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LITERATURE, LAW AND PSYCHOANALYSIS

Nineteenth-Century Law, Literature and Opium

Chris Dent

Murdoch University, AU

c.dent@murdoch.edu.au

It is not news to suggest that the law treated drugs like opium differently in the nineteenth century compared to today. These days, opium falls within the category of psychoactive drugs, for the purposes of the *Psychoactive Substances Act 2016*. This is because it 'produces a psychoactive effect in a person ... by stimulating or depressing the person's central nervous system ... [thereby] affect[ing] the person's mental functioning or emotional state' (section 2(2)).^[i] There was no equivalent provision in any nineteenth-century law. The suggestion here is that the law of the time – specifically, the law in England – was incapable of regulating the use of such drugs because lawmakers did not have a conception of what "mental functioning" was; and, without such an idea, they had no basis upon which to seek to control the impact of the drugs. Expressed differently, without an understanding of the mind of the legal subject, those applying the law were limited in their capacity to understand the threats, posed by opium, to that subject's mind.

While the law was almost completely silent on this drug, popular culture was not. In this article I will sample a number of literary works that referred to opium use in order to explore the popular understanding of opium in English culture – including texts by Thomas De Quincey, Wilkie Collins and Arthur Conan Doyle. Taken together, a particular trajectory of attitudes may be deduced. A key benefit of looking at these examples is evident in the assessment that 'novelists are quick to respond to the movement of our times, they know that we are ready to analyse our inner experience with an intimacy that our forefathers would have felt to be intolerable' (Terman, 1919: ix). I will demonstrate that these authors, in turn, presage the changes to the regulation of drugs in the early twentieth century.

I. Introduction

It is not news to suggest that the law treated drugs like opium differently in the nineteenth century compared to today. These days, opium falls within the category of psychoactive drugs, for the purposes of the *Psychoactive Substances Act 2016*. This is because it ‘produces a psychoactive effect in a person ... by stimulating or depressing the person’s central nervous system ... [thereby] affect[ing] the person’s mental functioning or emotional state’ (section 2(2)).¹ There was no equivalent provision in any nineteenth-century law. The suggestion here is that the law of the time – specifically, the law in England – was incapable of regulating the use of such drugs because it did not have a conception of what “mental functioning” was; and, without such an idea, it had no basis upon which to seek to control the impact of the drugs. Expressed differently, without an understanding of the mind of the legal subject, the law was limited in its capacity to understand the threats, posed by opium, to that subject’s mind.

While the law was almost completely silent on this drug, popular culture was not. In this article I will sample a number of literary works that referred to opium use in order to explore the popular understanding of opium in English culture – including texts by Thomas De Quincey, Wilkie Collins and Arthur Conan Doyle. Taken together, a particular trajectory of attitudes may be deduced. A key benefit of looking at these examples is evident in the assessment that ‘novelists are quick to respond to the movement of our times, they know that we are ready to analyse our inner experience with an intimacy that our forefathers would have felt to be intolerable’ (Terman, 1919: ix). I will demonstrate that these authors, in turn, presage the changes to the regulation of drugs in the early twentieth century.

II. Opium in the 19th Century

Before considering the literature, there is value in offering an overview of the use of opium in England. Opium had been known as a medicine since at least the fourteenth century (Booth 1996: 25). Writers began writing about the pleasures

¹ It may be noted, however, that opium is exempt from the provisions of the *Psychoactive Substances Act 2016* on the basis that it is already controlled under the *Misuse of Drugs Act 1971*.

of the drug, and its potential for addiction, from the beginning of the eighteenth century (Booth, 1996: 31). The use of opium increased significantly over the course of the nineteenth century – with estimates of 1.6lbs per 1,000 population in 1830 to over 10lbs per 1,000 population in 1875 (Berridge and Rawson, 1979: 352–3). During that century the drug was both cheap and widely available (Harding 1988: 7–8). The legal regulation of opium in England, however, was non-existent until the 20th century. There were no statutes that prevented the sale of the drug, nor were there any that banned its use. The closest the law came to controlling opium was the *Pharmacy Act 1868* – the focus of which was to regulate the sale of poisons and drugs (oxalic acid, chloroform, belladonna and opium were listed in Schedule A of the Act),²

There were, however, a number of international aspects involved. First, the manufacture, distribution and possession of opium was regulated in India, via the Indian *Opium Act 1878*, when that country was still subject to colonial rule (Richards, 2006: 409) – though, of course, this statute did not apply to those in England. Second, two Opium Wars were fought in order to facilitate trade into China – in the interests of British profit, rather than limiting domestic access to the drug.³ Finally, in terms of that access, it may be noted that opium was subject to import duties, up to 9 shillings per pound, till 1860 (Booth, 1996: 53).⁴ The State, therefore, was happy to benefit from the use, and abuse, of the drug.

