

Opium

I. INTRODUCTION

The opium poppy – *papaver somniferum* – with its gossamer petals of purples, reds and whites, its grey-green leaves, and its ‘pepper pot’ seed pod hides a potent chemical. During a short period of the plant’s life cycle, one can score the seed pod, from which a milky sap then oozes. This sap is raw opium, the source of commercial opium and opiates derived from them, including morphine and codeine.¹ Opium is a powerful painkiller, and has been used medicinally, religiously and socially since Neolithic times.² Its medical applications have been important, even revolutionary.³ Opiates have also been used recreationally. As well as the eating of opium granules and the smoking of opium, opiates have been consumed in popular drinks and tonics, and taken through intravenous injection.⁴ Like any powerful drug, opium’s beneficial properties come with side effects: Thomas de Quincey’s *Confessions of an English Opium Eater*, describes in vivid detail the highs and lows induced by opium.⁵ Like many drugs – including caffeine, alcohol, even sugar - opiates are addictive, and withdrawal symptoms can be physically and mentally extreme.

Opium is a chemical compound occurring naturally in the *papaver somniferum*, and a powerful drug. It is a physical substance grown, harvested, refined, traded (on both licit and illicit markets) and consumed. And it is an object of international law.

The current international legal regime which controls opium responds to all facets of the drug’s production, from cultivation to harvest, refinement to trade, with strict prohibition. The manufacture, use and sale of the drugs produced from the opium poppy are currently

¹ Bill Laws, *Fifty Plants that changed the Course of History* (David and Charles 2010) 148; Howard Marks, ‘Introduction’ in Thomas De Quincey *Confessions of an English Opium Eater* (Vintage 2013) viii.

² Marks (n 1) vii.

³ Ethan Nadelmann, ‘Global Prohibition Regimes: The Evolution of Norms in International Society’ (1990) 44(4) *International Organization* 479, 505.

⁴ *Ibid.*, 504-5.

⁵ De Quincey, (n 1).

stringently regulated by international law through a variety of International Conventions, the most relevant being the 1961 Single Convention on Narcotic Drugs, and its 1971 Amending Protocol (the Single Convention).⁶ Aside from those licit producers of opium who supply the global pharmaceutical market, the vast majority of those involved in the cultivation, production or trade of opium and opiates – from the Afghan poppy farmer to the international money launderer – are walking outside the law⁷

This paper takes three historical moments – the opium wars, the ‘war on drugs’ and the ‘war on terror’, and uses these episodes to demonstrate the various ways in which interests over opium are caught up in, interrelated with, and co-productive of, international legal regimes. In particular, I focus on the ways in which opium illuminates paradoxes around and within the concept of sovereignty, and specifically how opium as an object of international law has enabled interventions in sovereign states. In the following parts I consider physical interventions in sovereign territory, economic interventions, and moral interventions but I note at the outset that each type of intervention may rely on, be buttressed by, or ultimately produce, the others.

II. OPIUM AND INTERVENTION

The intervention of one state into the internal affairs and territory of another is often held out as anathema to international law. In contemporary international law, ‘[t]he territory of a state is inviolable and may not be the object of military occupation nor of other measures of force imposed by another state directly or indirectly or for any motive whatever even temporarily.’⁸ The uninvited intrusion of one state into another’s territory presents an affront to the most fundamental tenet of the international legal system, based as it is around the cardinal organisational principle of sovereign statehood. More broadly, international law provides that

⁶ Single Convention on Narcotic Drugs, 1961, done at New York 30 March 1961, as amended by the 1972 Protocol Amending the 1961 Convention, done at Geneva, 25 March 1972 entered into force 8 August 1975, 976 UNTS, 105 .

⁷ The licit production and trade of opium for the pharmaceutical market is preserved in the Single Convention (ibid), and monitored by the International Narcotics Control Board. See further www.incb.org

⁸ Montevideo Convention on the Rights and Duties of States, done at Montevideo, 26 December 1933, entered into Force, 26 December 1934, 19 LNTS (1933), Article 1.

‘no state has the right to intervene in the internal or external affairs of another’⁹ These central commitments are reflected, and protected, in Articles 2(4) and 2(7) of the UN Charter, and set out in the Montevideo Convention on the Rights and Duties of States.

