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## POSSESSED

### Drug policy, witchcraft and belief

*When our friends and family behave irrationally, indulging in fears and behaviours that even they agree are dysfunctional, eventually we stop reasoning with them and send them to an analyst instead. It is their irrational impulses that need to be understood if they are to change. After 50 years of prohibition, we know that banning heroin has not worked. Yet, still we persist. The question is why. It is time to psychoanalyse our drug policies, searching for the irrational fears and anxieties that lie at its heart. We find a surprisingly helpful parallel in another series of laws from long ago: the Witchcraft Laws of the sixteenth century. Entwining the two stories together, this essay argues that our drug laws are not intended to get rid of drugs, any more than the Inquisition wanted to ban the devil. The crime of possession is the sin of being possessed.*

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#### The crime of possession: law

The criminal law is established on the basis of two powerful and interrelated ethical principles: one is punished for intentional acts on the one hand, and wrongful acts on the other. As a rule, there is no crime without both of these elements. The crime of possession, however, centrepiece of the law of drugs for almost a century now, is anomalous in deracinating not one but *both* concepts.<sup>1</sup> (New South Wales 1985, ss. 3 & 10, Australia 1901a, s. 233B) The act is made so passive as virtually to vanish. Merely to retain control of something is enough; no outward gesture is required. At the same time, the mental state is made so specific as likewise to be devoid of meaning. One need intend nothing in relation to the drugs: not to use or to sell them or even to flush them down the toilet. Just knowing of their existence is enough. (*He Kaw The v. The Queen* 1985) In addition, most contemporary laws are replete with a whole battery of reverse onus provisions that require the person charged with possession positively to establish their innocence. (New South Wales 1985, ss. 7, 29; and see generally Carney 1987) Proximity to a 'dangerous drug', a

'narcotic' or whatever happens to be the nomenclature of the moment establishes a presumptive crime. The drug attaches itself to *you*, and you must work to be rid of the taint of it. Even looked at simply in terms of a regulatory framework, the thing contaminates the person and not the other way around. In terms of legal principle, the crime of possession is the crime of being possessed.

*Possession as a relationship of people to objects*

If the possessed drug is a kind of anti-matter, or anti-property, the irony is that it accords so poorly with our orthodox understanding of the nature of property. According to Locke (1690/1903) and, of course, many others down to Nozick (1974), the justification for property rights stems from the use we make of our labour in its creation: '[Man] removes it out of a state of Nature . . . [and having] mixed his labor with it, and joined it to something of his own, thereby makes it his property'.

Property is a kind of legitimated *use*, and expresses the triumph of human culture over the natural world (see Graham 2003, ch. 2). Indeed, in Hegel, the idea of property becomes central to the very distinction between people and things. A person has ends and achieves them precisely by appropriating things. A thing, on the other hand, is that which *has* no ends of its own and is therefore entitled to be used in this way. A possession is understood in terms of its passivity, its subjection to the ends of others.

This understanding of the nature of property and the nature of persons has been central not only to the development of property law over the past several centuries, but also to the practices of colonialism by which that law extended its reach around the globe. Thus, the following editorial on the question of the possession of land, from the *Sydney Morning Herald* in the year 1838:

The vast land was to [the aboriginal peoples] a common – they bestowed no labor upon the land – their ownership, their right, was nothing more than that of the Emu or the Kangaroo. They bestowed no labor upon the land and that – and that only – it is which gives a right of property to it.  
(quoted in Graham 2003, p. 84)

Indigenous peoples, who saw their relationship to land as less appropriative and more custodial, were understood by the colonizers as therefore not possessing it at all. They were on it but not *masters* of it, they did not reduce it to a thing for their use; and that, it was said, made all the difference. The corollary to possession by labor is dispossession through inertia. Possession has historically meant a grasp, legitimated by law, reaching out, seizing, and molding things in order to make them amenable to our use.

### *The problem of drugs*

It was not enough for aboriginal peoples to live in proximity to the land. They lost it anyway. That is the ideology of possession – and indeed of dispossession – at work (Reynolds 1990). But in this light, the possession of drugs again strikes one as anomalous. It is enough now for someone to be in proximity to heroin or, in most jurisdictions, marijuana. They are deemed to possess it anyway. It is an offence although there is no immediate harm, no active behaviour and no use at all – merely the potential for some future harm or future use. Inasmuch then as the crime of possession is said to deter acts of consumption or traffic, it is indeed the punishment of an intention before it has been acted upon.

Possession punishes simply the fact of one's proximity to an object – and in this manner is rather like, for example, the prohibition of guns or other weapons. But the distinction does not require us to focus on the no doubt extreme doctrine of the USA, with its entrenched 'right' to bear arms and grudges. Even in less dogmatic jurisdictions (New South Wales 1996), one can be licensed to use guns if there are grounds to think that the user will not end up harming anyone (apart, of course, from emus or kangaroos, raccoons or beavers). Licensing is a system of regulation not of prohibition: prohibition, as the USA discovered in the course of its disastrous experiment with alcohol, is in fact closer to the free market than to regulation. Yet, there is something about drugs that takes it out of such a category and aims to prevent its use altogether. Ironically, then, the law of possession denies the very possibility of use; while the theory of property understands possession as the precondition of, and as justified by, use.

What lies beneath is undoubtedly a fear of contamination. We fear that just coming into contact with certain substances will taint us. But taint us with what? Whatever it is, it is apparent that the possessor is thought powerless to prevent it. Certain weapons – chemicals, or high-powered assault rifles, for example (New South Wales 1998) – cannot be possessed without there being an intention to cause harm. One cannot innocently possess anthrax because to use it *is* to abuse it (see New South Wales 1991, Schedule 1). The same equation operates here, and indeed in many jurisdictions 'drug abuse' or 'misuse' are treated as synonymous with use (see New South Wales 1985, Queensland 1986). This only begs the question. What is it, in these drugs, that the very idea of their existence – not their abuse, not even their use, but merely the possibility of some *future* use – causes us to fear their touch?

### **The crime of possession: history**

We might begin by taking an historical approach. Around the world, the first 20 or 30 years of the twentieth century involved a radical shift in the taxonomy

of 'drugs'. What had previously been a question of science or habit (Freud 1953/1963, or Conan Doyle 1887–1905/1987; and see especially Musto 1986) or of desire or shame (De Quincey 1822/1961) became reconceived as criminal. However, it was not just the valency of a pre-existing category that changed. On the contrary, the definition of certain drugs *as* criminal reorganized the field in quite a new way, establishing new connections and weakening established ones. The crime of possession came in time to define drugs: a 'drug' was that which could not be legally possessed; if it could be possessed then it was not a drug at all, but a medicine, a drink or a smoke (see Manderson 1993, pp. 95–113).

The animating logic behind these new distinctions was initially racial. The first laws against possession were enacted around the turn of the twentieth century. In the USA and Australia, Canada and South Africa – countries like Great Britain following somewhat later – these laws, which formed the template and precedent on which all the later 'narcotic drugs Acts' would be built, focused on one habit in particular: 'opium suitable for smoking' (Manderson 1993, pp. 17–58). To begin with, it all must have seemed so simple.