III. Law and Liability in the 19th Century

While the law of the nineteenth century did not have a conception of mental functioning, over the course of that century, the way legal discourse conceived of issues around an individual's responsibility for their acts changed. Or, to express this more legally, this section will consider changes to the law's limited understanding of

² This fits the assessment that the initial anti-opium 'public health campaign [was] against the adulteration of drugs' (Harding, 1988: 13).

³ Though the names of the wars can be seen to reflect a simplistic view of the conflicts; see, for example, Chen (2017).

⁴ Berridge and Rawson, however, give four shillings as the highest rate of duty in the nineteenth century (1979: 353).

the liability – whether criminal or civil – of individuals. As at 1800, the law effectively had no conception of the internal lives of most of those who came before it. Civil liability was virtually absolute for those with specific responsibilities. Common carriers, for example, were liable for all loss or damage, ‘for every accident, except by the act of God, or the King’s enemies’ (*Forward v Pittard* 1785: 33). The law was only interested in whether harm, had, in fact, been suffered and not whether the individual concerned had done the best that they could to rectify this. There was no suggestion that liability could be modified on the basis of the appropriateness of their decision-making or their intent to do the best job possible. This was, substantially, because the focus of the law was on well-defined causes of action, rather than an individualised assessment of the actions of those who came before the courts. That is, liability focused on the ‘correct use of specific forms of action (with those forms being writs with rigid language and structure)’ (Dent, 2017: 413).

The criminal law assessment of the responsibility of parties was similarly undeveloped, compared to what came later. For example, ‘prior to the nineteenth century, persons acquitted on the grounds of insanity were legally entitled to their release’ (Moran, 1985: 487). The first statute that authorised the confinement of indicted persons of unsound mind was passed in 1800. This Act, *An Act for the Safe Custody of Insane Persons Charged with Offences*, ‘made an insanity acquittee subject to automatic confinement for an indefinite period of time’ (Moran, 1985: 489). That Act enabled a jury, specifically empanelled for the purpose, to assess the individual’s sanity (s. 2); there is, however, no definition in the Act for what counts as “insanity”, with no distinction being drawn between an individual being of ‘unsound mind’ and suffering from ‘insanity’ (s. 1). The effect of the Act was that, should a person be found to be insane, they were deemed so dangerous that they were, ‘in practice’, given a ‘life sentence’ (Moran, 1985: 513). Unsurprisingly, an “unsound mind” is a more simplistic characterisation than the “person’s mental functioning or emotional state” of the *Psychoactive Substances Act 2016*, but this early nineteenth-century articulation can be seen as a starting point for the law’s understanding of the “mind”.

The first significant change in the law was the introduction of the test of “reasonableness” into the common law of liability. This process involved the courts

passing judgment on defendants' actions – either when the plaintiff claimed to have suffered a loss at their hands or, in a limited number of cases, when the defendant was accused of a crime. With respect to the former, in *Vaughan v Menlove*, the defendant was assessed against the standard of the 'man of ordinary prudence' (1837: 477). In another case, the court stated that a person would be liable in negligence if they omitted to do 'something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do' (*Blyth v Birmingham Waterworks* 1856: 784). This is a more nuanced test of liability than the one in *Forward v Pittard*.

In the criminal sphere, a similar test was introduced three decades after *Vaughan v Menlove*. The partial defence of provocation to murder required that 'there must exist such an amount of provocation as would be excited by the circumstances in the mind of a reasonable man, and so as to lead the jury to ascribe the act to the influence of that passion' (*R v Welch* 1869: 338). These tests, then, looked beyond the effects of the actions of the defendants and judged what may be seen to be the internal processes that contributed to those actions.

