1.2 SOCIO-HISTORICAL PERSPECTIVES ON DRUG OFFENCES

It is important to recognise that the prohibition of certain drugs did not occur as response to the perceived risk of addiction or dangers to public health. Mugford has observed that the status of a particular drug as licit or illicit has more to do with a range of economic, political and cultural factors than a rational appraisal of its potential harm. Legal discussion of drug offences, including options for reform, often proceeds without appreciation of the historical forces that have shaped Australia’s drug laws. Such historical myopia is unfortunate. An historical analysis is vital for revealing the political, economic and social forces, as well as powerful and enduring cultural myths, impinging on the process of criminalisation.

From a historical perspective, the philosophies of welfare and liberalism relating to public health or harm prevention do not provide an adequate explanation for the development of drug laws in Australia, or indeed any other jurisdiction. As Desmond Manderson noted in From Mr Sin to Mr Big — A History of Australian Drug Laws (Melbourne: Oxford University Press, 1993), p 12:

> There is no simple or overarching reason for the development of drug laws in Australia. But there is one clear message: no matter what we are told, “drug laws” have not been about health or addiction at all. They have been an expression of bigotry, class, and deep-rooted social fears, a function of Australia’s international subservience to other powers, and a field in which politicians and bureaucrats have sought power. Drugs have been the subject of our laws, but not their object.

In the late 20th century, it is undeniable that medical discourse has assumed the dominant role in shaping our knowledge of drugs and legal responses to the “drug problem”. It is impossible to dismiss the harmful health effects of drugs. However, the concept of drug addiction and dependence may lead policy makers to an excessive focus on clinical intervention and treatment as the appropriate regulatory solution.

Mugford has pointed out that a wider “social historical” perspective on drugs reveals that medical and legal discourses are not the only ways of controlling drugs: “Controlled Drug Use Among Recreational Users: Sociological Perspectives” in N Heather, W Miller and J Greeley (eds), Self Control and the Addictive Behaviours (Sydney: Macmillan, 1991). Drug use, when understood as a social practice, has had different meanings at different times. Through history and across different cultures the consumption of intoxicating substances, rather than being an aberrant feature, reflects the central values of a society. In modern Western societies, Mugford suggests that drugs may be better understood in terms of the commodification of pleasure and the pleasure of commodities: p 255. The pursuit of pleasure by means of illegal drugs is prohibited because of the perceived threats to decorum and social order. Mugford represents this tension as a conflict between the Protestant work ethic and the hedonist ethic: p 258. In later work, this tension is understood in terms of a struggle over the body, between the classical body (ordered,

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Such an approach exposes the historical and cultural specificity of prohibition and how particular drugs are condemned, while others are legitimated. Mugford’s research also highlights neglected insights on regulating drugs such as the centrality of pleasure and commodification. This approach may yield practical benefits since it allows policy-makers, law-makers and regulators to reconceptualise the “drug problem” in terms of the regulation of a market for pleasurable commodities. This regulatory approach would be similar to that adopted for other social activities for which there is strong public demand yet simultaneously pose dangers to the community, such as prostitution, pornography and gambling. Clearly, a wider range of regulatory strategies should be considered that do not depend on pathologising drug use and viewing medical treatment as the only appropriate regulatory intervention. Within this regulatory framework, the State (though not necessarily the criminal law) would play a significant role in the regulation of pleasurable commodities.

Any regulatory framework that proposes to make the use of intoxicating substances lawful raises concern about the visibility of drug use and the potential for public nuisance. Indeed, the delays over the introduction of SIRs are related to concerns over location and public visibility. In an early article calling for the introduction of a comprehensive scheme of opioid maintenance, Ian Leader-Elliot raised the issue of “urban aesthetics”: “Prohibitions Against Heroin Use: Can They Be Justified?” (1986) 19 Australian and New Zealand Journal of Criminology 225. He concluded (at 244-245) that the lawful supply of intoxicants (including alcohol) raised the prospect of social congregation and attendant risk of public nuisance and disorder:

More permissive regimes of control may also intensify problems of urban aesthetics. When users are not punished, and attempts to drive them underground are abandoned, the undesirable effects of recreational opiate use may be even more visible than they are now. For many, the spectacle is offensive. One would add, however, that Australians are not unused to viewing the degrading spectacle of public intoxication and appallingly primitive and disorganized methods of purveying liquor.