In fact, however, international law condones certain types of interventions, and creates opportunities for others. Starting with opium as an object allows us to trace the way powerful states (particularly Britain and the US) have pursued and sought to control opium through international law, and how these states have simultaneously sought to create international law(s) that provide opportunities for intervention.

Opium, Sovereignty and Territorial Interventions

If the starting point for international law is the inviolability of the state’s territory and the principle of non-interference in domestic affairs, a study of opium of as an object of international law must consider how struggles to control opium’s trade and production have led to, justified or masked very real ruptures of the principles of sovereignty, as it has in all three of my examples: the Opium Wars, the ‘War on Drugs’, and the ‘War on Terror’.

In our times, when Britain’s foreign wars are commemorated by the symbolic poppy, the Opium wars, in which poppies played such a central role, are seldom the subject of public remembrance, let alone commemoration.¹⁰ The purpose of the Opium Wars was to protect China as a lucrative market for western opium exports from India. The Chinese market for opium gave Britain the financial power to buy Chinese tea, porcelain, and silk, for which the British had an insatiable appetite.¹¹ The opium market in China was explicitly created, supported, and finally, protected and perpetuated, through war.

⁹ Ibid, Article 8. See also Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations (GA Res 2625), adopted by UN General Assembly Resolution 2625 (XXV) of 24 October 1970.

¹⁰ The disjuncture between the poppy as symbol of commemoration and poppy as the symbol of foreign subjugation and humiliation was made tellingly evident when a British delegation, including Prime Minister David Cameron, visited China in November 2010. The British delegation were asked to remove the red remembrance day poppies worn on their lapels, a deeply offensive reminder of British imperialism over China. The delegation refused. See G B Lee ‘Nobel Peace Prize Winner Liu Xiaobo and David Cameron’s Poppy’ (2011) 14(4) *Postcolonial Studies* 415.

¹¹ Alain Peyrefitte, *The Immobile Empire—The first great collision of East and West—the astonishing history of Britain's grand, ill-fated expedition to open China to Western Trade, 1792-94* (Alfred A. Knopf, 1992) 520.

After China was defeated in the First Opium War in 1842, it was forced by coercive 'unequal' treaties (most notably the treaty of Nanking¹²) to accept British merchant ships in its harbours, and traders in its ports. In addition to opening its territory to foreign merchants and government officials, it was also forced to surrender land: the Island of Hong Kong was ceded to Britain in perpetuity.¹³

These incursions into China's sovereign territory were justified within the framework of international legal argument, rather than treated as a breach. The justification for the imposition of the unequal terms of the treaties was that China could not be seen as fully civilised, a test met only by a 'government capable of controlling white men [and] under which white civilisation can exist'¹⁴ and was thus not fully sovereign. As such, it was not owed the territorial integrity which attached to fully sovereign states. Crucially, international law was used as a tool to force intervention. If opium was the end, international law was the means to control and possess it.

China was not a lone victim of such unequal treatment. Before the UN Charter, sovereignty had not attained its entrenched status, and states appeared and disappeared regularly as the result of war and diplomacy. Force and power played more obvious roles in international relations. The Opium Wars, however, are particularly interesting because they illustrate how international law structures opportunities for intervention through its own doctrines, obscuring power's play behind the use of clear and objective rules.

If sovereignty is now an entrenched fact, the 'War on Drugs' and the 'War on Terror' raise even more complex issues in international law. Both are post-UN Charter phenomena, yet both have resulted in incursions into state territory justified by the interests and policy objectives of some powerful states (notably the US).

The 'War on Drugs' had a clear international dimension from the very beginning: Inaugurated by US President Nixon in the early 1970s, Nixon noted at the outset that the

¹² Treaty of Nanking (Treaty of Peace, Friendship and Commerce between Her Majesty the Queen of Great Britain and Ireland and the Emperor of China), done at Nanking 29 August 1842 entered into force 26 June 1843 93 Consolidated Treaty Series 465.

¹³ *Ibid*, Article 3.

¹⁴ Lassa Oppenheim (ed), *The Collected Papers of John Westlake on International Law* (CUP 2014) 145, 143-4. See also Ellery C Stowell, *International law: a restatement of principles in conformity with actual practice* (New York, Henry Holt and Company, 1931) 367-8.