A further aspect of the law's engagement with the "mind" of legal subjects relates to the fact that judgments increasingly became to be based, explicitly, on what was known by the defendants (and to a lesser extent, other parties). Liability, for example, began to be couched in terms of a failure to use knowledge. Again in *Vaughan v Menlove*, a case involving damage from a fire, it was held that the defendant 'had been warned repeatedly during five weeks as to the consequences likely to happen' and that 'it was well known that hay will ferment and take fire if it be not carefully stacked' (1837: 474–7). As well-known in the criminal law was the development of the *M'Naghten* Rules – under which a person could not be found guilty if they were 'labouring under such a defect of reason ... *as not to know* the nature and quality of the act he was doing; or, if *he did know* it, that he did not know he was doing what was wrong' (*R v M'Naghten* 1843: 210, emphasis added).

Finally, with respect to the middle of the century, there are traces of the law seeing the mind as something to be acted upon. To take an example from patent law,

an invention, one that 'makes good prints – almost pictures', could be characterised as being of an 'improving nature' to the 'minds and morals' of the general population (*Re Baxter's Patent* 1849: 905). Two decades later, a court could say that a publication, when read, would 'produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it might come' (*R v Hicklin* 1868: 370). Both of these suggest a passive conception of the brain receiving impressions, rather than of a mind capable of discernment and decisions.

Jumping, now, to the end of the century, the law demonstrated a more complex, albeit implicit, understanding of the minds of individuals. In 1890, a House of Lords decision introduced the idea of "confusion" into trademark law: the use of a label on a tin of baking powder was said to be 'calculated ... to create a confusion in the minds of those persons to whom Mr Dunn's advertisements are addressed ... the object I think was ... to induce people to buy under an impression "not founded in truth"' (*Eno v Dunn*: 263). Here, then, a competitor of the trademark owner was found to be liable for the effect that their 'confusing' mark had on the minds of purchasers of their products. This understanding is different from the preceding reliance on the notion of fraud. For this analysis,

confusion, as a concept, relates to incomplete, imperfect or possibly false knowledge of something; it does not connote the certainty of a person who has been convinced of a false fact, instead it relates to the possibility that the person is wrong (as well as the possibility the person is right) (Dent, 2015: 26).

This, then, is a more developed understanding of the internal lives of the customer than the law's earlier assessment – where a producer was held liable only if their use of a trademark was fraudulent. In the decision of *Crawshay v Thompson*, for example, the judge said that the legal test focused on whether the 'ordinary person' would be deceived by the use of the mark (1842: 377) – with deception relating to the acceptance of a false fact.

Finally, there are two statutes from the 1880s that round out this discussion of the law. First, the *Trial of Lunatics Act 1883* stated that, should evidence be provided

that the accused was 'insane so as not to be responsible ... for his actions at the time the act was done or the omission made', then the jury could return a 'special verdict' relating to that insanity (s. 2). This provision, while similar to the *M'Naghten* Rules, used the notion of "responsibility" as the test for insanity. This, although a consideration of the internal life of the accused, is not a medically-defined category⁵ – noting that, as was the case for the *M'Naghten* Rules, a jury decision would likely to have been based on medical evidence (Barnes, 1944: 305). Second, under the *Criminal Lunatics Act 1884*, 'two legally qualified medical practitioners' could certify a prisoner as 'insane' (s. 2), so this is a process carried out after the trial.⁶ The 1884 Act did not define what it meant to be insane – leaving the assessment of these conditions in the hands of experts. In sum, the two 1880s Acts confirmed a role for medical discourse but still did not create a nuanced understanding of the mental functioning of the parties who came before the courts. This, in turn, shapes the way that drugs were understood at the time.

IV. Opium in 19th Century Literature

Turning to the literature, the most complete nineteenth-century literary description of the impact of opium comes from De Quincey's *Confessions of An English Opium Eater* (1821). In it, De Quincey highlighted the pleasures of using and the pains of withdrawing from opium. With respect to the first, he called opium, a 'panacea ... for all human woes ... the secret of happiness' (De Quincey, 1821 (2003): 44). Further, 'whereas wine disorders the mental faculties, opium ... introduces amongst them the most exquisite order, legislation, and harmony' (De Quincey, 1821 (2003): 46). 'In short ... the opium-eater feels that the diviner part of his nature is paramount' (De Quincey, 1821 (2003): 47). There is nothing qualified about these descriptions; for De Quincey, the highs of the drug were amongst the best experiences a person could have.

