China (and a similar treaty the following year between China and the USA) in which the importation of morphine into China was prohibited—except for medical use, in which case a medical certificate was required. The development of analgesics based on opium and opium derivatives and the huge demand created by the immense casualties of World War I created a legitimate market for opium whose magnitude was unimagined by the anti-opium societies of the nineteenth century.

The IDCR successfully controlled the legitimate market by a system of reporting requirements. States were, and still are, required to estimate their needs for legitimate drugs, report their production, purchases and inventory. Where there is non-compliance, the IDCR is authorized to make its own estimates; where there are anomalies, to question them. Modern technology such as satellite surveillance has made the detection of rogue states growing opium poppies more effective.

Part of the success of the IDCR in controlling the market for legitimate drugs is that non-producing states have a vested interest in a stable supply of drugs for medicinal purposes at reasonable prices. The demands of this market legitimate the oversight of the IDCR. In spite of the grandiose schemes of an International Monopoly, codified in the 1953 Opium Protocol but subsequently nullified by the 1961 Single Convention, the markets have been left open: any nation may produce opium. Their obligation is to report their production.

These control systems, perfected by the exigencies of war, have largely eliminated “spillage” from the legitimate to the illegitimate markets. With certain exceptions, addressed later in this chapter, states generally avoid trafficking illicit drugs with other states. But this achievement has had tragic and unforeseen consequences. Since the market for drugs for recreational use has grown and expanded to alarming proportions and states generally avoid supplying this market, demand has

outgrown supply and prices have consequently risen. This basic law of economics has created enormous incentives for non-state actors to enter the market and profit from the demand and from the absence of legitimate competition. These profits have, in turn, been used to corrupt governments and finance terrorism.

The IDCR has proved ill-equipped to combat non-state actors, an adversary largely of its own making, as noted above. A slow moving bureaucracy, without teeth, without battalions to enforce its treaties, constrained by the need for agreement among its hundred-odd member nations, the IDCR is faced with smaller, multiple, more nimble foes, capable of quickly adapting to changing conditions, unconstrained by any concern for human rights and with one single motivation—profit. This has proved an unequal battle. The IDCR is structured in such a manner that limits its ability to provide carrots (such as crop substitution) or apply the stick of intervention. Its achievements in this field, such as they are, have been largely limited to negotiating treaties in which nations surrender a certain degree of national sovereignty in exchange for more effective pursuit of drug traffickers, a notable example being the right to search vessels on the high seas.

Pressure from the United States, a founder member of the IDCR, was a major factor in the convening of the Shanghai Conference of 1909 and the Hague Convention of 1912. American support for drug control has been consistent and outspoken. More recently, this hegemonic power has compensated for some of the IDCR's weaknesses by taking unilateral action in areas where the IDCR could not think to go. Two examples are the unilateral invasion of Panama and the establishment of the "Majors List" where valuable US foreign aid is withheld, if America's (and the IDCR's) anti-drug policies are violated. America's strong support for the IDCR, and her willingness to undertake pre-emptive action has, to a certain extent, provided the regime's missing battalions.

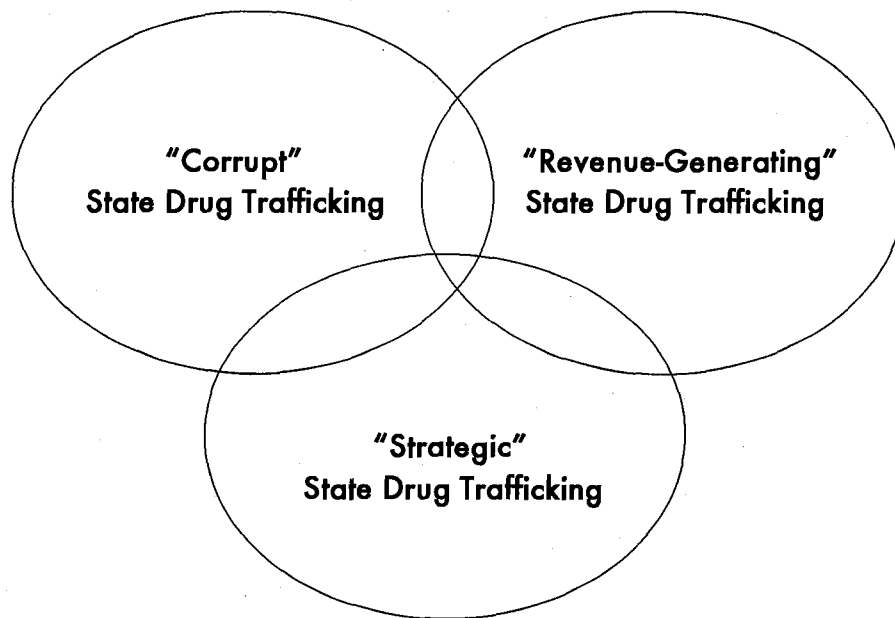
III. STATE DRUG TRAFFICKING UNDER THE IDCR

This dissertation has argued that one of the main reasons for the founding of the IDCR is to coordinate a withdrawal of states from the illegal drug trade, and to minimize the temptation of any state to "shoot the farmer". And by and large, states have withdrawn from direct involvement with the trade. Today, it is extremely rare to see states involved in the drug trade in the same way they were in the 19th century. This section, then, attempts to answer the question of how, despite

the norm against drug trafficking, and despite the incentives of the IDCR, do the resources of certain states get diverted toward assisting drug traffickers instead of opposing them.

When states do defy the IDCR and become involved with drug traffickers, the relationship usually manifests itself in one of three ways, or a combination of the three ways: through corruption, for strategic purposes, or the now rare nineteenth-century model of revenue generation.

Figure 5.1: Types of state drug trafficking



The three types of state drug trafficking shown above classify inter-state drug trafficking by the reasons behind the trafficking.³²⁸ "Corrupt" state drug trafficking describes an orientation toward court, military, and state collaboration with drug traffickers for the private benefit of state officials. "Strategic" state drug trafficking is the use of illicit drugs as a weapon to undermine an adversary. "Revenue-Generating" state drug trafficking refers to state support of drug traffickers to fund public goods—often state initiatives that cannot be funded overtly from the public treasury either for political or economic reasons. This section will now examine these three reasons in turn.

³²⁸ In the case of Figure 1.3 in Chapter 1, state drug trafficking is shown as a matrix of private/public benefit and state opposition/facilitation of the drug trade.