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

(Victoria 1905)

Pharmaceutically this makes no sense. The smoking of opium was no more dangerous than drinking laudanum or taking morphine pills or patent medicines. But demographically, the practices were distinct: the Chinese were associated exclusively with opium smoking and all the settler societies that led the rush to prohibition had large and poorly assimilated Chinese minorities. The prohibition of opium smoking was the expression of racial anxiety.

### *Anxiety and identity*

Our analysis does not yet illuminate exactly why the connection between drugs and the Chinese was so compelling. Why did the undoubted racism directed against the Chinese find its clearest expression in *drug* laws? It cannot simply have been a marker for repressed hostility: many countries, most notably Australia, had no difficulty prohibiting the so-called 'influx' of Chinese

immigration quite explicitly (for example, New South Wales 1881 and 1888; Australia 1901b).

*Step 1:* the association between the Chinese and opium smoking was already powerfully implanted in the public consciousness.<sup>2</sup> ‘The Mongolian Octopus’, a celebrated cartoon by Phil May published in the *Australian Bulletin* (1886, pp. 11–12) depicted opium – along with gambling, disease and cheap labour – as one of the ‘tentacles of the octopus’. It was a metonym that represented the Chinese as unable to be assimilated to the body of White Australia.

*Step 2:* opium was not just one tentacle among eight. It was *primus inter pares*, the privileged signifier of an orientalism beneath which the good British settler capitalists of Australia, for example, felt in constant danger of being inundated. The image of the opium den *was* that of the Orient: sexual, dark and pungent; indolent, smoky, communal and undisciplined. Here is a passage charged with sensory meaning:

Down from the fan-tan dens are stairs leading to *lower* and *dirty* abodes: rooms *darker* and more *greasy* than anything on the ground floor: Yet the rooms are not naturally repulsive, nor would they be so when occupied by other tenants; but the Chinaman has *defiled* their walls with his *filthy* touch; he has vitiated what was once a reasonably *pure* atmosphere with his presence, and he has *polluted* the premises with his *disgusting* habits . . . The *very air* of the alley is *impregnated* with the *heavy odor* of the drug.

(*Bulletin* 1886, pp. 11–14)

The opium den was imagined and feared because it evoked a distinctly *oriental* type of pollution. Although the prevention of Chinese immigration served to minimize the immediate dangers of that contamination, the opium den served as a constant reminder of a lingering anxiety. In countries like Australia, the banning of opium was not a way of prohibiting the Chinese. On the contrary, banning the Chinese was just one way of attempting to proscribe the Orient itself – not just its people but its temperament, its pleasures and its vices. In Australia, in the USA, and elsewhere, it was a question of safeguarding the purity of Western identity: immigration policy was one way of maintaining that identity, the prohibition of opium smoking another.

*Step 3:* this anxiety of identity in face of the Orient was not simply symbolic. A specific causal argument was at work and the Australian experience is again indicative. The stories that circulated in the mainstream media at the end of the nineteenth century consistently treated opium as an agent of seduction (Manderson 1993, pp. 20–27). Time and again, we see the Chinese dealer depicted as a trafficker in young white women, and opium as the device by which the sexual inhibition or revulsion of young girls towards

the Chinese could be trepanned, weakened, or overborne. Miscegenation was the fear, and the 'Chinaman's' opium was said to play a *causal* role in bringing it about.

One of the girls now kept in a den on the Rocks, says . . . 'I went to \_\_\_ \_\_\_' place when I was only about 16 because he used to give me presents. He then wanted me to smoke, but I never would, because the pipes looked so dirty. But one day he put a new pipe before me, and made it ready, and after the first whiff from it, he or any other man \_\_\_ \_\_\_ \_\_\_ \_\_\_ \_\_\_. I was completely at their mercy, but so help me God I was a good girl before that'.

(*Bulletin* 1886, p. 11)

Sexual relationships between white women and Chinese men were not uncommon: as was the case all over the world, many of the Chinese who first worked on the railways (in Canada and the United States) or panning for gold (in Australia and South Africa as well as in North America) left their families at home (Rolls 1992). There were, then, a good many sexual relationships across racial lines, based variously on commerce, affect, or convenience. But in a society in which the question of the loss of identity was particularly important, sexuality assumed a central place. Sex was the very means by which that loss, that contamination, would take place. The fear of sexual relationships between the Chinese and native-born Australians was the apotheosis of all the fears that led, around the world, to discrimination, exclusion, racism, violence, riots and murders.

Opium was not just associated with the Chinese. It was not just a metonym or a metaphor for what they represented. It was also the active agent in the sexual relations that threatened to consummate those fears. In this respect, the drug was a highly convenient scapegoat. It relieved 'good girls' of responsibility. Though they might be punished for taking opium, the treatment of the drug itself as the active principle allowed them – and society itself – to remain forever innocent.

The social utility of this form of symbolic reasoning is apparent in evidence given to the Royal Commission into Alleged Chinese Gambling and Immorality, which subpoenaed over a dozen women living with Chinese men in Sydney (New South Wales 1893). It was suggested to all of them that opium functioned either to disinhibit them sexually, or to place them in a state of such slavery to the drug that they had no choice but to yield to the advances of their supplier. The idea struck each of them as perfectly ludicrous, although some of the Commissioners remained stubbornly wedded to it. For after all, if the drug did not work a kind of magic over these women, then they were actually *choosing* to remain with Chinese men rather than among their own kind – a kind whose kindness, I may hasten to add, had frequently left them

abused, beaten, raped, abandoned or destitute. The agency of opium served both to render blameless the women's own actions, and to dull the mirror their stories might have held up to the workings and injustice of Australian society. If opium was to blame, then the established order was not.

### *Witchcraft and drug laws*

The first drug laws expressed a fear of sexuality and identity. Opium itself was not itself feared but on the contrary was the welcome *salve* to the fear. We have seen such a structure before. The parallel with witchcraft is, as Thomas Szasz has remarked, remarkably close (1982, 1992). Indeed, the connection between witches and drugs was explicit in the work of early modern witchcraft theorists such as the authors of the infamous *Malleus Maleficarum* of 1486 (Sprenger & Krämer 1486/1996). Witches were primarily herbalists, midwives and abortionists (Part 1, Question viii; Part 1, Question xi; Part 2, Question i). 'The devil', wrote Krämer & Sprenger, 'has an exact knowledge of the virtue of herbs' (Part 3, 3<sup>rd</sup> Head, Question xvii). Drugs, then, were literally an instrument of the devil; an association which has not been lost in some of the more intemperate modern literature. But my interest lies deeper, in the structural logic that organized the laws of witchcraft, rather than in the material connections between witches and drugs. I want to argue that if we pursue the metaphor of witchcraft seriously, particularly as a kind of crime and an approach to evidence, we may in fact learn something significant about the nature of modern drug legislation. Certainly, we no longer believe in witches, but the legal structure that sustained it is important enough to bear a closer attention than the rhetoric of a 'witch-hunt' normally permits. There is an enormous stretch of time between the 'witch crazes' of the early modern era and our own. Yet this hysteria was merely the best known example of a recurring legal response to deep-seated social anxiety. The drug laws are another example from our own time.