US's efforts would have international implications, and would require action on the international plane.¹⁵ The 'war on drugs' became a policy commitment to the 'total repression by sheer force' of the illicit market.¹⁶ Brought into being against a backdrop of alarmist domestic reports of heroin addiction amongst Vietnam veterans,¹⁷ the war is premised on a 'unidirectional geo-coding' in which the social disorder of drug consumption is produced elsewhere, with the domestic market the passive victim.¹⁸

Interestingly, by the time the 'war on drugs' had become a concerted policy programme and a phrase in common parlance, the enemy was almost universally referred to as cocaine, and the foreign source as South America.¹⁹ Opium was, to a large extent, off the radar of the 'War on Drugs.' Yet this very silence speaks to the relationship between opium and international law. The fact that opium did not figure strongly in this popular picture of the war on drugs has, partly, to do with fluctuating markets for coca-based products *vis a vis* opiates,²⁰ but much to do with the US's strategic interests in opium producing countries, notably, in Afghanistan, which remains the world's largest producer of illicit opium.²¹

The US 'certifies' drug producing states, in line with the requirements of the Single Convention.²² Certification is given to states who can show falling production of illicit drug crops.²³ The certification system gives the appearance of a technical, dispassionate standard applied with scientific rigour. Yet certification is also based on a state's willingness to cooperate with the US in drug eradication *and* on the US's own foreign policy interests.²⁴ States that cooperate with the US or that are released from the requirement on the US's 'national interest waiver' are exempted from the coercive regime of international drug prohibition.²⁵ The low profile of opium producing countries such as Afghanistan during the

¹⁵ Richard Nixon, 'Special Message to the Congress on Drug Abuse Prevention and Control, June 17 1971.

¹⁶ Tony Payan, 'Introduction' in Payan et al *A War that Can't Be Won: Binational Perspectives on the War on Drugs* (Arizona 2013).

¹⁷ See Congressmen Murphy and Steele's Report to Congress, *The World Drug Heroin Problem* (GPO, 1971).

¹⁸ Dominic Corva, 'Neoliberal Globalization and the War on Drugs: Transnationalizing Illiberal Governance in the Americas' (2008) 27 *Political Geography* 176, 182 – 83.

¹⁹ Curtis Marez, *Drug Wars: The Political Economy of Narcotics* (Minnesota 2004) 3. See also Mathea Falco, 'Foreign Drugs, Foreign Wars' (1992) 121(3) *Daedalus* 3.

²⁰ Julia Buxton, *The Political Economy of Narcotics: Production, Consumption and Global Markets* (Fernwood 2006), ch 6.

²¹ UNODC, *World Drug Report 2016* (UNODC, 2016) 27.

²² Single Convention, (n 6), Article 21 (especially Article 21(4)) and Article 21 *bis*.

²³ *Ibid*, Articles 20 – 25.

²⁴ Pierre-Arnaud Chouvy, *Opium: Uncovering the Politics of the Poppy* (Harvard 2010) 105-6. See also Corva (n 18) 186 – 87.

²⁵ Corva (n 18) 186 – 188.

phases of highest rhetoric of the 'War on Drugs', when Colombia, for example, was seen as an outcast and regularly the arena of military intervention,²⁶ is thus a reflection of the US's international politics, not its stance on opium production alone.

This strategic approach to the producers of illicit opium has continued through the 'War on Terror,' launched in response to the September 11 terrorist attacks against the US in 2001, and having as its initial focus the Afghan State's Taliban government, and its perceived support of the Al-Qaeda organisation behind the attacks. Afghanistan has been certified by the US since the fall of the Taliban despite increased poppy cultivation within the state.²⁷ This again illustrates the role of strategic interests and foreign policy, which has carried on through the 'War on Terror', despite the rhetorical links made between illicit drug production, corruption, and instability in Afghanistan.²⁸ The intervention or non-intervention in a drug producing state is, thus, not a decision based on a scientific formula dictated by international legal prohibition. Rather, power interests that are decidedly extra-legal are also at play.

Rights to Trade: Creating Licit and Illicit Markets in Opium

Military intervention in sovereign territory may be the most striking breach of the principle of sovereignty, yet the physical entry of forces into a state is by no means the only intrusion facilitated by international law that opium illuminates.