3.1 Corruption-driven state drug trafficking

Besides branding their product, as discussed in detail in Chapter IV, there is another old-fashioned arrangement traffickers seek to replicate: monopoly. As established in the earliest days of Britain's involvement in the opium trade, a state monopoly on an addictive drug is an ideal situation for drug traffickers who wish to corrupt the state. Using the power of the state to control supply and competition may be desirable to a state wishing to control so as to limit drug consumption; however, it provides a ready framework for criminal groups to subvert. Rather than cultivate the capacity to enforce a monopoly themselves, traffickers often find it easier to leverage the greater power of a government to maintain their monopoly for them. This is not uncommon on a small scale in nations otherwise opposed to the drug trade; for example, a policeman paid to look the other way is a micro-example of a relatively tiny amount of state power being co-opted to guarantee freedom from enforcement, and possibly to secure enforcement against competitors. But this corruption can spread to entire institutions of governments, such as courts, police forces, or militaries, or even to the entire government—a situation which has rarely been manifested more completely than in Manuel Noriega's Panama.

This is one reason that the drug trade has proved so dangerous to order and justice: the IDCR has created an incentive for drug trafficking groups to corrupt and subvert states and use their institutions and powers—especially the police and military—to protect their enterprise instead of the public good. Here is a final tragic aspect of the IDCR: by creating conditions so ripe for corruption, which can undermine governments and cripple sovereignty, the IDCR has weakened the values it was established to protect.

Narcotics-driven corruption is probably the most common type of failure of the IDCR today. The ways in which this corruption can change a society and undermine a government have not escaped the attention of scholars, and systematic approaches to evaluating this "narcotization" effect have been outlined both by David Jordan and by Louise Shelley.³²⁹ But the other two sorts of cooperation between states and traffickers discussed below differ substantially from this corruption model (although they may co-exist alongside it), and therefore deserve closer attention.

³²⁹ Jordan, David C. Drug Politics: Dirty Money and Democracies. Norman, OK: University of Oklahoma Press. (1999). Shelley, Louise I. "Transnational Organized Crime: The New Authoritarianism". In Friman, H. Richard and Peter Andreas, eds., The Illicit Global Economy & State Power. Lanham: Rowman & Littlefield (1999). 25-51.

3.2 Strategic involvement: drugs as weapons

There is another sort of orientation a government can have toward international drug trafficking: as a strategic means of attacking or undermining an adversary. Narcocolonialism itself is a strategic decision, but it is based on the desire to exploit another nation rather than to destroy it or sustain an insurgency against it. If narcocolonialism is parasitic, the strategic use of drug trafficking is predatory.

One conclusion of Kathryn Meyer and Terry Parssinen's history of the opium trade, *Webs of Smoke*,³³⁰ was to downplay the notion of an international criminal elite conspiring with state powers to distribute drugs around the world. Meyer and Parssinen admit that cooperation between states and cartels exists, but they insist it is transitory. While it may be only temporary or be greatly exaggerated for political purposes, however, state-directed strategic use of drug trafficking does occur. It just happens in a limited way, carefully circumscribed by the norms about state drug trafficking.³³¹

There is a long history of the tactical, small-scale use of intoxicants and hallucinogens as a weapon in warfare by states, and also in covert action. An unpublished manuscript by E. Goodman details several of these, most interesting of which dates from the Cold War:

³³⁰ Meyer, Kathryn and Terry Parssinen, *Webs of Smoke*. Lanham, MD: Rowman & Littlefield (1998). Although her work is not cited, *Webs of Smoke* seems also to be warning against Claire Sterling's books, e.g. *Octopus* (1990) and *Thieves' World* (1994) which warned of increased cooperation and a *de facto* merger between major international criminal syndicates. Though Sterling was an excellent journalist, the passage of time has not borne out her prediction. In any case, such a vast narcotics conspiracy would soon reach the constraints of any conspiracy—it would lose its advantages of secrecy and adaptability even as it became a target for law enforcement or military action. It is likely that law enforcement and the IDCR place a cap on the effective size of trafficking organizations, even politically powerful ones. Meyer and Parssinen's characterization of drug trafficking organizations is closer to Michael Kenney's assessment of how traffickers organize themselves. As Kenney notes, the optimal size for today's Colombian trafficking organizations is much smaller than the large cartels of the 1980's, and he notes that even those cartels were never as big or as top-heavy as they were portrayed.

³³¹ An exhaustive discussion of this phenomenon would be interesting but nearly impossible to compile. Rachel Ehrenfeld attempted that sort of compilation for her 1990 book *Narcoterrorism*. By "narcoterrorism", Ehrenfeld meant something very similar to what I have termed "state drug trafficking", encompassing all three of the fields differentiated in Figure 5.1 above. This term can be a little misleading, since "narcoterrorism" is often applied to describe terrorist activities carried out by nonstate trafficking groups, e.g. Pablo Escobar's 1989 bombing of Avianca Airlines flight 203 out of Bogota to avoid his extradition to America (see Bowden, Mark. *Killing Pablo*) instead of to describe state complicity in the drug trade.

A double agent revealed that in Munich, in 1959, salt shakers in a cafeteria serving 1,248 employees of Radio Free Europe were dosed with atropine. Chemical analysis of the contents of two shakers showed the presence of 2.36 per cent by weight of atropine. (One gram of this concoction would thus contain almost 24 mg of atropine, more than enough to produce severe delirium.) Fortunately, the attempt was aborted.³³²

While the article does not explain why the attempt was aborted, it is not surprising that, because of both normative and legal strictures on state-sanctioned drug trafficking, states would be wary of using such methods either as covert tactics or to advance broader strategic goals. In fact, the United States has outlawed the punitive use of psychoactive drugs on prisoners, branding such use "torture" under 18 U.S.C. § 2340. This law criminalizes even the threat of using "mind-altering substances" on a prisoner or on another person to coerce a prisoner.³³³

While most states are willing to forgo the revenue from the sale of illegal drugs, as well as the tactical and strategic use of psychoactive illegal drugs as weapons or as tools of interrogation, states have been less eager to eliminate all contact with subnational drug trafficking groups. What do states get out of such collaborations?

The examples described below suggest that it is usually intelligence that states seek. Criminal groups learn secrets, and may sell them to the state for the right price. Some states go beyond passive intelligence gathering, however, and use drug-trafficking substate groups for political and covert action, including assassination.³³⁴ Some states go even farther and back narcoterrorist insurgencies in order to enact regime change.³³⁵

³³² Goodman, E. *The Descriptive Toxicology of Atropine*. Edgewood Arsenal, Md. Unpublished manuscript, 1961. Quoted in Ketchum, James S., and Frederick R. Slidell. "Incapacitating agents." Medical Aspects of Chemical and Biological Warfare. Frederick R. Sidell, Ernest T. Takafuji, David R. Franz, eds. Washington, D.C. : Borden Institute, Walter Reed Army Medical Center. (1997) Available online at: <http://www.maxwell.af.mil/au/awc/awcgate/medaspec/Ch-11electrv699.pdf>. Ketchum and Slidell note that during the Cold War, "the feasibility of chemical incapacitation was systematically studied by nations on both sides of the Iron Curtain", and conclude that "Incapacitation produced by less likely candidates such as LSD and other indole derivatives, psychedelic phenethylamines, and potent opioids is theoretically possible, but it is unlikely that any of these compounds would be employed militarily. Covert use, which is logistically easier to accomplish and has fewer constraints, opens a broader spectrum of possibilities. This, however, is a concept that involves considerations that generally extend beyond the scope of chemical warfare."

