

August 27, 2007

To those attending the September 7 workshop:

For some years, I have been working on a history of laws regulating alcohol and other drugs. The book is now creeping toward completion. It's a big project and a bit hard to cut into coherent chunks. The attached excerpt, which includes the prologue, chapter 1, and parts of chapters 7 and 8, presents those pieces of the story rooted on the West Coast. I am happy to send intervening chapters to anyone who's curious.

My presentation will focus on the race-related discussion begun in the brief excerpt from chapter 8 at the very end of this document. I know that time is especially valuable as classes gear up, so please feel free to read only those pages.

I'm looking forward to seeing all of you.

Yours,

George Fisher



August 24, 2007

MARRIED TO ALCOHOL  
The Drug War' s Moral Roots

George Fisher



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**Eleven** Monogamy's Prospects



## Prologue

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Why are we married to alcohol? Or more to the point, why have we stayed faithful? Since time out of mind, alcohol has reigned as our lone legal intoxicant. Countless rivals beckon our affections, whispering promises of elegiac dreams or fantastic visions or the bliss of suspended awareness. Yet forswearing all others, we hold true to alcohol.

Our fidelity is the more amazing because so often mocked. On academic shelves crammed with potent critiques of the status quo, only scattered volumes dare to defend the war on drugs. Few voices not supported by government grants or paychecks seem prepared to explain why alcohol alone should duck the prohibitionist' s ax. To judge from the weight of academic authority, only irrational fear binds us to alcohol and blinds us to the virtues of legalizing its rivals—and only gutless officeholders stall this inevitable step toward the future.

And yet alcohol reigns. Alone, unchallenged, it remains the only legal intoxicant money can buy. And so it will stay, almost everywhere, for a good long time to come.

This book is an attempt to explain why. In seeking to explain our adherence to alcohol and our rejection of other recreational drugs, I don't defend our present drug ban, but merely ask how it came to pass. Like many others, I question the wisdom of today's drug law regime. Our struggle to suppress all recreational drugs other than alcohol has spawned a thriving street trade marked by extortionate prices, extravagant profits, violent turf wars, and abusive police tactics. By waging a drug war with such faint prospects for victory, we perhaps blind ourselves to better ways to attack the evils of drugs.

But the policies of the present are not the focus of this book. Instead I look backward for the roots of a regime that warily embraces alcohol while spurning its recreational rivals. Why then are we married to alcohol?

The answer is scarcely seen in those scholarly assaults on the drug war and hardly heard in the rhetoric of policymakers who prop up our laws against change. Ask those academics who deride our drug bans how such wayward policy took hold. Many will say racism, so often the virus of injustice, spread its worm here. We banned opium, they say, when Chinese miners and railroad workers brought it here; cocaine when Southern African Americans made it their drug of choice; and marijuana when migrant Mexicans cast its seeds north of the border. Or, they say, our drug laws rose when early factory owners came to fear that drug-hazed workers dragged down output. Rooted in racism and class conflict, they charge, drug bans claim no legitimacy as law.

Ask instead those officeholders who defy change how our drug laws came to pass. Most reply in utilitarian tones, speaking a calculus of harms and risks. The danger of addiction, they say, and of overdose and death proved weightier than the rapture of escape. Alcohol, they admit, was a pestilence too—but it was the devil we knew. Alcohol survived despite its evils because we had learned how to keep them in check.

Attractive or plausible as these claims may be, they all miss the mark. Why have we banned recreational intoxicants? The answer is almost too plain to see. We have banned them because they *intoxicate*—because they disable our reason and self-command, if only for a while—and do so with no better excuse than recreation. True, alcohol also befuddles the brain—and if it did nothing else, we would ban it too. We ban recreational intoxicants not because they harm us or give pleasure to groups we despise, but because of an old and deep and essentially moral aversion to pleasures that numb the mind.

In the pages ahead I hope to uncover the ancient roots of this moral aversion and to trace its force forward in time. And I hope to show the power it wields today. For this old moral instinct lives on and sustains much of our familiar drug law regime.

Imagine then three drugs. The first, a euphoria pill, delivers ninety minutes of mind-numbing, stupefying pleasure—and nothing else. It generates neither side effects nor aftereffects. It impairs neither health nor productivity nor alertness while driving. It neither addicts nor promotes the use of other, more

dangerous drugs. As the product of an American pharmaceutical company, it lacks any racial link. Perhaps this drug does not exist. But if it did—I feel certain—we would readily ban it. For it is precisely this mind-numbing, pleasure-seeking escape from reality that I believe underlies our long-held moral aversion to drug-induced intoxication.

The second drug is very different: It marvelously concentrates and sharpens the mind. But it works only for a short time, and while repeated doses maintain alertness, it soon proves fiercely addictive. Taken over time, it ravages health and ultimately strips ten years off the average user's life. This drug—I feel certain—we would license for sale. For this drug of course is nicotine, delivered through the medium of cigarettes. And whatever havoc cigarettes may wreak on our bodies, they escape the avalanche of moral condemnation that falls on any drug daring to call itself Ecstasy. For cigarettes sharpen rather than numb the mind—and they supply no euphoric escape from reality.

Consider finally alcohol. Like Ecstasy it numbs the mind, transporting its consumers to a lolling, narcotic oblivion—but only when taken in excess. Used in moderation alcohol leaves the reason intact and acuity almost undimmed. Though alcohol may not quite sharpen the mind, small amounts help both mind and spirit speak more freely, more vividly. It delivers not the mindless pleasure of escape, but the pleasure of minds meeting, engaged with each other and with the now more manageable cares of this world.

Like cigarettes, then, alcohol escapes condemnation, for whatever harms it may cause when used in excess, it more often enlivens our minds and conversation. Yet if alcohol were available only in a six-shot swallow—so one couldn't drink but one got drunk—we would ban it too. Alcohol may be the devil we know, but if it served *only* to intoxicate, slurring conversation without brightening it, it too would face the prohibitionist's ax.

So I disagree with those defenders of the status quo who say our drug laws reflect a rational balance of harms and gains. In their world our ideal euphoria drug would be licensed and cigarettes not. And I disagree with those skeptics who trace our drug laws to racism or the wants of the industrial class. They cannot explain why a race-neutral, short-acting euphoria drug would be banned—or why alcohol would fall, despite its mammoth industrial patrons, if it merely made us drunk.

The historical record supports neither camp. Drugs were not banned because they risked health or bore a racial badge. They were banned because they blighted our brains, however briefly, blotting out reason with base pleasures. Withdraw from the case each of the other factors commonly cited for a ban on drugs, and we would ban them still.

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This book then is a social history. In particular it is a moral history. In the chapters ahead I hope to expose the deep-seated moral attitudes, traceable back through the centuries, that have given rise to our general acceptance of alcohol and our rather rigid rejection of other mind-altering drugs.

I am not the first to take this path. Some years back David Richards traced the lineage of the drug war to old Christian roots. He argued that by exposing the drug ban's Christian heritage, he had revealed its irrationality and sectarian illegitimacy. More recently James Morone has taken a similar tack, blaming our present drug laws and older liquor laws on a harshly nativist brand of American Puritanism.<sup>1</sup> I follow a different course. Where Richards and Morone aimed to condemn modern drug laws, I hope to explain but not defend them. Though I question the wisdom of our present drug war, I believe its underlying moral precepts have force—and that they *make sense*. That is, I think they have given rise to an internally consistent drug law regime. With a few narrow exceptions—such as the ban on medical marijuana, seemingly a historical anomaly—the present framework of our drug laws rather faithfully reflects these underlying

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<sup>1</sup> Richards writes: “Drug users are branded as the Puritans branded their deviants: evil and willful outcasts whose criminal stigma reflects the demarcation between the ideals of the saints and the inexplicable and satanic evils of the sinner. We have disclosed this cruel vision for what it is: not a critical moral judgment, but a remnant of a sectarian ideology secularized into a moral ideal of emotional self-control.” David A. J. Richards, *Sex, Drugs, Death, and the Law: An Essay on Human Rights and Overcriminalization* (1982), p. 194.

Morone puts it this way: “Substance abuse poses undeniable problems in every community. The Puritan tradition pins those problems on bad behavior, pure and simple. The policy prescription follows directly: get tough, or the depravity will spread.” James A. Morone, *Hellfire Nation: The Politics of Sin in American History* (2003), p. 16.

moral precepts. What is more—and this is something else—I believe these precepts appeal to widely held and perhaps fundamental human instincts.

Any study that looks to prevailing moral attitudes to explain a historical development must first decide *whose* moral code is at issue. Ultimately the aim of this book is to explain how the American legal regimes governing alcohol and other recreational drugs took form. That goal compels a focus on the Western, largely Christian moral tradition, especially that of England and America, for English law dictated the shape of much of our own. Yet the moral notions that underlie American alcohol and drug laws do not seem to be exclusively Christian or even Western. Moral objections to sex, drunkenness, and drug abuse appear to spill across such categories and may trace to anthropological rather than theological or philosophical roots. Though I make no claim to address other traditions, I believe that in the ways most relevant to this study, moral attitudes may differ less across cultures than at first appears.

But while moral attitudes toward recreational intoxicants may prove similar on a global scale, closer to the ground they vary more starkly. Hence I am not writing about *my* moral attitudes or those of any individual reader, but rather those of the cultural mainstream—that part of the American community most responsible for our laws. Not everyone shares mainstream values—or there would be no need for drug laws—and those who don't will not recognize themselves in what follows, though they may recognize their neighbors. In some places—Berkeley, say, or Ann Arbor or Greenwich Village—even one's

neighbors will fall outside the mold. But I am writing about the broad middle of American society, not its bluest extremities.

Nor am I writing about that politically powerless but peculiarly prominent group known as “emerging adults,” those between eighteen and twenty-five, whose attitudes toward drinking, drug use, and sex—another topic that lies ahead—fall far outside the cultural mainstream. The evidence suggests not that this group is the leading edge of an imminent moral revolution, but rather that as its members mature into adulthood, they adopt more mainstream mores and moral attitudes.<sup>2</sup>

In later chapters I will argue that our moral aversion to drug abuse stands independent of our concern that drugs endanger health or social order or the wellbeing of others. But I do not claim that our moral sentiments stand alone. Some recreational drug use surely causes harms that cannot be called “moral” — and fear of such harms may deepen and strengthen our dislike of drugs. Still, I believe that the moral impulse that lies behind our regime banning recreational drugs is, standing alone, sufficient in large part to explain the shape of that regime. Even if moral concerns alone have not driven our cultural decision to ban recreational drugs, traditional views about the wrongfulness of intoxication,

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<sup>2</sup> At least this seems to be true with regard to collegiate drinking. See Bruce D. Bartholow, Kenneth J. Sher, & Jennifer L. Krull, “Changes in Heavy Drinking Over the Third Decade of Life as a Function of Collegiate Fraternity and Sorority Involvement: A Prospective, Multilevel Analysis,” *22 Health Psychology* 616 (2003), p. 616 (“There is considerable evidence indicating that alcohol use generally tends to increase during late adolescence, peak during the early twenties, and decline thereafter, a pattern sometimes called *maturing out*.”).

which for centuries have imposed a moral veto on recreational drug use, remain potent enough today to bar efforts to legalize.

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*Marriage to alcohol* is not, then, merely a metaphor for our rejection of other intoxicating drugs, but expresses as well the history and moral meaning of our attachment to alcohol. In this moral history, the concept of alcohol monogamy plays three roles.

*First*, it hints that the roots of our condemnation of substance abuse may lie in far earlier moral attitudes toward sex. Our cultural aversion to intoxication stems in great part from the nature of intoxication itself—the heedless suspension of self-control, the abdication of rational functioning, the indulgence in mindless pleasure. It stems, too, from the addictive quality of so many intoxicants, which magnifies the loss of self-control and makes the addicted, in the words of Saint Thomas Aquinas, “a slave to pleasures.”<sup>3</sup> I explore these features of intoxication in Chapter 1 in the context of the American rejection of opium dens, newly arrived from China in the latter half of the nineteenth century.

Then, in Chapter 2, I look back in time to link these views to earlier and more fundamental attitudes toward sex. For sex, like drunkenness and drug

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<sup>3</sup> Saint Thomas Aquinas, *The Summa Contra Gentiles* (English Dominican Fathers trans. 1928), vol. 3, p. 120.

intoxication, suspends self-control, abdicates rationality, and indulges in mindless pleasure. In the Western moral tradition, lust and drunkenness have stood side by side in the dock, accused of robbing us of our God-like reason and transforming us into beasts. The similarity between the old moral regimes governing sex and alcohol use is some evidence of the primary role that moral objections have played in shaping regulation of substance abuse. For while sex and intoxicants are bad in many ways, only along the moral dimension are they bad in the same way.

*Second*, alcohol monogamy suggests that an explanation of our culture's moral aversion to drug intoxication lies in our moral coming to terms with alcohol. In Chapter 3, I examine how early Puritan moralists condemned drunkenness in terms strikingly like Saint Augustine's far earlier condemnation of sex. In both moral regimes, the concept of necessity acted as a critical moral mediator. Old Church fathers understood that however troubling sex might be as a moral matter, sometimes our survival required it. The demands of marriage and procreation excused indulgence in the mindless, uncontrolled pleasure of sex—but only as necessary. Puritan moralists saw that alcohol, too, could claim a broad excuse of necessity—as a dietary staple, a sanitary beverage, an all-purpose nostrum against pain and winter's dank cold. But as with sex, necessity did not grant unconditional license to indulge. One could use alcohol only as necessary—and never to intoxicate.

Aversion to mind-numbing pleasure and deference to necessity' s demands persisted in remarkably unchanged form over the centuries. But other realities of life changed—and with them the line that divided alcohol' s necessary *use* from its sinful *abuse*. Chapter 4 explores the crisis that plagued England in the early eighteenth century, when newly popular—and highly potent—gin readily induced drunkenness, but could not claim to serve dietary or medicinal needs. In America the offending drink was not gin but rum and sometimes whiskey. Here the moral crisis that brought on the temperance fever of the nineteenth century was deeper and longer-lived than the gin panic of old England. As I suggest in Chapter 5, advancing medicine, sanitation, and food preservation snapped the strained notions of necessity that once excused alcoholic indulgence. Suddenly life without alcohol grew thinkable—and when it did, the old moral accommodation of alcohol broke down.

The result was temperance fever. Temperance leaders argued that alcohol, shorn of its claims of need, must go. Others reached a different verdict: Their moral rule was *moderation*, and their mantra was that measured use of alcohol was no vice. With the temperance community torn between moderationists and “cold water” warriors for full-scale prohibition, the temperance debate raged through the last half of the nineteenth century and early decades of the twentieth.

Prohibitionists won with ratification of the Eighteenth Amendment late in 1919—but as I show in Chapter 6 their success was never all it seemed. National

prohibition came and went in a scant thirteen years, swept away by the turning tide of public opinion. And the regime that rose in prohibition's place embraced a new view of the *social necessity* of alcohol—a concept that happily required a web of rules, legal and social, ensuring that “social drinking” always fell shy of drunkenness. This is the alcohol regime we inherit today, one in which moderate alcohol use is tolerated largely because of its role as social lubricant—as a facilitator of fellowship and good cheer. In this moral regime drink makers boost their products' power to spark conversation, but never their power to intoxicate.

*Third*—and finally—alcohol monogamy captures the essentially exclusive nature of this moral accommodation of moderate alcohol use. That most people do not call alcohol a “drug” suggests that we box it separately in our minds from other intoxicants. Our elaborate moral rationalization of drinking has sustained our bond with alcohol at the same time that it has shut out rival intoxicants—for the terms of this moral arrangement have proved difficult for other drugs to meet.

The difficulty emerged when alcohol's first real recreational rival reached American shores in the late nineteenth century. Opium dens did not fit the moral framework that sustained alcohol use both because smoked opium served no apparent need—doctors thought it useless as medicine—and because it permitted no subintoxicating use. Unlike alcohol, opium did not enliven but narcotized conversation. The result, detailed in Chapter 7, is that opium dens

and opium smoking met ready legislative condemnation. So too did other recreational drugs as they emerged on the scene. Legislators distinguished legitimate medical use from recreational abuse simply by criminalizing sales not made by prescription. This legislative stratagem spurred a social revolution, as legislators across the country passed law after endless law targeting recreational drug abuse.

In their regulatory zeal lawmakers doomed all recreational drugs whatever their users' racial or ethnic cast. At certain times and in certain places racial biases warped the timing or severity of drug bans—and over time the racism that coarsens through our culture has overrun our drug law regimes. Seen in rear view through decades of racial strife, early drug laws seem to have grown from soil soaked in racism. But as I show in Chapters 8 and 9, most bans owed nothing to race. Overwhelmingly they sprang not from group conflict, but from the traditional moral condemnation of intoxication for intoxication's sake.

Today it is hard to see this moral dynamic at work, for modern lawmakers rarely speak the language of moralism when speaking of drugs. Instead a discourse of harms and risks drives our drug war debate. In Chapter 10, I explore whether our modern harms-based argot simply submerges old moral strains beneath secular words and concerns.<sup>4</sup> A secular rhetoric of harms and risks falls more naturally on our modern ears, no longer accustomed to explicitly

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<sup>4</sup> See Bernard E Harcourt, "The Collapse of the Harm Principle," 90 *Journal of Criminal Law and Criminology* 109, pp. 168–72 (1999). I will consider Harcourt's views in more detail in Chapter 8.

moralized public debate. And there is one harm—an oddly moral harm—that merges utilitarian and moral concerns and helps obscure the latter. This is the corruption of our youth. In the realms of both drugs and sex, our moral codes wield peculiar force when youths face risk.

At last in Chapter 11, I consider monogamy's prospects. Here we encounter the true meaning of alcohol monogamy, for our moral arrangement with alcohol may yet prove hard for other drugs to mimic. Other drugs don't share alcohol's pharmacology, which permits the social drinker to quantify exactly the amount that will ease inhibitions without straying toward intoxication. Nor do they share alcohol's peculiarly social influence on behavior. Although some drug-using groups surely are more garrulous than others, no drug loosens tongues and warms the heart quite like alcohol. And then there is alcohol's very status as our lone legal intoxicant, which has helped cement its sole standing. In mainstream eyes, the only form of *necessary* social intercourse is the form we have long sustained with alcohol. Here racial differences may bear on the analysis, for it is hard for one group to view as *essential* a substance that plays a role in some other group's social interactions. Whatever social milieu may thrive under the influence of some *other* drug is not the one that has grown fundamental to our mainstream way of life.