Women bore the horrific and monumental brunt of the witchcraft trials from the beginning of the fifteenth to the end of the seventeenth centuries: of an estimate of deaths ranging from 60,000 to the millions, 80 percent were women (Stephens 2002, pp. 3–4). To a considerable degree, then, the fear in question was a fear of women as such (Daly 1990, Llewellyn Barstow 1994). Yet much recent scholarship, not least that of feminists, has rejected earlier claims that sought to explain the immense literature surrounding, and the trials and executions of, witches, solely in terms of patriarchy and misogyny (Larner 1981, Roper 1994, Purkiss 1996; see also Barry 1996). Significant as they are, these analyses do not come close to explaining a world-view in which apparently intelligent people seemed prepared to believe in flying witches, sex with demons, Satanic masses and the ritual drinking of babies' blood. Still less do they explain why these issues seemed so pressing to writers and inquisitors,

and what they thought to accomplish (Clark 1997, Stephens 2002, p. 32). For the purposes of this paper, I am less interested in the grievous consequences of the oppression of so-called witches, than the logic that animated it and the crisis that underpinned it. This logic and this crisis will help us understand a kind of legal response that echoes that of contemporary drug laws.

Neither the legislative prohibition of witches, then, nor that of drugs, now, was of ancient lineage. On the contrary, both appear to be products of a specific social and historical context (Trevor-Roper 1990). Drug laws emerge in their modern form around 1900 and not before; witchcraft laws, for their part, are products of the Reformation. In England, the first *Witchcraft Act* dates from 1542 and the last was repealed in 1736 (England 1542, 1604, United Kingdom 1736; for legal analyses, see Levack 1996 and Durston 2000). In both cases, we are confronted not by an explosion in the incidence of witches, or drugs, but an explosion in the *fear* of witches and of drugs (Stephens 2002, p. 44), which is something altogether different. We can begin by positing an intense fear of change in a time of social unrest, allayed by attributing it to a magical outside agency (see, for example, Barry 1996).

Let us begin with witches. The idea of devils appropriating the bodies of women was an extraordinarily powerful technology. In the first place, women could be destroyed in the guise of a cure. We are not doing this to human beings, said the Inquisition; we are doing this only to the demons that have corrupted them. Secondly, all challenges to established authority could be quelled while simultaneously denying that any such challenge ever existed. Human beings are not resisting or arguing with us, said the Inquisition; the Devil made them do it and their continuing resistance is proof of it. The attribution of all activity to the Devil and his subjects literally pacified – rendered passive – any challenge to the authority of the Church and the male order.

The ideology of witchcraft was a metaphysically near-perfect method of social control. It defined abnormality as evil and invisible: evil and hence insupportable, invisible and hence indisputable. To be in the thrall of the Devil and his minions was to forfeit all responsibility in the sense of any moral agency over one's behaviour, and at the same time to be deprived of the protection of any responsibility that society owed you. *You* no longer existed at all since you had been suborned by this thing. On the one hand, you were not 'really' doing these things at all, while on the other, society was not 'really' doing these things to you.

Within this ideology, the notion of possession performed a variety of functions. Witchcraft and 'possession' are distinct concepts, the latter much more a creature of the seventeenth century than of earlier times (Levack 1996, pp. 1613–14). Witches are contracted to the Devil, and in return they are given enormous powers, including the power to possess others. The possessed, for their part, are victims of the witchcraft of others, taken over by demons

against their will. The former are cured by execution, the latter by exorcism (Stephens 2002, pp. 326–31). At the same time, however, the authoritative sources do indeed understand witches to have been possessed by the Devil – sexually. This is, apparently, the almost universal initiation of women into witchcraft: the Devil physically possesses them and wins them over (Stephens 2002, pp. 13–31, pp. 87–124). The result is not as horrible as one might imagine. On the contrary, the ‘demon lover’ is sexually all but irresistible (Stephens 2002, p. 23, pp. 42–54). The women, having been tricked (in the first instance) by the Devil’s adoption of a human disguise, then find themselves precisely ‘addicted’ (Stephens 2002, p. 23, p. 39) to the pleasure it affords them. ‘Women’, says the *Malleus*, ‘willingly subject themselves to this stinking, miserable servitude for sheer pleasure’ (Stephens 2002, p. 46).

It will be apparent how closely the idea of drug-taking conforms to this structure, right down to the magical sexual potency with which it is endowed. The devil, like the drug or, indeed, like the Chinese opium pusher, seduces and destroys the will. Each present a promise of pleasure so potent, so alluring, that it tricks the subject in the first place, then traps them and finally entombs them. To drugs or to demons, one is left ‘completely at their mercy’.

The role of possession, in all its senses, is remarkably similar in both discourses. Firstly, it provides a causal explanation for unacceptable social behaviour. Whether as an occasion for punishment or for treatment, the problem thus manifested is treated as separable from the person. The person is not responsible for their behaviour; the drug made them do it. Neither is society responsible for the punishment; it is rather the drug itself that is being exorcised. The crime of possession indicated precisely both the intensity of the fears to which the laws responded, and also the idea of passivity and external and supernatural agency that underscored the ideology which appeared to justify those laws.

Secondly, it provides tangible corporeal proof of the intangible degradation of the spirit. The possession of a drug offers *physical evidence* of an evil that is otherwise entirely metaphysical. The witches’ sexual possession, and their possession of others, likewise provided the sole physical evidence of the existence of the spirit world. It is hardly coincidental that the legal category of *crimen exceptum* recognized the need to abandon normal criteria of proof in cases ‘composed of secret crimes unlikely to produce the usual kinds of evidence or witnesses’ (Levack 1996, note 25). Its principle example, prior to modern drug laws replete with their deeming provisions and reverse onuses, were the laws of witchcraft.

The inquisitors were obsessed by the need to extract from witches detailed information as to their sexual relations with demons. They needed *proof* of actual ‘corporeal interaction with incarnate devils’ (Stephens 2002, p. 18). Indeed, the more bizarre the account, the more it seemed to *prove* the existence of the Devil, for how else could such things have taken place? ‘The

function of the witch, as Kramer baldly admits, is to *make* credible the notion that devils have regular bodily interactions with human beings' (Stephens 2002, p. 36). So too, of course, did sex with the Chinese 'devils' (Manderson 1993, pp. 19–20) provide ultimate corporeal proof of the reality of the degradation wrought by opium. In each case, possession is the physical proof that unveils the stench of corruption. In terms of historical analysis, the crime of possession *was* the crime of being possessed.