### 1.3 CULTURAL PERSPECTIVES ON DRUG LAWS AND THE “WAR ON DRUGS”

When examining drug law and policies it is important to appreciate the power of symbolism and mythology in constructing our knowledge of drugs and their users. The imagery and symbolism around drugs and users are historically contingent: D Manderson, “Metamorphoses: Clashing Symbols in the Social Construction of Drugs” (1995) 25 Journal of Drug Issues 799. In the 19th century moral and political campaigns to criminalise drug use were directed specifically to the “Chinese vice” of opium-smoking. In the 20th century, the threats posed by drugs are now personified by the disease-ridden and crime-prone “junkie” and the “Mr Bigs” of organised crime.
Similarly potent imagery has developed around drug law enforcement where the dominant metaphor is that the international and domestic community is engaged in a “War Against Drugs”. In times of war, “extraordinary measures” are needed, and the suspension of fundamental rights is justifiable. The metaphorical War Against Drugs has produced draconian offences against trafficking, and money laundering and the reintroduction of forfeiture laws to prevent participants in drug dealing profiting from their crime. From a law enforcement perspective, drugs have empowered new investigative agencies with national and international jurisdiction (such as the National Crime Authority). They have also justified the use of intrusive investigative powers, such as electronic surveillance and police entrapment.

Deviation from normal investigative methods is tolerated by the courts and condoned by the legislature as necessary measures to fight the War Against Drugs. Legislation has provided legal authority for electronic surveillance and “controlled operations” in which police and their informers can participate in the illegal importation and supply of drugs. The trend is firmly in favour of the “normalisation” of these exceptional investigative powers. When the system of regulation of phone-tapping was introduced in 1970s, it was initially restricted to Federal police involved in the investigation of “serious narcotic offences”. The range of offences for which interception may be authorised under the *Telecommunications (Interception) Act 1979* (Cth) has been extended to include serious offences against the person, computer and property offences and even tax evasion. The powers have also been extended to State and Territory police and specialised investigative agencies such as the National Crime Authority. Electronic surveillance, like emergency legislation adopted to combat terrorism, was initially tolerated as an exceptional measure for designated offences not amenable to ordinary investigative techniques. But once adopted, these exceptional powers have become an accepted and, in due course, an indispensable feature of the Australian criminal justice system: S Bronitt, “Electronic Surveillance, Human Rights and Criminal Justice” (1997) Vol 3(2) *Australian Journal of Human Rights* 183 at 189.

In the United States, as noted above, the advent of drug courts have provided the template for new specialist courts for dealing with domestic violence; driving under the influence (DUI); neighbourhood courts; mental health courts; teen courts; juvenile drug courts and native drug courts: A Freiberg, “Australian Drug Courts” (2000) 24 Crim LJ 213 at 235.

It would seem that drug law, both in relation to investigation as well as procedure, has been an area of unrestrained *legal* experimentation.

Criminal justice scholars often represent the “War Against Drugs” as a struggle between legality and crime control. As Francis Allen, a leading American legal scholar of criminal justice, observed in *The Habits of Legality* (New York: Oxford University Press, 1996), the true casualty of this war is the rule of law (p 39):

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The war on drugs has contributed importantly to the environment in which the rule of law functions today. Any rational appraisal of the war on drugs as it has emerged in the last decade and a half must focus in large measure on the cost of present drug policy. One category of costs largely neglected in modern political discourse is that resulting in debilitation of the legality ideal, and the weakening of the habits of legality.