⁵ It was suggested, contemporaneously, that the 'medical definition of insanity is far too wide for legal purposes' (Raleigh, 1885: 151).

⁶ While the 1884 statute does not define the category of professions, it is narrower than the equivalent list in an earlier Act – where it was required that a 'physician, surgeon or apothecary ... be satisfied that [the] person is insane or a dangerous idiot' (*Custody of Insane Persons Act 1838*, s. 2).

He also, however, described opium's more negative effects. With respect to use, the 'opium-eater ... lies under the weight of incubus and nightmare' (De Quincey, 1821 (2003): 74); for the author himself,

Mathematics [and] intellectual philosophy were all become insupportable to me; I shrunk from them with a sense of powerless and infantine feebleness that gave me an anguish the greater from remembering the time when I grappled with them to my own hourly delight (De Quincey, 1821 (2003): 71).

Finally, there was the withdrawal – after

opium had long ceased to found its empire on spells of pleasure; it was solely by the tortures connected with the attempt to abjure it that it kept its hold ... even when four months had passed, [I was] still agitated, writhing, throbbing, palpitating, shattered... (De Quincey, 1821 (2003): 86–7).

The author's awareness of the (mostly physical) detrimental impact of the drug is clear from these quotations. Further, he claimed that he 'renounced' his use (De Quincey, 1821 (2003): 87); though commentators suggest that he 'overstates the degree of his triumph' (Milligan in De Quincey, 2003: 260 n 4). It may also be pointed out that his creativity and capacity to write engaging prose were not altogether diminished by the opium.

There is value, then, in interrogating further De Quincey's implicit understanding of the "mind". As noted, he referred to "mental faculties"; and at other points, he uses the language of 'consciousness' (De Quincey, 1821 (2003): 46), 'majestic intellect' (De Quincey 1821 (2003): 47), 'distress of mind' (De Quincey, 1821 (2003): 58), 'moral sensibilities' and 'intellectual apprehension' (De Quincey, 1821 (2003): 74). It is clear that De Quincey had a broad conception of his own internal life – perhaps somewhat obviously, as he was writing autobiographically rather than imagining the experiences of a fictitious protagonist. Further, De Quincey placed significant emphasis on the impact of the drug on his dreams – going so far as to include as a reason for his writing, the 'furnishing [of] a key to some parts of that tremendous

scenery which afterwards peopled the dreams of the Opium-eater' (De Quincey, 1821 (2003): 7). Unsurprisingly, there are both positives and negatives here – he writes of his dreams as having 'splendours' (De Quincey, 1821 (2003): 78) and of containing both 'unimaginable horror' (De Quincey, 1821 (2003): 81) and 'unutterable monsters and abortions' (De Quincey, 1821 (2003): 82). This is not the place to revisit the connections between De Quincey and Freud (see, however, Maniquis, 1985); instead, the value is in highlighting De Quincey's understanding of the '*involuntary* execution of processes set in motion by a sensory stimulus' (Iseli, 2013: 327, emphasis added). For Paul Youngquist, the 'overall effect of [the] *Confessions* ... is to materialise cognition ... transgressing Kant's sacred limit of representation, the formal boundary of phenomena and noumena' (Youngquist, 1999: 353). There is no separation between the world and its experience and there is no separation between the thinker and the thought.

The next text to be considered comes from the middle of the nineteenth century – Collins' *The Moonstone* (1868). There are three reasons for the "jump" to this text. First, there are Collins' many references to opium, which are not surprising given that two key characters actively use the drug. Second, mirroring the 19th century geopolitics of the drug trade, there was a colonial aspect to the story – with the titular gem being stolen from the Palace of Seringapatam. Third, there is also a specific reference to De Quincey's *Confessions* – where Ezra Jennings suggests that it offers valuable insights into the effect opium has on its users (Collins, 1868 (1944): 357) – enabling De Quincey to operate as a touchstone for this analysis. Other writers, also, have linked *The Moonstone* with *Confessions*, forming a 'thematic strand' around opium use and vice (Zieger, 2011: 213).