### **The crime of possession: belief**

The racial fears leading to the prohibition of opium suitable for smoking were not, and are not, mere anomalies. The importance of anti-Mexican sentiment in the hysteria that surrounded marijuana in the 1930s (the name itself is Mexican) and the connections between cocaine and Blacks are well articulated by John Helmer in *Drugs and Minority Oppression* (1975). The distinction between cocaine and 'crack cocaine' provides a current example of the way in which the so-called war on *drugs* – as if they were the ones who could obey a law or not – continues to be a means to implement, legitimate and deflect attention from the oppression of minority groups (Dvorak 2000). At the same time, it is clear that questions of racial anxiety can no longer account for the popular support that the current structure of drug legislation still enjoys. Yet the fear of certain drugs, 'narcotic' only in the inaccurate but emotive terminology of the *Single Convention on Narcotic Drugs* (1961: Schedule 4), remains. Why?

#### *Witchcraft and the dramatization of religious belief*

In *Demon Lovers: Witchcraft, Sex, and the Crisis of Belief* (2002), Walter Stephens casts the motivations of the witch-hunters significantly more broadly than previously. This compelling book invites a complete retheorization of the problem. Stephens argues that the origins of the witch craze lie, ironically, in the growing influence of empiricism and scientific rationality on the Western mind. The Reformation challenged the very structure of belief and authority in the Christian world: the immediate divinity of the Book replaced the mediated divinity of priests, overturning the hierarchy of the church, and rejecting the doctrine of transubstantiation and the centrality of the administration of the sacraments. The Inquisition, in turn, attempted to justify the incorporeal reality of the Catholic faith *not just* by ignoring the advances of empirical science outright, as it did most famously in relation to Galileo, but also by making an empirical case for the existence of the spirit world. Ironically, in accepting the need for some physical proof of the Devil's presence and his

work in the mundane world, the witch-hunters were attempting to shore up the structure of Catholic belief:

The effects of the sacraments had come to seem imaginary because they were imperceptible. Where Protestantism openly contested sacramental efficacy, witchcraft theory attempted to defend it, but it did so covertly, indirectly, and in bad faith.

(Stephens 2002, p. 185)

The witchcraft trials that swept through Europe were not a product of dogmatic belief: they were, on the contrary, the product of a sceptical anxiety. The witchcraft theorists that Stephens studied were ‘doubting Thomases’ – and what better role model could one find for a Christian empirical scientist? They demanded proof, physical evidence, of the reality of the Devil and, in turn, of the invisible power of God and the sacraments. The witch-hunters did not *fear* witches: they hoped for them (Stephens 2002, p. 37). They were not enforcing a rigid belief: they were struggling to maintain one. Yet their anxiety in the face of an increasing scepticism about the truth of the invisible was a spot that could not be washed away. Ultimately, it drove them to seek ever more lurid and specific confessions from their victims. The torture by which witches’ confessions to these ‘real events’ were extorted were acts of utmost desperation. ‘What is universally recognized or firmly believed’, as Stephens remarks, ‘does not need constant reaffirmation through violent coercion’ (Stephens 2002, pp. 6–7) Inquisitors like Spenger, Kramer, or Spina needed to touch and feel the wounds in Christ’s side – even if they first had to put them there themselves.

This anxiety manifested itself in several ways. To take one example, the question of theodicy haunted Catholicism (Stephens 2002, pp. 256–60). If witchcraft was nothing more than a hallucination, or illness, or madness, then there was no *reason* to believe in demons at all. Who then would be responsible for the evil that men saw everywhere around them? – God? To take another example, consider the doctrine of the sacraments that lay at the heart of the Reformation. The eucharist is not, in Catholicism, a symbol: at the moment of communion, it *is* the body and blood of Christ – yet this is so despite the fact that the wine and the wafers are not materially transformed in any demonstrable fashion whatsoever. For those with faith, this is no impediment. One accepts the truth of the sacrament in the absence of evidence: one might even say that that is the very definition of faith. But those who demanded hard cold facts found themselves in spiritual danger. One solution was to treat the eucharist purely symbolically, as did Protestantism. Another was to try and *find* proof of the physical reality of the imperceptible, and this was the direction to which the witch-hunts led (Stephens 2002, pp. 180–96). One might say that their obsession with magic, which precisely aims

to conjure up incontrovertible physical *evidence* in order to shore up belief – ‘before your very eyes!’ – was already a sign of bad faith.

The witch craze concerned the ‘real presence’ of God in the sacraments and in the world. Witchcraft provided empirical evidence of invisible presences, and at the same time offered a much-needed argument for the continuing weakness and impurity of the world. The spirit world exists, as the Devil’s marks proved; but evil still exists, as the meddling Devil mandates. The notion of evil *incarnate* (in other words, made flesh), thus rendered incontrovertible to the public imagination, served to generate a climate of fear that justified the paranoid maintenance of the established conceptual order. And it also justified an ideology built around the doctrine of incarnation – the paradoxical physical form of spirit – itself. ‘Possession’, writes Stephens, was a drama that ‘called presence into being’ and gave it material form (2002, p. 340).

#### *Drugs and the dramatization of philosophical belief*

A similar approach may help to expand the analysis of drug laws beyond the racial obsessions that surrounded its origins. Surprisingly, Walter Stephens, though he canvasses a range of contemporary phenomena from psychiatry to alien abduction (2002, pp. 365–71), does not do so. Yet the anxiety in question now is surely a very general, even an ontological one, as it was in the fifteenth century. We live in a time in which our cherished structures of belief are again under severe stress. It is not Reformation but Postmodernity that provides the backdrop to such a crisis. Deep philosophical challenges have emerged over the past century or so ‘with regard to the twin ideologies of political liberalism and the ‘objective’ scientific quest for truth’. The ‘snags and inconsistencies’ beneath the surface of liberal individualism have been relentlessly unpicked by ‘the entire ‘French’ or even ‘German’ orientation’ (Zizek 2003, p. 3). From Marxism to post-structuralism, in history, sociology, psychology and psychoanalysis, and most recently in genetics, the relationship of agency to structure has had to be radically rethought.<sup>3</sup>

Doesn’t deconstruction teach us to render problematic a naïve direct reliance on the predominant forms of the assertion of freedom, democracy, human rights, and so on, as well as the predominant form of the scientific quest for objective truth? And doesn’t the tradition of the Frankfurt School, in its critique of late capitalist civilization and modern science, accomplish a similar theme in a different way?

(Zizek 2003, p. 3)

Yet the idea that human beings are fundamentally responsible for their own autonomous identity, and capable of realizing their own destiny, continues to form the basis of our law, our economy and our ethics (Giddens 1990, 1991).

There, of course, may be good reasons why to some extent they should do so. But the paradox is striking: our structures are still understood through theories of individual autonomy, whilst individuals are increasingly understood through theories of structuralism. There is an intellectual tension here that goes to the heart of what counts as a valid or relevant explanation of behaviour. The very distinction between 'right' and 'left' in politics may be characterized as a disagreement about the relationship of agency to structure. That between prosecution and defence in law, or between punishment and rehabilitation in sentencing, is marked by the same kinds of disagreements, couched in terms of whether human beings are fundamentally actors that determine their environment, or are determined by it.