And so monogamy with alcohol may prove to be, if not permanent, then at least enduring. Hence in the end I arrive at a prediction for the future—that

alcohol will remain almost everywhere our lone legal intoxicant for a good long time to come.



## Chapter One

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### Monogamy' s Paradox

One night in 1891 or 1892, two unlikely figures strode down a grubby little alley in San Francisco' s Chinatown. White men often found their way to Chinatown, but rarely at this hour, and when they did their business was rarely good. Yet here was a minister, cane in hand. The Reverend Frederick J. Masters was on a mission—and had brought a man with a camera to record it.<sup>5</sup>

Down “ an alley of execrable squalor,” with the “ sickly fumes of opium” rising from every cellar, the men found a door that opened to a stair that dropped to a cramped and lightless passage that ended at last at another door. Masters rapped with his cane.

The door opened slightly, showing the sliver of a man—a face and a hand. The face was Chinese, the hand raised in a gesture of “ *procul este profani*”—the “ take your trouble elsewhere” of an earlier age. Addressing the man in Chinese,

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<sup>5</sup> The following description of Masters' s visit to the den is drawn from Frederick J. Masters, “ Opium and It' s [sic] Votaries,” 1 *California Illustrated Magazine* (May 1892), pp. 631–38. Masters supplied a similar description of a generic opium den, often in the same words, in Frederick J. Masters, “ The Opium Traffic in California,” 24 (n.s. 15) *The Chautauquan* 54 (Meadville, Pa., The T. L. Flood Publishing House 1896–97), pp. 54–56.

Masters overcame his feigned innocence and won entry to the world within.

“Nose, eyes and ears soon tell us,” he recalled, “we are in the presence of the dusky tyrant.” Opium.

That such a place existed in 1892 may seem odd. Some seventeen years before, in 1875, San Francisco adopted the nation’s first ban on opium dens. The Board of Supervisors made it a crime punished by up to six months in jail to keep such a den or to visit one to smoke opium.<sup>6</sup> But that ordinance, driven in part by the supervisors’ distress that young “WHITE MEN AND WOMEN . . . of respectable parentage” had begun to indulge in this stereotypically Chinese vice, seemingly had little impact on dens kept by and for the Chinese. San Francisco police apparently left such dens unmolested as long as whites dared not enter.<sup>7</sup>

Masters did not go to the little establishment off Jackson Street to smoke opium. Instead he wanted to investigate opium smoking among the Chinese and seek some remedy. As the superintendent of the city’s Methodist Chinese Mission and a one-time missionary to China, he perhaps bore two biases on his descent into the den.<sup>8</sup> Unlike so many others of his day, he may have felt no

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<sup>6</sup> The ordinance and a brief account of its passage are printed in “The Opium Dens,” *San Francisco Chronicle*, Nov. 16, 1875, p. 3, and “Board of Supervisors,” *Daily Alta California*, Nov. 16, 1875, p. 1; “Board of Supervisors,” *id.*, Nov. 23, 1875, p. 1. I thank my research assistant Helen Kim for persevering in a difficult hunt for the text of the ordinance, which does not appear to survive in any San Francisco public document. Dean Latimer and Jeff Goldberg’s uncited claim that San Francisco passed an ordinance against opium smoking “as early as 1874” appears to be mistaken. Dean Latimer & Jeff Goldberg, *Flowers in the Blood: The Story of Opium* (1981), p. 208.

<sup>7</sup> I will present the evidence that police targeted mainly white smokers in Chapter 8.

<sup>8</sup> Masters noted his role as the superintendent of the Chinese mission in “Opium and It’s Votaries,” p. 631. In “The Opium Traffic in California,” p. 55, he reported that he had spent

particular hatred toward the Chinese, often the victims of vicious and unconcealed racism.<sup>9</sup> But as a Methodist minister, he perhaps held a dimmer view than most of the practice of smoking opium. During much of the nineteenth century, Methodists had championed the American and British temperance movements and had fought for strict limits and ultimately a total ban on alcohol. Having rejected one recreational intoxicant, Methodists hardly seemed likely to embrace another.

We can merely guess at Masters' s opinions as he stepped down into the den, for he left us no record of his thoughts. Fortunately he left an unusually clear record of what he saw, richly detailed in the pages of *California Illustrated Magazine*. Alongside prose descriptions, he printed pictures of the den and its denizens caught in the glare of “ flash light photographs” that burst into the den' s “ Stygian darkness.” The resulting images convey nothing so much as a

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“ twenty-two years . . . among the Chinese in Kwangtung and the United States.” For additional biographical information see Jeffrey L. Staley, “ ‘ Gum Moon’ : The First Fifty Years of Methodist Women' s Work in San Francisco Chinatown, 1870–1920, *The Argonaut (Journal of the San Francisco Museum and Historical Society)*, vol. 16, no. 1 (2005), p. 4, nn.13–15.

<sup>9</sup> The best evidence of Masters' s benign feelings toward the Chinese might be an 1894 article in which he argued that Chinese sailors had discovered America and settled the West Coast long before the days of Columbus. He wrote that the Chinese “ gave the best blood to the native races of this Coast.” And he concluded with this hope:

Some day when China' s history and people are better understood, when national jealousies subside and race prejudices no longer blind us from accepting the truth, that little band of humane, peace-loving missionaries . . . who came to these shores to educate, elevate, and civilize, the native races of this Coast, may be thought as deserving a share of our gratitude, and as worthy a niche in the temple of Fame, as the brutal European adventurers, whose progress on this continent was marked by plunder and destruction, and whose feet were swifter to shed blood than to ameliorate the woes of mankind.

scene of stifling banality. Far from the hoped-for den of exotic depravity, the reader discovers a sooty hovel with forlorn smokers lying almost hidden beneath cluttered shelves and coat hooks. (See Figure 1.) Disappointed by these photos, the reader turns instead to Masters' s ornate Victorian prose, which impresses more potent images on the mind.

The darkness is what strikes us first. Descending into the den, Masters passed three or four Chinese patrons “ crawling out into the light.” Feeling his way along a narrow passage, he emerged into the dusky, sultry haze of the den. There a “ stupefying smoke fills the hovel, through the gloom of which the feeble yellow light of three or four opium lamps struggles hopelessly to penetrate.” Other writers of the day had ventured into the underground world of the dens, and they too wrote of the smoky darkness. Over and over we read of “ dens shut out from air and sunlight,” of the futile efforts of a “ sickly, guttering tallow candle” or a “ dull red light that illuminates nothing,” and of “ the hesitating dusk” of the “ low, black, . . . cave-like hole underneath the sidewalk.”<sup>10</sup>

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Frederic[k] J. Masters, “ Did a Chinaman Discover America?” 23 *Overland Monthly* 576 (1894), pp. 576, 587–88.

<sup>10</sup> David T. Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* (2001), p. 177 (quoting from “ A Pestilential Drug,” reprinted from the *San Francisco Chronicle* in 10 *The Pharmacist* (1877), p. 115) (“ dens shut out . . .”); Mark Twain, *Roughing It* (Hartford: American Publishing Company 1872) (reprint Oxford University Press, Shelley Fisher Fishkin, ed. 1996), p. 395 (“ sickly, guttering . . .”); [Dan De Quille,] “ A Cave of Oblivion,” *Daily Territorial Enterprise*, July 28, 1874, p. 3 (“ dull red light . . .”); George Parsons Lathrop, “ The Sorcery of Madjoon,” 20 *Scribner’ s Monthly* 416 (1880), p. 417 (“ hesitating dusk . . .”); “ A Growing Evil: What an Officer Knows About Opium Smoking,” *San Francisco Chronicle*, July 25, 1881, p. 3 (“ low, black . . .”).

What strike us next are the den's Spartan furniture and the odd posture of the smokers reclined upon it. The only furnishings were three or four mat-covered wooden bunks, on which the den's patrons curled, their feet propped on pillows, their faces turned toward the proprietor's hissing pipes. In one after another contemporary description of a squalid den, we read of smokers recumbent on "greasy benches" or "a filthy pallet," their bunks stacked "one above the other, like the berths on shipboard," their "swollen, nerveless lips . . . glued" to the pipe.<sup>11</sup> "Many persons suppose that opium is used in the same way that tobacco is," wrote one observer. "This, however, is a mistake. Tobacco can be smoked standing, walking, and at business. The opium smoker always lies down when indulging his habit, and gives all his attention to the process of inhaling the fumes of the drug."<sup>12</sup> Occasionally an author would add the notable detail that male smokers shared a bunk with indifferent females, who "manifest

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<sup>11</sup> Thomas J. Vivian, "John Chinaman in San Francisco," 12 *Scribner's Monthly* 862 (Oct 1876), p. 870 ("greasy benches"); "Topics in the Sagebrush: The Chinese Treaties in the Nevada Legislature; Prevalence of the Opium Habits on the Pacific Slope," *New York Times*, Feb. 21, 1881, p. 1 ("filthy pallet"); Dan De Quille, *The Big Bonanza*, p. 295 (" . . . like the berths on shipboard"); "A Growing Evil," *San Francisco Chronicle*, July 25, 1881, p. 3 ("swollen, nerveless . . .").

See also Kathleen Auerhahn, "The Split Labor Market and the Origins of Antidrug Legislation in the United States," 24 *Law and Social Inquiry* 411 (1999), p. 421 (quoting Albert S. Evans, "A Cruise on the Barbary Coast," in *A la California: Sketch of Life in the Golden State* (San Francisco 1873: A. L. Bancroft)) ("In an alcove on one side of the room is a raised couch, spread with matting, and provided with braided split-cane pillows, for the accommodation of the opium smokers, two of whom are now stretched out at full length thereon . . ."); "The Opium Habit," *San Francisco Chronicle* (Feb. 1, 1886), p. 2 ("Arranged in tiers around the room, like the bunks of a ship, were the bunks (*chung*) on which the smoker reclined, while his mind sank into delirium."); "Opium Smoking in Nevada," *New York Times*, July 29, 1877, p. 10 ("We noticed . . . half a dozen youths, all the way from 16 to 20 years of age, lying curled up in the bunks . . .").

<sup>12</sup> "Chinese in New-York: How They Live, and Where," *New York Times*, Dec. 26, 1873, p. 3.

no bashfulness in smoking with strange men, and . . . usually remove the shoes, loosen the corsets, and remain for hours on the hard wooden bunks.”<sup>13</sup> And sometimes an author added to this threat of promiscuity the haunting specter of miscegenation—“ the sickening sight of young white girls from sixteen to twenty years of age lying half-undressed on the floor or couches, smoking with their ‘lovers.’ Men and women, Chinese and white people, mix indiscriminately in Chinatown smoking houses.”<sup>14</sup>

And then there is the silence. “ We had been in this den about five minutes,” Masters wrote, “ and no one had spoken a word”:

It was like being in a sepulcher with the dead. The noise of the street could not reach us there, and nothing could be heard but the sputtering of opium pipes. What a contrast to the glare and glitter of the saloon, or the hilarious shouts and drunken orgies of the dive! . . . No wild frenzy and excited mirth are here. It is a place of shades and sleep and dreams; the hush of the grave . . . .

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<sup>13</sup> H.H. Kane, *Opium-Smoking in America and China: A Study of Its Prevalence, and Effects, Immediate and Remote, on the Individual and the Nation* (NY, G.P. Putnam’s Sons 1882), p. 74. See also “ Topics in the Sagebrush” : “ All pretense to decency is thrown aside; often he lies in the sensual stupor side by side with Chinamen and creatures, male and female, to whom, before he acquired the habit, he would not condescend a nod on the street.”

<sup>14</sup> “ The Opium Habit in San Francisco,” *Medical and Surgical Reporter*, vol. 57 (1887), p. 784 (quoting San Francisco doctor Winslow Anderson). See also “ Female Opium Smokers,” *San Francisco Chronicle*, Apr. 25, 1875, p. 5 (“ The fair hair of the younger girl . . . fairly brushed the shaven crown of the unclean Chinaman, and once or twice the unappreciative heathen brushed it away from his eyes.”).

Far removed from frenzy or mirth, the satisfied smoker, struck literally dumb by the den's narcotic fumes, "sinks back, the pipe slips from his hand, and oblivious of everything around him, he drops off to sleep."

A decade earlier, when George Parsons Lathrop wrote in *Scribner's Monthly* of his visit to an opium den in an unspecified "cosmopolis," he reported with almost identical imagery the contrast between the den's ghostly silence and the saloon's convivial din:

What most impresses us, now, is the silence of the scene. . . . [N]ot a word is spoken; everything proceeds in a wicked, ominous hush, which becomes oppressive. How unlike the prodigal gas of the barrooms, with their silver-mounted taps, their glittering, vari-colored bottles, their seductive air of social re-union, are the hesitating dusk of this gloomy interior, the motionless forms and the silence!

"In the bar-room," Lathrop continued, "there is bewildering brilliance; here, no concealment or palliation is attempted—everything is in harmony with the work of death that is being done . . ." <sup>15</sup> Or as Nevada journalist Dan De Quille wrote after visiting a local Virginia City den in 1874, it was a "Cave of Oblivion. . . . Not a sound is heard within or about the place. The cave of the Seven Sleepers was not more silent." <sup>16</sup>

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<sup>15</sup> Lathrop, "Sorcery of Madjoon," pp. 416–18.

<sup>16</sup> [Dan De Quille,] "A Cave of Oblivion," *Daily Territorial Enterprise*, July 28, 1874, p. 3. This newspaper account, published without byline, is reprinted in Dan De Quille, *The Big Bonanza*

But gloomy and silent as the den might have been when set against the glare and glitter and excited mirth of the saloon, Masters wondered whether the “terrible curse” of opium smoking was truly worse than the vice of drunkenness. Opium, he wrote, caused nothing like “the appalling amount of crime that results from the use of alcoholic liquors. . . . Opium does not brutalize and inflame human passions but soothes and finally destroys them. In an opium den one never hears a brawl, or a curse, or sees men fighting like infuriated demons.” Nor did the opium smoker, unlike so many drunks, “go home to drag his wife out of bed by the hair of her head.”<sup>17</sup> And opium posed no substantial risk to health. “[U]sed moderately and with proper bodily nourishment opium smoking is . . . not attended by any immediate debilitation or any visible physical infirmity as is generally supposed.” At least at first glance, then, the balance of evils favored the den.

*Monogamy's Paradox*

Masters was hardly the first to note that alcohol fuels more crime and far more violence than opium or any of its derivatives. Half a century earlier the

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(New York: Alfred A. Knopf 1947) (reprint of 1876 edition), pp. 295–96. De Quille's real name was William Wright. See *ibid.*, p. viii.

<sup>17</sup> Dr. Harry Hubbell Kane wrote in similar terms that “the opium-smoker does not break furniture, beat his wife, kill his fellow-men, reel through the streets disgracing himself or friends, or wind up a long debauch comatose in the gutter.” Kane, *Opium-Smoking in America and China*, pp. 74–75.

Reverend Walter Colton had written of opium that “[i]t allows a man to be a gentleman; it makes him visionary, but his visions create no noise, no riots; they deal no blows, blacken no one’s eyes, and frighten no one’s peace.”<sup>18</sup> Nor was Masters the first to see that opium’s comparatively mild health effects, while hardly benign, make alcohol look like a major public health threat.<sup>19</sup> Masters and others repeated tales of hopeless opium addicts who nonetheless displayed astonishing physical stamina, lived out ample spans, and executed exacting tasks with consummate skill.<sup>20</sup> Yet at the time Masters wrote, opium dens had been

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<sup>18</sup> Walter Colton, “Turkish Sketches,” 7 *Knickerbocker* (1836), p. 421. See also “\_\_\_\_\_,” *New York Tribune*, Oct. 8, 1893, p. \_\_, quoted in H. Wayne Morgan, *Drugs in America: A Social History, 1800–1980* (Syracuse University Press 1981), p. 90: “[W]hile it is impossible to recommend or defend the practice of opium-smoking, yet it is not the worse than the alcoholic habit. Both are vices, but of the two, the opium eater is a much less dangerous and offensive member of society than the one who is a victim of the curse of drink.”

<sup>19</sup>Dr. Kane questioned reports by patients and others of the health hazards of opium: “Occasionally neuralgia of the bowels is complained of, but I question whether it is not due to colic from flatus, incidental to irregular eating, imperfect digestion, and constipation, more than to opium. . . . Epileptiform convulsions and paralysis, although often spoken of by lay writers, do not occur.” Kane, *Opium-Smoking in America and China*, p. 90.

<sup>20</sup> On feats of endurance:

Masters reported that while visiting China, three men bore his sedan chair over a long journey taking nothing but an occasional pipe and that boatmen have “towed, rowed and poled my boat up rapid streams from sunrise till dark on three meals of coarse rice and salt fish”—and a pipe before bed. Masters, “Opium and Its Votaries,” p. 638. See also Alonzo Calkins, “Opium and Its Victims,” *The Galaxy*, vol. 4 (1867), pp. 25, 27 (“[I]t is certain that, both in man and beast, opium, properly used, assists endurance. Dr. Burnes, of the Cutch country, having one time a fatiguing night journey before him through a rough mountain region, made a half-way halt, and, at the suggestion of his native guide, divided between himself and his horse a quarter ounce of opium; thus fortified, he was enabled to complete his forty-mile ride with ease.”). Dr. Kane agreed. Kane, *Opium-Smoking in America and China*, p. 75.

On long lives:

See Calkins, “Opium and Its Victims,” p. 27 (“O’Shaughnessy declares the longevity of smokers to be proverbial. Dr. Burnes instances a Cutchee chief of extreme age, a votary all his

banned in San Francisco for seventeen years and had been unlawful across California for more than a decade.<sup>21</sup> Between 1877 and 1907, twenty-three states or territories made it a crime to keep an opium den or to visit such a place for the purpose of smoking opium, and by 1914 another fifteen had criminalized any distribution of opium not authorized by a doctor's prescription.<sup>22</sup> That year the federal government effectively banned opium sales nationwide.<sup>23</sup>

Meanwhile alcohol and alcohol-serving saloons remained in most states perfectly legal unless banned locally. Not until the federal Volstead Act and the Eighteenth Amendment to the U.S. Constitution took effect in 1920 did California act to end alcohol consumption. And no sooner was the prohibition amendment repealed in 1933 than the state reinstated lawful alcohol sales. Since prohibition's repeal, there has been no further serious debate on the matter of a nationwide alcohol ban—the idea, if ever floated in earnest, would drown in a torrent of ridicule. Today every state permits liquor sales, and but for those nations governed by Islamic law, every nation does too. Yet opium dens were

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life, yet vigorous still.”). But later Calkins reports contrary evidence of persistently short lifespans. See *ibid.*, pp. 29–30.