³³³ 18 U.S.C. § 2340.

³³⁴ Bulgaria's KINTEX, described later in this chapter, was credibly tied to the attempt to assassinate Pope John Paul II, using Turkish criminal and terrorist groups to do so.

³³⁵ Davids, Douglas J., Narco-terrorism: A Unified Strategy to Fight a Growing Terrorist Menace. Ardsley, NY: Transnational Publishers Inc. (2002). p.5. Davids attempted to distinguish "narco-terrorism" from "narco-insurgency", focusing exclusively on violent substate groups which use drug trafficking to further

The advantage of using such groups as a proxy is deniability: sabotage or insurgency within State A may fit State B's agenda, but carrying out those acts using State B's agents would be easily foiled, and if detected would invite censure and retaliation against State B. On the other hand, if those acts are carried out by a domestic substate or cross-border group within State A's borders, State B may deny any connection to the violence. This deniability makes drug-trafficking organizations ideal proxies for covert action. Unfortunately for scholars, the need to maintain deniability obscures the complex relationships between states and drug traffickers or narcoterrorists, even as it invites uninformed speculation and disinformation.

Nations that condemn the drug trade and state involvement in it sometimes manage to overcome their dislike and deal with politically useful criminal and insurgent groups to advance other foreign policy interests. In the practice of international politics, State A may honestly condemn the drug trade and support efforts to combat it, but may simultaneously support insurgent group B that is sympathetic to State A's foreign policy goals.

This contradiction demonstrates the limitations of considering states and state policies as discrete units of analysis. To say that state X supports criminal/terrorist/insurgent group Y presumes an unlikely, though not unprecedented, organizational unity within a state. One possible interpretation, and the one most politically satisfactory to state X's opponents, is that the administration of State X is simply being hypocritical in its stated support for the norms and institutions of international drug policy. But such an analysis may elide the possibility of differing or contradictory policies within different agencies or political parties within State X. Again, one of the best-documented examples of such an incongruous policy was the United States' complicated pre-war relationship with Panamanian leader Manuel Noriega.

The complicated reasons that prohibit states from trafficking drugs impinge less (if at all) on substate groups that states may choose secretly to support. Whether they are primarily criminal

political ends, even if those ends are no more ideological than Escobar's goal of frustrating law enforcement efforts against his operations: "The difference between narco-terrorism and narco-insurgency is that narco-terrorists use terrorism (as defined above) as a tactic or method of operating, whether they are drug traffickers or insurgents. On the other hand, narco-insurgents are those who use the financial profits of narco-trafficking to support their goals of subversion, but do not use terrorism as a tactic to achieve such goals. Perhaps, in this case, one would prefer to further define narco-terrorism as "Drug-Financed Terrorism" (DFT), and narco-insurgency as "Drug-Financed Warfare" (DFW)." Davids notes that terrorism is "often warfare for the weak"; but as this section explains, neither DFW nor DFT are the exclusive province of the weak nor even of strong substate groups. Nations do involve themselves from time to time in the drug trade.

or terrorist in orientation, non-state drug trafficking organizations have their own agendas and their own strategies. Some are purely profit-seeking, but even Marxist or anti-capitalist insurgent groups turn to the drug trade in order to secure the resources to continue their operations and achieve their ideological goals. In many cases, such groups see the deleterious effects of drug use as a long-term strategic goal. Rand Beers, Assistant Secretary for International Narcotics and Law Enforcement Affairs, mentioned the strategic goals of terrorist drug traffickers in his testimony before Congress in 2002 on worldwide connections between drug trafficking and terrorism:

In the past, state sponsors provided funding for terrorists, and their relationships with terrorist organizations were used to secure territory or provide access to gray arms networks. Lately, however, as state sponsorship of terrorism has come under increased scrutiny and greater international condemnation, terrorist groups have looked increasingly at drug trafficking as a source of revenue. But trafficking often has a two-fold purpose for the terrorists. Not only does it provide funds, it also furthers the strategic objectives of the terrorists. Some terrorist groups believe that they can weaken their enemies by flooding their societies with addictive drugs.³³⁶

Even groups claiming a strategic justification for selling drugs to their opponents (usually America) choose to sell narcotics rather than give them away. The strategic goal of damaging the target nation is invariably secondary to the primary goal of raising money; corrupting the moral fiber of American youth is just a bonus for them.

A case in point: one of the most successful drug traffickers in recent history described his involvement in the drug trade as a political act. Colombian kingpin Carlos Lehder Rivas, arrested in 1987, visualized the drug trade as a tool of the third world to be used against the United States:

Declaring that drugs are the Third World's "atomic bomb," Lehder further boasts that: "Coca has been transformed into a revolutionary weapon for the struggle against American

³³⁶ Rand Beers and Francis X. Taylor, "Narco-Terror: The Worldwide Connection Between Drugs and Terror". Testimony Before the Senate Committee on the Judiciary Subcommittee on Technology, Terrorism and Government Information, Washington, DC, March 13, 2002. Available online at <http://www.state.gov/p/inl/rls/rm/8743.htm>

imperialism. The Achilles' heel of imperialism are the estimulantes [drugs] of Colombia."³³⁷

Though he was involved in the corruption and subversion of the Pyndling administration in the Bahamas, there is no reason to class Lehder as a political revolutionary instead of a profit-driven trafficker. His Bahamian operations were no more ideological than securing a refueling and transshipment base on Norman's Key.³³⁸

Similarly, according to Yossef Bodansky, Hezbollah justifies its participation in the drug trade as a tool of subversion. He cites their "original fatwa" on the subject of drug sales:

"We are making these drugs for Satan—America and the Jews. If we cannot kill them with guns, so we will kill them with drugs."³³⁹

Hezbollah is attempting to carry out this threat on several targets around the world. They profit from marijuana trafficking out of Lebanon, but also maintain a drug-trafficking presence in South America, especially in the Tri-Border Area (TBA) at the juncture of Brazil, Paraguay, and Argentina.³⁴⁰

A 2003 Library of Congress report on the terror/organized crime relationship in the TBA casts some doubt on Hezbollah's commitment to its founding fatwa on the drug trade. Rather than drugging America, many of their cocaine shipments seem to be destined for Islamic countries:

On May 10, 2003, Hassan Abdallah Dayoub, a Lebanese merchant who lives in Ciudad del Este, was arrested at Asunción's Silvio Pettrossi Airport, while in possession of 2.3 kilos of cocaine hidden in an electric piano. High-ranking police sources connected with the investigation of Dayoub reportedly believe that his arrest constitutes overwhelming proof that Barakat's Hizballah clan has a "wing of narco-traffickers"... This is because Dayoub is a cousin of Barakat. Investigators

³³⁷ Satchell, Michael, Richard Z. Chesnoff, Maia Wechsler, Joseph P. Shapiro, Robert Rosenberg, Carla Anne Robbins and Sharon Golden: "Narcotics: Terror's New Ally". *U.S. News & World Report*, May 4, 1987. pp.30-37.