The crisis of identity no longer simply concerns the loss of a particular kind of identity, be it racial or cultural. It has been expanded to encompass the solidity and meaning of human identity as such (see Habermas 1987). Can we still understand ourselves as individual creatures of choice and action, responsible for our destinies, authors of our characters, with a core of selfhood that can be channelled into productive economic and social directions? Such questions go right to the distinction between persons and things – between possessors and possessed – that established, as we have seen, a model for agency founded on the subjectivity of the one and the objectivity of the other (Pottage & Mundy, 2003). Bioethical debates over cloning, genetic engineering, and the ownership of genetic information (e.g. Pottage 1998, Fukayama 2002), no less than debates in cyber-technology over artificial intelligence and transgenic manipulation (e.g. *AI & Society*; Lessig 1999), provide recent examples of the dimensions of the problems that this uncertainty has unleashed.

Fundamentally, this crisis still concerns the question of presence: the 'critique of presence' is indeed one shorthand expression that is often used to condense this philosophical tradition. In the Reformation, the presence of an omniscient God was in jeopardy; now, according to Foucault, it is the presence of an omniscient Man that is in danger of being 'erased, like a face drawn in sand at the edge of the sea' (Foucault 1973, p. 387). The critique of 'the metaphysics of presence' (Derrida 1978, p. 281) may be described as an argument against the possibility of finding any still point, any foundation, whether intellectual or moral, from which the truth about what we know or who we are may proceed in confidence (thus see Heidegger 1953/2000, Derrida 1982, Rorty 1991). It is about the possibility of drawing lines, making judgments, apportioning blame. The consequent and oft-touted fear of relativism therefore problematizes our claims to human autonomy and agency, making it increasingly difficult to rely on any established principles in order to reason towards the judgment of behaviour, the attribution of fault and the acceptance of responsibility (see also Habermas 1976). As Harpham writes recently, the end result 'would be the destruction of the very idea of a field, a

specialized professional discourse that arrives at a true account of a limited domain by progressive and rational means. It would mean the end of life as we know it' (Harpham 2003, pp. 467–68).

In the run-up to the forthcoming British general elections, to take one example, we find striking expressions of these anxieties on both sides. Prime Minister Tony Blair puts it this way:

A society of different lifestyles spawned a group of young people brought up without parental discipline, without proper role models and without any sense of responsibility to or for others . . . Today, people have had enough of this part of the 1960s consensus . . . They know there is such a thing as society. They want a society of respect. They want a society of responsibility . . . where those that play by the rules do well and those that do not get punished.

(*Weekly Telegraph*, 18–24 August, p. 12)

That is the socialist party speaking. The Opposition simply expresses the same anxiety more forthrightly.

Most damaging of all has been the dramatic decline in personal responsibility. Many people now believe that they are no longer wholly responsible for their actions. It is someone else's or something else's fault – the environment, society, the Government. The decline of responsibility and the proliferation of rights have left us in an ethical quagmire which is undermining our fight against crime. The clear distinction between right and wrong has been lost in sociological mumbo-jumbo and politically correct nonsense.

(Michael Howard, *Weekly Telegraph*, 18–24 August, p. 12)

Just as we saw in relation to witches, this crisis of belief – not in the efficacy and identity of God, but in the efficacy and identity of men – might be allayed by being dramatized. For if drugs show us what it is like to be possessed, and therefore to lose one's identity *and* one's capacity for individual agency, we can be confident by way of contrast, in our own autonomy. The standard portrayal of the drug addict, stultified and immured in incapacity, reassures us of their absolute *otherness*. The solidity, the certainty, of our identity is shored up by vivid contrast with theirs. The possessed addict depicts a world where night and day are clearly marked, where we are awake and they are asleep, relieving us of our fears of twilight and insomnia (Blanchot 1955/1989). The possessed witch performed much the same service in a different world.

Of course, both must be punished for this failure; both are to be held to a standard of agency and responsibility that they *ipso facto* cannot attain, and then destroyed for their failure. The drug user, like the witch, is held up as a – perhaps the – threat to the modern ideology of autonomy and freedom: held

up, set apart, and struck down. In this way, anxiety around these questions can be neatly quarantined from infecting the rest of us.

So too, just as witchcraft reconciled God's infinite capacity to the imperfections of the world by making visible and carnal the demons working to pervert his sacramental power; so too drugs reconcile *Man's* infinite capacity to the imperfections of the world, by making visible and carnal the objects working to pervert his autonomous rationality. The demonization of drugs gives us a ready-made explanation – at once powerful and mundane – for the failure of our law and morals to effectively solve the social problems that seem to be increasingly more endemic and resilient than we might once have hoped.

Witchcraft satisfied a deep yearning in its theorists. It established the reality, cause, and power of God's presence. It represented the last throw of the dice in face of the encroaching scepticism of early modern identity. Drug laws also satisfy a deep yearning: they establish the reality, cause and power of Man's presence. They represent the last throw of the dice in face of the encroaching relativism of late modern identity. We have come full circle, for 'the psychiatrist is attempting to recover what the inquisitor is attempting not to lose'. (Blanchot 1955/1989, p. 369) One might even suggest that witchcraft laws and drug laws are mirror images of each other; the former seeking to preserve some sense of supernatural agency or will in a world becoming gradually disenchanted by the force of human rationality, the latter seeking to preserve some sense of human agency or will in a world becoming gradually disenchanted *with* the force of human rationality.

### *Unravelling the mysteries of drug laws*

If we understand legal structures as staging, for our benefit, a passion play of identity, much that seems opaque about the current regime of prohibition, particularly its paranoid and counter-productive over-reaction, and its unremitting failure to achieve its avowed purposes, becomes apparent. It is not, of course, that the consumption of heroin is harmless, by any means, but at the same time it is surely almost beyond dispute that the current legal regime of prohibition makes matters worse from the point of view of absolutely every conceivable indicator of health and social efficacy.<sup>4</sup> The legal structure must therefore be understood in terms of its symbolic meaning, *regardless* of the dangers and harms that heroin itself causes. The drug laws we have been considering are no more designed to outlaw drugs than the Inquisition wanted to outlaw the Devil. On the contrary, they need them. Both drugs and witches serve necessary symbolic functions to those who are committed to their oppression.

The prohibition of drugs is not an attempt to *destroy* but rather to *dramatize* and cauterize our anxieties. Of course, this must be self-evident to anyone who has studied the problem of drug legislation and appreciates the utter

impossibility of the final elimination of a traffic that flourishes like a many-headed Hydra. Every drugs seizure, every boatload or shoot-out, is clearly of only the most trivial actual significance. But it is presented, by police, lawyers, government and the media, as an elaborate morality play staged for the public benefit. The farcical display of the captured drugs is in some ways the sole and certainly the most tangible achievement of law enforcement. The law provides a stage on which this drama can take place. This is not simply a sideshow made possible by law, or a consequence of the failure of the legal principles to achieve their promised goal. On the contrary, this drama is precisely what drug laws have always and only been about.