The use of opium by Ezra Jennings,⁷ one of Collins' several narrators, provides a personal account of the drug's impact on the user. As in *Confessions*, there is an acknowledgement of the multi-faceted nature of opium's effects: the 'action of opium

⁷ That Jennings had a 'mixture of some foreign race in his English blood' (Collins 1944: 338) would enable a reading that accounted for the English control of opium in the Far East; however, there is not the room for such an analysis here – if only because the law discussed in this article is "colour-blind", at least as it is presented in the legislation and the case law.

is comprised, in the majority of cases, in two influences—a stimulating influence first, and a sedative influence afterwards' (Collins, 1868 (1944): 358). In his narrative, Jennings also notes the further downsides of the drug: 'Rose late, after a dreadful night; the vengeance of yesterday's opium, pursuing me through a series of frightful dreams' (Collins, 1868 (1944): 362). The only point in the novel that explores the nature of these opium-fuelled dreams is the following:

At one time I was whirling through empty space with the phantoms of the dead, friends and enemies together. At another, the one beloved face which I shall never see again, rose at my bedside, hideously phosphorescent in the black darkness, and glared and grinned at me (Collins, 1868 (1944): 362).

The detail, and the horror, here is not as complete as that in De Quincey. It is, nonetheless, a crucial description of the drug's impact on the character's mental functioning.

In terms of the drug's more specific effects, Jennings also acknowledges the value of opium as a painkiller – with that function being his original motivation to take it (Collins, 1868 (1944): 374). Further, in terms of its impact specifically on the waking mind, the narrative references its capacity to stimulate 'intelligence' (Collins, 1868 (1944): 357). More completely, the capacities of opium's influence ultimately explain the central mystery of the novel, as

the latest and most vivid impressions left on your mind ... would be likely, in your morbidly sensitive nervous condition, to become intensified in your brain, and would subordinate to themselves your judgment and your will... Little by little, under this action, any apprehensions about the safety of the Diamond ... would be liable to develop themselves from the state of doubt to the state of certainty – would impel you into practical action to preserve the jewel – would direct your steps, with that motive in view (Collins, 1868 (1944): 358).⁸

⁸ The disappearance of the Diamond referred to in the quote is a central mystery in the novel.

Jennings, here, is describing the extent to which the drug can impact on the volition of its user. While this may now be described in the contemporary language of impaired decision-making, Collins uses language closer to that of enslavement.

Three further aspects of *The Moonstone* are notable in the context of the present article. The first is that it is cited as one of the earliest detective novels in the Western canon. Dorothy L. Sayers, in her Introduction to the "Everyman's Library" edition, refers to it as a 'classic of detective fiction ... [that] is not only a "standard" work, the best of its class: it actually makes the class and sets the standard' (Collins, 1944: v). The investigative and deductive work on display, however, is more important here. Specifically, Thomas highlights that Jennings solves one of the mysteries in the tale because he has expertise in the 'physiological basis of behaviour' (Thomas, 2006: 70). As was seen above, specific knowledge also became important to the law of that century.

The second aspect is that the description of opium use is, in part, autobiographical.⁹ In other words, just as De Quincey was writing from personal experience, so was Collins – at least when it came to the impact of opium on the individual (Dolin, 2006: 12). It is not the case, therefore, that the other was putting himself in the mind of a user; Collins did not have to imagine the impact the drug had on his behaviour, as he had experienced it for himself. With respect to his description of opium's effect, the disappearance of the titular moonstone happened 'unconsciously' as a result of the drug (Thomas, 2006: 71). Here, opium was not said to have addled Franklin Blake's mental functioning; instead the 'influence of the opium ... impell[ed]' the theft (Collins, 1868 (1944): 359). In other words, the drug excluded Blake's agency from the equation. The third aspect is that Collins, through Jennings, highlights a resistance to opium use in Victorian society: the 'ignorant distrust of opium (in England) is by no means confined to the lower and less cultivated classes' (Collins, 1868 (1944): 352), with this assessment offered as part of Jennings' justification for

⁹ Booth suggests that *The Moonstone* was 'written almost entirely under the influence of opium' (1996: 47).

the “spiking” of Blake’s drink with laudanum by Mr Candy.¹⁰ For Jennings, the fact that doctors were comfortable in deceiving their patients through dosing them with opium was unproblematic, and preferable to the lack of enlightenment on the part of the working classes.¹¹