Illicit drugs represent a threat not only to users or the community, but to the integrity of the criminal justice system. As explored in Chapter 2, the rule of law performs an important symbolic and ideological function within liberal democracies. Within the criminal justice system, legality and fairness limit the power of the State to censure and punish individuals. As such, it is an important source of political legitimacy for the criminal law. Liberal scholars of criminal justice such as Allen conceive criminal justice as a balance between two competing models: crime control versus due process: Ch 1 pp 34-36. Like Herbert Packer’s influential two models of criminal justice outlined 30 years earlier in *The Limits of the Criminal Sanction* (Stanford, CA: Stanford University Press, 1968), the crisis of criminal justice is that the system’s equilibrium is becoming unbalanced in favour of crime control. Critical scholars, such as Doreen McBarnet, would reject this dichotomised approach to criminal justice implicit within most liberal scholarship. In her view, the concepts of legality and fairness rarely stand in the way of conviction. Rather than restraining crime control, she concludes that "due process is for crime control": *Conviction: Law, The State and the Construction of Justice* (London: MacMillan Press, 1981), pp 155-156. It is not that the police, prosecutors and judges collude in deviation from principles of legality and fairness, but rather that the law itself licences this deviation. Drug offences and the specialised investigative methods employed to detect them provide many illustrations where the rhetoric of legality and fairness not only fails to be realised, but in fact serves the interests of the State.

The Significance of Culture: Drug, Mindset and Setting

The effects and dangers of drugs are contingent on the nature of the drug, the expectations or mindset of the user and the setting within which consumption takes place: N Zinberg, *Drug, Set and Setting: The Basis for Controlled Intoxicant Use* (New Haven, CT: Yale University Press, 1984). The setting and mindset may dramatically differ for the same drug. Mugford’s research on “crack” and cocaine revealed that although these substances are identical chemical compounds, the setting for use and the mindset of the users are very different: “Despite the common chemical structure, the drugs are understood and used differently with different outcomes”: “Studies in the Natural History of Cocaine Use — Theoretical Afterword” (1994) 2(1) *Addiction Research* 127 at 130. Unlike junkies addicted to “crack”, recreational users of cocaine conform to a different socio-economic profile — young, single, urban, moderate in education and income, secular and non-traditional: at 131. Mugford’s socio-historical approach to drugs cautions against simplistic caricatures of drugs or their user for guiding legal regulation and drug policy, highlighting that a single drug may have many and varied meanings and uses, and that these may change over time: “Controlled Drug Use Among Recreational Users: Sociological Perspectives” in N Heather, W Miller and J
THE HISTORY OF DRUG LAW IN AUSTRALIA

Until recently, the history of drug law in Australia has been largely neglected. Researchers have tended to adopt the subservient view that the history of drugs in Australia was similar to that of the United Kingdom and United States though “necessarily briefer and less complex”: J Krivanek, *Heroin — Myths and Reality* (Sydney: Allen and Unwin, 1988), p 32. This historical blind-spot has been largely rectified by Desmond Manderson’s book, *From Mr Sin to Mr Big — A History of Australian Drug Laws* (Melbourne: Oxford University Press, 1993). This lively historical account explores the multitude of domestic and international forces shaping drug laws in Australia during the late 19th century and early 20th century. Manderson locates the impetus for criminalisation of drugs in a complex interaction of factors that include racism, the rise of the medical profession, bureaucratic attitudes, the pressure of the international community, the emergence of a drug mythology, and political convenience: p 11.

In the first two chapters, Manderson examines how the first wave of opiate prohibition was the product of racism directed toward the “Chinese vice” of opium-smoking and religious moralism in the form of temperance crusades. At this time, Australia was at the forefront of drug regulation. Some of the early Australian prohibitions on the supply and use of opiates predated laws in Britain and the United States.