Regimes of trade, carried on the back of international law, have also constituted interventions in states where opium is produced or where it finds a market. These interventions may be subtle, as is the case where increased prohibition of opium's production and trade creates new or changes existing markets, resulting in shifts in livelihoods, criminal markets, and patterns of official corruption.²⁹ Or they may be striking. The British-Chinese Opium Wars are an example of trade-driven intervention in the extreme.

²⁶ Chouvy (n 24) 113.

²⁷ Ibid 106.

²⁸ Ibid.

²⁹ See Jonathan Goodhand, 'Corrupting or Consolidating the Peace? The Drugs Economy and Post-conflict Peacebuilding in Afghanistan' (2008) 15(3) *International Peacekeeping* 405.

The international trade regime is founded on liberalisation as ‘normalcy.’ The desirability of free trade rests at the heart of the system.³⁰ Certainly, there are exceptions to freedom of trade, and some of these are significant: as Chantal Thomas puts it, trade liberalisation as normalcy is ‘emphatically conceptual, rather than empirical.’³¹ Nevertheless, the conceptual or ideological commitment to free trade is clear. The international regime governing the trade of opium conflicts with efforts to decrease trade regulation. Over the past 100 years, while regulation has been stripped away elsewhere, it has been laid in an increasingly tight net over the opium trade, both justifying further physical interventions in territory, and also resulting in more subtle interventions: those wrought by changed market conditions themselves.

Prior to the twentieth century, the opium trade was backed by the powerful British Empire, for which the trade in opium from its Indian colony to China was a highly significant source of revenue. It was so significant, in fact, that as we saw above, Britain was willing to protect this trade against the wishes of the Chinese government, with military force. It would not be fully accurate to describe this trade as *free*, of course: China was not a willing participant, and the British trade travelled through monopolies.³² It is the case, however, that the trade was not the subject of criminalisation or prohibition through international law.

It was not until the 1960s that an international legal framework coalesced, slowly gelling from a miscellany of bilateral treaties, into the 1961 Single Convention.³³ The contemporary regime is based around strong prohibitions. Opiates, along with other narcotic drugs, appear from this regime as strictly illegal. Yet legally sanctioned trade interests have played a significant role in the way international law regulates opium.

First, it is important to note that only *illicit* markets are prohibited: the opium poppy remains the source of many important medical drugs, and the *licit* market in these drugs is preserved.³⁴ Afghanistan and Burma are pariah states not because they produce the opium poppy, but because they do so for the illicit market. No such stigma attaches to Australia,

³⁰ Chantal Thomas ‘Disciplining Globalization: International Law, Illegal Trade, and the Case of Narcotics’ (2003) 24 *Michigan Journal of International Law* 549, 558-59 and 563-4.

³¹ *Ibid* 563.

³² See further Mark S Gaylord ‘Hong Kong’ in Jurg Gerber and Eric L Jensen (eds), *Drug War American Style: The internationalization of Failed Policy and its Alternatives* (Routledge, 2001) 61-62.

³³ Single Convention (n 6).

³⁴ *Ibid*, Article 19.

France, or Hungary, for example, all of which are among the major licit producers for the world pharmaceutical market.³⁵

The system of state-controlled and licenced production provided for by the Single Convention thus echoes the monopoly on trade exercised by Britain in the 19th century, where select states controlled the trade in opium and opiates, and others bore the brunt of their trade policies. More recently states unable or unwilling to control the illicit market have also become pariahs, subject to sanction and censure. We see this clearly in both the ‘War on Drugs’, and the ‘War on Terror’.

Although the ‘War on Terror’ had no necessary connection to the production of opium, and it was not initially a focus of the intervention in Afghanistan,³⁶ cultivation of the poppy was seen as increasingly linked to funding for terrorism, political corruption, instability,³⁷ and thus to the state’s overall failed or outlaw status.³⁸ Ironically, perhaps, once opium became an illicit substance in Afghanistan, where it had previously been treated as a licit crop,³⁹ the nature of the market changed substantially with increases in prices reflecting the ‘risk premium’ borne by those involved in it.⁴⁰ The imposition of the international legal framework changed, and even created, a new type of market for opium.