<sup>21</sup> In 1881 the California legislature enacted an opium dens ban that, like San Francisco's earlier law, made it a misdemeanor punishable by up to six months' confinement to keep an opium den or to visit one for the purpose of smoking opium. See 1881 Cal. Stats. ch. 40, § 1 (Act of March 4, 1881), p. 34.

<sup>22</sup> See Tables \_\_ and \_\_ at pp. \_\_ and \_\_\_\_. In the first group, I am not counting Hawaii, which banned all opium sales not authorized by a prescription in 1874, when it was still an independent kingdom. See *Compiled Laws of the Hawaiian Kingdom* (Honolulu: Hawaiian Gazette Office 1884), pp. 571–72 (reprinting act of Aug. 8, 1874). I do count Hawaii in the second group, as it became a territory of the United States in \_\_\_\_.

<sup>23</sup> I will discuss the 1914 Harrison Act in some detail in Chapter 7.

and remain strictly off limits. Meanwhile our broader war on drugs carries on with unmatched intensity. Despite some recent softening toward medicinal marijuana and clean needles to fight AIDS, the drug foes' flanks have held firm on all nonmedical fronts.

Why then are we married to alcohol? The search for an answer leads eventually back through the centuries to the roots of America's drug law regime. But we begin here, with Frederick Masters' s visit to the little den off Jackson Street, because San Francisco is where America's drug war began. The city's 1875 ban on opium dens appears to have been the nation's first law criminalizing use of a recreational intoxicant other than alcohol.<sup>24</sup> The country was then engaged in a struggle over alcohol, one that ended ultimately in alcohol's victory. Perhaps we may find in the meeting of these epic conflicts clues to why two so similar wars could end so differently.

### *The Evil of the Dens*

The perceived evil of the dens took many forms. First and foremost was the matter of race. We have seen already the San Francisco supervisors' vexation at news that the city's Chinese kept " eight opium-smoking establishments . . . for

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<sup>24</sup> Kathleen Auerhahn reports that San Francisco banned the smoking of opium—as opposed to opium dens—in 1874, but I have found no confirmation of this earlier law. See Auerhahn, " The Split Labor Market," p. 422 (citing Dean Latimer & Jeff Goldberg, *Flowers in the Blood: The Story of Opium* (1981), p. 208).

the exclusive use of WHITE MEN AND WOMEN.”<sup>25</sup> One could easily multiply venomous quotes linking the dens with the hated Chinese. Politicians and newspapers of the day spoke of the “ swarms of Chinamen, thick as maggots in cheese, smoking opium” in “ the vilest dens of Mongol depravity.” We read of “ the noisome salival drippings of coolie bawds” —of “ those soulless human reptiles” and “ pigtailed rat[s]” and their “ blighting vice.”<sup>26</sup> Even the urbane George Parsons Lathrop wrote in *Scribner’ s* of the den’ s “ suitably Asiatic [air], poisoned by too many Chinese lungs” and of its “ tigerish little proprietor” who went “ crawling about his work.”<sup>27</sup>

Seizing on such rhetoric—and on a good deal more dealing with drugs other than opium—a generation of drug war historians has cast the nation’ s early drug laws as a response not to the evils of the drugs, but to the race of those who used them. David Musto triggered this scholarly onslaught when he wrote in 1973 that “ early opium prohibitions . . . clearly had more to do with the drug’ s users than with the drug itself.”<sup>28</sup> He stressed in particular fears of miscegenation—of

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<sup>25</sup> “ The Opium Dens,” *San Francisco Chronicle*, Nov. 16, 1875, p. 3.

<sup>26</sup> *Speech of Hon. Aaron A. Sargent, of Calif., in the Sen. of the US* (Washington, DC, Government Printing Office, 1876), p. 7 (quoted in Diana Lynn Ahmad, “ ‘ Caves of Oblivion’ : Opium Dens and Exclusion Laws, 1850–1882” (Ph.D. Dissertation, University of Missouri-Columbia 1997) p. 76) (“ swarms of Chinamen . . .”); “ A Pestilential Drug,” *S.F. Chronicle*, reprinted in 10 *The Pharmacist* (April 1877), p. 114, 115 (“ vilest dens of Mongol depravity . . .” and “ noisome salival drippings . . .”); “ Opium Smoking: The Hideous Heathen Vice in Our Midst,” *Reno Evening Gazette*, Feb. 21, 1879, p. 3 (“ soulless human reptiles . . .” and “ blighting vice”); Vivian, “ John Chinaman in San Francisco,” p. 865 (“ pigtailed rat”).

<sup>27</sup> Lathrop, “ Sorcery of Madjoon,” pp. 417, 418.

<sup>28</sup> David F. Musto, *The American Disease: Origins of Narcotic Control* (3d ed. 1999), p. 14.

the seduction of young white women by the Chinese demons of the dens.<sup>29</sup> As for other drugs, Musto observed that “cocaine was supposed to enable blacks to withstand bullets which would kill normal persons and to stimulate sexual assault. . . . Chicanos in the Southwest were believed to be incited to violence by smoking marihuana. . . .”<sup>30</sup> Other historians followed in Musto’s trail, adopting almost unaltered his thesis that racial bias lay at the roots of the nation’s early drug bans.<sup>31</sup>

Beyond the problem of race, there were the health risks of opium. Although Frederick Masters and several experts looked on opium’s health hazards with complacency, many others viewed them with alarm. In 1867 Dr. Alonzo Calkins quoted one authority’s warning “that the youth who begins [smoking opium] at twenty must not calculate on passing thirty-six”—and added that “Mr. Martin of the Colonial Office at Hong Kong, allows [such a youth] not even that brief

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<sup>29</sup> Musto, *American Disease*, pp. 294–95 (“Fear that smoking opium facilitated sexual contact between Chinese and white Americans was also a factor in its total prohibition.”). See also David T. Courtwright, *Dark Paradise: Opiate Addiction in America Before 1940* (1982), p. 78 (“Fear of miscegenation made such a spectacle all the more shocking.”).

<sup>30</sup> Musto, *American Disease*, pp. 294–95.

<sup>31</sup> Just a year later, Richard Bonnie and Charles Whitebread wrote that “drug legislation may be aimed at the lifestyle of the users rather than at use of the drug. Users of opium were often Chinese; street users of cocaine, and later heroin as well, were often perceived as black and West Indian; intemperate users of alcohol were often Irish, Italian, and German; and later we shall see that users of marihuana were often Mexican and users of peyote were often American Indian.” Richard J. Bonnie & Charles H. Whitebread II, *The Marihuana Conviction: A History of Marihuana Prohibition in the United States* (1974), p. 30. As recently as 2001, David Courtwright argued that while “[p]rejudice alone did not cause the bans,” one source of opposition to nonmedical drug use “is the association of a particular drug with deviant or disliked groups. Liquor was associated with lower-class Catholic immigrants; opium smoking with Chinese laborers; heroin

limit.”<sup>32</sup> A decade later the *San Francisco Chronicle* reported that sharing a pipe, especially with the Chinese, could cause leprosy.<sup>33</sup> A Nevada newspaper told in 1879 of an apparent fatal overdose suffered in an opium den, taking the occasion to warn its readers of the habit’ s lethal risks.<sup>34</sup> Even Frederick Masters felt compelled in an 1896 article to note that “ where opium is smoked there is a marked deterioration physically, mentally, and morally.”<sup>35</sup>

In time I will return to race-based accounts of the drug war and to theories that turn on health risks and other harms. Despite their intuitive appeal, I believe that all such theories crumble in the face of sustained scrutiny and empirical evidence. That analysis must wait until more of our story is told. For now I simply ask this: Subtract from Masters’ s image of the Jackson Street den any hint of the race of the occupants. Subtract as well any thought that opium could harm health or shorten life or spark even a small increase in crime. Subtract finally the risk of addiction—so that nothing remains but the den, the drug, the smokers, and the drug’ s present impact on them. Would the San

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with big-city delinquents; and cocaine with out-of-control black men. In every instance, prohibitive legislation followed.” Courtwright, *Forces of Habit*, p. 171.

<sup>32</sup> Calkins, “ Opium and Its Victims,” pp. 29–30.

<sup>33</sup> Ahmad, “ Caves of Oblivion,” pp. 105–06 (citing *Chronicle* report of February 28, 1877).

<sup>34</sup> “ Died in an Opium Den,” *Virginia City Territorial Enterprise*, Mar. 28, 1879, p. 3; “ Really Dead,” *Virginia City Territorial Enterprise*, March 29, 1879, p. 3; “ Opium Smoking,” *Virginia City Territorial Enterprise*, March 29, 1879, p. 3 (all cited in Ahmad, “ Caves of Oblivion,” pp. 105–06).

<sup>35</sup> Masters, “ The Opium Traffic in California,” p. 638.

Francisco supervisors have tolerated what remained—a place where citizens went to smoke themselves senseless? Would such a place be lawful today?

I believe not. For the fundamental evil of the den—the thing that distinguished it from the saloon—was not race or crime or health risks. It was the silence.

What was the nature of that silence—that sepulchral hush so unlike “the prodigal gas of the barrooms,” the “excited mirth,” and “seductive air of social re-union”? At first one might understand the den’s silence as a simple function of the task of smoking. The inebriate whose “swollen, nerveless lips were glued” to the pipe could not talk, at least not in the moment.<sup>36</sup> But the true source of the den’s eerie quiet was not the act of smoking, but the smoke—the narcotic vapors of the pipe. For the smoke, as we learn time and again from almost every scribe who stooped down into a den, was “stupefying,” its consumers “stupefied” or simply “stupid,” and their sought-for state either “stupor” or “stupefaction.”<sup>37</sup> As Dan De Quille wrote after visiting his “Cave

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<sup>36</sup> Kane, *Opium-Smoking in America and China*, p. 12 (quoting *San Francisco Chronicle* article from July 25, 1881).

<sup>37</sup> Stupefying:

See “The Opium Habit,” *San Francisco Chronicle*, Feb. 1, 1886, p. 2 (“[S]everal men [were] lying upon a bunk or a bed, a ‘layout’ by their side, a pipe in hand, the stupefying smoke coming in volumes from their nostrils, their brains gradually being rendered imperturbable by the inhalation of the fumes . . .”); Masters, “Opium and Its Votaries,” pp. 633 (“A stupefying smoke fills the hovel . . .”).

Stupefied:

See Kane, *Opium-Smoking in America and China*, p. 12 (“[A]ll [were] asleep save one, who was half stupefied w the fumes . . .”) (quoting *San Francisco Chronicle* article from July 25, 1881);

of Oblivion” in 1874, “ These fellows are silent as dead men and seem unconscious of our presence. . . . To a looker-on it is all vapid, vacuous stupefaction.”<sup>38</sup> Or as the *New York Times* reported in 1873, “ scores of persons . .

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Lathrop, “ Sorcery of Madjoon,” p. 417 (“ At the back of the room is an opening into another blind apt, where we can dimly make out certain bunks placed one over the other around the walls, for the convenience of confirmed and thoroughly stupefied debauchees.”).

Stupid:

See “ Chinese in New-York,” *New York Times*, Dec. 26, 1873, p. 3 (“ [A] handsome but squalidly dressed yong white girl was lying upon a bed, apparently stupid from the opium fumes that filled the room.”); “ Opium and the Lottery,” *Sacramento Daily Record-Union*, Feb. 23, 1876, p. 1 (“ Here the smokers are stretched upon the platforms, some stupid under the inflence of the drug, some just rousing from its lethargic power, others making ready for the deadly inhalation.”).

Stupor:

See Willard B. Farwell, et al., “ The Report of the Special Committee of the Board of Supervisors of San Francisco, on the Condition of the Chinese Quarter of that City,” in *The Chinese at Home and Abroad* (San Francisco: A. L. Bancroft & Co. 1885), p. 26 (“ The bunks are occupied night and day, and the spectacle of pallid men in a condition of death-stupor . . . may be witnessed in these dens any day . . . ”); [Dan De Quille,] “ A Cave of Oblivion,” *Daily Territorial Enterprise*, July 28, 1874, p. 3 (“ These men are in various states of stupor.”); “ Topics in the Sagebrush” (“ [O]ften he lies in the sensual stupor side by side with Chinamen and creatures, male and female . . . ”); “ Opium Den: A Successful Raid by Officer Phelan Yesterday,” *Los Angeles Times*, Oct. 25, 1888, p. 2 (“ [T]he two women were found lying in a stupor from the effects of the drug . . . ”); “ Sara in the Cellars: The Great Actress Astonishes the Celestials,” *Los Angeles Times*, Apr. 28, 1891, p. 4 (“ The poor wretches lay about the place in a stupor, half-naked, emaciated, and mentally smothered.”).

Stupefaction:

See Masters, “ Opium and It’ s Votaries,” pp. 633–64 (Three Chinamen lie curled up on the beds . . . in different stages of stupefaction.”); “ The Opium Dens,” *San Francisco Chronicle*, Nov. 16, 1875, p. 3 (“ [T]he habitués of these infamous resorts inhale the fumes from the opium pipes until a state of stupefaction is produced . . . ”); “ Report of the Special Committee of the Board of Supervisors,” p. 17 (Many in Chinatown are “ addicted to the daily use of opium to the extent that many hours of each day or night are passed in the delirious stupefaction of [opium’ s] influence.”).

<sup>38</sup> [De Quille,] “ Cave of Oblivion,” *Daily Territorial Enterprise*, July 28, 1874, p. 3.

. spend hour after hour, never ceasing until they drop off into the death-like stupor which is the aim of all opium smoking.”<sup>39</sup>

*The death-like stupor that was the aim of all opium smoking.* For this was the business of intoxication. No one entered an opium den except to render himself “senseless.”<sup>40</sup> Once there, the visitor went about his business: “The opium smoker . . . gives all his attention to the process of inhaling the fumes . . . .”<sup>41</sup> Then, “stretched out at full length . . . , gazing into vacancy with fixed, staring eyes, unconscious of all that is passing around” him, he would slip into the desired “dreamy oblivion.”<sup>42</sup> The opium smoker pictured in Figure 2, who appeared in a second article by Frederick Masters, wears the very image of stupefaction: He lies sprawled on his bunk, awake but unseeing, still clenching his pipe.

Stupor was not merely one of many opium-induced effects. It was instead the drug’s defining feature, the root source of opium’s classification as a “narcotic.” The 1895 edition of *Webster’s Academic Dictionary* supplies

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<sup>39</sup> “Chinese in New-York,” p. 3.

<sup>40</sup> Kane, *Opium-Smoking in America and China*, p. 13 (quoting *San Francisco Chronicle* article from July 25, 1881).

<sup>41</sup> “Chinese in New-York,” p. 3.

<sup>42</sup> Auerhahn, “The Split Labor Market,” p. 421 (quoting Albert S. Evans, “A Cruise on the Barbary Coast,” in *La California: Sketch of Life in the Golden State* (San Francisco 1873: A. L. Bancroft) (“stretched out at full length . . . .”); Kane, *Opium-Smoking in America and China*, p. 12 (quoting *San Francisco Chronicle* article from July 25, 1881) (“dreamy oblivion”).

“ [s]tupefying” as the first definition of *narcotic*.<sup>43</sup> The 1890 *Century Dictionary* renders *narcotic* as “ [h]aving the power to produce stupor.”<sup>44</sup> Together, the two books’ definitions of *narcotic* yield five uses of some form of the word “ stupor.” And the stupor of the opium, more than the race of the participants, seems to have prompted the San Francisco Board of Supervisors’ 1875 ordinance. The dens that most aggrieved the Board were not those in which Chinese smoked, or even those in which white smokers intermingled with Chinese, but rather those kept “ *for the exclusive use of WHITE MEN AND WOMEN.*”<sup>45</sup> The supervisors’ concern seems to have been that such “ young men and women of respectable parentage . . . inhale[d] the fumes from the opium pipes *until a state of stupefaction is produced.*”<sup>46</sup>

Given all this focus on opium’ s stupefying power, it seems likely that somewhere in the nature of stupor lies a clue to our world-wide ban against opium.

### *Stupefaction’ s Vice*

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<sup>43</sup> *Webster’ s Academic Dictionary: A Dictionary of the English Language* (New York: American Book Company 1895), p. 375 (emphasis added).

<sup>44</sup> *The Century Dictionary of the English Language* (New York: The Century Co. 1890), p. \_\_\_\_ .

<sup>45</sup> “ The Opium Dens,” *San Francisco Chronicle*, Nov. 16, 1875, at 3 (emphasis added).

<sup>46</sup> *Ibid.* (emphasis added).

The opium stupor is merely one case of the general phenomenon of intoxication. *Webster's Academic Dictionary* defined “intoxicate” in 1895 as “[t]o make drunk; to excite *or stupefy* by strong drink or by a narcotic.”<sup>47</sup> And the perceived evil of intoxication supplies the driving force behind the long evolutionary story that lies ahead. For in this retelling of the origin of our drug laws, the evil of the drugs lay not in their association with despised racial groups or even in the crime or health harms they caused, but first and foremost in their fundamental use as intoxicants for intoxication's sake. The primary force behind our laws against recreational drugs was therefore neither racial nor utilitarian, but moral.

The nature of *stupor* helps explain the broader moral objection to intoxication. To *stupefy* is to abandon one's faculties or—in older moral tones—to abdicate one's God-given reason. But one needn't be a theist to appreciate the moral objection to stupefaction for stupefaction's sake. I suspect that few of us, theists or not, could abide a storefront business that catered to people's desire to render themselves temporarily senseless. Something about a lolling, vegetative escape from life's concerns and realities seems vaguely but powerfully awry.

The evil of the dens was that they served precisely to help patrons abandon all command of their faculties, all reason. What was worse, patrons gave up

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<sup>47</sup> *Webster's Academic Dictionary*, p. 304 (emphasis added). This was the second definition given of the transitive form of the verb “intoxicate.” The first definition was “[t]o poison; to drug.” The *Century Dictionary* of 1890 gives “[t]o poison” as the first definition and “[t]o make drunk, as with spirituous liquor; inebriate” as the second. See *ibid.*, p. 3161.

their reason to *pleasure*—and in particular, to that brand of mindless pleasure implied by the emphasis on stupor. That is, the dens served as houses of intoxication. And because visitors to the dens soon grew hopelessly dependent on their drug, hopelessly addicted, they became in the eyes of the community *slaves to pleasure*.