The early prohibitions in Australia were directed to local concerns. For example, the first drug laws in Australia prohibited the supply of “any opium to aboriginal natives of Australia or half caste of that race except for medicinal purposes”: *Sale and Use of Poisons Act 1891* (Qld). While formally neutral, this Act was in fact directed against the Chinese customary usage of opium as a means of barter and exchange. The Act was the product of xenophobia, economic protectionism and paternalism toward Aboriginal people. It is important to appreciate that the restrictions on dealing in opiates were directed only to opium suitable for smoking and did not restrict its widespread medicinal use. These early laws distinguished between the vice of opium-smoking and the ingestion of opiates in the form of patent and proprietary medicines. These medicines (few of which actually were patented) were often simply pure alcohol or opiate preparations. As Manderson points out, the consumption of patent medicines was widespread with Australia having the largest per capita levels of consumption in the world at the turn of the century: p 53. The general public only became aware of the opiate content of the “secret ingredients” in patent medicines through a New South Wales Royal Commission into Secret Drugs, Cures and Foods in 1905. The exposé by the Commission, rather than leading to prohibition or tighter control over medicinal opiates, simply led to the introduction of Commonwealth laws requiring accurate labelling of contents for medicines. The patent medicine industry, from which newspapers generated huge profits through advertising revenues, continued to flourish with minimal restrictions.

The prohibition on the supply of opium to Aboriginal natives in Queensland was eventually extended to the general population. Although the prohibition on opiates purported to have general application, enforcement policies continued to focus on the problem of intoxication and drug abuse within Aboriginal communities. Even though opium-smoking by the Chinese community was reviled in the general community, the prohibition was only loosely enforced against them. Rather than implement the prohibition as legislation dictated, police and customs officials operated an
administrative regime for licensing and taxing the supply of non-medicinal opium until the end of the century: D Manderson, *From Mr Sin to Mr Big — A History of Australian Drug Laws* (Melbourne: Oxford University Press, 1993), p 34. Such pragmatic strategies resonate with the regulatory policies of decriminalisation that have been adopted for some “recreational drugs” such as cannabis.

Drug law developed its modern character in the latter half of the 20th century. The offences have quickly proliferated beyond possession, use and supply, to a wider range of trafficking and drug related activities, such as money laundering. It was not until the 1970s that the extremely high penalties (such as life imprisonment) for drug offences were adopted, and offence and penalty provisions began to distinguish between personal use and commercial dealing. The explosion in legislative activity in the 1970s, supported by numerous Royal Commissions and official inquiries into illicit drugs, coincides with a moral panic about drugs and the corruption of Australian youth. Chris Reynolds in *Public Health Law in Australia* (Sydney: Federation Press, 1995) summarised (p 204) the social forces promoting legislative activity during the 1970s and 1980s as follows:

This legislative flurry seemed to be a product of the wider social event of the time, the Vietnam war, fear about the rebelliousness of youth and the “pop” culture all combined with drugs to make a high profile issue of concern. The laws were populist responses, designed to protect Australia’s youth from the outside influences of dangerous drugs and ideas.

This historical survey of the formation of drug laws in Australia highlights the danger of over-reliance on formal legal sources, such as legislation, to understand the purpose, operation and effects of the criminal law. Lifeless statutes provide only a partial account of the complex process of criminalisation. Legal history clearly plays a vital role in revealing the social, economic and political forces that have shaped, and continue to shape, the development of drug law in Australia.

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23 The Royal Commissions held in Australia between 1977-1980 symbolised official and community anxiety about the growth of illicit drug use: D Manderson, *From Mr Sin to Mr Big* (Melbourne: Oxford University Press, 1993), p 170. The Commissions played a significant role in reshaping attitudes toward drugs, particularly in solidifying the distinction between users (who required treatment) and traffickers. From 1980, there were a further 13 commissions or inquiries into drugs in Australia: D Brown, D Farrier and D Weisbrot, *Criminal Laws* (2nd ed, Sydney: Federation Press, 1996), pp 1047-1050.
alcohol addiction, which generated new laws and powers for dealing with *habitual* drunkenness: see Ch 14, p 779.