The ‘War on Drugs’, too, has created new markets. The US, its standard-bearer, spends in excess of US \$35 billion each year in waging it.⁴¹ Moreover, powerful actors such as transnational corporations benefit from the drug wars, and lobby hard for its continued prosecution. The prison industry, the aerospace industry, chemical companies,⁴² even government departments (most notably the US’ Drug Enforcement Administration (DEA)) are heavily invested in the ‘War on Drugs.’⁴³ And then there is the contribution of drug

³⁵ Martin Jelsma, ‘The Development of International Drug Control: Lessons Learned and Strategic Challenges’ (2010) 10 *Transnational Institute Series on Legislative Reform of Drug Policies* No 10, 4.

³⁶ Goodhand (n 29) 405 and 409.

³⁷ World Bank, ‘Afghanistan – State Building, Sustaining Growth and Reducing Poverty’, World Bank Country Study, Washington, DC, 2005.

³⁸ Goodhand (n 29) 413.

³⁹ *Ibid* 409.

⁴⁰ *Ibid*.

⁴¹ Moisés Naím, ‘The Five Wars of Globalization’ (2003) 134 *Foreign Policy* 28.

⁴² Marez (n 19) 5.

⁴³ Chouvy (n 24).

money, which accounts for US \$400 billion per year (or 2 percent of the global economy), to international investment and capital flows through money laundering.⁴⁴

The anomalous position of opium production as an ever-more regulated and criminalised market in an overall system of trade liberalisation also reflects an enduring spatial discourse on drugs as threat to the global north emanating from the south.⁴⁵ The fact that a small handful of states constitute the potential producers, while other states can only be markets for the product means that those states who do not benefit from the production of opiates, and suffer only the social consequences of their misuse, have little incentive to encourage a lucrative trade for others. As a counterpoint, for instance, as Nadelmann writes, 'alcohol was legitimized' in the global drug prohibition regime 'in good part by the fact that it could be produced and consumed in the great majority of societies.'⁴⁶ There was little at stake in the way of protecting domestic economic interests, unlike in the cases of coca and opium. It is also noteworthy that the 1971 Convention on Psychotropic Substances, which regulates *synthetic* drugs, is significantly weaker⁴⁷ due to pressures from states with strong pharmaceutical industries producing and trading in those substances.⁴⁸ Meanwhile, and not unrelatedly, the UN Office on Drugs and Crime (UNODC) has expressed concerns that the global south has trouble accessing licit opiates for use in medical treatment,⁴⁹ despite the saturation of the licit market.⁵⁰ One factor, thus, contributing to opium's prohibited status is the trade interests of powerful states in regulating a product which they cannot produce. The irony lies in the fact that such prohibition may create in the first place the very lucrative market which would not exist absent prohibition.

Yet another anomaly is illustrated if we focus on the subsistence farmers who grow the poppy in those 'pariah' states in which opium is produced. For many of the often impoverished farmers who grow it, the opium poppy is an important cash crop, providing a source of income and livelihood. But growing the opium poppy is also an entry point as players,

⁴⁴ Marez (n 19) 5.

⁴⁵ Corva (n 18) 183.

⁴⁶ Nadelmann (n 3) 511.

⁴⁷ 1971 Convention on Psychotropic Substances (Convention on Psychotropic Substances, done at Vienna, 21 February, 1971, entered into force 16 August 1976, 1019 UNTS, 175) Article 2.

⁴⁸ Jelsma (n 33) 3.

⁴⁹ World Drug Report 2016 (n 21) xvi, 74-75.

⁵⁰ INCB, *Report 2015: Estimated World Requirements for 2016 – Statistics for 2014* (UN, 2016) 102 – 103.

however small or unwilling,⁵¹ in the global economy. The prohibition of these farmers' capitalist activities illustrates that participation in capitalism is not a matter of free enterprise, but is contingent on the parameters set by powerful players. That these contingencies involve moral judgments is the subject of the following section.

Morality: the Indulgences of International Law

The increasing regulation of opium through international law over the last century powerfully illuminates the role of morality in international law.⁵² First, it shows the way moral norms influence the creation of international law, second, the way that international law can be used to impose a certain moral version of behaviour on states and other actors, and third the way that perceived moral failings can be used to punish states that fail to make the moral grade.