For opium was notoriously pleasurable and notoriously addictive. Alonzo Calkins, the first prominent American expert on opium, wrote in 1867 of the mindless, senseless ecstasy of the opium high:

First, all disposition to move is gone, the baser propensities flag into obtuseness, and the body relapses into inertia. The reasoning faculty, that intellectual balance-wheel, reels out of equipoise, and the imagination, now swinging loose from its moorings, bounds away on buoyant wing to luxuriate upon the hallucinative raptures of a paradise.<sup>48</sup>

The smoker abandoned not merely his reason, but the concerns of life itself. “ At one and the same time,” Dr. Harry Hubbell Kane wrote in 1882, opium “ puts out of sight the real and unpleasant crudities of daily life, and magnifies and elevates into view a pleasant bubble, whose play of colors and misty outlines are

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<sup>48</sup> Alonzo Calkins, “ Opium and Its Victims,” 4 *The Galaxy* 25 (1867), p. 26.

born of the pipe alone.”<sup>49</sup> In Frederick Masters’ s eyes, the opium smoker “ float[ed] away into a state of revolting enjoyment.”<sup>50</sup>

And what at first was pleasure soon became habit. George Parsons Lathrop, who introduced us to the den of his “ cosmopolis,” told of “ the pleasure that allures to a continuance of [opium’ s] use, until the dependent upon it is morally manacled, and thrust into a torture chamber from which there is small chance of his ever escaping.”<sup>51</sup> The lesson was nearly as old as the Christian age. In the fourth century after Christ, Saint Augustine lamented that his “ lust [had] yielded to become habit, and habit not resisted became necessity. These were like links hanging on one another—which is why I have called it a chain—and their bondage held me hand and foot.”<sup>52</sup>

Though the image is religious, the consequence was legal. Many state drug laws of the late nineteenth and early twentieth centuries supplied definitions of addiction, inebriation, and similar terms that emphasized above all the narcotics user’ s *loss of self-control*—an expression that seems to capture both the

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<sup>49</sup> Kane, *Opium-Smoking in America and China*, pp. 60–61. See also Stephen Crane, “ ‘ Dope’ Smokers: Slaves of the Opium Habit Who, Seeking Peace of Mind, Find Grim Despair,” *Los Angeles Times*, May 17, 1896, p. 23 (“ The influence of ‘dope’ is evidently a fine languor, a complete mental rest. The problems of life no longer appear.”).

<sup>50</sup> Masters, “ The Opium Traffic in California,” p. 56.

<sup>51</sup> Lathrop, “ Sorcery of Madjoon,” p. 419. See also “ John Chinaman: The Habits and Manners of the Mongolian,” *San Francisco Chronicle*, Jan. 31, 1875, p. 1 (“ He will smoke his pipe of opium every evening lying in his bunk and enjoying that pleasure that seems at first something almost divine in its nature, but which in the future exacts from its votaries such a fearful penalty.”).

<sup>52</sup> Augustine, *Confessions* (Books i-xiii) (F.J. Sheed trans. 1993), p. 135.

abandoned reason and the manacled will of the addicted. Hence in what appears to be the earliest law of this variety, Connecticut provided in 1874 that any person “ so far addicted to the intemperate use of narcotics or stimulants as to have *lost the power of self-control*” was to be committed to an inebriate asylum for a minimum of four months.<sup>53</sup> A California law of 1911 tracked the quoted language almost exactly, as did an Idaho law of 1913 and a Massachusetts law of 19\_\_.<sup>54</sup>

Meanwhile a Colorado act of 1895 defined “ drunkard” as a “ person who has acquired the desire of using alcoholic or malt drinks, morphine, opium, cocaine or other narcotic substance used for the purpose of producing intoxication, to such a degree as to deprive him or her of *reasonable self-control*.”<sup>55</sup> The previous year Louisiana and Maryland had adopted similar language, as did Oklahoma in 1895, Michigan in 1907, and North Dakota in 1913.<sup>56</sup> Colorado later amended its law to add the words “ or stupor” after the word “ intoxication.”<sup>57</sup> Virginia’ s 1902 law supplied a slight variation, providing for the commitment of “ any person [who] is an habitual drunkard, opium eater or addicted to other

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<sup>53</sup> 1874 Conn. Public Acts ch. 113, § 1 (Act of July 25, 1874), p. 256 (emphasis added).

<sup>54</sup> 1911 Cal. Stats., ch. \_\_ (Act of \_\_ \_\_, 1911), p. \_\_; 1913 Id. Gen. Laws, ch. 56, § 1 (Act of \_\_ \_\_, 1913), p. 166; 1921 Mass. Gen. Laws, vol. 1, ch. 123, § 62, at 1224.

<sup>55</sup> 1895 Colo. Laws, ch. 74, § 6 (Act of Apr. 13, 1895), p. 174 (emphasis added).

<sup>56</sup> 1894 La. Acts, No. 157, § 4 (Act of \_\_ \_\_, 1894), p. 196[?]; 1894 Md. Laws, ch. 247, § 5 (Act of \_\_ \_\_, 1894); 1895 Okla. Sess. Laws, ch. \_\_ (Act of \_\_ \_\_, 1895), p. \_\_; 1907 Mich. Acts, No. 68 (Act of Apr. 30, 1907), p. 72; N.D. Compiled Laws (1913), vol. II, § 3164

<sup>57</sup> 1911 Colo. Stats. Ann., vol. 2, § 2134, at 1312.

drug habits, and *lost to self-control*.”<sup>58</sup> Even today the concept of intoxication embraces both stupor and loss of self-control. *Webster’ s Third New International Dictionary* defines “intoxicate” as “to excite *or stupefy* by alcoholic drinks or a narcotic *esp. to the point where physical and mental control is markedly diminished*.”<sup>59</sup>

Yet surely it would make no sense to condemn opium dens as houses of intoxication, where young men and women went to abandon their self-control, while sparing saloons this same judgment. Still, both Lathrop and Methodist minister Frederick Masters cast drinking establishments in a far more attractive light than the dens. For Masters, a visit to the den “was like being in a sepulcher with the dead,” a world removed from the “glare and glitter” and “excited mirth” of the saloon. For Lathrop, the “ominous hush” of the den compared depressingly with the “prodigal gas” and “bewildering brilliance” of the barroom. The distinction, as both men saw, was that in the best of its forms, the saloon was a consummately social place, abuzz with the “seductive air of social re-union.” And if the saloon was to take this social form, its patrons could not drink themselves stupid. The saloon, unlike the den, was not a house of stupefaction.

### *The Paradox of the Saloon*

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<sup>58</sup> 1902 Va. Acts, ch. 101, § 1 (Act of Mar. 25, 1903), p. 92 (emphasis added).

<sup>59</sup> *Webster’ s Third New International Dictionary of the English Language Unabridged* (1993), p. 1185 (emphasis added).

Why then was the saloon banished—if not from California and New York, where Masters and Lathrop wrote, then from the nation as a whole in 1920? And why was it delivered from exile a bare thirteen years later? For the same nation that hailed the Eighteenth Amendment in 1920, spreading prohibition across the land, gustily embraced its repeal by Twenty-First Amendment in 1933. And why, finally, did the same forgiving nation that returned the bar to our social fold lock out the den forever? For even as the saloon threw open the speakeasy' s blackout blinds, the den remained shuttered forever.

I ask these questions in the historical sense—*how did these things come to pass?* Seeking answers, we must take a long step back in time and then trace forward the forces that made the saloon redeemable but the den a perpetual outcast. The equation—the *moral* equation—that distinguished the saloon from the den proves to have two historical variables. One we have seen already—the perceived immorality of reason-depriving, stupefying, self-abandoning pleasure. The other is the role of *necessity* and the moral excuse it can give for indulging in otherwise forbidden pleasures or tempting the bounds of temptation.

In search of both moral forces—and of the moral roots of our monogamy with alcohol—we must step far back in time. Indeed we must return to the beginning.

And in the beginning there was sex.

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[Sadly I am skipping the chapter on sex—as well as the next four. I pick up at Chapter 7, which rejoins sex and then addresses the emergence of American laws against opium dens.]

## Chapter Seven

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### Medical Drug Use Versus Recreational Drug Abuse

**D**r. John Jones was not the first to tell the Western world the medical wonders of opium. Long before Jones' s *Mysteries of Opium Revealed* appeared in London in 1700 as the first English text devoted to the drug, medical authors both ancient and modern had hailed this Eastern import' s curative force.<sup>60</sup> Like them, Jones spun long lists of symptoms and sicknesses that called for the opium cure. But in boosting opium' s medical magic, Jones proved savvier than others before him. An Oxford-trained lawyer turned doctor, he promoted medical opium as a lawyer might—as an advocate for the cause, anticipating and guarding against a legal backlash that loomed distantly in the future.<sup>61</sup>

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<sup>60</sup> Virginia Berridge sketches the earliest records of opium therapy, some dating to hundreds or thousands of years B.C.E. By at least the sixteenth century, opium was a fixture of Western European medicine. See Virginia Berridge, *Opium and the People: Opiate Use and Drug Control Policy in Nineteenth and Early Twentieth Century England* (New York: Free Association Books 1999), pp. xxii–xxiii.

<sup>61</sup> John Jones, *The Mysteries of Opium Revealed* (London: Richard Smith 1700); Stuart Handley, “John Jones,” *Oxford Dictionary of National Biography*, H. C. G. Matthew & Brian Harrison, eds. (Oxford: Oxford University Press 2004), p. \_\_\_\_\_. Although Jones' s appears to have been the earliest volume on opium written in English, a small Dutch text had appeared in English translation as early as 1618. See Angelus Sala, *Opiologia: or, A Treatise Concerning the Nature, Properties, True Preparation and Safe Use and Administration of Opium* (Tho. Bretnor, trans., 2d ed., London: Nicholas Okes 1618).

Jones knew opium's therapeutic prowess came at psychic, physical, and societal costs. Dependency was one grave risk—overdose and death another—abiding indolence a third. On the matter of addiction Jones was especially blunt: “ [A]fter a long, and lavish Use” of opium, sudden deprivation could cause “ [g]reat, and even intolerable Distresses, Anxieties, and Depressions of Spirits, which in a few *days* commonly end in a most miserable *Death* . . . .”<sup>62</sup> Like any wise lawyer, Jones perhaps foresaw how opium's evils could one day lead to bans.

In defending the drug despite its risks, he proved at once brilliantly prescient and thuddingly dense. With a sharp sociological eye he saw that opium's best defense was by analogy to alcohol. Over and over, in admitting opium's flaws, Jones said it did no worse than wine. Yes, heavy opium use “ affects some by making them Furious” —just “ as *Wine* does.” True, lavish use over time produces a “ *dull, moapish, and heavy Disposition*” —just “ as in old *Drunkards*.” Sure, taking a lot of opium causes “ very considerable *Indolence*” —“ much after the same manner as *Wine* does.” Both opium and wine, used excessively, cause first mirth “ and afterward a kind of *Drunken Sopor*” —the sleepy silence of Frederick Masters' s San Francisco opium dens.<sup>63</sup> But opium, Jones insisted, was no more stupefying than wine. He rejected an earlier author' s “ great *Mistake*”

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<sup>62</sup> Jones, *Mysteries of Opium Revealed*, p. 32.

<sup>63</sup> Jones, *Mysteries of Opium Revealed*, pp. 30 (“ affects some by making them furious”); 31 (“ *dull, moapish, and heavy Disposition*”); 52 (“ very considerable *Indolence*”); 88 (“ and afterward a kind of *Drunken Sopor*”).

in saying opium gave users equanimity “ by stupifying the *Senses, Brain, &c.*” Instead it worked by raising the spirits, “ as *generous Wine* does before Men are fuddled, or overcome with it.” And as for addiction, a long and lavish use of both wine and opium leads to “ *Difficulty and Danger in suddenly leaving them off.*” Triumphantly, Jones concluded, “ The short is this; *Wine* and *Opium* agree in all their *Effects*, saving such as are the Consequences of their *different Accidents*, as the Quantity of *Wine* that must be used to cause the same *Effects* with a little *Opium . . . .*”<sup>64</sup>

Jones’ s next turn in defending opium was slyer still. Beyond similes likening opium with wine, he undertook to squeeze opium into the moral mold that shaped society’ s accommodation with alcohol. Yes, he said, opium poses risks—of stupor and addiction, indolence and even death—but only when used in excess. *Used in moderation*, it was as inoffensive as the moderate use of wine. “ The Mischief[] of excessive Doses and lavish *Use* of either [wine or opium] is no *Argument* against their inspiriting *Nature*; if it were, then *Wine* is no *Cordial*, tho’ made to *glad the Heart of Man . . . .*” After all, “ [t]here is nothing so good, whereof an *intemperate Use* is not *mischievous*, God having so ordered it to deter from, and punish *Intemperance*, and the *Abuse* of his *Creatures . . . .*”<sup>65</sup> Used *moderately*, opium was appealingly wholesome and even productive, fostering

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<sup>64</sup> Jones, *Mysteries of Opium Reveal’d*, pp. 22 (criticizing Dr. Thomas Willis’s “great *Mistake*”); 89 (“ *Difficulty and Danger in suddenly leaving them off*”); 90 (“The short is this . . . .”).

<sup>65</sup> Jones, *Mysteries of Opium Reveal’ d*, pp. 89 (“ The Mischiefs of excessive Doses . . . .”); 245 (“ There is nothing so good . . . .”).

such admirable qualities as “ *Promptitude, Serenity, Alacrity, and Expediteness in Dispatching and Managing of Business.*” When under the influence of the drug, users “ are mostly enabled to *Work, or Labour, tho’ tired before.*”<sup>66</sup>

But if Jones’ s moderationist defense of opium displayed his keen sense of society’ s moral accommodation of alcohol, his raptures about opium’ s sexual powers showed him stunningly tone deaf to those same moral strains. Rather than distance his drug from wine’ s unflattering association with sex, Jones fixated on the topic, rehearsing it in ever more explicit terms. There was first opium’ s aphrodisiac force. Applied externally to the perineum, it “ excites *Venery*”; taken internally in a moderate dose, it “ *causes a great promptitude to Venery.*”<sup>67</sup> Beyond increasing desire, it enhances erections “ *especially if the dose be larger than ordinary.*” And if used “ long and lavish[ly],” those erections won’ t go away.<sup>68</sup> Like a modern Cialis ad, warning ominously yet alluringly of “ erections lasting more than four hours,” Jones insisted he “ would have Men believe without experimenting . . . lest any should injure themselves by too great a *Dose.*”<sup>69</sup> One needn’ t accept Jones’ s say-so, however, for he listed a brace of

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<sup>66</sup> Jones, *Mysteries of Opium Revealed*, pp. 21 (“ *Promptitude, Serenity, Alacrity . . .*”); 84 (“ are mostly enabled to *Work*”).

<sup>67</sup> Jones, *Mysteries of Opium Revealed*, pp. 18, 20, 24.

<sup>68</sup> Jones, *Mysteries of Opium Revealed*, pp. 24, 31, 34, 304–05.

<sup>69</sup> Jones, *Mysteries of Opium Revealed*, p. 24. Cialis made news with its 2004 Super Bowl ads that warned, “ Erections lasting more than four hours, while rare, require immediate medical help.” One reporter replied, “ Do they ever.” Tim Goodman, “ Super Bowl Ads Strain for Cheap Laughs,” *San Francisco Chronicle*, Feb. 2, 2004, p. A2.

supporting authorities “ whose Words I do not repeat, partly for *Modesty*’ s, partly for *Brevity*’ s sake.”<sup>70</sup>

Modesty, however, did not keep Jones from recurring to the theme, over and over. Beyond momentary manifests of desire, Jones attributed functional and structural changes to opium. It increased both seed and milk, both penis length and breast size. And for those whose sexuality was only of the mind, opium was a premodern, organic orgasmatron. It caused “ *Venereal Dreams*” and “ *Nocturnal Pollutions*.” The effect of even a moderate dose, he said, “ has been compar’ d (not without good cause) to a permanent gentle *Degree* of that Pleasure which Modesty forbids the naming of . . . .” “ Doubtless [the pleasure] of Venus, if it were half as lasting, would be as dangerous as that of a great Dose of *Opium*.”<sup>71</sup>

Yet there was more—and still stranger. Jones lavished pages on the similarity of opium and semen. Both chemically and physiologically, he said, they are quite alike—from opium’ s “ *rank* and vehement *Smell*,” which is “ most like” that of semen, to its capacity, like semen, to excite “ *Venereal Fury*,” to the sleepiness that follows the pleasure of both. Nor were these similarities coincidental. Rather they proved that semen itself “ is an *Opiate*” and “ would have much the same *Effects* with *Opium*, if it were fit to use it after the same

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<sup>70</sup> Jones, *Mysteries of Opium Revealed*, pp. 24 (“ whose Words I do not repeat . . . .”); 31 (“ *Inclinations to Venery*”).

<sup>71</sup> Jones, *Mysteries of Opium Revealed*, pp. 20 (“ has been compar’ d . . . .”); 24 (increased seed); 25 (increased milk, enlarged breasts and penis, “ *Venereal Dreams*,” “ *Nocturnal Pollutions*”); 167 (“ Doubtless [the pleasure] of Venus . . . .”); 335 (increased milk, enlarged breasts and penis).

manner.” So “ we need not wonder at [opium’ s] titillating to *Venery*, nor indeed its causing a *high* sense of *Pleasure* upon any *Membrane* . . . .” Among few differences between these substances was their duration of action, for opium delivers “ a Sense of Pleasure more permanent, *viz.* for many *Hours*, . . . [while] the *Pleasure* of the other is *Momentary*.”<sup>72</sup>

Jones surely did not mistake opium’ s aphrodisiac and orgasmic powers. On the contrary, a bevy of both older and modern authorities corroborate his claims of *Promptitude to Venery* and solitary chemical ecstasy. With long use, it is true, opium’ s magic fades, inducing instead persistent impotence among many men, failed menstruation and barrenness among women, and decreased libido among both.<sup>73</sup> But Jones’ s error was not in ignoring these darker shadows of opium’ s sexual lightshow, but in showcasing its sexual side at all. For while he aimed plainly to extol opium’ s virtues and promote its use, his obsession with its status as sexual wonder drug doomed his mission. He sent up a flare by the light of which the moral mainstream one day would shoot opium down.