³³⁸ Nordland, Rod, Mark Miller, and David L. Gonzales, "Snaring the King of Coke". *Newsweek*, February 16, 1987. p. 16.

³³⁹ Bodansky, Yossef. Bin Laden: The Man Who Declared War On America. Rocklin, CA: Prima Publishing. (1999). p.322.

³⁴⁰ Hudson, Rex. "Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America". Library of Congress Report, July 2003. p.1.

believe that Barakat himself hired Dayoub as a "mule" to market the drug in Damascus, Syria. Once in the Argentine capital, Dayoub intended to transfer to an Iberia flight to Madrid, whence he would proceed on to his final destination of Damascus.³⁴¹

Another recent case of state collaboration with drug trafficking organizations that goes beyond the passive gathering of intelligence was the collaboration of Pakistan's ISI with Indian drug trafficker and wanted terrorist Dawood Ibrahim. Ibrahim's "D-Company" gang maintained worldwide operations (especially in India, Dubai, and Southeast Asia.) Ibrahim himself was wanted for a 1993 serial bombing in Mumbai that killed 257 people, the worst terror attack in India's history. India accused the ISI of providing the explosives and sheltering Ibrahim afterwards, a charge seconded by the United States. In October 2003 the U.S. Treasury Department named Ibrahim as a Specially Designated Global Terrorist under Executive Order 13224,³⁴² and accused him of collaboration with Al Qaeda, although their fact sheet did not explicitly mention his ties to Pakistan:

IBRAHIM's syndicate is involved in large-scale shipments of narcotics in the U.K. and Western Europe. The syndicate's smuggling routes from South Asia, the Middle East and Africa are shared with Usama bin Laden and his terrorist network. Successful routes established over recent years by IBRAHIM's syndicate have been subsequently utilized by bin Laden. A financial arrangement was reportedly brokered to facilitate the latter's usage of these routes. In the late 1990's, IBRAHIM traveled in Afghanistan under the protection of the Taliban.

IBRAHIM's syndicate has consistently aimed to destabilize the Indian government through inciting riots, acts of terrorism, and civil disobedience. ...

Information, from as recent as Fall 2002, indicates that IBRAHIM has financially supported Islamic militant groups working against India, such as Lashkar-e-Tayyiba (LeT). For example, this information indicates that IBRAHIM has been helping finance increasing attacks in Gujarat by LeT. Lashkar-e-Tayyiba (Army of the Righteous) is the armed wing of Markaz-ud-Dawa-wal-Irsha (MDI)—a Sunni anti-US missionary organization formed in 1989.³⁴³

³⁴¹ Hudson, *supra*, p. 7.

³⁴² "U.S. Designates Dawood Ibrahim as Terrorist Supporter", U.S. Treasury Press Release, Oct. 16, 2003. Available at <http://www.treasury.gov/press/releases/js909.htm>.

³⁴³ U.S. Treasury, "Fact Sheet, Dawood Ibrahim". Oct. 16, 2003. Available at http://www.treas.gov/press/releases/reports/fact_sheet.pdf

Subsequently Ibrahim was designated a Foreign Narcotics Kingpin under the "Kingpin Act".³⁴⁴ Recent reports indicate Ibrahim was arrested in 2007 in Pakistan and detained there, which Pakistan denies.³⁴⁵

In another example of states' strategic involvement in drug trafficking, *Unrestricted Warfare*, written by two Chinese colonels, was a brief book on strategy published in 1999 by the People's Liberation Army Literature and Arts Publishing House.³⁴⁶ It is notable for its recommendations that China counter the influence of the United States through "unrestricted", or unconventional, warfare—including through what they refer to as "drug warfare".

That term is defined parenthetically as "obtaining sudden and huge illicit profits by spreading disaster in other countries".³⁴⁷ The authors, Col. Qiao Liang and Col. Wang Xiangsui, believe that such unconventional attacks can, if employed in the correct combinations, be as damaging as a conventional military attack.

For a long time both military people and politicians have become accustomed to employing a certain mode of thinking, that is, the major factor posing a threat to national security is the military power of an enemy state or potential enemy state. However, the wars and major incidents which have occurred during the last ten years of the 20th century have provided to us in a calm and composed fashion proof that the opposite is true: military threats are already often no longer the major factors affecting national security....

In this area we only need mention the names of lunatics such as George Soros, bin Laden, Escobar, [Chizuo] Matsumoto, and Kevin Mitnick. Perhaps people already have no way of

³⁴⁴ "President Bush Designates Dawood Ibrahim as Foreign Narcotics Kingpin". Press Release, U.S. Department of State, June 2, 2006. Available at <http://newdelhi.usembassy.gov/pr060206.html>.

³⁴⁵ "Pak. Denies Dawood's Presence on its Soil", *The Hindu*, Oct. 19, 2007. Available at <http://www.hindu.com/thehindu/holnus/001200710191754.htm>. Before her assassination, former Pakistani Prime Minister Benazir Bhutto believed Ibrahim was in Pakistan and promised he would be extradited to India should she return to power. "Intelligence Reports say Dawood is in Pakistan: Bhutto". *The Economic Times*, Oct. 17, 2007. Available at: http://economictimes.indiatimes.com/PoliticsNation/Dawood_is_in_Pakistan_Bhutto/articleshow/2468404.cms.

³⁴⁶ Qiao, Liang and Wang Xiangsui. *Unrestricted Warfare*. Panama City: Pan American Publishing Company (2002). p.xvii. U.S. Government translators originally translated the document for review by the U.S. intelligence community, and in an editor's note (included in the Pan American Press version cited) the translators indicate that the source of its publication suggested that "its release was endorsed by at least some elements of the PLA leadership."

³⁴⁷ *Unrestricted Warfare*, supra., p. 42.

accurately pointing out when it first began that the principal actors starting wars were no longer only those sovereign states, but Japan's Shinrikyo, the Italian Mafia, extremist Muslim terrorist organizations, the Colombian or "Golden New Moon" drug cartel, ...all of whom can possibly be the creators of a military or non-military war.³⁴⁸

Other than its novel endorsement of "drug warfare", Qiao and Wang's book broke little new ground. The attention it provoked was likely due to the PLA's imprimatur on the publication and its ideas, which is noteworthy. As this section has shown, governments around the world throughout the twentieth century have typically condemned cooperation with organized criminal groups, even if they also relied on them for intelligence or pseudo-military services. States previously distanced themselves from the tactics endorsed by Qiao and Wang, which suggests China may be reconsidering the norm against state drug trafficking.