In the 1800s, opium was readily, legally, and cheaply available across Europe and North America,⁵³ and its recreational and medicinal use was commonplace and accepted. By the 1900s, it was regarded as dangerous and an opium habit was seen as 'a variety of dissipation, a vice, a sin, a folly or other evidence of moral obliquity'.⁵⁴ The campaign to prohibit the production, use and trade in opium at the international level was undeniably a moral one, though trade interests were never absent.⁵⁵ The interlinkages between trade and moral norms point to important continuities between the opium wars and the present, and are an indication that morality and economy are not distinct spheres operating in isolation from each other.⁵⁶ Among the important 'moral entrepreneurs' in the drug prohibition regime were religious

⁵¹ As Newman notes of 19th C China, poppy cultivation can be read 'as an index of rural immiserating and impoverishment as peasants were forced to take greater risks in the face of market pressures.' R.K. Newman 'Opium Smoking in Late Imperial China: A Reconsideration' (1995) 29 *Modern Asian Studies* 765, 792.

⁵² On morality and intervention in international law, see Michale Walzer *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (4th ed, Basic Books 2006) and Anne Orford's important critique of the same, 'Moral Internationalism and the Responsibility to Protect' (2013) 24(1) *EJIL* 83.

⁵³ De Quincey notes that in the Manchester of the time, opium eating was a common amongst the factory workers: 'The Immediate occasion of this practice was the lowness of wages, which at that time would not allow them to indulge in ale or spirits.' (n 1) 5.

⁵⁴ Charles Carter, 'What is the Morphine Disease?' in (1908) *Journal of Inebriety*, quoted in David Musto, *Drugs in America: A Documentary History* (NYU, 2002) 240.

⁵⁵ The American government noted that moral condemnation of opium and efforts to help China stamp it out would 'oil the troubled water of our aggressive commercial policy there. US State Department Opium Commissioner, Hamilton Wright, quoted in David Musto, 'Opium, Cocaine and Marijuana in American History' (1991) *Scientific American* July 1991 20 – 27 (just after Brent image).

⁵⁶ See for eg Anne Orford, 'Locating the International: Military and Monetary Interventions after the Cold War' (1997) 38 *Harvard International Law Journal* 443, 459.

movements such as the Quakers, and missionaries returned to the west from the Far East,⁵⁷ who 'vigorously promoted' the addictive, ruinous, effects of opium in their accounts.⁵⁸ Chinese authorities, meanwhile, denounced opium taking as a form of Western domination.⁵⁹ These actors – including key individuals⁶⁰ – were instrumental in shifting social and governmental perspectives from opium as a commonplace medical and social drug, to a dangerous, immoral depravity.

At the domestic level, the US, over all other states, was the key driver behind the regime.⁶¹ And behind the US' position that drug control regimes were necessary was a particular moral stance on *vice*. Indulgence of any form (including not only the consumption of narcotics, but also alcohol and tobacco) was viewed as abhorrent and sinful.⁶²

Rather than an innocent preoccupation with clean living, fears of immigrants and the poor, and concerns with the labour productivity of the worker fuelled the prohibitionist climate.⁶³ Opium was particularly associated with Chinese labourers, who were themselves feared as dangerous and subversive.⁶⁴ Even now the 'War on Drugs' in both rhetoric and in concrete effect, structures social relations, impacts on the citizenship of individuals and communities,⁶⁵ and produces deviant, criminal and excluded subjects.⁶⁶ These subjects range in scale from individuals, to 'races' to the 'criminal' state itself.⁶⁷

Yet when it comes to the moral condemnation of international society, international drug crime has been found wanting: it is simply not heinous *enough* to warrant inclusion in the list of those 'most serious crimes of concern to the international community as a whole.'⁶⁸ Despite the fact that the prosecution of drug trafficking was the initial impetus for a permanent international criminal court, the crime was ultimately removed from the

⁵⁷ Nadelmann (n 3) 504.

⁵⁸ Newman (n 51) 767.

⁵⁹ Musto, 'Opium' (n 55) before emergency kit.

⁶⁰ Jay Sinha, *The History and Development of the Leading International Drug Control Conventions, Prepared for the Senate Special Committee on Illegal Drugs* (Library of Parliament, Parliament of Canada, 2001) 4.

⁶¹ Nadelmann (n 3) 511, Sinha (n 60).

⁶² Nadelmann (n 3) 506; Musto *Drugs in America* (n 54).

⁶³ Nadelmann, (n 3) 506.

⁶⁴ Musto, 'Opium' (n 55) (just before image of emergency kit).

⁶⁵ Marez (n 19) 4.