The medicalisation of drug use is consistent with Michel Foucault’s identification of the “clinical gaze”: *The Birth of the Clinic* (New York: Vintage Press, 1975). Diagnosing social as well as biological diseases empowered medical science and the medical profession as the appropriate disciplinary authority over drug users. Levine concluded that the concept of addiction should be understood not as an independent medical or scientific discovery but rather “as part of a transformation in social thought grounded in fundamental changes in social life — in the structure of society”: pp 165-166. The medical model remains highly influential in regulatory strategies based on harm minimisation, supporting treatment in the form of methadone programs and scientific research such as the proposed “Heroin Trial”.

**COMPARATIVE PERSPECTIVES**

**Drugs in the United Kingdom, United States and Australia**

More than any other area of the criminal law, drug law has been influenced by political pressure from powerful individual nations, such as the United States, and the wider international community. The following comparative history of drug law relies heavily on Jara Krivanek’s, *Heroin — Myths and Reality* (Sydney: Allen and Unwin, 1988), Ch 2. As Krivanek points out, the first nation to become concerned about opiate misuse was China, reacting to concerns about the high level of imports from India by the British East India Company. Opium for non-medicinal use was outlawed in China in 1726 primarily for economic reasons. In an attempt to preserve this trading arrangement whereby valuable tea, silk and spice were exchanged for opium, the United Kingdom was ultimately prepared to use force (the so-called “Opium Wars”) to protect their interests. The domestic acceptability of opium began to change in the 19th century with the emergence of temperance movements, such as the Society for the Suppression of Opium Trade established by Quakers in 1874.

The prohibition movement was aided by the medical profession which from the 1870s onwards viewed habitual non-medicinal drug use as a disease — “addiction”. By pathologising drug use, the medical profession gained control over drug users and entrenched its monopoly over the use of narcotic drugs for medicinal purposes: T Parssinen and K Kerner, “Development of the Disease Model of Drug Addiction in Britain, 1870-1926” (1980) 24 *Medical History* 275. As early as 1895, a Royal Commission on Opium took the view that drug addiction was a disease requiring medical treatment. Indeed, the problematic aspects of drug use were reflected in the belief that addiction caused mental infirmity and sometimes insanity. Moreover, the *Mental Deficiency Act* 1913 (UK) was extended to “intoxicants”, who were defined as addicts of sedatives, narcotics and stimulant drugs. This Act allowed for the detention of “moral imbeciles” in asylums or the appointment of guardians.
The United Kingdom ratified the Hague Convention in 1912, an international treaty aiming to bring about the gradual suppression of the "abuse of drugs" specifically opium, morphine and cocaine. Significantly, the Convention's definition of drug abuse excluded the medical use of drugs. The medical control over drug use was further entrenched by an official inquiry into drugs conducted by the Rolleston Committee in 1924. This Committee, comprised entirely of medics, concluded that drug addiction should be viewed primarily as a disease rather than as a vice: “the taking of a narcotic drug of addiction for a few doses may be termed as a vice, but if the administration is continued for a month or so a true disease condition becomes established with a definite pathology and symptoms”: cited in J Krivanek, Heroin — Myths and Reality (Sydney: Allen and Unwin, 1988), p 36.

The so-called “British system” separated out the pathological from the moral and legal aspects of drug use, conferring on the medical profession the principal responsibility for controlling “the addict” through treatment. Such treatment in many cases involved simply controlling opiate addiction through maintenance, namely providing a controlled dose with a view to avoid the symptoms of withdrawal, rather than to cure the addiction. The system required no registration of addicts, though the Committee did lay down some guidelines on how addicts should be maintained by doctors. For example, addicts should not be informed of the name of the drug and in no circumstances should inject themselves.