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<sup>72</sup> Jones, *Mysteries of Opium Revealed*, pp. 173 (“ we need not wonder . . . .”); 175 (“ *rank* and vehement *Smell*”); 189 (“ *Venerable Fury*”); 190 (sleepiness); 191 (“ a Sense of Pleasure more permanent . . . .”); 192 (semen itself “ is an *Opiate*”).

<sup>73</sup> Jones, *Mysteries of Opium Revealed*, p. 38 (“ *Promptitude to Venery*“ ); Brecher, *Licit and Illicit Drugs*, pp. 28–29 (reporting evidence that opiates reduce sexual desire, delay ejaculation, delay or interrupt menstruation, and reduce the likelihood of pregnancy); H. H. Kane, *Drugs That Enslave: The Opium, Morphine, Chloral and Hashisch Habits* (Philadelphia: Presley Blakiston 1881), pp. 41–42, 45 (reporting delayed or halted menstruation, reduced breast size, and sterility among women and increased short-term desire giving way to long-term partial or total impotence among men); Alonzo Calkins, “ Opium and Its Victims,” *The Galaxy*, vol. 4 (1867), pp. 25, 29 (“ Aphrodisia, apparently enhanced in the beginning, declines in no long time to a permanent impotentia . . . .”). Not all men report impotence with long-term use. See Brecher, *Licit and Illicit Drugs*, p. 28; Kane, *Drugs That Enslave*, p. 45.

Realizing his mistake too late, Jones flailed in the closing pages of his treatise to cast opium's sexual powers in a moral glow. In a chapter devoted to the proper "Use" of opium, rather than mere descriptions of its effects, he said he trusted doctors to prescribe the drug only "where there is a *just Cause* for its *Use*, which I will not expose to every lustful *Goat*." He insisted that while opium was "of great use to excite to *Venery*, cause *Erections*, [and] to actuate a dull *Semen*," all this was "for the sake of lawful *Propagation*." He even invoked Biblical sanction for opium's sexual utility. "It is observable how desirous Rachel, being Barren, was of the *Opiate* call'd *Mandrake*, so that she parted with her *Beloved Husband* to her Sister Leah for a Night to purchase it . . . ." <sup>74</sup>

But these few lines, tacked at the end of a massive volume, could not save the situation. Taken as a whole, Jones's work celebrates and advertises opium as recreational sex aid. Yet the sexual wonders of opium, together with its other stupefying pleasures, eventually would spur its ban. True, Jones was not alone responsible for this development, for a great many others wrote of opium's undeniable sexual side effects. Nor could Jones have hoped to succeed in his quixotic quest to bill opium as no worse than wine. Though he played down the drug's stupefying force, many others told of it plainly.<sup>75</sup> Still, whatever he

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<sup>74</sup> Jones, *Mysteries of Opium Revealed*, pp. 357 ("of great use to excite to *Venery* . . ."); 357 (recounting the story of Rachel from Gen. 30:14–16, 22–23); 358 ("where there is a *just Cause* for its *Use* . . .").

<sup>75</sup> Irish physician Samuel Crumpe reported that opium "occasions an increased disposition to *venery*" in many persons and that the drug's "more obvious effects" include "insensibility,

hoped to gain in casting opium as the moral equivalent of wine he squandered in fetishizing the drug's sexual moxie. On balance, he sped the day when the moral mainstream turned its censorious eye on opium.

That day nonetheless lay far in the future. Opium did not face formal legal regulation in England till 1868, nor was it banned anywhere in America before the 1870s. Whatever opium's other qualities, it was after all a medicine and an altogether indispensable one. For another century and a half it survived, unmolested by law, sustained by its evident necessity. . . .

[Here I skip several segments of chapter 7 that address the long delay in regulating medicinal (eaten) opium. Eaten opium escaped ban because it so plainly served medical need. During centuries of primitive surgery and dentistry and lingering death by cancer, opium was the only pain relief stronger than whisky. The modern solution of limiting opium sales to those prescribed by a doctor had to overcome a long tradition of self-medication with opium-laced home remedies. In the course of this discussion I cross the Atlantic and switch focus to the American experience with opium.]

### *Emergence of the Dens*

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sleep, stupor, &c.” Samuel Crumpe, *An Inquiry into the Nature and Properties of Opium* (London: G. G. and J. Robinson 1793), pp. 44, 94.

Undeniable recreational abuse arrived undisguised. The change was one not simply of style or attitude, but of the very form of the drug. All the opium mentioned in the works of Jones, Willis, Young, and Crumpe was *edible*—eaten or drunk in solutions such as laudanum. Opium smoking remained all but unknown in the West centuries after eaten opium had arrived along Eastern trading routes and become part of the medical mainstream. Neither Jones nor Willis nor Young nor Crumpe so much as mentioned the opium pipe.

In both England and America opium dens arrived rather suddenly with the laboring Chinese of the last half of the nineteenth century. After the first wave of immigrants reached the American West Coast around 1850, dens began dotting cityscapes and mining towns throughout the West. Almost entirely male, the newcomers dispersed in search of jobs up and down the West Coast and throughout the intermountain states of Nevada, Idaho, Montana, and Wyoming.<sup>76</sup> Where they went, they brought their imported narcotic pastime with them. A roving Western actor of the era wrote that wherever he lighted, even in little frontier towns, he found a smoking place with a pipe and related paraphernalia. If there was no formal den, the back room of a Chinese laundry

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<sup>76</sup> Kane, “Opium Smoking: A New Form of the Opium Habit,” p. 103 (“Since the advent of the Chinaman opium-smoking, a vice before wholly unknown, has made its appearance amongst our own people . . .”); Courtwright, *Dark Paradise*, p. 63 (describing the early period of Chinese settlement of the West Coast from 1850 to 1880); Diana Lynn Ahmad, “‘Caves of Oblivion’: Opium Dens and Exclusion Laws, 1850-1882” (Ph.D. Dissertation, Univ. of Missouri-Columbia 1997), pp. 5, 22 (reporting that the first Chinese immigrants arrived at California in 1848).

filled the need.<sup>77</sup> And as Chinese workers fanned East and South, dens appeared in New York by 1873, Chicago, St. Louis, and New Orleans by 1876, Philadelphia by 1882, and Boston by 18\_\_.<sup>78</sup>

Much like the sudden popularity of gin in early-eighteenth-century England, the rather sudden appearance of opium dens in England and America introduced an old drug in a new administration. As with gin, contemporaries regarded the new administration as insidiously different.<sup>79</sup> The simple presence of an opium pipe, unlike a pill bottle or laudanum vial, was usually unanswerable proof of recreational drug abuse. The drug was undeniably intoxicating. No one doubted that smoked opium delivered the mind-numbing pleasure of eaten opium to all but the most hardened addicts. Descriptions of the pleasure followed a standard formula, conjuring from the smoke a languid, lighter-than-air escape from life's surly bonds. Frederick Masters cast the smoker "float[ing] away into a state of revolting enjoyment"; Harry Hubbell Kane had him slipping into a "lazy insouciance," a "listless calm and contentment," a "pleasant bubble" that wafted over the "unpleasant crudities

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<sup>77</sup> Kane, *Opium-Smoking in America and China*, pp. 66–67 (quoting letter from actor); *ibid.*, pp. 70–71.

<sup>78</sup> Kane, "Opium Smoking: A New Form of the Opium Habit," p. 103 (" [T]his vice . . . has gradually spread eastward, keeping pace with the advance of the Celestial in the same direction."); Kane, *Opium-Smoking in America and China*, p. 5 (Chicago, St. Louis, and New Orleans); "Chinese in New-York," *New York Times*, Dec. 26, 1873, p. 3 (New York); "Philadelphia's Opium Parlor," *New York Times*, Aug. 29, 1882, p. 2 (Philadelphia).

<sup>79</sup> Courtwright, *Dark Paradise*, pp. 62–63.

of daily life”; Stephen Crane drew him lapsing into “ a fine languor, a complete mental rest.”<sup>80</sup>

Then there was the sex. From the physicians we hear many of the same symptoms lavishly described by Dr. John Jones a century and a half earlier. Dr. Alonzo Calkins told of smokers “ habitually tormented with a satyriasis as abortive as it is insatiable.” Dr. Kane wrote of “ considerable erethrism” among both men and women—and among women in particular a sexual appetite that “ sometimes approaches to frenzy, the woman losing all modesty.”

Compounding the drug’ s effects were the immoral influences of the den itself—its darkness, its bunks, the general air of degradation, and the company. “ The surroundings, the low companionship, and the effect of the drug,” Kane wrote, “ combine to effect any thing other than a raising of the moral tone.” Most female smokers were prostitutes, and those “ not already lost in point of virtue, soon become so.” Indeed, he said, “ the laws against opium-smoking that have been enacted and enforced in this country had their inception in a knowledge of the fact that male smokers (Americans) . . . were continually beguiling women and young girls to try the pipe, and effected their ruin when they were under its influence.”<sup>81</sup>

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<sup>80</sup> Masters, “ The Opium Traffic in California,” p. 56; Kane, *Opium-Smoking in America and China*, pp. 60–61, 84; Stephen Crane, “ ‘ Dope’ Smokers: Slaves of the Opium Habit Who, Seeking Peace of Mind, Find Grim Despair,” *Los Angeles Times*, May 17, 1896, p. 23.

<sup>81</sup> Calkins, *Opium and the Opium-Appetite*, p. 71, quoted in Ahmad, “ ‘ Caves of Oblivion,’ ” p. 109 (“ habitually tormented . . .”); Kane, *Opium-Smoking in America and China*, p. 81 (“ The surroundings, the low companionship . . .”); *ibid.*, p. 90 (“ most of the female smokers are

But if smoked opium set off all the escapist, hedonistic moral alarms of eaten opium, it lacked eaten opium's moral saving grace. For smoked opium had no recognized medicinal value. Exactly why doctors snubbed the pipe as a means of administering the drug is not clear. Perhaps it was the difficulty of precise calibration. The typical dose of eaten opium was a grain, or 0.065 gram. Dissolved in solution, it could be divided into twenty-five drops of laudanum. Opium smoking by its nature permitted no similar exactitude. And the differing preparations of eaten and smoked opium made dosage conversions even more elusive. Whereas medicinal opium was dried and powdered, smoked opium was boiled to a thick syrup and later burned in a pipe. Even if smoked opium had been suitable as medicine, the den was a distinctly non-medical milieu. Doctors may have rejected medicinal smoking because of its dank, unhygienic setting—a “bare, squalid” cellar, in Stephen Crane's 1896 sketch, “occupied only by an odor that will float wooden chips.”<sup>82</sup>

It is clear in any event that doctors turned their backs on the drug. Multiple sources report this verdict, albeit without explanation. Dr. Kane wrote in 1882 that “not a single grain [of this preparation] is used as medicine.” An 1892 editorial in the *Journal of the American Medical Association* alleged that smoked

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prostitutes”); *ibid.*, p. 93 (“considerable erethrism”); *ibid.*, pp. 131–32 (“the laws against opium-smoking . . .”); Kane, “Opium-Smoking: A New Form of the Opium Habit,” p. 112 (“sometimes approaches to frenzy . . .”);

<sup>82</sup> Lathrop, “The Sorcery of Madjoon,” pp. 417–18 (discussing the differing opium preparations and the manner of smoking); Crane, “’Dope’ Smokers,” p. 23.

opium was “ never used for any legitimate purpose. We never knew a physician to prescribe it . . . .” The editors charged that the “ sole uses” of smoked opium were “ as an intoxicant or as an aid to the perpetration of illegal and vicious acts”—presumably a reference to the seductions described by Kane and others. That same year Frederick Masters wrote that “ [w]hatever may be said for crude opium and the medicinal uses to which it may be applied,” opium prepared for smoking “ can have no earthly use but to ruin men morally and physically . . . .”<sup>83</sup>

It is true that occasional medical authorities advocated the medical utility of smoked opium. An 1884 article in the *American Journal of Medical Sciences*, for example, wrote of “ Opium Smoking as a Therapeutic Means” and claimed it could cure violent coughs, hay fever, and migraines. That article drew an almost instant rebuke from the *Journal of the American Medical Association*, which argued that the drug’s addictive potential disqualified it for treatment of these ailments. Dr. Kane allowed that smoked opium had proved “ an excellent sedative” against an “ excited and irregular” heart and was effective as well against organic cardiac disease—but went on to say that “ so great is the danger of

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<sup>83</sup> Kane, *Opium-Smoking in America and China*, p. 17; “ ‘ Opiokapnism’ or Opium Smoking,” *JAMA* (June 4, 1892), p. 719; Masters, “ Opium and It’s Votaries,” p. 465.

forming the habit [and] so disgusting the surroundings” that patients should turn instead to one of “ many equally efficacious remedies.”<sup>84</sup>

It is also true that an 1881 San Francisco ordinance, which imposed a licensing requirement on sale of smoked opium, exempted opium sold or exchanged “ for medicinal purposes.” But other lawmaking bodies ignored or rejected any medicinal potential for smoked opium. When Congress regulated opium imports in 1909, it pointedly foreclosed any medicinal purpose for smoked opium. The law banned importation of “ opium in any form or any preparation or derivative thereof: Provided, That opium and preparations and derivatives thereof, *other than smoking opium or opium prepared for smoking*, may be imported for medicinal purposes only . . . .”<sup>85</sup>

And if smoked opium lacked eaten opium’ s claim to medical necessity, it also lacked alcohol’ s claim to social necessity. Recall the silence—“ the hush of the grave,” the “ wicked, ominous hush”—that for Frederick Masters and George Parsons Lathrop distinguished the dens from “ the hilarious shouts” and “ seductive air of social re-union” of the saloon. Or consider again the den pictured in Figure 1 (page 16), captured by Masters with flashlight photography.

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<sup>84</sup> See “ Opium Smoking as a Therapeutics,” *JAMA*, vol. 3 (July 26, 1884), p. 100 (rebutting “ Opium Smoking as a Therapeutic Means,” *American Journal of the Medical Sciences* (July 1884); Kane, “ Opium Smoking: A New Form of the Opium Habit,” p. 113.

<sup>85</sup> “ ‘ Opiokapnism’ or Opium Smoking,” *JAMA*, vol. 18 (June 4, 1892), p. 719; Masters, “ Opium and Its Votaries,” p. 645; Kane, *Opium-Smoking in America and China*, p. 17; *General Orders of the Board of Supervisors* (San Francisco: P. J. Thomas 1888), No. 1615 (Ord. of Feb. 16, 1881), p. 179; “ An Act to Prohibit the Importation and Use of Opium for Other Than Medicinal Purposes,” Act of Feb. 9, 1909, c. 100, § 1, 35 Stat. 614 (emphasis added).

The photo appears to show four bunks—three laid end to end and one above. Even if awake the smokers could not readily face one another, and though they could speak the arrangement resisted conversation. And the problem was not simply the den, but the drug. Dr. Alonzo Calkins wrote that opium smoking rendered the user’ s character less social: “[T]he mind appears sunk in a somnolent and impassive quiescence. Under this spiritual thralldom . . . the relish for society and its enjoyments is extinguished . . . .” Indeed the smokers in Masters’ s photograph appear quite asleep. Masters wrote that after inhaling the drug, the smoker “ sinks back, the pipe slips from his hand, and oblivious of everything around him, he drops off to sleep.”<sup>86</sup>

It is true that Dr. Kane insisted the effect of smoking opium “ is to *awaken* rather than to cause repose, and smoking to excess almost always, I may say invariably, causes wakefulness.” True, too, sympathetic depictions of the dens sometimes cast them in a more social light. William Rosser Cobbe, a journalist and (he claimed) former addict, wrote in 1895 that “ [i]n certain stages of the smoking the wretches are talkative and may be mirthful” —though “ [n]ow and then one falls away into a stupor that has all the appearance of death.”<sup>87</sup> Thomas Crothers claimed several years later that the opium smoker “ wants company, is

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<sup>86</sup> See Kane, *Opium-Smoking in America and China*, p. 134 (attributing quote to Calkins without citation); Masters, “ Opium and Its Votaries,” p. 636.

<sup>87</sup> Kane, “ Opium Smoking: A New Form of the Opium Habit,” p. 114; William Rosser Cobbe, *Doctor Judas: A Portrayal of the Opium Habit* (Chicago: S. C. Griggs and Company 1895), p. 131. One of Cobbe’ s earliest reviewers, writing in the pages of the *American Journal of Psychology*, was

talkative, his mind turns in a philosophical direction, to monosyllabic comments on men and events. He goes to a ‘joint,’ or a room which persons of a similar desire frequent.” An addict reported that smokers in New York dens joked, chatted, told stories, even sang.<sup>88</sup> But all these were anomalous descriptions. Even if they reflected some fragment of the smoking scene, they lay shadowed by more prominent images of stony silence. In the eyes of readers who never set foot in a den, the dominant image was silence—and silence signaled the dens’ immorality.

Among those who deemed opium immoral because of its abusers’ silence was Immanuel Kant. Writing at the end of the eighteenth century, when the old moral argot still reigned, Kant condemned a drunkard as “ simply like a beast” — or “ even beneath the nature of an animal” —and “ not to be treated as a human being.” Such debasement could trace to alcohol or to “ other stupefying agents such as opium.” But wine, Kant said, “ used almost to the point of intoxication,” could be permitted “ because it arouses a company to lively conversation and unites it in frankness.” The critical thing was that there be “ a moral end in view, namely to bring many people together for a long time in mutual communication.” Neither opium nor distilled alcohol could claim this moral

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agnostic about “ whether [his book was] the work of a genuine victim of the habit or not.” “ *Doctor Judas*” [book review], *American Journal of Psychology*, vol. 7 (Jan. 1896), p. 294.

<sup>88</sup> Thomas Crothers, *Morphinism and Narcomanias from Other Drugs* (Philadelphia: W. B. Saunders & Co. 1902), p. 208; Thomas Byrnes, *Professional Criminals of America* (New York: Chelsea House Publishers, reprint 1969), pp. 381–85, cited in Courtwright, *Dark Paradise*, p. 73.

excuse of social drinking: “ The use of opium and distilled spirits for enjoyment is closer to baseness than the use of wine because the former, with the dreamy euphoria they produce, make one taciturn, withdrawn, and uncommunicative.”