3.3 Revenue-generating state drug trafficking

Chapter III discusses in some detail the occupation of Manchuria by Imperial Japan, and how the Japanese military funded its occupation by selling opiates to the Chinese populace. This was an egregious instance of narcocolonialism which inspired reforms within the IDCR to prevent a recurrence of this situation. It may also have influenced American drug policy toward a parallel track of unilateral enforcement to compensate for the inherent weakness of the IDCR in stopping states which were simply determined to ignore international censure.

While it would be premature to claim these are the *only* instances of revenue-generating state drug trafficking in the second half of the twentieth century, three states in particular stand out as exemplars of deliberate and systematic state drug trafficking for public revenue.³⁴⁹

³⁴⁸ Unrestricted Warfare, 96. The reference to "Escobar" is Medellin drug kingpin Pablo Escobar. The "Golden New Moon" appears to be a generalized Chinese reference to the Andean drug production area rather than to a specific organization.

³⁴⁹ Another possible candidate for this list is Burma, which has been on every iteration of the U.S. "majors list" since it began publication. However, despite several sources that indicate the Burmese government or military is "involved" in the drug trade, I have found no evidence that would allow me to differentiate whether there is a public revenue aspect to Burma's involvement, or whether it is a matter of private benefit (corruption).

3.3.1 Bulgaria

A state-owned export company, KINTEX, began brokering deals between heroin and marijuana traffickers in Lebanon's Bekaa Valley and European drug traffickers. The arrangement began apparently at Soviet instigation, around 1970, with the political aim of destabilizing the West and supporting insurgent groups. Often these arrangements would take the form of a weapons-for-drugs barter arrangement. KINTEX would often take payment in drugs rather than requiring cash, and then resell the drugs.

Working through a state-supported Bulgarian company offered a certain degree of legitimacy to trades. It also offered security, both in the sense of armed protection of merchandise and freedom from arrest, but also in the sense of a disinterested third party that could arbitrate disputes, much like a court or regional trade organization would do among legitimate businesses. According to NSC staffer Paul Henze, the Bulgarian government would provide fake passports to smugglers and even offer naval escorts. The United States became aware of KINTEX's operations and also of state involvement and oversight around 1983. As KINTEX acquired a bad reputation, Bulgaria shifted to another export company, Globus, to handle illegal transactions.³⁵⁰

In her 1986 analysis of the state-controlled Bulgarian drug trade, Juliana Geran Pilon saw several motives for Bulgarian involvement, one of which is that it "brings in needed hard currency". This indicates that the KINTEX transactions were oriented toward raising revenue. The other motives were strategic, under the direction of the Soviet Union: one was the support of allies, including insurgent and terrorist groups abroad. The other reason was "subversion":

According to defector Stefan Sverdlev, formerly a colonel in the Bulgarian Committee for State Security (KDS), the heads of the Warsaw Pact security services met in Moscow in 1967 and set the operation in motion. A result of this was KDS Directive M-120/00-00500, dated July 16, 1970, which detailed the plan to exploit and hasten the inherent "corruption" of Western society. Another defector, General Jan Sejna, a former high-ranking Czech official, stated on June 21, 1985, that the Soviet decision to increase involvement in the international narcotics trade dates back to 1963. The USSR decided then to give Bulgaria a leading role in the operation because of its proximity to Turkey. Sejna reports that the Soviets emphasized the potential for

³⁵⁰ Ehrenfeld, Rachel. Narco-terrorism. New York: Basic Books (1990) pp. 1-19.

demoralizing people—troops in particular—through the use of drugs.³⁵¹

3.3.2 North Korea

One of the more egregious narcostates operating today is the Democratic People's Republic of Korea. Information about internal North Korean politics is scarce, but arrests and interdictions of narcotics shipments originating there indicate a pattern of state involvement. North Korea's nuclear program has long been funded to some degree by the state-sponsored traffic in narcotics, as well as counterfeiting currency and other criminal activities, including the sale of counterfeit cigarettes and illicit Viagra.³⁵²

Drugs involved include both heroin, originally made from poppies grown in North Korea, and methamphetamine and other synthetic drugs. Given the visibility of poppy production, the DPRK is moving more toward synthetic drugs such as methamphetamine. Further, given negative publicity resulting from the 2003 *Pong Su* incident in which a North Korean freighter carrying heroin was captured near Australia, it is possible that the DPRK is moving away from state-sanctioned drug trafficking altogether.³⁵³

3.3.3 Taliban Afghanistan

Afghanistan under the Taliban is another egregious example of state drug trafficking. The Taliban has acquired a reputation for being firmly anti-drug, and while it is true that they eradicated almost completely their opium production in a single year, that is not the whole story.

Under the Taliban, Iran's neighbor capitalized on its opium crop instead of destroying it. While internal use of opium was criminalized, its export was subject to the *zakat* tithe and taxed up to a rate of twenty percent of its market value. The Taliban stamped out the production of hashish,

³⁵¹ Pilon, Juliana Geran. "The Bulgarian Nexus". *The National Interest*, Spring 1986, pp.84-87.

³⁵² Walsh, Kenneth T. and David E. Kaplan. "White House Week". *U.S. News & World Report*, May 30, 2005. Available at <http://www.usnews.com/usnews/news/articles/050530/30whitehouse.htm>. Also: "NK Earns \$20 Million a Year From Counterfeiting: Expert". *The Korea Times*, May 13, 2005. Available at <http://times.hankooki.com/lpage/nation/200505/kt2005051318101711990.htm>. Raphael Perl puts the value of the DPRK's counterfeiting enterprise at \$20 million per year, and notes that North Korean Viagra is indistinguishable from its U.S.-manufactured counterpart.

³⁵³ One of the best efforts to track and analyze the North Korean government's involvement in various illicit trades was published by Sheena Chestnut. Chestnut, Sheena E., "The "Sopranos State"? North Korean Involvement in Criminal Activity and Implications for National Security." Honors Program Thesis, CISAC, May, 2005. Available at <http://www.nautilus.org/fora/security/0605Chestnut.pdf>.

which they felt corrupted Muslims. But they reasoned that while opium addiction among their co-religionists was sinful, the corruption and poisoning of infidels was no problem. "Opium is permissible [sic] because it is consumed by kafirs [unbelievers] in the West and not by Muslims or Afghans," explained Taliban drug czar Abdul Rashid.³⁵⁴

Under international pressure, especially from the United States, the Taliban announced in 2000 that it would end the opium trade. And while the cultivation of opium was nearly wiped out in one of the most successful drug eradications in history, the Taliban retained a stockpile of opium and especially of non-perishable heroin, both for commerce but also as a sort of strategic reserve. By eradicating the supply of opium they had made their own stockpiles much more valuable, and there has been speculation that market manipulation, in combination with international pressure, actually motivated the 2000 eradication.