Until the 1950s, there was no significant illicit market in opiates in Britain. A series of medical abuses in prescribing drugs in the 1950s and 1960s, coupled with the emergence of an affluent, rebellious and drug using youth culture led to calls for tighter regulations. The medical profession increasingly sought to distinguish between therapeutic and non-therapeutic addiction. The Home Office adopted this distinction in 1958, and it appears that 80% of cases of drug addiction at this time were characterised as therapeutic, that is, addicted through medical contact. The recreational use of drugs was properly the subject of criminal prosecution. In this sense, the law entrenched a dichotomy between lawful (medically supervised) drug use and unlawful recreational use. As Manderson observes in Mr Sin to Mr Big (p 105),

In stark contrast to the medical and legal authority that jointly demonised the transgressor of drug laws, those who accepted the legal and medical boundaries that had been set in place met with support and reassurance. Even “drug addicts” were able to continue their habit if they did so legally and under medical supervision.

The Brain Committee in the 1960s generally endorsed the medical model adopted in the 1920s, but recommended measures to control over-prescribing drugs including the establishment of special centres and specialist care, notification of addicts to central authority and powers of compulsory detention for the purpose of treatment: Ministry of Health and Scottish Home and Health Department, Drug Addiction, The Second Report of the Interdepartmental Committee (London: HMSO, 1965) (the Brain Committee). These clinics reduced the size of doses and used substitutes like methadone to maintain addiction.

The “British system” was largely followed in Australia. Although some States forbade the supply of opiates for the purpose of addiction, as Manderson has pointed out, the essence of the Commonwealth policy remained the “institutionalisation and medicalisation of drug use”: 
For example, heroin was widely used in the first half of the 20th century in the United Kingdom and Australia by the medical profession. It was used not merely as a treatment for morphine addiction, but was also prescribed for the alleviation of pain experienced as a result of cancer and even childbirth. As Manderson further notes (p 110),

In 1931 Australia consumed 3.10 kilograms of heroin per one million persons, more in total than the United States, Canada or Germany and, per capita, behind only New Zealand. Australia consumed three times as much heroin per capita as the United Kingdom and twice as much cocaine. Hitherto we had been world leaders in the popping of patent medicines pills; now we had moved on to other drugs.

Due to increasing international pressure and treaties requiring more stringent prohibition, the importation of heroin was banned in Australia in 1953, notwithstanding protests from the medical profession at the time.

The history of the regulation of opiates in the United States differs from the medical and bureaucratic model adopted in the United Kingdom: see generally, J Krivanek, *Heroin — Myths and Reality* (Sydney: Allen and Unwin, 1988), Ch 2. The “British system”, while highly influential in Australia, was never adopted in the United States. Opiate addiction first became visible at the end of the American Civil War in the 1860s. The introduction of the intravenous syringe on the battlefield allowed morphine to be used as an effective pain-killer. The consequent addiction to morphine became known as “army disease”. Returning soldiers continued to obtain their supplies of opiates lawfully through doctors and pharmacists. Indeed, a wide range of opiates were available by mail order through the Sears-Roebuck catalogues in the 1890s. In 19th century America, opium addiction was not widely associated with vice or crime.

As in Australia, a number of factors were critical in changing public attitudes towards opium in the United States — the rise of the Temperance Movement and the arrival of Chinese workers. In relation to the latter, opium became a symbol of Chinese vice and its criminalisation a means of attacking the social and economic challenges that they presented. As Thomas Szasz noted: “After all Americans could not admit they hated and feared the Chinese because the Chinese worked harder and were willing to work for lower wages than they did”: *Ceremonial Chemistry* (London: Routledge and Kegan Paul, 1975), p 76. In 1875 San Francisco enacted laws prohibiting the keeping of opium dens and opium smoking. In 1883 the Chinese were prohibited from importing opium, though no similar restrictions were placed on importation by Americans. For an excellent article examining the historical forces behind opium offences in the United States, see P Morgan, “The Legislation of Drug Law: Economic Crisis and Social Control” (1978) 8(1) *Journal of Drug Issues* 53.