Where the English translator writes “ taciturn,” Kant had said *stumm*— capturing both the stupefying force of opium and the end state of those who drug themselves dumb. And where the translator says “ uncommunicative,” Kant had written *unmittelbar*—perhaps better rendered (as earlier translators had it) “ unsocial.” “ Therefore,” Kant continued, given the social uselessness of opium and distilled alcohol, “ they are permitted only as medicines.”<sup>89</sup> That is, lacking the moral excuse of social necessity, opium and distilled alcohol needed the excuse of medical necessity. Smoked opium, which emerged in Europe after Kant wrote these words in 1797, could make neither claim, for doctors denied it a medical role. Even William Rosser Cobbe, who claimed that smokers sometimes were talkative and mirthful, denied them the moral excuse of opium eaters: While opium eaters could claim to have been addicted by their doctors or by “ racking physical pain,” opium smokers could blame only “ wantonness of

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<sup>89</sup> Immanuel Kant, *The Metaphysical Principles of Virtue* (J. Ellington, trans. 1964 (1797)), pp. 88–89 (rendering Kant’ s *stumm, zurückhaltend und unmittelbar* as “ taciturn, withdrawn, and uncommunicative”). Compare Immanuel Kant, *The Metaphysical Principles of Virtue* (John William Semple & Henry Calderwood, trans. 1871 (1797)), p. \_\_ (rendering the same phrase as “ mute, reserved, and unsocial”). For Kant’ s original, see *Die Metaphysik der Sitten: Der Streit der Fakultäten* (Benzion Cassirer, ed. 1916), p. 239. My thanks to David Crandall for his assistance in gathering and comparing translations.

desire” and “moral depravity. The smoker . . . is a creature given over to his own lusts walking after the flesh . . . .”<sup>90</sup>

And if smoked opium could claim neither social nor medical necessity, it also lacked the broader moral safety zone of subintoxicating use—ør use in moderation. That is because the drug was—ør at least was perceived to be—incapable of moderate use. A 1911 ruling of the California Supreme Court quoted a lower appellate court’s comments on this score. The lower court had sought to explain why the legislature could ban possession of opium despite earlier rulings that it lacked power to penalize possession of alcohol. “[L]iquor is used daily in this and other countries as a beverage, moderately and without harm, by countless thousands,” the lower court wrote. But “it appears there is no such thing as moderation in the use of opium. Once the habit is formed the desire for it is insatiable, and its use is invariably disastrous.” The California Supreme Court conceded it may be “unduly sweeping” to say opium must always be used in excess. Still, “[i]t is enough if the law-making body may rationally believe such facts to be established. If the belief that the use of opium, once begun, almost inevitably leads to excess may be entertained by reasonable men—and we do not doubt that it may—such belief affords a sufficient justification for applying to opium restrictions which might be unduly

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<sup>90</sup> Cobbe, *Doctor Judas*, pp. 124–25, 127.

burdensome in the case of other substances, as, for example, intoxicating liquors . . .”<sup>91</sup>

### *Banning the Dens*

Opium dens confronted the West for the first time with a *recreational intoxicant*—a mind-numbing, pleasure-giving escape from reality that served no known nutritional or medicinal or social need and permitted no reliable subintoxicating use. Smoked opium therefore was our first *drug* in the sense meant by the *War on Drugs*.<sup>92</sup> Its legal fate was never much in doubt, as there was no tradition in either England or America of tolerating any intoxicant *as an intoxicant*.

Nor did the timing of the dens’ arrival in America help their cause. For just at that moment, temperance battles flared across the nation. In California the Chinese dens rose in public consciousness soon after a “local-option” law of March 1874 stirred anti-saloon passions throughout the state. The law empowered citizens to demand local elections to decide the saloon’ s fate in their communities. In succeeding months, even as the *San Francisco Chronicle* made no

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<sup>91</sup> *In the Matter of Yun Quong, on Habeas Corpus*, 159 Cal. 508, 514–15 (1911) (quoting from lower appellate ruling).

<sup>92</sup> See U.S. Public Health Service, *State Laws Relating to the Control of Narcotic Drugs and the Treatment of Drug Addiction* (Washington: Government Printing Office 1931), pp. 3–4 (“ [T]he use of opium for smoking purposes constituted the first serious narcotic problem confronted by the States.”).

apparent mention of opium smoking, it lavished attention on the saloon question.<sup>93</sup> A series of articles ran from April through September reporting on local-option elections in Oakland, San Jose, Santa Cruz, and cities and towns up and down the state.<sup>94</sup>

In September, before local option could reach the ballot in San Francisco, the state Supreme Court struck down the new law, agreeing with liquor makers and sellers that the law unconstitutionally delegated lawmaking powers to voters.<sup>95</sup> Not waiting on the Court's ruling, the San Francisco Board of Supervisors already had acted to restrain saloon traffic. On August 31, 1874, supervisors

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<sup>93</sup> The *San Francisco Chronicle* is not on line in this time frame. My conclusion that the paper made no mention of smoked opium or opium dens in 1874 is based on a page by page search made by my research assistant, Helen Kim. The *Chronicle* printed a few references to eaten opium, none in connection with the Chinese.

<sup>94</sup> See, e.g., "Legislative Action," *San Francisco Chronicle*, Apr. 6, 1874, p. 3 (noting recent passage of local option law); "Local Option," *ibid.*, May 15, 1874, p. 2 (detailing the law's provisions and noting elections in Oakland, Santa Clara, Santa Cruz and towns in Contra Costa, Nevada, Tulare, and Yolo Counties); "Across the Bay: Oakland in a Ferment over Local Option," *ibid.*, May 21, 1874, p. 1; "Oakland's War on Gin: To-Day's Great Struggle Across the Bay," *ibid.*, May 30, 1874, p. 3; "The Women's War: The Great Battle in Oakland Yesterday," *ibid.*, May 31, 1874, p. 1; "The Temperance Warfare," *ibid.*, June 1, 1874, p. 3 (noting that in sixteen of twenty-two local-option elections held so far, the vote had been in favor of a drink ban); "Local Option," *ibid.*, June 10, 1874, p. 3 (reporting that "[e]very township in Alameda county has now petitioned for an election under the Local Option law" and noting elections in towns in Contra Costa, Solano, Trinity, and Yuba Counties); "Local Option," *ibid.*, June 23, 1874, p. 1 (reporting election results in six townships in Yolo County and mentioning an election in Sutter County); "The War on Rum," *ibid.*, June 24, 1874, p. 3 (reporting on upcoming election in San Jose).

<sup>95</sup> *Ex Parte Wall*, 48 Cal. 279, 313–14 (1874); "Local Option in San Francisco," *San Francisco Chronicle*, June 10, 1874, p. 2 (predicting defeat at the polls for the anti-liquor forces in San Francisco); "The Impending Crisis: San Francisco Preparing for the Local Option Fray," *ibid.*, June 16, 1874, p. 1; "The Plans and Prospects of the Liquor Dealers," *ibid.*, June 25, 1874, p. 2 (outlining the liquor interests' strategy for challenging the local-option law in court); "The Local Option Law: Does It Conflict with the Constitution?," *ibid.*, Aug. 18, 1874, p. 3 (reporting on argument before the California Supreme Court); "The Local Option Law: Conclusion of the Argument Regarding Its Validity," *ibid.*, Aug. 19, 1874, p. 3; "The Bung Out: The Local Option Law Declared Unconstitutional," *ibid.*, Sept. 29, 1874, p. 1.

barred any “ drinking cellar, saloon, or drinking place” from admitting women between 6:00 p.m. and 6:00 a.m. and forbade women to enter during those hours. Violators—both the women who entered and the proprietors who admitted them—faced up to 100 days’ confinement.<sup>96</sup>

The supervisors did not explain why they chose to bar women from the saloons—or why they took this action then, in late summer 1874. It seems likely that raging battles in nearby local-option elections heightened lawmakers’ sensitivity to the moral threats saloons posed. They knew drunken women suffered worse moral and social stigma than drunken men—and knew saloon sojourns by night hinted at sexual depravity too. They probably knew that men-only rules had precedents elsewhere, in jurisdictions across the country.<sup>97</sup> But whatever roused supervisors to act, their new ordinance advertised vigilance in detecting and combating threats to feminine morals.

The *Chronicle*’ s reporting soon faced them with such a threat from a new quarter. At the beginning of 1875, after at least a year’ s silence on the matters of opium smoking and opium dens, the *Chronicle* turned to these topics in earnest.

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<sup>96</sup> “ The Supervisors: A New Order to Exclude Women from Saloons at Night,” *San Francisco Chronicle*, Sept. 1, 1874, p. 3. This article reprints the text of the new ordinance and says it “ was passed to print and referred to the Committee on License and Orders.” It is not clear to me whether the ordinance took effect immediately or required some further action by the Board of Supervisors. It is clear, however, that the ordinance became law, for two months later the *Chronicle* reported that a question had arisen concerning its enforcement. See “ The New Saloon Ordinance at the Gardens,” *ibid.*, Oct. 17, 1874, p. 2.

<sup>97</sup> See *State v. Nelson*, 10 Idaho 522, 524–26, 529 (1905) (quoting local ordinances forbidding saloons to admit women in Boise, Denver, and Middlesboro, Kentucky).

Opium dens were not yet illegal, either in San Francisco or anywhere in the United States. The *Chronicle* therefore covered their emergence not as an element of the criminal underworld, but as a slightly unpleasant artifact of the immigrant Chinese culture. Hence the first of several long articles from 1875 examining life in the dens ran under the front-page headline, “John Chinaman: The Habits and Manners of the Mongolians.”

In this article from late January and three others from February, April, and June, the *Chronicle* wrote of life in the city’s Chinese district and of the nether realm of the dens.<sup>98</sup> Though never approving, never beguiled by the exoticism of the opium scene, the anonymous author at first avoided the shuddering revulsion that later colored such notes from the underground. “The Chinese are the victims of two great vices,” said the first article—gambling and smoking opium. Unable to shake his taste for the “cursed drug,” the Chinese man “will smoke his pipe of opium every evening lying in his bunk and enjoying that pleasure that seems at first something almost divine . . . .” In time, the reporter warned, smokers fall victim to addiction, and the drug “exact[s] from its votaries such a fearful penalty.” With that, his interest in the topic was spent.<sup>99</sup>

The second article cast opium smoking in even less alarmist tones. Here our reporter—still unnamed but likely the same—told of a night of upscale revelry at a

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<sup>98</sup> See “John Chinaman,” *San Francisco Chronicle*, Jan 31, 1875, p. 1; “A Celestial Banquet,” *ibid.*, Feb. 22, 1875, p. 3; “Female Opium Smokers,” *ibid.*, Apr. 25, 1875, p. 5; “The Orient in America,” *ibid.*, June 13, 1875, p. 5.

<sup>99</sup> “John Chinaman,” *San Francisco Chronicle*, Jan 31, 1875, p. 1.

“ Celestial Banquet” thrown by Chinese cigar makers. After a posh dinner he “ lingered and was invited to try a pipe of opium.” He followed his host to “ an elegantly furnished alcove” where, he told readers without embarrassment, he inhaled “ several blasts of strong-smelling smoke.” Faint and qualmish, he despaired of the “ delicious languor . . . one reads of,” with its “ succession of fairy realms” and its “ sensation of being whirled through space.”<sup>100</sup>

The reporter’ s next foray into the dens, in late April 1875, was decidedly more ominous. His title told his theme: “ Female Opium Smokers: Midnight Meetings to Indulge in the Vice.” The “ females” in question were not those often spoken of as lost to virtue, but rather two “ young and pretty and very expensively attired” women, with “ beaded silks, showy jewelry, and bright complexions,” who visited a seedy den on that “ battered and immoral thoroughfare,” Dupont Street. Inside the women came upon the reporter and a police officer, who had entered under cover on pretense of wanting a smoke. It was no time for respectable women to be out—after three on a Friday morning—and these two risked the twin moral dangers we have come to expect from opium smoking. First there was the stupor—the narcosis of the smoke. The women were practiced smokers, the reporter judged, and lasted through seven pipes. But after the eighth “ the drug began to have its effect,” and “ they gave

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<sup>100</sup> “ A Celestial Banquet,” *ibid.*, Feb. 22, 1875, p. 3.

themselves up to THE INTOXICATION OF THE OPIUM.” Soon they were “unconscious of the mean, grimy place and all its occupants.”

Then there was the sex. The danger here was not the four Chinese patrons who lay sleeping in bunks “arranged fore-castle fashion” at one end of the den. Nor was it the Chinese proprietor who lay alongside the pipe he was preparing for his lady patrons. True, the reporter found it “odd and painful” to see the younger of the two women sharing the proprietor’s pillow, her “fair hair . . . arranged in a wild and coquettish tangle [that] fairly brushed the shaven crown of the unclean Chinaman.” But the reporter need not have worried, for “the unappreciative heathen brushed [the woman’s hair] away from his eyes.”

The danger came instead from white men—“the brace of dissipated-looking bucks in shiny hats” who had accompanied the women into the den and who now, as the women lay unconscious, began to speak threateningly toward the reporter and undercover cop, “inquiring of one another why some people would stay where they weren’t wanted.” Taking the hint, the reporter and officer slunk away, leaving the women prey to the “*blase* scoundrels.” It was just such scenes, one presumes, that led Harry Hubbell Kane to write six years later that “the laws against opium-smoking . . . had their inception in a knowledge of the fact that male smokers (Americans) . . . were continually beguiling women and young girls to try the pipe, and effected their ruin when

they were under its influence.”<sup>101</sup> Indeed Kane’s parenthetical reference to “(Americans)” suggests he may have had this very *Chronicle* article in mind.

Or his reference may mean only that such events were typical. The article itself suggested as much. The undercover officer told the reporter that in surveilling the den over the previous week, he had seen “women going in at all hours of the day and night”—fifteen women on the previous afternoon alone, together with “nearly as many young men. ’ They go there to smoke opium,’ said the officer, ‘and what else I don’t know. Most of the women are young, and the men are hoodlums and sports.’ ”<sup>102</sup>

Both white hoodlums and the women they squired turned up missing in the last of the *Chronicle*’s 1875 articles on the world of the dens. “The Orient in America” focused entirely on the Chinese and their ways. It bore a sadly typical subheading—“Habits of the Heathen Chinees”—yet offered a surprisingly tolerant account of Chinese culture, almost modern in its pained admission of the day’s pervading racism:<sup>103</sup> “To see the waves of Chinese humanity divide [on a San Francisco street] as the lordly American sweeps through them like an ironclad through a fleet of birch bark canoes, is to understand that the aristocracy of race did not end with Southern slavery.” The reporter chided fellow whites for

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<sup>101</sup> Kane, *Opium-Smoking in America and China*, pp. 131–32.

<sup>102</sup> “Female Opium Smokers,” *San Francisco Chronicle*, Apr. 25, 1875, p. 5.

<sup>103</sup> On the origins of the expression “heathen Chinees,” see Ahmad, “Caves of Oblivion,” pp. 25–26.

refusing to “ see anything good, or curious, or wise, or interesting . . . under the brown guise of these strange Orientals, who have built our railroads, tilled our fields and otherwise brought their forty centuries of old-world aristocracy into meek submission to our despotic and semi-barbarous spirit of progress.”

Despite so stout a defense of the maligned Chinese, the reporter proved ambivalent on the matter of opium smoking. On the one hand he allowed that “ [t]he Chinaman who does not smoke opium is a singular exception” — suggesting that the habit is consistent with “ forty centuries of old-world aristocracy.” Yet unmistakably the dens revolted him—from the “ steps slippery with accumulated filth” to the “ slop and offal” outside the door to the cramped quarters and “ yellow clay-skinned” occupants within. Worse was the drug’s effect on its devotees and the “ somnolent inebriety” in which they lay: “ By night or day anyone who enters here can see the same Chinamen at their pipes, or asleep, living from day to day a kind of life in death, with scarcely waking and lucent intervals long enough for successful theft or ordinary immorality.” Ordinary immorality, the author seemed to suggest, would be better than this lolling, narcotized stupor. “ It is only the novelty of a sight like this that prevents absolute disgust and sickness.” This time the reporter thought better than to indulge. “ [D]eclining an invitation to inhale the fumes of the sleepy drug,” he climbed back to “ the glittering streets” of the city.<sup>104</sup>

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<sup>104</sup> “ The Orient in America,” *San Francisco Chronicle*, June 13, 1875, p. 5.

Three more articles, appearing not in the *Chronicle* but in the rival *Alta California*, backdropped the San Francisco supervisors' assault on the dens. On September 30, 1875, less than two months before supervisors took action, police Detective James Rogers inspected a Chinatown den "frequented by a certain class of whites and Chinese, both male and female . . ." Inside Rogers found "five young women from 18 to 23 years old, and some eight or nine young men, fumigating themselves in Oriental style amidst a pack of Chinese." Though the account of Rogers' s visit, printed in the *Daily Alta California* the next day, does not specify the race of the "young women" and "young men," their placement "amidst a pack of Chinese" suggests they were white. The report never clarifies whether the women were in the company of the white men or their Chinese hosts or neither. But in the context of the *Chronicle*' s report of sporting white men leading young white women to the dens and of Kane' s complaint "that male smokers (Americans) . . . were continually beguiling women and young girls to try the pipe," it seems likely that the young women were with the white men. The *Alta* hinted as much—but hardly clearly—in noting that "the miserable guests were ordered to leave, and informed that they would be prosecuted for vagrancy if found again in such degraded surroundings."<sup>105</sup>

On Detective Rogers' s next reported descent into a den, almost a month later, he disturbed " [a] number of white women . . . at their favorite pastime of

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<sup>105</sup> "An Opium Den," *Daily Alta California*, Oct. 1. 1875, p. 1.

Oriental fumigation.” This time, it is true, the *Alta* said nothing of white men—indeed nothing of men at all—and it is hard to know what contemporary readers would have made of this report. The paper’s ten-line account told little more than that Rogers once again “ordered [the women] to depart, which they did, taking with them a warning not to be found in such places again . . . .”<sup>106</sup>

All we know for sure is that Rogers made no arrests, for he lacked authority. Neither the women in smoking at the den nor its proprietors in selling to them had broken the law. Barely a week later, however, on November 8, Mayor George Hewston called on city supervisors to ban the dens.<sup>107</sup>

### *The Drug War Begins*

We cannot know whether the mayor and supervisors had this series of articles in mind when, in November 1875, they adopted the nation’s first ban on a nonalcoholic recreational drug. Henry Hubbell Kane perhaps thought as much. His 1881 claim that the new laws against opium dens sprang from efforts of young white men to seduce young women by means of the pipe may have referred to the third of the *Chronicle* articles and its account of well-dressed

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<sup>106</sup> “Raid on Opium Dens,” *Daily Alta California*, Oct. 30, 1875, p. 1.