That is the legal analysis that connects the disparate stories of witches and narcotics. The function of illegality in this 'kabuki prohibition' is not to stamp the phenomenon out, but to make it *more* public, more dramatic, more theatrical. Those involved in this system perhaps do not think that this is what they are doing, or why, since the argument I have presented here is psychological and psychoanalytic rather than about conscious intention. Indeed, my argument has been that law itself has an unconscious (Goodrich 1997). The metaphor I have here explored cautions us against understanding law in purely functional, instrumental, or intentional terms, and instead permits us to evaluate its metaphorical or symbolic sub-text. Furthermore, these two levels of social meaning may be diametrically opposed to one another.

Drugs therefore serve an object lesson – a lesson in the perils of becoming an object. The mythology of drugs dramatizes what it supposedly looks like to lose one's identity, responsibility, and agency. The problem of addiction is articulated as this loss of choice and direction, a restructuring of oneself as passive and controlled by something that is external to the person (Peele 1985). They become a 'slave' in just that sense of being no longer the subject of their own destiny but an object without will (for the classic depiction, see Murphy 1922). The proof of this slavery – its undeniable physical evidence – is made present, once and for all, by their possession of the drugs that possess them. We are being asked to see the captured drugs, as we were once asked to hear the witches' stories, in all their fleshy, gruesome detail. We thus become witnesses ourselves to the ideology they instil through horror.

The point is not really how accurate this story of drug use is. It is hardly controversial to say that the drugs are by and large neither as dramatic as this, nor as magically controlling or irresistible (Peele 1988, Szasz 1992). It is hardly controversial to say that the obfuscation of the line between 'use' and 'addiction' has been central to way in which drugs have been treated by the law throughout the century (Peele 1989). Neither is it controversial to recognize that many people *do* experience serious problems from their use of drugs, and that these problems are not only health-related, but stem from their own inability to impose some sense of their own will over their behaviour. The

point is that the hysterical register of the discourse of drugs has the powerful effect of defending the notion of individual autonomy and agency and of identifying and cauterizing threats to it. More than this, the drugs themselves function as the substance through which the psychological and philosophical crisis of belief can be externalized, objectified and materialized. In the process, the crisis is both explicated and expiated.

From a legal point of view, the question must then resolve itself into an analysis of the consequences of this drama of identity and responsibility, in terms of the lives it ruins, as well as the distinctly questionable legitimacy of devoting so many resources, and sacrificing so much legal goodwill, to keeping open what amounts to a long-running theatre of the absurd.

### Case study and conclusion

Of course, it is hardly easy to find evidence of the social subconscious. It is, by definition, that which is not spoken. Nevertheless, the themes that I have been indicating do, it seems to me, increasingly mark the contemporary discourse of drug policy. Politicians in the English-speaking world have increasingly had recourse to the language of 'zero tolerance' in recent years, despite the manifest success of what is sometimes called 'harm minimization' in reducing deaths from drug overdose, levels of AIDS infection amongst the population of intravenous drug users, and so on (see Wodak 1996, 2001, Erickson *et al.* 1997, Hamilton 1998). In fact, one might reasonably surmise that the calls for a return to zero tolerance – to Nancy Reagan who just said no – have grown in intensity precisely *as a result of* the practical success of such measures.

Harm minimization is a broad term that encompasses a range of public health responses to the problems of drug use, aimed not at abstinence but at a practical and perhaps temporary response to users' immediate needs. It focuses on health issues rather than legal or moral judgments, an agnosticism that accounts for the intense hostility it generates. As Alex Wodak put it:

Experience over several decades has shown that attempts to reduce the adverse consequences of illicit drugs have generally been highly successful (and inexpensive), while attempts to reduce consumption have usually turned out to be ineffective and costly. Rather than setting our sights on the utopian target of becoming a drug-free nation, harm minimization allowed Australia in the 1980s to aim for and achieve HIV control . . . In contrast, Congress passed legislation in 1988 requiring the United States to become drug-free by 1995. Not only are illicit drugs in the US now cheaper and more concentrated than ever before, almost half the 40,000 new HIV infections in the country each year involve the sharing of injecting equipment. Harm minimization fits in well with the traditional

public health notion of never letting the best become the enemy of the good.

(*Sydney Morning Herald* 3 April 2000, p. 17)

Although both sides tend to obscure and deny it, these two approaches are profoundly different. Harm minimization measures seek to improve the health and longevity of drug users *even if* those measures lead to an overall increase in use. Zero tolerance measures seek to decrease drug use *even if* those measures worsen the health and longevity of users. The former asks of users: are they well? Are they stable? Do they resort to crime? Do they have a job? The latter asks of users: are they still using? For the former, there is nothing intrinsically wrong in making clean needles available for users – or clean heroin, for that matter – if the result significantly decreases mortality and improves social functioning. To the latter, such an approach is intrinsically and infrangibly misguided, because it is not the short-term health of users' bodies but the long-term health of their souls that is at stake. The former are relativists in every meaningful sense, including believing that illegal drugs can be more or less bad depending on the circumstances. The latter are absolutists in every meaningful sense, including believing that illegal drugs are absolutely bad under any circumstances.

The argument is about the importance or otherwise of maintaining such bright lines between acceptable and unacceptable behaviour. Harm minimization insists that it is the *lines* that are themselves causing the harm. Zero tolerance expresses not an approach to effective social policy but, on the contrary, a deontological principle that is irreducible to utilitarian considerations. So too one would not expect the witch-hunters of the sixteenth century to have countenanced any tolerance of witches. It was the health of their soul and not their body that concerned the inquisitors, and only a complete elimination of witchcraft could have counted as successful. It would not have made sense to argue that there was a continuum between witchcraft and other practices, because it was precisely the *distinction* that was most important and that dramatized the impossibility of any kind of relativism or agnosticism where the Devil was concerned. The same is true in respect of zero tolerance: its absolutism and its belief in the continuing existence of a distinction between normal and abnormal, between good and bad drugs, and so on, is precisely the point. In the middle ages, thousands of women were burned in order to save them from the demons that had possessed them. The lucky ones were only exorcised. In the modern world, thousands of men and women are imprisoned in order to save them from the demons and desires that inhabit them. The lucky ones are only detoxified.

If it is the *success* of harm minimization that has, in recent years, exacerbated social anxiety, it should not surprise us that the move towards zero-tolerance has been most strongly marked in Australia, which led the

world in harm minimization strategies in the early 1980s. A central element of the anxieties expressed throughout this revisionist project has been the way in which harm minimization or reformist approach to illegal drugs has been seen to undermine the idea of personal responsibility and identity. As we have seen, this anxiety forms an intense undercurrent of contemporary political discourse.