After the September 11, 2001 attacks, when US invasion appeared imminent, the Taliban began releasing its opium supplies, flooding the market and depressing the price.³⁵⁵ Iran's current drug epidemic was no doubt greatly exacerbated by this flood of cheap heroin.

In hindsight, the Taliban's sudden compliance with international requirements appears duplicitous. Insofar as their compliance could be observed and monitored, they conformed to and even exceeded international expectations. But in an aspect of the drug trade that could be concealed from inspection—the stockpiles—the Taliban disregarded international norms in favor of profit.

The Taliban was overthrown and Afghanistan remains the world's leading producer of heroin. However, the Karzai government was quick to renounce the opium trade and remains opposed to it, even if it lacks the capacity to enforce its policy. Religion, ultimately, proved no bar to state-sponsored narcotics traffic in the case of Taliban Afghanistan. The constraints it imposed were only upon the traffic among Muslims, and even then only among the Sunni Muslims of Afghanistan. The real constraints upon the Taliban's drug traffic, minimal as they were, came from international sanctions and disapproval.

³⁵⁴ Rashid, Ahmed. Taliban: Militant Islam, Oil, & Fundamentalism in Central Asia. New Haven: Yale University Press, 2000. p.118.

³⁵⁵ "Another Powder Trail". *The Economist*, Oct. 18, 2001.

Looking at these three cases, it becomes clear that they had more in common than a decision to traffic drugs for the benefit of the public fisc. Bulgaria was a Soviet police state. North Korea is an authoritarian police state with an abysmal human rights record. Similarly, the Taliban's record of human rights abuses and their oppressive lack of civil and religious freedom were egregious, so severe that Iran, the Moslem Brotherhood, and Pakistan's Jamaat-i-Islami condemned the Taliban's "social experiments" for "giving Islam a bad name".³⁵⁶

While Bulgaria's drug trafficking never received the notoriety that the Taliban and North Korea's have, all three states were condemned for their participation in the illicit drug trade.³⁵⁷ However, all three of these states were already subject to much deeper international condemnation on matters of freedom and human rights. While Bulgaria may not have been a pariah state, North Korea and the Taliban were ostracized by international society. It is not surprising, therefore, that states which were not constrained by such powerful norms as freedom and human rights were indifferent to the derivative norm against state drug trafficking.

These three states were also already isolated from American assistance, and expected to remain so; therefore, American bilateral foreign-aid carrots were less effective in influencing these countries' policies than they were elsewhere. North Korea, as noted in Chapter III, enjoyed a special immunity from being condemned for its drug trade, because the United States wished to use foreign assistance in order to negotiate with Pyongyang about its nuclear program.³⁵⁸ Again, the complex agendas of states intrude. Analyzing the decision-making processes of these states in adopting policies counter to the goals and norms of the IDCR would be a useful direction for future research.

³⁵⁶ Griffin, Michael. Reaping the Whirlwind: Afghanistan, al Qa'ida, and the Holy War. Revised Edition. Sterling, VA.: Pluto Press. (2003). p. 9.

³⁵⁷ Bulgaria's involvement in the drug trade was exposed in a 1983 Readers' Digest investigative report. Adams, Nathan M. "Drugs for Guns: The Bulgarian Connection". *Reader's Digest*, November 1983. pp. 86-98.

³⁵⁸ Solomon, Jay, and Gordon Fairclough. "North Korea's Counterfeit Goods Targeted," *The Wall Street Journal*, June 1, 2005. p.1. Available at <http://online.wsj.com/article/SB111756528456047297.html>

IV. THE SIGNIFICANCE OF THE IDCR

This final section will address both the theoretical and the policy significance of the IDCR and the norm and power structures that support it, and close with a comment on the future of the IDCR.

4.1 Theoretical significance of the IDCR

The central theme of this dissertation is that the IDCR was founded to mitigate the distributional consequences of the drug trade. What are those consequences? Who was the IDCR intended to benefit?

One possible answer to this question was advanced by Ward Thomas in his study of the international norms against political assassination and against civilian bombing in wartime. Thomas noted how states (especially the more powerful states) were not merely bound passively by these norms:

...states are not always simply along for the ride: they can adopt policies, either alone or in concert with others, aimed at changing the environment in which they operate....This is significant in terms of ethics because it raises the possibility that states may seek to overcome structural obstacles to cooperation and ethical action through the building of institutions.³⁵⁹

These institutions, Thomas argues, are often not mere abstract moralizing, but rather a mechanism for preserving a balance of power:

Because norms are geopolitically constructed, their specific content and application will tend to reflect the broad interests of powerful states in international society over time. ... It would surprise us to find, therefore, a state with substantial superiority in a particular type of militarily effective weapon agreeing to calls to ban the weapons on the grounds that it is inhumane. On the other hand, one might expect states without the weapon to call for such a ban []. If the "have" state were also in a position of influence in international society, as would likely be the case, a norm restricting the weapon would be less likely to arise. Conversely, if a restriction serves to reinforce the dominant

³⁵⁹ Thomas, Ward. The Ethics of Destruction. Ithaca: Cornell University Press, 2001. p. 190.

position of a strong state or group of states in international society, it is more likely to be the basis for a strong norm. This leads to two corollaries to the latter hypothesis: first, weapons or practices that have the potential to close the gap between strong and weak states in international society are more likely to be restricted than those which enforce the relative advantage of strong states; and second, the more directly a norm reflects the interests of strong states, the stronger the norm will be...Taken together, these corollaries reflect what I will call the *power-maintenance* function of some prohibitory norms.³⁶⁰

A contrasting view of international institutions and their relation to structural competition was advanced by Stephen Krasner. Krasner argues that rather than the most powerful nations using international law and transnational organizations for their benefit, these tools are actually used most effectively by the less-developed world against otherwise more powerful nations. He distinguishes between "relational power"—contesting issues of political significance within the existing framework—and "meta-power": changing the rules of the game itself to better accommodate a state's particular strengths and weaknesses. Relational power conflicts usually do not afford third-world nations much opportunity for ensuring their continued stability and sovereignty, at least when undertaken directly with the first world, so they employ meta-power as well to secure their advantages.

Third World states are interested in employing both relational power and meta-power. Proposals for international regime change, voiced by the less developed countries, are an effort to exercise meta-power. The objective of these proposals...is to alter the principles, norms, rules, and decision-making procedures that condition international transactions....For the Third World, altering international regimes is a relatively attractive way to secure some control over the environment.³⁶¹

Krasner's work concentrates primarily on the postwar world order, but the principle applies to the drug trade. The establishment of the IDCR represents a fundamental change in the "rules" of international politics—one best exemplified by the comparison between the opium wars and the invasion of Panama. In a later work, Krasner acknowledged that coordination in international law

³⁶⁰ Thomas, pp. 31-32. Italics in original.