⁶⁶ Corva (n 18) 180.

⁶⁷ *Ibid* 182.

⁶⁸ Statute of the International Criminal Court A/CONF.183/9, as corrected by the procès-verbaux of 10 November 1998 and 12 July 1999, entered into force 1 July 2002, Preamble.

jurisdiction of the International Criminal Court (ICC).⁶⁹ As Schwöbel-Patel argues, this outcome can be explained in a way that powerfully illustrates the entanglements of moral and economic interventions. Drug crime is socio-economic in nature, and its prosecution might easily reveal the conditions of misery and deprivation that drive it, and that are enabled and sustained by exploitative arrangements of global capitalism.⁷⁰ The prosecution of drug trafficking in a forum as high profile as the ICC might call into question the morality of an entire system of global economic organisation in a manner quite unwelcome to the powerful western states who benefit from it.⁷¹

The Opium Wars, which occurred before the global prohibition regime now governing opium, illuminate further aspects of morality and international law. Here, international law was used as an instrument through which certain moral standards could be demanded of nations. As discussed above, China was forced to sign 'unequal treaties' which limited and regulated its sovereignty, based on the argument that it failed to meet the standards set by Britain and other 'civilised' states. Yet this stance carries with it a presumption that what civilisation entails is unchallenged, unproblematic, and objective, and masks deeper questions about who has the authority to impose its version of morality.⁷²

Far from a historical state of affairs, the morality of indulgence continues to fuel the ever-tighter net of regulation laid over opium, at the same time as it demands particular moral standards are met. Hamid Karzai, president of Afghanistan between 2001 and 2014, invoked a rhetoric of 'religious sin and collective shame' to combat the normality of opium production in Afghanistan.⁷³ Afghanistan's perceived failure to reach the standards of a modern state, with an accountable and democratically-elected central administration, equal rights for women, and a policy of drug prohibition, illustrates that international law constructs modernity as a moral state of affairs. Reaching modern standards of morality still carries with it certain privileges, conveyed through international legal norms, such as the right to be free from interventions in one's sovereign territory, and the benefits of membership in the international trade regime.

⁶⁹ Christine Schwöbel-Patel 'The Core Crimes of International Criminal Law' in K. Heller et al (eds), *The Oxford Handbook of International Criminal Law* (OUP 2018); Faiza Patel, 'Crime without Frontiers: A Proposal for an International Narcotics Court' (1990) 22 *International Law and Politics* 710.

⁷⁰ Dawn Paley, *Drug War Capitalism* (AK Press 2014)

⁷¹ Schwöbel-Patel (n 69).

⁷² Orford 'Moral Internationalism' (n 52) 105.

⁷³ Goodhand (n 29) 417.

III. CONCLUSIONS: RETHINKING INTERVENTIONS THROUGH OPIUM AS OBJECT

The international regime governing the cultivation of the opium poppy, and the manufacture and trade of opium and opiates, powerfully illuminates the various interventions enabled by international law, and illustrates its limits. Control of opium through international law has facilitated obvious interventions into sovereign territory such as the forced opening of China's territories and the cession of Hong Kong under the Treaty of Nanking. International law's response to illicit opium production also reinforces and creates opportunities to intervene, as illustrated by the War on Drugs and the War on Terror, even if these opportunities are exercised selectively.

But international law's relationship with opium also enables more subtle, if no less significant, interventions. The international legal regime of prohibition over opium also creates and structures markets, influencing the position of everyone involved in opium production. Subsistence farmers, multinational pharmaceutical companies, the global prison industry, are all actors playing their parts in markets that international law creates, and of which it simultaneously controls the legitimacy or illegitimacy.

Opium as an object also reveals how powerfully moral norms structure international law. A positivist approach to international law, so long dominant in the Westphalian system, is couched in objective neutrality, yet attitudes to sin, indulgence and even what it means to be modern infuse the regulation of opium's production, cultivation and trade, and have a direct influence on how states are governed under it.

Considering opium as an object of international law reveals the centrality of international law to the lives of those from the Afghan farmer to the head of a Swiss Bank, and shines a light on the way international law penetrates and intervenes in multiple aspects of each state's sovereignty. In sum, considering opium as an object is a way of interrogating the relationship between the doctrine of sovereignty and international law's commitment to moral norms and free trade, as well as the limits of those commitments.