There is no more striking example of the power of this discursive force than the battle that briefly raged in Australia over a proposed heroin trial in 1997. The conservative government of the Australian Capital Territory, Australia's smallest and most liberal jurisdiction, had proposed a scientific trial that would have involved the legal distribution of managed quantities of heroin to some 40 long-term addicts, in order to determine what effect such a policy might have on the social and health outcomes of the participants. In short, the proposal was a version of policies that had already shown some success in Switzerland, among other places, leading to a dramatic decrease in deaths from overdose in Zurich, as well as considerable other benefits to some users: 'It gave me time to reflect and especially to get me off the street. To get back to work and get back to normal. To finally live and not just survive' (Beat Laupt in Australian Broadcasting Corporation 1992).

The trial had been rigorously designed and developed over a period of several years by a multi-disciplinary team based at the National Centre for Epidemiology and Public Health. The development process had been exceptionally carefully handled in order to ensure and respond to input from health, academic, government, community and police groups at every stage. It had garnered bi-partisan support in the local parliament. Research had been conducted which consistently showed majority support for the trial in the ACT. Finally, at a meeting of the Ministerial Council on Drugs Trafficking, consisting of health and law enforcement ministers from around Australia, the proposal received surprisingly warm approval, leading ACT Chief Minister Kate Carnell to describe the trial as 'the most dramatic breakthrough in drug treatment in 25 years' (*Sydney Morning Herald* 1 August 1997, p. 1).

Within three weeks, it had been savaged beyond hope of salvage. It is now generally agreed that a relentless campaign waged on talkback radio and throughout the pages of the *Daily Telegraph*, Australia's largest circulation morning paper, coupled with the Prime Minister's own implacable opposition, doomed the project. Carnell, who was described as the 'drug pedlar' for a 'profoundly evil' plan, expressed her disappointment: 'I think the *Telegraph's* decision to not only campaign against the trial in its news pages but also its conscious decision not to provide balanced coverage marks a watershed in Australian journalism'. Indeed the editor of the *Telegraph*, Col Allen, conceded as much. 'I think that in the last week particularly, as we fought to have this thing canned, that we were pretty single-minded about it' (*Sydney Morning Herald* 22 August 1997, p. 35).

The discourse against the proposed trial starkly exposes the kind of anxieties that drug reform stirs up. Foremost was the theme that a society in which identity and responsibility, agency and choice, are clearly marked could not tolerate *any* level of heroin use, regardless of the social and personal costs of such a policy. Drug users ‘must be told they have a choice and if they take the anti-social option society will punish them’, said one of the *Telegraph*’s many editorials (*Daily Telegraph* 5 August 1997, p. 10):

Anyway, the aim of governments must be to eradicate the deadly and pernicious growth of drug dependence, not merely to disguise its consequences . . . Drug users must be aware as soon as they show an interest in heroin that if they go further they will be put before a court.  
(*Daily Telegraph* 5 August 1997, p. 10)

It was precisely the importance of the idea of a freely chosen identity that led the Prime Minister’s own principal advisor, Major Brian Watters, to remark that ‘there are worse things than death when it comes to heroin addiction’ (*Daily Telegraph* 14 August, p. 17). The theme is again hammered home by Col Allen in a later interview:

I mean it’s outrageous. The point is that people have personal responsibility in our society and they must accept personal responsibility, and you know, this idea that heroin addicts are somehow similar to people who take insulin, I mean it’s just outrageous.  
(Australian Broadcasting Corporation 1999)

With some frequency, this theme of free choice and personal responsibility was tied to broader anxieties about the breakdown of standards, an argument in which the very illegality of drugs is a central reason to enforce them against a rising tide of law breaking:

The traditional judicial approach to habitual criminals has been to impose sentences upon them of increasing severity in the belief that such people . . . will be deterred . . . It now appears those foundations are shifting. In Cairns on Thursday, a group of our most senior political leaders . . . acted in consort to allow a group of habitual criminals to continue their conduct unpunished . . . What next, we may wonder.  
(William Bush, *Daily Telegraph* 5 August 1997, p. 12)

Similar notes were struck in many letters to the editor across the country. Most users, says one correspondent, ‘took up this illegal habit of their own volition’ (A. Ellery, *Daily Telegraph* 19 August 1997, p. 12). ‘Heroin is a social curse’, said another, ‘which we are being forced into accepting as normal by

irresponsible anarchists of the same ilk as the medieval Pope and his flat earth policy' (Barry Dinnar, *Sydney Morning Herald* 20 August 1997, p. 14).

Here we see in its clearest form the striking paradox of possession. Though drug dependence is feared precisely *because* of the loss of agency it connotes, the legal and social principle of personal autonomy and responsibility must be maintained and enforced at all costs. It is the anxiety that this idea of responsibility is being steadily undermined that explains both on the one hand, the focus on drug use as the cause of the contagion, and on the other, an insistence that it must be quarantined and stamped out in the name of that same autonomy. We see then an insistence on the enduring value of liberal individualism as a base-line of social policy, coupled with the identification of drugs – and indeed of drug *reform* – as the corporeal manifestation of the virus that threatens it.

The other recurring strain of the discourse was the notion of surrender. Any movement other than absolute prohibition, and any suggestion of containment, was said to imply that Australia would have 'run the white flag up the pole, we've surrendered. We've surrendered to the drug dealers' (Col Allen, *Australian Broadcasting Corporation* 1999; see also *Sydney Morning Herald* 15 August 1997, p. 9). Prime Minister Howard himself elaborated on the theme during his 2001 general election policy speech, in which he referred contemptuously to those 'who want to run up the white flag and throw up [*sic*] in surrender' (Howard 2001). The idea of 'losing the battle' (*Daily Telegraph* 16 May 1997, p. 10) formed the sub-text of the explicit grounds on which the federal Cabinet finally succumbed to the media onslaught in August 1997 and blocked the heroin trial: such a social experiment would, it was said, 'send an adverse signal', 'the wrong message' (*Daily Telegraph* 20 August 1997, p. 1; see also *Daily Telegraph* 14 August 1997, p. 17, *Sydney Morning Herald* 19 August 1997, p. 1, *Sydney Morning Herald* 3 February 2004, p. 1).

On one level, of course, Howard means to emphasize by this that he remained a 'profound sceptic about the social advantage of legalizing things that constitute a problem'. (*Daily Telegraph* 14 August 1997, p. 17) But what is at stake is surely more than a particular social policy option, since it is clear that within the specific confines of the proposal or, more recently, debates over 'shooting galleries', 'legalizing' or 'surrendering to the drug dealers' was not the issue. Indeed, it was surely drug dealers who had the most to lose from a successful trial of government-controlled heroin. Furthermore, the excessive and military nature of the metaphors – and the media hysteria around the ACT heroin trial was truly extraordinary in its ferocity – suggest a powerful anxiety in which the weakness, and the ego at risk, is ours and the Prime Minister's. The language of war and surrender, of 'retreat' and 'weakness' and 'going soft' (John Howard in *Sydney Morning Herald*, 3 February 2004: 1) implies that the loss and retreat will be ours, too, and not, for example, those who in fact suffer from the 'scourge' of drug use. Recall Walter Stephens:

what is believed with confidence does not need constant reaffirmation through coercion (2002, pp. 6–7).