³⁶¹ Krasner, Stephen. Structural Conflict: The Third World Against Global Liberalism. Berkeley: University of California Press. (1985). pp.15-16.

and institutions is often achieved by military power, exactly the sort of exercise of power at work in these examples:

There are some issues in international politics, especially but not exclusively related to security, that are zero sum. What is at stake is the power, that is, the relative capacity, of actors. Power-oriented concerns may be directed either toward altering the behavior of others or toward preserving one's own autonomy. Market failure is never at issue here; one actor's gain is another's loss.

Second, in international relations, it is possible to eliminate some players through the use of force or to compel an actor to accept an outcome that it would never agree to voluntarily. This is an option that is not analytically tractable for a market failure research program, which assumes that actors are in a position to make voluntary choices. ... Munich compelled Czechoslovakia to accept an outcome that left it absolutely worse off.³⁶²

Krasner's analysis of the power dynamics at work in some international issues describes the complexities of the international opium trade well. As documented in Chapter III, states' reluctance to leave the drug trade was in part because of relative power concerns. Exiting the trade unilaterally ran the risk of enriching a competitor, thereby undermining a state's own security and relative power. Likewise, states such as Britain and the United States have used military force to impose a particular drug policy upon target nations—China and Panama. Yet one difference is manifest—the first use of force was intended to compel a weaker state to open a market for opium; the second was intended to compel the *closure* of a market for cocaine.

Both of these events involved a stronger state compelling the compliance of a weaker state, and in each case it is fair to describe the first-world nation as going to war in pursuit of its interests. But those interests had undergone a major transformation. Rather than using military force to secure a narcocolonialist trade with a less powerful country, the United States had limited its interests only to protecting itself from narcocolonialism.

The United States was not the only nation redefining its interests. By making the drug trade unthinkable or at least unattractive for nations which considered themselves "civilized", and which abhorred slavery, the original IDCR limited the coercive powers of strong states vis-à-vis weaker

³⁶² Krasner, Stephen D. "Global Communications and National Power: Life on the Pareto Frontier." *World Politics*, Vol. 43, No. 3 (Apr. 1991), 336-366. p.364.

states. In this case, it departed from the predictions of Thomas; strong states abandoned their structural advantage in the drug trade, instead of reinforcing it. As Krasner might have predicted, China was active in shaping the norm to protect its own internal authority, and used meta-power to influence the British policymakers to forgo their narcocolonialist policies.

I would argue instead that the IDCR was originally conceived as a Krasnerian formalized constraint on the first world by the third, one that offsets the military advantages of great powers that could once again impose narcocolonialism on the third world as Britain had done to China. As Krasner's theory of structural conflict would predict, China was active in the nineteenth century in shaping the norm to protect its own internal authority. "Relational", direct confrontation with Britain failed spectacularly, and so as China reassessed its own interests in the last decade of the nineteenth century and the beginning of the twentieth, China instead used "meta-power" to influence the British policymakers to forgo narcocolonialist policies. China utilized diplomacy, international institutions, and normative arguments to protect its interests, although China's efforts were undertaken in cooperation with American influence—and largely at American initiative—to establish the IDCR.

Subsequent developments in the IDCR saw first world nations attempting to defend their interests by controlling the supply of illegal drugs entering their own borders, but, significantly, they have *not* attempted to restore the nineteenth-century balance of power and turn the tables back against the third world. These major powers remain committed to choking off the narcotics revenue stream, instead of exploiting it. Because of the norm against state drug trafficking, the economic benefits of the drug trade end up going (usually indirectly, through criminal groups) into small and weak countries which lack the will or capacity to oppose growers and traffickers, instead of to the major powers.

It seems strange to say that the third world was the beneficiary of this redefinition of first-world interests regarding drugs just after discussing the invasion of Panama by the United States. Yet measured solely by looking at which direction the dollars flow, such an argument might be defended. The exploited countries have become the exploiters. Furthermore, the increased scarcity of addictive drugs due to the IDCR's supply control approach sets the price too high for drugs to become affordable in the poorest countries. Such nations export drugs but cannot afford

to consume them, and avoid the costs of drug addiction among the poorest populations who are least able to bear them.

However, a more complete accounting that includes the drug trade's effects on civil society, its assistance to insurgencies, and its utility to regimes like Noriega's make the question of whether the Third World benefits from drug prohibition much more complex. Panama's situation was an unintended result of the dynamism of the IDCR: countries such as Britain, Japan, and America had managed to coordinate an end to their own involvement in the drug trade, initially in order to end the exploitation of third-world drug users and third world (especially Asian) nations. The IDCR's success in limiting the depredations of the first world at the expense of the third world led, perversely, to the corruption of nations like Panama, the governments of which were less able to resist the encroachments of strongmen who consolidated their power through taking a cut from the drug traffic.

Such consequences preclude a clear argument that the regime has ultimately been a net benefit for the third world. The vast sums of money that flow there through illegal channels prop up criminals, corrupt institutions and, as David Jordan and Louise Shelley have pointed out, undermine democracies. Nor is it accurate to say that the Third World uniformly wants or supports this regime in its current incarnation to the degree the United States does, even though it was conceived originally as a protection for the developing world. Many countries chafe under the dictates of the IDCR and the U.S. certification process, and much lobbying by developing nations on this issue centers on convincing rich countries to curb their own demand for drugs.

Ultimately the history of the IDCR is problematic for both Krasner's and Thomas's views of international institutions and the reasons behind them. What is clear is that the reason for the IDCR's original founding was, effectively, a self-imposed restriction upon a mechanism that served the interests of powerful nations—a mechanism that Carl Trocki argued was a prime means of maintaining and expanding empire. This frustrates Thomas' prediction that powerful nations would manipulate norms and institutions to their own advantage. However, the continued development of the IDCR does not clearly benefit the third world, either. Though its founding may have been Krasnerian, its progress is not a clear example of meta-power wielded by the weak against the strong, since one of the regime's greatest supporters is the United States.

The IDCR remains an unusual case, because it demands that *all* states cede power; it appears they have unintentionally (though foreseeably) ceded this power to transnational criminal groups—even as the states involved continue to suppress these groups. This study has sought to clarify some of the reasoning behind that paradoxical transfer of power, and the ongoing conflict it has created. As strange as that outcome may seem, there was a logic of power as well as a logic of appropriateness driving that decision, and the alternatives had been considered, tried, and rejected. Imperfect as the IDCR is, an argument can be made that it represents the *least worst* scenario for ordering the worldwide market in addictive drugs.

4.2 Policy conclusions

While this study has characterized the IDCR as “tragic”, this is not the same as saying it is futile. Even if there have been consequences in the form of better-funded insurgencies, political instability, and massive corruption in the third world, the IDCR has done much to control the worst effects of addiction in the poorest countries, and has limited predatory narcocolonialism. A few of the factors brought to light in this study suggest some ways in which policy makers may mitigate the unintended consequences of drug prohibition, and also some lessons that may apply to a related international control system—the arms control regime.