<sup>107</sup> “Board of Supervisors,” *Daily Alta California*, Nov. 9, 1875, p. 1. I am grateful to Jim Baumohl for these citations to the *Alta* and the events reported in the last three paragraphs. Baumohl first told of Rogers’s visits to the dens in “The ‘Dope Fiend’ s Paradise,’ Revisited: Notes from Research in Progress on Drug Law Enforcement in San Francisco, 1875–1915,” *The Surveyor*, no. 24 (June 1992), pp. 3, 7.

women and their sporting young bucks. And Mayor Hewston's November 8 appeal to the supervisors seems to have built on the *Alta*'s reports of Detective Rogers' raids on the dens. His brief address began with a pointed reference to white youths in the dens. And while he worried most about the white women, he was concerned for the young men too: "I would respectfully call your attention," he said, "to the existence and increase of the opium smoking dens, under Chinese supervision, and frequented by white males and females of various ages, from the schoolgirl to the more quarter."<sup>108</sup> He did not clarify the danger he saw to those schoolgirls.

In answering the mayor a week later, the supervisors spoke with more clarity. Their new ordinance and statement of rationales seemed to respond to the two moral dangers highlighted by the *Chronicle* and *Alta* articles—the drug's narcotizing stupor, which afflicted young white men and white women alike, and the drug's power to beguile respectable young women at the hands of unscrupulous men.

No official copy of either the 1875 ordinance or the supervisors' preamble appears to have survived the San Francisco earthquake and fire of 1906. Happily both the *Chronicle* and the *Alta* reprinted the text of both the ordinance and what appears to be a preamble a day after their approval. The ordinance itself is straightforward: It forbade anyone to "keep or . . . visit . . . any place, house or

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<sup>108</sup> Kane, *Opium-Smoking in America and China*, pp. 131–32; "Board of Supervisors," *Daily Alta California*, Nov. 9, 1875, p. 1.

room where opium is smoked, or where persons assemble for the purpose of smoking opium . . . .” It made no mention of eaten opium or any other drug. Its penalty scheme, given the law’ s novelty, was aggressive: Offenders faced between ten days’ and six months’ confinement or a fine of between fifty and 500 dollars or both.<sup>109</sup>

The *Chronicle* preceded the ordinance with a statement of its rationales possibly constituting the supervisors’ preamble. The preamble said much the law did not:

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<sup>109</sup> Here is the ordinance in full as it appeared in the *Alta*:

ORDER NO. \_\_ *Prohibiting opium-smoking dens.*—The People of the city and county of San Francisco do ordain as follows:

SEC. 1: No person shall, in the city and county of San Francisco, keep or maintain, or become an inmate of, or visit, or shall in any way contribute to the support of, any place, house or room where opium is smoked, or where persons assemble for the purpose of smoking opium or inhaling the fumes of opium.

SEC. 2: Any person who shall violate the provisions of Section 1 shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$50 and not exceeding \$500, or by imprisonment in the County Jail for a period not less than ten days or more than six months, or by both such fine and imprisonment.

Passed to print.

“ Board of Supervisors,” *Daily Alta California*, Nov. 16, 1875, p. 1. The *Chronicle*’ s version of the ordinance was virtually identical, though punctuation varied, and the *Chronicle* merged sections one and two as a single section. See “ The Opium Dens,” *San Francisco Chronicle*, Nov. 16, 1875, p. 3. Both papers introduced the quoted passage in a way that suggested nothing (of note) was dropped: The *Chronicle* wrote that “ the following ordinance was read and passed to print,” and the *Alta* said the supervisors “ recommended the passage of the following order: . . . .”

Final passage of the ordinance came one week later, on November 22. See “ Board of Supervisors,” *Daily Alta California*, Nov. 23, 1875, p. 1 (reporting on the previous evening’ s meeting and announcing that “ [t]he ordinance prohibiting the keeping of opium dens and opium smoking was finally passed”).

At the meeting of the Board of Supervisors last night, the Health and Police Committee, to whom was referred the communication from the Mayor in relation to the opium-smoking dens kept by Chinese, reported that there are numbers of these places kept for Chinese only, and that there are now existing, within three blocks of the City Hall, eight opium-smoking establishments kept by Chinese, for the exclusive use of

WHITE MEN AND WOMEN;

That these places are patronized not only by the vicious and depraved, but are nightly resorted to by young men and women of respectable parentage and by young men engaged in respectable business avocations in the city; that the habitues of these infamous resorts inhale the fumes from the opium pipes until a state of stupefaction is produced; that unless this most dangerous species of dissipation can be stopped in its inception there is great danger that it will become one of the prevalent vices of the city . . . .<sup>110</sup>

It is hard to miss the supervisors' pointed distinction between opium dens "kept for Chinese only" and those "kept . . . for the exclusive use of WHITE MEN AND WOMEN." The latter apparently touched a nerve. True, the distinctive typeface and setting of the words "WHITE MEN AND WOMEN" perhaps were the

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<sup>110</sup> "The Opium Dens," *San Francisco Chronicle*, Nov. 16, 1875, p. 3. The *Alta*'s version of the preamble differed in three minor ways. Where the *Chronicle* wrote "that there are numbers of these places kept for Chinese only," the *Alta* wrote "that there are numerous of these places kept by Chinese only." The *Alta* did not follow the *Chronicle* in centering and capping the reference to WHITE MEN AND WOMEN. And the *Alta* omitted the words "respectable parentage and by young men engaged in." The last omission was likely a typesetting error.

printer' s whims and not the supervisors' message. But succeeding references to “ young men and women of respectable parentage” and “ young men engaged in respectable business avocations” suggest the Board' s dominant concern was the threat to the city' s white youth.

The nature of that threat took two now -familiar forms. First there was the drug' s narcotizing force: These young men and women of respectable parentage “ inhale the fumes from the opium pipes until a state of stupefaction is produced . . . .” That is, “ stupefaction” was not a side effect of some other, more legitimate use of the drug, but rather the reason for smoking. As the *New York Times* had reported two years earlier, that “ death-like stupor . . . is the aim of all opium smoking.”<sup>111</sup> Then there was sexual commingling. Twice the supervisors mentioned that both men and women haunted the dens. In emphasizing that those men and women were white and of respectable parentage, the supervisors warned that the threat to feminine virtue did not fall only on the already fallen . . .

[The balance of Chapter 7 traces the rise of anti-dens laws in various Western cities and states and ultimately across the country. As in San Francisco, local authorities typically took action only after smoking spread to whites of the better sort. The narrative then turns to regulation of eaten opium, delayed somewhat

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<sup>111</sup> “ Chinese in New-York,” *New York Times*, Dec. 26, 1873, p. 3.

because of the need to preserve medical use. Eventually legislators hit upon the formula of banning sales except when prescribed. The theme of race is never far from the surface in Chapter 7, but is not engaged in earnest till Chapter 8. I pick up here with the closing paragraphs of Chapter 7:]

In the making of laws against opium dens and eaten opium, we have seen racial images flickering across the page—elichéd references to “ John Chinaman”; snide allusions to the “ unclean” and “ unappreciative heathen”; smug wordplay on the “ Manners of the Mongolians” and the “ Habits of the Heathen Chinees.” But there is much more to be said of the role of race in the rise of early anti-drug laws. To judge the force of race in framing early laws against opium dens, it will be useful to watch the role of race in enforcing those drugs once made. And to judge whether the story of anti-opium laws is characteristic of all anti-drug laws, we need to explore other early drug laws, particularly those governing morphine, cocaine, and marijuana.

These investigations will crisscross the country several times in search of national trends. But for now we return again to San Francisco to witness the nation’ s first anti-drug law in force.



## Chapter Eight

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### Race in the Dens and Miscegenation Myths

In late December 1876, thirteen months after the San Francisco Board of Supervisors adopted the nation's first true anti-drug law, the *New York Times* got the story glaringly wrong. The paper uncritically reprinted an item from the San Francisco *Bulletin* that made passing mention of the law and its contents. "A little over a year ago a great many white people of both sexes patronized the opium dens," the *Bulletin* had written. "The Board of Supervisors deemed it best to put a check upon the growing evil . . . ." This much was true. The supervisors had voiced concerns that young "WHITE MEN AND WOMEN" of respectable parentage nightly indulged in the stupefying smoke. But the *Bulletin*'s account then veered from fact: "[A] stringent law was passed, making it a penalty of not less than \$50 nor more than \$500 for the keeper of any opium den to allow a white person to smoke in the place."<sup>112</sup> Here there were

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<sup>112</sup> "San Francisco Opium Den," *New York Times*, Dec. 23, 1876, p. 7 (quoting account from the San Francisco *Bulletin*).

two errors. The less important concerns the law's penalty scheme, which also provided for a jail term of between ten days and six months.

The more important concerns that word *white*. “White” appeared nowhere in the supervisors’ ordinance: “*No person,*” the law began, shall “keep or maintain, or become an inmate of, or visit . . . any place, house or room where opium is smoked.” And “*[a]ny person* who shall violate” this law shall be guilty of a misdemeanor.<sup>113</sup> Apparently the *Bulletin*’s error was no random typo, for a sentence later it repeated the wayward reference to race: “It was also made a criminal act for any *white* person to be found in an opium den . . . .” The *Bulletin* then emphasized the racial restriction by noting its consequence: “Since the passage of this law the dens drive a less lucrative business. Their customers are all Chinese . . . .”<sup>114</sup>

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<sup>113</sup> “Board of Supervisors,” *Daily Alta California*, Nov. 16, 1875, p. 1 (emphasis added). Again, the full text of the city’s ordinance follows:

ORDER NO. \_\_ *Prohibiting opium-smoking dens.*—The People of the city and county of San Francisco do ordain as follows:

SEC. 1: No person shall, in the city and county of San Francisco, keep or maintain, or become an inmate of, or visit, or shall in any way contribute to the support of, any place, house or room where opium is smoked, or where persons assemble for the purpose of smoking opium or inhaling the fumes of opium.

SEC. 2: Any person who shall violate the provisions of Section 1 shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$50 and not exceeding \$500, or by imprisonment in the County Jail for a period not less than ten days or more than six months, or by both such fine and imprisonment.

<sup>114</sup> “San Francisco Opium Den,” *New York Times*, Dec. 23, 1876, p. 7 (quoting account from the San Francisco *Bulletin*) (emphasis added).

Nor may we dismiss the *Bulletin*'s account as stray sloppy reporting. After all, it bore the imprimatur of the *New York Times*, albeit a distant arbiter of accuracy. And it had authoritative precedent. In early December 1875, not quite three weeks after it had reported the supervisors' approval of their pioneering ban on opium dens, the *Alta California* announced "[t]he first raid under the new ordinance against *white* persons who frequent opium dens . . . ." All the alleged smokers nabbed by Detective James Rogers and a police posse on that raid had distinctly non-Chinese names: Fannie Whitmore, Cora Martinez, James Dennison, Charles Anderson.<sup>115</sup>

Moreover, these early reports of the *Times* and *Alta* gained heft from later corroboration. In his 1892 description of San Francisco's opium dens, Frederick Masters wrote, "A *white* person convicted of visiting such a place is now sentenced to three months' imprisonment without the option of a fine." Masters evidently had in mind a San Francisco general order of 1880, which displaced earlier ordinances and imposed a three-month sentence for keeping or visiting an opium den. But that law retained word for word the race-neutral language of the 1875 original: "*No person* shall . . . keep or maintain . . . or visit . . . any place, house, or room where opium is smoked . . . ." <sup>116</sup> Six years later

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<sup>115</sup> "Raid on Opium Dens," *Daily Alta California*, Dec. 6, 1875, p. 1 (emphasis added). I thank my research assistant Justin Barnard for finding this reference.

<sup>116</sup> Masters, "Opium and Its Votaries," pp. 641, 644 (emphasis added). Masters supplied the citation of this general order and its date of passage. See *ibid.*, p. 644. For the law's language, see *General Orders of the Board of Supervisors* (San Francisco: P. J. Thomas, Printer 1889), § 61, p. 39 (emphasis added).

another author repeated Masters' s mistake. In an 1898 issue of *Scientific American*, C. F. Holder told of scores of opium dens “ in the Chinese quarter of every large city. There the Chinaman can buy his pipe and smoke in peace. In San Francisco,” however, despite the indulgence granted Chinese smokers, “ *white* people are forbidden to visit these dens . . . .”<sup>117</sup>

As renditions of the law in print, all these reports were wrong. No San Francisco ordinance or California statute ever forbade only whites to keep or visit opium dens or to smoke opium. But all these authors can be forgiven their failure to look up the law—for as statements of the law *in force*, they were right. On this score the evidence is both abundant and far ranging.

### *Enforcement with an Unequal Hand*

Six years after San Francisco' s anti-dens ordinance took effect, a *Chronicle* reporter accompanied Officer James Mahoney on a daytime tour of some of the city' s most notorious dens. Officer Mahoney began the 1881 outing with an upbeat assessment of police efforts to suppress the dens:

We have . . . closed up the opium dens. I mean by that the places formerly kept by Chinese in Chinatown, where anyone could go and

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<sup>117</sup> C. F. Holder, “ The Opium Industry in America,” *Scientific American*, vol. 78 (March 5, 1898), p. 147 (emphasis added).

smoke opium by paying for the privilege. These places were supported principally by the patronage of white men and women. The likely chance of having to pay \$20 in the Police Court for the privilege has made the white smokers find other means of hitting the pipe.<sup>118</sup>

Here the officer disclosed two things: The police had targeted those dens that catered principally to whites—apparently ignoring those that served only the Chinese. And only white smokers, it seems, faced police court discipline and its twenty-dollar fines.

At the first den on the tour, in Chinatown's Bartlett Alley, the reporter saw the consequences of whites-focused policing. Six Chinese patrons lay by their pipes. "[M]ost of the shelves in the den whereon white smokers erstwhile sought dreamy oblivion showed evidences of not having been used for weeks. . . . All of the dens, whose white patrons the vigilant officers have driven away, are now occupied by the lowest class of Chinese sneak thieves."

The tour led next to Jackson Street, where Officer Mahoney pointed out a den cleverly disguised behind several hidden doors. "The den is still patronized late at night, the officers think, by white men and women" who managed to elude police with an elaborate signaling mechanism. In yet a third establishment, abutting Pacific Street, Mahoney recalled how police had searched in vain for a certain visitor. "[O]ne night some officers were informed that a

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<sup>118</sup> "A Growing Evil: What an Officer Knows About Opium Smoking," *San Francisco Chronicle*, July 25, 1881, p. 3.

white man was smoking in that den.” They promptly broke down the door and sent in a trained dog with the simple command, “ Seek them out, Scotchey.” Even the dog, it seems, knew the quarry in question was white. For Scotchey ignored the “ one lone . . . Chinaman” in the den, “ snuffed all about the place, and came back to its master with tail dragging.”

The reporter’ s tour of the dens complete, he expressed his “ conviction that Chinatown had indeed been cleared of white opium smokers. . . . The anti-opium-smoking ordinance” —though race-blind in print—“ drove the white smokers out of Chinatown . . . .”<sup>119</sup> As it works out, this result flowed from official departmental policy. Officer Mahoney’ s boss, San Francisco Police Chief Phillip Crowley, publicly endorsed Mahoney’ s view that the 1875 anti-dens ordinance outlawed mainly those places “ supported principally by the patronage of white men and women.” The law’ s *point*, Crowley said, was to target those dens that drew a white clientele—and especially those that attracted young women. It did not aim to outlaw opium smoking itself. “ All we can do is to keep them [the Chinese] from opening places where whites might resort to smoke.” This task Crowley’ s men had discharged “ pretty thoroughly.”<sup>120</sup>

The department’ s race-targeted enforcement of a facially race-neutral law persisted long after the reporter’ s 1881 tour. A visitor to San Francisco’ s

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<sup>119</sup> “ A Growing Evil,” *San Francisco Chronicle*, July 25, 1881, p. 3.

<sup>120</sup> “ A Growing Evil,” *San Francisco Chronicle*, July 25, 1881, p. 3; Baumohl, “ The ‘Dope Fiend’ s Paradise,’ Revisited,” p. 6 (quoting Chief Crowley without date or citation).

Chinatown in 1887 saw hundreds of Chinese “ smoking in full view of the street, and nothing is thought of it. The police disturb them not.” And in 1892 Frederick Masters congratulated police on their continued vigilance against white—and only white—smokers:

It should be mentioned to the credit of our police that the visits of white men and girls to opium hells in Chinatown, so often described a few years ago, have now been stopped. . . . If done at all it must be very secretly. The movements of white people about Chinatown are so carefully watched, and the different hells under almost half-hourly surveillance, that it would be impossible for them to frequent these places without soon attracting the attention of the police.