Instead, *we* would be ‘giving up’ our faith in the perfectibility of society and the idea that law could solve our social problems in some absolute fashion. The underlying assumption is that if only the laws are strong enough and severe enough and well enough enforced, the problem must disappear. Law’s hubris in relation to drugs is of long duration:

We are assuming that all we have to do is to pass an Act of Parliament when, hey presto, all sin and misery will disappear from the world . . . [We are] ready to pass an Act for the prohibition of the opium traffic in the full belief that the evil will at once disappear. (Alfred Conroy MHR, Commonwealth Parliamentary Debates 1905, p. 1779)

In short, a policy that recognizes or accommodates human imperfection must raise the spectre of anthropodicy just as surely as any weakness in the ‘war on witchcraft’ would have raised the spectre of theodicy. For if the so-called evil of drug use is to be understood as lying on a continuum with our own behaviour, and as a consequence of our currently existing social policies, then we would be giving up our ability to blame those who are ‘drug peddlers’ and ‘profoundly evil’ for the undeniable failure of those laws and hopes. It was not what we ought to do about the ‘drug problem’ that was under threat in August 1997, but rather who was to blame, a question freighted with implications for every area of social policy. If heroin is to blame, then the established order is not. Witchcraft theory insisted on the reality of the Devil in order to exculpate God from the daily tragedies of the world, and could not therefore compromise with it. So too zero tolerance theory insists on the reality of Evil in order to exculpate both Man and Law from the daily tragedies of the world, and cannot therefore compromise with it. In that case, harm minimization would be a very significant white flag indeed: it would signify the surrender of law and the sacrifice of the ram of pride (Owens 1917).

As a direct response to what might be characterized as the ‘near miss’ suffered by Prime Minister John Howard over the ACT heroin trial, his conservative government has since then replaced or forced mass resignations in his peak advisory body on drugs, and appointed as his senior advisor on illegal drugs a Major in the Salvation Army with notoriously dogmatic prohibitionist views (*Daily Telegraph* 14 August 1997, p. 17). Nothing could have signalled more clearly the triumph of a morality antithetical to social policy.

*John Howard:* And I feel in very safe hands, with the police on the one side and the Salvation Army on the other.

*Major Brian Watters:* It’s the law and the prophets.

*John Howard*: It's the law and the prophets. That's right.  
(Australian Broadcasting Corporation 2002)

So too the information and funding overhaul launched by the government shortly after the collapse of the heroin trial in late 1997 was pointedly called 'Tough On Drugs' – 'a national *illicit* drug strategy' designed to overturn the consensus of the previous 15 years, which had focused not only on harm minimization, but whose centrepiece was a 'national drug strategy' specifically dedicated to treating licit and illicit drug problems without distinction (*Sydney Morning Herald* 3 November 1997, p. 6, 4 November 1997, p. 15, *Daily Telegraph* 3 November 1997, p. 1). The new approach highlighted drugs as an evil not an illness, and insisted above all on the moral and legal gulf between licit and illicit drugs. 'Tough On Drugs', announced the Prime Minister, 'provides moral leadership against drugs for our children's sakes' (*Daily Telegraph* 3 November 1997, p. 1). As one dissenting member of the Australian National Council on Drugs complained, 'And it was changed to, "Listen to your parents. Drugs are dangerous". All the old stuff we've had for years and years and years that isn't working' (Jude Byrne, Australian Broadcasting Corporation 2002).

The government's policy, therefore, was about the clear separation of good from evil, right from wrong, and normal from abnormal behaviour. It was about maintaining the nature of personal identity and the power and promise of law. Indeed, the Prime Minister, in his policy speech before the 2001 election, refers to the 'scourge of drugs within the Australian community', while insisting that any measures that tolerate any level of illegal drug use are the product of 'negative doomsayers who want to run up the white flag' (Howard 2001). Atheism in respect of what Wodak calls 'utopia' is thus Howard's principal enemy; the fight is more important than any victory. We have to *believe*, and we must enforce those beliefs, by violent coercion if necessary.

In the face of a rising tide of criticism of his absolutist policies, including calls for a radical reversal of drug policies from sitting and former State Premiers, Attorneys General, Directors of Public Prosecution and Commissioners of Police, Howard's position has become even more Inquisitorial:

Any retreat from the essentially zero tolerance approach the Government has will be a signal to those who would traffic in drugs that this country has gone soft. We have a zero tolerance approach and it won't change, while the [Opposition] has a permissive approach... They would encourage and turn a blind eye to heroin injecting rooms. We won't.  
(*Sydney Morning Herald* 3 February 2004, p. 1)

Zero tolerance betrays a faith and not a policy, a faith at the heart of which lies the importance of social rules, obedience, and respect for the distinctions

between right and wrong, and which sees the legal system as an all-powerful arbiter and enforcer of social norms. Behind that faith lies fear: fear of the consequences of a loss of certainty, fear of a weakened legal capacity, and fear of a 'permissive' world in which such clear lines can no longer be drawn. Such a world is not being brought into existence by drug users themselves. They are merely the puppets forced to play a symbolic role in this kabuki theatre. The real anxiety derives from the threat posed by 'negative doomsayers' whose tolerance for ambiguity and uncertainty is more than zero. It is, in short, a fear of tolerance and philosophical rupture with which Sprenger and Krämer would surely have empathized. Like these men, Howard does not fear witches: he *hopes* for them. It is only their existence, blacker than black, beyond the pale, punished and killed in the name of a normality they cannot hope to attain, that can still the white flags and silence the doomsayers once and for all. In pursuing and insisting upon this hope, against all the evidence and with ever more shrill and inflexible determination, the Prime Minister and those like him are behaving like men possessed.

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## Notes

- 1 For the purposes of this essay, I have taken examples from the law of New South Wales as my model; a corresponding form of the general principles I elaborate here can be found in virtually any jurisdiction in the developed world.
- 2 Much of my discussion in the following sections draws heavily on my previous research into the history of opium and the Chinese in Australia, particularly in Manderson (1993, pp. 17–58).
- 3 One could hardly begin to reference an assertion which attempts to encapsulate whole traditions of philosophical thought in a sentence. I trust the argument is at least credible without reference to the complete works of

Marx, Freud, Lacan, Elias, Derrida, Foucault and Giddens. For recent discussions that touch on the specific themes that I wish to draw out of these long-standing debates, see Pinker (2002), Jurist (2002), Foucault (1973) and Derrida (1987, 1994).

- 4 The literature is vast. For more or less recent synopses of the debates and arguments, see Stokes *et al.* (2000), Wodak and Moore (2001), Wodak and Owens (1996) and Heather *et al.* (1993).

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