First, the scope of this study into the problems the IDCR was intended to solve suggests that there are serious national security risks presented by a population of drug addicts. If there is some significant number of citizens willing to pay extraordinary amounts for a continuing supply of addictive drugs, someone will meet the demand. That someone might be the state, or it may be a rival state, or it may be a criminal group, or it may be some new form of organization—for example, in a world in which the IDCR’s prohibitions have relaxed, a multinational corporation along the lines of the old East India Company, or perhaps T. Whiffen and Sons. But as long as there is money to be made shooting the farmer, some group will convince itself (as Benjamin Weald did) that it might as well be the one to profit from the farmer’s execution.

This is not mere prohibitionist paranoia; the history of the drug trade shows a parade of political horrors stemming from drug dependency: currency flight, corruption, a loss of productivity and human capital, smuggling and the empowerment of transnational criminal organizations (or terrorist groups, or insurgencies). These are the political costs that should concern even the most amoral politician who might not otherwise care about the damage to health, to human dignity, to

families, and to societies that drug abuse engenders—especially on the poorest members of a society who lack the financial means and social competence to mitigate its effects.

While this dissertation has been primarily about the international control of drug supplies, it has thrown into sharp relief the necessity for demand reduction as a matter of national security as well as international order. Demand reduction effectively reduces the bounty on the farmer. Such a recommendation is easy to offer, but it has proven extremely difficult to implement. Education and treatment are obviously necessary, but results to date have not proven particularly encouraging—especially in light of a well-financed counter-campaign that seeks to overturn drug prohibition and reform drug laws, without advocating a concurrent cessation of drug use.

As for the interdiction of supplies, the history of the drug trade from the country traders to the current worldwide situation demonstrates the adaptability and ingenuity of smugglers to surmount every obstacle prohibitionists put in their way. Production, refining, transport, and retail levels of the narcotics trade all adapt competitively (and occasionally violently) to changes in law enforcement, to competitors, to changing economic conditions, and to broad changes in international institutions. As Michael Kenney summarized his assessment of Colombian traffickers, *"narcos" learn.*

Counterdrug enforcement must learn as well. Policymakers should support fluidity and adaptability in enforcement. In an asymmetric contest with foreign traffickers, actionable and accurate intelligence becomes especially important. Also important, when possible, is anticipating what traffickers are likely to do in response to moves by law enforcement, by politicians, or by the IDCR. Law enforcement is by nature reactive, whereas criminals usually possess the initiative. A greater emphasis on predictive and strategic intelligence could be used to blunt the traffickers' advantage in this regard.

Finally, this dissertation showed the exceptional power of the analogy between drugs and slavery, and drug trafficking with slave trafficking, to galvanize political will around the world. I have argued that this was one of the reasons for this norm's particular success—it fit a pattern (identified by Keck and Sikkink) of international norms that were more likely to be persuasive in international politics. When Philip and Thompson advanced the analogy between the drug trade and the slave trade, it was picked up and advanced by a community of activists all around the world. But that

connection is, these days, largely taken for granted along with the norm itself. It is possible that this reason behind the norm is less persuasive than it used to be. It is also possible that it has merely been forgotten.

Whether or not the norm is still forceful today, the analogy between drugs and slavery has largely disappeared from public memory. It enjoyed a brief revival in the latter half of the 1980's; in a 1986 address in Colombia, Pope John Paul II

...said that the commerce of drugs had turned many people into 'traffickers in the freedom of their brothers whom they enslaved, sometimes with a slavery more fearful than that of the negro slave.¹³⁶³

In the United States, the Partnership for a Drug Free America (in collaboration with the NAACP) used the idea in some of its campaigns in 1990.³⁶⁴ President George H.W. Bush had used the comparison in a speech advocating stronger precursor controls earlier that year³⁶⁵, and officials in his administration used it as well. Whether or not the brief campaign was effective in deterring consumption, the idea behind it was a powerful one that ought to be revisited and re-examined as a means of explaining what is at stake, and as a useful principle in re-ordering the IDCR.

4.3 The future of the IDCR

As this conclusion was being written, an interesting arrest made the news. Recall first of all the story of Manuel Noriega, and his extraordinary success at staying in power in Panama. Noriega cultivated allies in the U.S. State Department and intelligence services, as well as the DEA, convincing them his political and intelligence value to the United States' broader interests justified overlooking his drug and human rights excesses. When the beginning of the end came for Noriega, it came from a U.S. court which indicted him for drug trafficking. After that indictment, his support began to fragment and hawkish voices were able to advocate his overthrow.

³⁶³ Matheson, Catherine. "Pope Says Drug traffic Is Modern Form of Slavery". *The Guardian*, July 8, 1986. Retrieved through Lexis-Nexis.

³⁶⁴ Isikoff, Michael. "Anti-Drug Ad Campaign Directed at Blacks; Survey Shows Cocaine Use Dramatically Higher Among Minority Teenagers". *The Washington Post*, November 3, 1989. Retrieved through Lexis-Nexis.

³⁶⁵ Lichfield, John. "Bush claims that US firms' laxness is helping drug barons". *The Independent*, April 28, 1989. Retrieved through Lexis-Nexis.

On March 6, 2008, an arms dealer named Viktor Bout was arrested in Thailand. Bout was former Russian air force officer, but he was a global merchant who sold weapons in Africa in violation of U.N. sanctions, and had done so for years. He was even accused of selling weapons to Al Qaeda. No one moved against him, however; there were rumors of his involvement with national intelligence services. One story said he delivered weapons using American airstrips in Iraq, and received American assistance.³⁶⁶ Bout was, like Noriega was, a very useful man.

His downfall came not from his gunrunning to Africa, though it fueled atrocities and outrage there. Instead, his indictment issued from a sting operation initiated in November 2007 that fooled Bout into thinking he was negotiating with Colombia's FARC, a designated terrorist organization with ties to the cocaine trade. It was the American DEA that launched the sting operation that cut through the institutional gridlock, and led to Bout's arrest by Thai police.³⁶⁷

Whether it is made explicit or not, the norm against state drug trafficking is still a strong political imperative, and not just in America. It is dynamic and sometimes paradoxical, but can manifest itself on the world stage in unexpected ways. The echoes of Philip and Thompson's call still resound, and students of international politics are well advised to listen.

³⁶⁶ Rood, Justin and Maddy Sauer. "Arrested Arms Dealer's Planes Flew U.S. Missions in Iraq". ABC news, March 6, 2008. Available at <http://www.abcnews.go.com/Blotter/story?id=4400141&page=1>.

³⁶⁷ U.S. v. Viktor Bout and Andrew Smulian. Feb. 27, 2008. Criminal complaint available at <http://news.findlaw.com/hdocs/docs/crim/usbout22708cmp.html>.

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