Following the Hague Convention in 1912, the Harrison Act 1914 was enacted by Congress. The Act had three central provisions:

— to provide information about legal opiate traffic;
— to introduce a tax on those who handled drugs; and
— to prohibit the purchase of opiates except on the prescription of a physician for a “legitimate medical purpose”.

The Act severely limited the availability of opiates resulting in the medical profession becoming besieged with addicts. Special clinics were established but quickly became unmanageable and were all closed by 1921. Also, individual States began to prosecute doctors who were prescribing drugs for addicts. An early decision of the Supreme Court in
prescription for the purpose of maintaining habitual use, rather than for the purpose of curing addiction was not permitted under the *Harrison Act.*

Although this decision was reversed in 1925, the reticence of the medical profession to supply opiates to addicts fostered a black-market for drugs and organised crime.

The regulation of drug use was conceived as a criminal justice issue, an approach promoted by newly created national agencies, such as the Federal Bureau of Narcotics (FBN). The FBN played a significant role in marshalling and shaping public concern about marijuana misuse. Propaganda films like “Reefer Madness” portrayed cannabis as a drug capable of inducing sexual frenzy and homicidal rage. Howard Becker has stressed the critical role played by “moral entrepreneurs”, such as Harry Anslinger, the head of the FBN from the 1920s to the 1960s, who once described marijuana as “the assassin of youth”: *Outsiders: Studies in the Sociology of Deviance* (London: Collier McMillan, 1963). Other researchers have stressed the role of racism directed toward Mexican migrant workers (the principal consumers of “marijuana”) and the bureaucratic needs in explaining prohibition: S Bottomley and S Parker, *Law in Context* (2nd ed, Sydney: Federation Press, 1997), pp 177-179. What is striking is how our understanding of cannabis has changed from one of a dangerous sexual stimulant in the 1930s, to a relaxant associated with the hippy youth culture in the 1960s and 1970s.

While there is clearly an international dimension to the criminalisation of drugs, as reflected in the narcotic treaties adopted in the 20th century, the intensity and nature of legal regulation has varied from jurisdiction to jurisdiction. These variations reflect the different meanings and symbols of drug law in different places at different times. Australia’s legal response to opium, like the United States, was affected by the problem of “Chinese vice”. As Manderson concludes in “Substances as Symbols: Race Rhetoric and the Tropes of Australian Drug History” (1997) 6 (3) *Social and Legal Studies* 383 (at 384), opium in the 19th century became an important symbolic expression of anti-Chinese sentiment:

> [T]he very first, anti-opium, drug laws arose in many countries — in Australia and New Zealand, South Africa and Canada, as well as in the United States — specifically because of the association of Chinese immigrants with opium use. In each case it was not the dangers of the substance itself but its use by these minority groups which caused public outcry and outlawry.

In the United Kingdom, the medical control of drugs remained dominant. This regulatory approach was not affected by the moral crusades against Chinese vice in the United States and Australia — significantly, the United Kingdom had not experienced Chinese migration to any large extent. Thus, drugs simply symbolised sickness rather than vice. As Krivanek

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concludes, “where Britain espoused a disease model, the United States took an essentially moral stance on opiate addiction, and that stance remains basically unchanged today”: Heroin — Myths and Reality (Sydney: Allen and Unwin, 1988), p 59. Australia may be viewed as falling between these two models — a dualist approach based on prohibition tempered by medical pragmatism that continues to influence regulatory strategies today.

The National Drug Strategy Household Survey in 1998 indicated that 2.2% of the population surveyed had tried heroin. By contrast, 39.3% of the population surveyed had consumed cannabis. Whilst comprising a relatively small part of the illicit drug market, heroin users are disproportionately targeted for regulation by law enforcement agencies and the present government’s National Illicit Drugs Strategy.