“ During the last six years,” Masters marveled, “ I have failed to discover a single Caucasian in one of these dens, or even suspiciously near one.”<sup>121</sup>

### *Unequal Enforcement Elsewhere*

Police enforcement looked much the same down the coast in Los Angeles. Like San Francisco’ s 1875 anti-dens ordinance, California’ s statewide ban of 1881 applied to “ [e]very person who opens or maintains” an opium den “ and

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<sup>121</sup> Letter from “ J.F.M.,” reprinted in Samuel B. Collins, *Theriaki: A Treatise on the Habitual Use of Narcotic Poison: How the Habit Is Formed, Its Consequences and Cure* (Laporte, Ind.: n.p. 1887), p. 64; Masters, “ Opium and It’ s Votaries,” p. 641.

every person who visits . . . any such place . . . .” Yet repeated articles in the *Los Angeles Times* reveal officers’ almost single-minded focus on white smokers. Hence when a *Times* reporter followed a police captain on a tour through L.A.’s Chinatown in April 1882, the reporter noted no action against the Chinese smokers whose cadaverous forms the tour group found asleep in the dens. But “ [a] few white men, with some shame left, were occasionally noticed to be hurriedly getting out of sight on the officer’ s approach.” Six years later, when officers suspected “ that an opium joint on Marchessault alley, kept by Ah Wen, was frequented by depraved white men and women,” they raided the place, “ capturing the proprietor and two white women, who were caught in the act of ‘hitting the pipe.’ ” The next month a *Times* reporter made personal use of his knowledge of police priorities. Annoyed at a Chinese den owner he found presiding over a “ nest of Chinese opium smokers,” the reporter “ didn’ t kill the impudent heathen, but . . . had the whole gang arrested soon after for selling opium to white friends” —presumably a typo for “ white fiends.”<sup>122</sup>

Most striking was an account of “ A Successful Raid” on a “ notorious opium joint” made by one Officer Phelan in October 1888. The *Times* hailed the officer’ s capture of “ a white man and two women, as well as the Chinaman

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<sup>122</sup> See 1881 *California Statutes*, ch. 40 (Act of Mar. 4, 1881), § 1, p. 34; “ Hell’ s Half Acre: A Report of a Tour Through Chinatown Yesterday,” *Los Angeles Times*, Apr. 14, 1882, p. \_\_; “ The City in Brief,” *ibid.*, July 23, 1888, p. 8; “ In Demand: People Who Send for a Reporter and Get Him,” *ibid.*, Aug. 20, 1888, p. 2.

who had been in the habit of selling the habitues of the place their ‘dope.’ ”

Phelan had waited for whites before striking:

The officer has been watching the [den] for some time, as he was certain of its character, but heretofore has been unable to get sufficient evidence on which to convict. Yesterday afternoon, however, he saw a white man go into Ah Yek’ s place and purchase some opium, which he carried to the joint.

Having seen his white prey, Phelan raided the den and arrested the white man, William Scott, and two women found with him, Katie Boyd and Nellie Wilson, for smoking opium. The seller, Ah Yek, was charged not with selling opium, but “ with selling opium *to a white man.*”<sup>123</sup>

As anti-dens laws spread east from California, so too did the fixation on white smokers and the dens that served them. I noted in the last chapter that several Nevada communities banned dens only after local authorities saw whites—and especially white youths of the better classes—going there. As in San Francisco, where supervisors outlawed the dens to protect young “ WHITE MEN AND WOMEN . . . of respectable parentage,” authorities in Virginia City, home of the nation’ s second anti-dens law, acted only after smoking had spread “ amongst the younger class of boys and girls, many . . . of the more respected

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<sup>123</sup> “ Opium Den: A Successful Raid by Officer Phelan Yesterday,” *Los Angeles Times*, Oct. 25, 1888, p. 2 (emphasis added).

class of families.” Had the habit remained confined to the Chinese, a local newspaper surmised, it would have been “scarcely worthy of notice.”<sup>124</sup> Yet the Virginia City ordinance of September 1876 tracked word for word the race-neutral language of San Francisco’s 1875 original.<sup>125</sup>

Likewise in Carson City, the state capital, authorities apparently enforced race-neutral laws mainly against dens that served whites. In April 1879 the *Carson City Morning Appeal* sent a reporter to the local Chinatown “to ascertain to what extent opium smoking has been practiced by white men and women.” One Chinese businessman recalled “that before the law prohibiting the Chinese from selling the drug *to white people* was passed, the traffic carried on here was astounding.” As in San Francisco, then, locals read the word *white* into the law—for neither the original Nevada anti-dens law of February 1877 nor the Carson City ordinance of June 1877 nor the amended state law of March 1879 applied only to white smokers or sales to whites. They applied instead to any “person”

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<sup>124</sup> Kane, *Opium-Smoking in America and China*, p. 3 (quoting Dr. Harris) (“amongst the younger class . . .”); *Virginia City Evening Chronicle*, Mar 31, 1875, p. 3; *ibid.*, June 8, 1875, p. 3.

<sup>125</sup> The ordinance read in full:

Section 1. No person or persons shall, within the corporate limits of the city of Virginia, keep or maintain or become an inmate of, or visit or contribute to the support of any place, house or room where persons frequent or assemble for the purpose of smoking opium, and all such places, houses or rooms are hereby declared to be nuisances.

Section 2. Any person who shall violate any of the provisions of Section 1, of this Ordinance, shall, on conviction thereof, be punished by a fine of not less than fifty dollars, and not exceeding five hundred dollars, or by imprisonment for a period of not less than ten days or more than six months, or by both such fine and imprisonment.

“An Ordinance to abolish Opium-Smoking Dens,” *Revised Ordinances of the City of Virginia* (Virginia, Nev.: Enterprise Steam Printing House 1878), p. 116.

who sold and any “ person” who bought and smoked. Yet the Chinese businessman told the *Morning Appeal*’ s reporter that since the passage of these laws, “ the respectable Chinese merchants refuse to sell the drug even to their countrymen who are suspected of encouraging *the smoking of it among the whites.*” Satisfied with this result, the paper declared it “ high time that a stringent law was passed to forbid the opium traffic *among our own kind.*”<sup>126</sup>

In succeeding weeks, however, the *Morning Appeal* complained that the law permitted arrest only of those patrons actually caught smoking in the dens. The editor told of a police officer who had found two young men, one from “ a highly respectable family in this city,” reclined in a local den, but could make no arrest because they were “ not caught in the act of whiffing.” The law was “ defective,” the editor declared. “ [I]t should have provided for the arrest and conviction of every *white* person found in one of these infamous hells, unless such *white* person could prove beyond any question of doubt that he or she had business of a respectable nature there.”<sup>127</sup>

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<sup>126</sup> “ The Opium Vice” (editorial), *Carson City (Nevada) Morning Appeal*, Apr. 12, 1879, p. 3 (emphasis added); “ An Act to Regulate the Sale or Disposal of Opium, and to Prohibit the Keeping of Places of Resort for Smoking, or Otherwise Using That Drug,” 1877 *Nev. Stats.*, ch. 27 (Act of Feb. 9, 1877), pp. 69–70 (punishing “ any person” who sold opium or kept an opium den and said nothing of the race of the smokers); “ Ordinance No. 48,” *Carson City (Nevada) Morning Appeal*, Mar. 1, 1879, p. 4 (quoting text of Carson City ordinance, which declared that “[n]o person” shall keep or visit an opium den); “ An Act Amendatory and Supplementary of an Act Entitled, ‘ An Act to Regulate the Sale or Disposal of Opium . . . ,’ . . . ,” 1879 *Nev. Stats.*, ch. 116 (Act of Mar. 8, 1879), pp. 121–22 (increasing maximum fine and prison term for “[a]ny person” who sold opium or who kept or visited a den). The new statute provided for a maximum fine of \$1000 and a maximum prison term of two years.

<sup>127</sup> “ Opium Smoking,” *Carson City (Nevada) Morning Appeal*, May 5, 1879, p. 3; “ Opium Smokers,” *ibid.*, May 20, 1879, p. 3 (“ not caught in the act . . . defective . . . . It should have

Looking southeast from Carson City to the central Nevada town of Tybo, we find again the suggestion that the state's race-neutral opium-dens statute applied peculiarly to whites. In November 1877, some nine months after the state first outlawed opium dens, the *Tybo Weekly Sun* grumbled that “[l]aws have been enacted for the suppression of this traffic, yet we seldom hear of an arrest being made. It may be that our officers are not aware that *whites* frequent these dens, yet the fact stares us in the face and cannot be denied.”<sup>128</sup>

To be sure, while enforcement of anti-dens laws focused only on white *smokers*, those Chinese *sellers* who catered to whites often found themselves in the law's grip—or in the media's sights. Hence the Tybo editor who was so distressed to find whites visiting the dens urged “punishment of the heathen . . . engaged in the fearful traffic.” Likewise the *Reno Evening Gazette* deemed it “passing strange that the officers do not take some steps to enforce the law against the Pagan dealers in this living death. . . . That white men and women daily and nightly visit these loathsome resorts of degradation is an open and notorious fact.” The *Gazette* later added that although “[p]apers from nearly all the towns in the state contain accounts of the arrest and conviction of Chinamen for keeping opium dens,” the Chinese of Reno have escaped punishment. “There are opium dens in Reno and they are frequented by whites. Why this

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provided . . .”) (emphasis added). Diana Lynn Ahmad's excellent 1997 dissertation, “'Caves of Oblivion': Opium Dens and Exclusion Laws, 1850–1882,” steered me to many of these sources.

<sup>128</sup> “Opium Smoking,” *Tybo (Nevada) Weekly Sun*, Nov. 24, 1877, p. 3 (emphasis added).

traffic is not suppressed is a mystery.” Indeed the Nevada law apparently fell harder on Chinese sellers than on white buyers. Diana Lynn Ahmad has reported that while a smallish number of Chinese offenders served time in state prison for violation of Nevada’s opium statute, not a single white did so.<sup>129</sup>

Then too Chinese *smokers* were not wholly immune from prosecution. Harry Hubbell Kane reprinted two news items from 1881—one bylined Stockton, California, one Oakdale—reporting raids on dens and arrests of both white and Chinese patrons. The Stockton raid netted three whites and a single Chinese; the Oakdale outing nabbed just two whites against eighteen Chinese. Even the same *San Francisco Chronicle* article that detailed Officer James Mahoney’s whites-focused enforcement practices noted a den raid under the city’s ordinance that swept up “thirteen Chinamen and three white boys.”<sup>130</sup>

But taken together, the evidence from this era overwhelmingly suggests broad tolerance of opium smoking by the Chinese—and anxiety to combat it among whites. If still more proof were needed, there is the curious case of Idaho.

### *The Idaho Ban*

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<sup>129</sup> “Opium Smoking,” *Tybo (Nevada) Weekly Sun*, Nov. 24, 1877, p. 3; “Opium Smoking,” *Reno Evening Gazette*, Feb. 21, 1879, p. 3; “Opium Smoking,” *Reno Evening Gazette*, Apr. 4, 1879, p. 3; “Topics in the Sagebrush,” *New York Times*, Feb. 21, 1881, p. 1 (emphasis added); Ahmad, “Caves of Oblivion,” pp. 138–39.

<sup>130</sup> See Kane, *Opium-Smoking in America and China*, pp. 9–10; “A Growing Evil: What an Officer Knows About Opium Smoking,” *San Francisco Chronicle*, July 25, 1881, p. 3.

In form, all of the California and Nevada anti-dens laws applied to anyone who kept a den or went to one to smoke. Yet in practice none applied so widely. By a principle rarely voiced though broadly understood, color-blind laws gave rise to color-coded, whites-focused law enforcement. Idaho's original anti-dens law of 1881 followed the standard color-blind formula: "Any person or persons who shall set up . . . any house or place as a resort for the purpose of smoking opium . . . shall be guilty of a misdemeanor." Likewise, "[a]ny person" who bought opium for smoking in a den faced punishment, as did "any person" found in a den without lawful business.<sup>131</sup>

Six years later, however, Idaho lawmakers dropped the dodge of race neutrality and rashly spoke the truth: "Every *white* person," an 1887 law declared, "who opens, maintains or keeps" an opium den "shall be guilty of a misdemeanor" and face a fine of up to \$300 or up to six months in jail or both. "Every *white person* who bargains for, buys, takes or accepts any opium" in any such place faced a similar fate. And "[e]very *white person* who is found" in any such place "without any lawful business" risked a smaller fine or up to three months in jail.<sup>132</sup> The new act displaced the earlier, race-neutral language and left the territory without any anti-dens law that applied to the Chinese.

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<sup>131</sup> "An Act to Prohibit the Keeping of Places of Resort for Smoking Opium or Frequenting the Same," 1881 *Idaho General Laws* (Act of Jan. 22, 1881), §§ 1–3, p. 276–77.

<sup>132</sup> "Opium Smoking," 1887 *Idaho Revised Statutes*, tit. 8, ch. 7, §§ 6830–6832 (Act of Feb. 10, 1887), pp. 736–37 (emphasis added).

Although the new act's clear aim was to keep whites from the dens—and legislators could have advanced that goal by barring *any* den-keeper from catering to whites—the act punished only those den owners who happened to be white.

Idaho lawmakers surely did not act thoughtlessly in a matter touching white–Chinese relations. In 1880 the territory had the largest Chinese contingent of any state or territory as a proportion of the population.<sup>133</sup> Yet if lawmakers recorded their reasons for writing this color-coded law, they hid their records well. No committee report or sponsor's statement or floor debate seems to have survived. Nor did local newspapers so much as comment on the new law's racial focus, much less offer a rationale.<sup>134</sup> But whatever explains the 1887 law's focus on white smokers and den-keepers, the law supplies a critical link in our understanding of the racial dynamics underlying anti-dens lawmaking throughout the West. For it forecloses any claim that the whites-focused enforcement seen in San Francisco, Los Angeles, and several Nevada cities and towns was either a local fluke or a false scent left by scattered sources. Idaho

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<sup>133</sup> Census figures from 1880 show that Idaho ranked first among U.S. states in proportion of Chinese residents, who made up 10.4 percent of the state's population. Nevada's Chinese contingent ranked second with 8.7 percent.

<sup>134</sup> Two of my research assistants, Micah Myers and Helen Kim, tried in vain to find contemporary sources or secondary studies casting light on the law's background. Ms. Kim examined legislative and executive papers as well as microfilmed issues of three important newspapers: the *Idaho Weekly Statesman* (searched from January 1, 1886, to March 12, 1887); the *Idaho Triweekly Statesman* (January 4, 1887, to February 28, 1887); and the *Idaho World* (early August 1886 to the end of April 1887).

legislators differed from those in neighboring states only in putting in print what others intended but dared not draft.

Lawmakers elsewhere had reason to shun their Boise brethren' s candor. The Idaho law' s racial restriction flatly affronted the Fourteenth Amendment' s guarantee of equal protection of the laws. The San Francisco supervisors who wrote the nation' s first anti-dens law in 1875 had learned this lesson from recent local history. Just the year before, California lawmakers had taken up a bill to remove the word “ white” from a law granting all “ white children” a free public education. In truth lawmakers disliked the notion of integrated public schools. But Governor Newton Booth had won office on a pledge to delete *white* wherever it appeared in the statute books and insisted that “ ‘ white’ and ‘ colored’ should be stricken from our school law. They are a badge of the past.” Ultimately the measure to drop *white* from the school law failed—but not before the *San Francisco Chronicle* had announced its support, urging that “ [o]ur State laws must conform to the supreme law of the land . . . .”<sup>135</sup> And when schooling

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<sup>135</sup> “ Colored Children in the Public Schools,” *San Francisco Chronicle*, Jan 7, 1874, p. 2 (quoting existing law and the present views of Governor Booth and insisting on the supremacy of federal law); “ ‘ White,’ ” *ibid.*, Jan. 28, 1874, p. 2 (reporting on a bill that would have amended the school law “ to admit colored children into the public schools but to exclude the Chinese children”); “ The Word ‘ White,’ ” *ibid.*, Jan. 31, 1874, p. 1 (supplying more detail on the pending bill; recounting the governor' s campaign statement “ in favor of striking out the word ‘ white’ everywhere . . . .”; and noting bill' s failure).

Governor Booth called for public school integration in his 1871 inaugural address: “ All badges of distinction that are relics of the slaveholding era of our National history should pass away with the system they commemorate. Until the State graduates penalties, it cannot justly graduate opportunities. The doors of our schools should be open to all, with no prejudice of caste without, and no sectarian teaching within, which will prevent any child from freely entering.” Newton Booth, “ Inaugural Address” (Dec. 8, 1871), available at: [http://www.californiagovernors.ca.gov/h/documents/inaugural\\_11.html](http://www.californiagovernors.ca.gov/h/documents/inaugural_11.html).

was not the issue, California law makers proved truer to their race-blind principles. In February 1874, just weeks after legislators abandoned the bill to integrate the schools, they amended an old law “ for the suppression of Chinese Houses of ill fame” by striking out the word “ Chinese.”<sup>136</sup>

It is true that an anti-dens law *penalizing* whites would have differed from a school law privileging them. After all, Idaho’ s whites-only ban looked nothing like the Jim Crow penal codes of the South, passed in open contempt of the Fourteenth Amendment. But in the days before the doctrine of affirmative action, cautious lawmakers were wise to worry that a whites-only crime law would fail constitutional scrutiny. So it is no surprise that when San Francisco supervisors banned the dens in 1875, they did not ban only those that served whites or bar only whites from smoking. Nor did lawmakers in Sacramento or Virginia City or Carson City or, it seems, any other place but Idaho. Only in Boise were lawmakers so bold—and even they retreated soon enough. In 1893, six years after their whites-only dens ban hit the books, Idaho legislators reverted to a law like all the others, punishing “ [e]very person” who kept or visited an opium den. Again, they left no record of their reasons.<sup>137</sup>

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<sup>136</sup> “ The New Laws,” *San Francisco Chronicle*, Feb. 11, 1874, p. 1 (noting passage of law “ to strike the word ‘ Chinese’ from an Act for the suppression of Chinese houses of ill-fame”).

<sup>137</sup> “ An Act to Amend . . . ,” 1893 *Idaho General Laws* (Act of Feb. 16, 1893), §§ 1–3, pp. 22–23. David Crandall, one of my research assistants, searched without success both for surviving legislative history of the 1893 law change and for related commentary in local newspapers.

Still, the whites-only version of Idaho's anti-dens law drew back the curtain on other states' lawmakers, whose rules were neutral on their face but enforced as Idaho's was written. Of all these lawmakers we may ask why they were intent on stopping mainly whites from smoking—and why they were content to let the Chinese continue.

[From here I argue that *these are laws about whites*. They did not aim, as some historians have claimed, to weaken Chinese labor or drive the Chinese home or subject them to police surveillance and discipline. Whites-focused policing would have undermined all these goals. And although keeping whites from smoking would be one way to prevent interracial sex in the dens, miscegenation panic does not seem to have driven these laws. The evidence surrounding the earliest dens bans, traced in detail in Chapter 7, points instead to fear of *white* seduction in the dens and to the corrupting influence of the smoke on *whites*. True, other historians cite a lot of lurid evidence of miscegenation panic. Much of it, however, traces to a false source, too late and too far away and too obviously contrived to bear on early Western dens bans. Moreover, the readiness to outlaw *every* recreational intoxicant, including those such as eaten opium, morphine, and cocaine that once had no racial association, undermines all race-based theories. I devote two chapters to rebutting such theories of anti-drug lawmaking and will be happy to discuss the evidence in detail when we meet.]