The final author considered here is Conan Doyle – specifically, three of his Sherlock Holmes stories that refer to opium use. Again, De Quincey’s work is explicitly referred to in *The Man with the Twisted Lip* (1891); in this case Watson describes how Isa Whitney, the husband of Watson’s wife’s friend, started smoking laudanum-soaked tobacco after reading *The Confessions* in college (Conan Doyle, 1891 (1998): 123). With respect to specific references to opium, in *The Sign of Four* (1890), Sherlock Holmes is identified as a drug user. While the drug-use description in the text refers to cocaine (Conan Doyle, 1890 (2001): 5), Watson does ask, “Which is it today ... morphine or cocaine?” (Conan Doyle, 1890 (2001): 5), making it clear that Holmes was, for the purposes of that story at least, a regular user of both. There is also a ‘hint in *A Study in Scarlet* of Watson’s suspicion that Holmes’ occasional “dreamy, vacant expression” might be due to the use of a narcotic’ (Peterson, 1984: 204). In *The Man with the Twisted Lip*, on the other hand, Holmes says to Watson, after being found in an opium den, “I suppose ... that you imagine that I have added opium-smoking to cocaine injections” (Conan Doyle, 1891 (1998): 127). There is an ambivalence, here, towards Holmes’ use of opium; one that the detective does not provide a final response to.

The other aspect of opium in *The Man with the Twisted Lip* is the description of the inhabitants of the opium den:¹² ‘Through the gloom one could dimly catch a glimpse of bodies lying in strange fantastic poses, bowed shoulders, bent knees, heads

¹⁰ Blake stole the Moonstone after a Mr Candy arranged for laudanum to be put into Blake’s drink – Mr Candy having been upset by Blake’s attacks on the medical profession.

¹¹ For a more complete discussion of the relative uses of opium by the different social classes, and the medical uses of opium, across the nineteenth century, see Berridge and Edwards (1981).

¹² One further point to be made is that there are few, if any, villains who are affected by drugs in the Sherlock Holmes stories – a clear contrast with twenty-first century crime tales; and, given the fact that drugs are not illegal, and therefore less profitable, the villains in Holmes’ stories are not motivated by the sale of opium.

thrown back and chins pointing upward, with here and there a dark, lack-lustre eye turned upon the newcomer' (Conan Doyle, 1891 (1998): 125). These are not images that suggest pleasure or people experiencing the "diviner parts" of their nature, in De Quincey's words; nor do they relate to people with any mental functioning at all. Watson's attitude is also made clear: 'I walked down the narrow passage ... holding my breath to keep out the vile, stupefying fumes of the drug' (Conan Doyle, 1891 (1998): 126). There is no mention of opium's positive effects, even to the limited extent described by Jennings in *The Moonstone*. It seems clear, therefore, that there is a trend with respect to how the nineteenth-century English literature judged the opium use of its characters.¹³

Further, there are connections across the depiction of drug use in the stories that may be highlighted. First, the repeated reference to De Quincey by the later writers implies a continued knowledge, in society, of both the positives and negatives of drug use. Second, the narratives saw opium impacting on the internal mental states of the characters (such as their dreams), but not their mental *functioning*. Even the relatively extreme impact of the drug in *The Moonstone* was not characterised as an impaired decision; instead, opium "impelled" the theft, with no agency experienced at all by Franklin Blake. Finally, the decrease in the positive references to opium use over the century reflects a public awareness of the deaths that resulted from opium use. From the 1860s to 1900, this death rate was between 6 and 6.8 per million population (Berridge and Rawson, 1979: 355) – an effect of the drug that authors may not have wanted to exacerbate. This, in turn, may have supported the criminalisation of drugs in the early decades of the twentieth century.

Conclusions

Tying the law and the literature together, this analysis of the legal responsibility of individuals in the nineteenth-century has shown how law was silent as to the regulation of opium. Over the course of the century, the law became more concerned

¹³ This assessment of a trend is reinforced by the negative descriptions of both the opium den (2012: 179) and Dorian's 'hideous hunger for opium' (2012: 177) in Oscar Wilde's *The Picture of Dorian Gray*. There were no positive characterisations of opium use in that text.

with the internal lives of individuals – considering issues such as what they knew, and the reasonableness of their actions. There was, however, no statute that required the courts to consider the impact of drugs on the level of liability of a defendant. Given the broad concerns for the law are either compensation (in civil cases) or punishment (in criminal trials), there would never be a need for the law to consider the positive aspects of opium as described by De Quincey. Save for prosecutions in cases of mass-poisoning or mere drug possession, the law would also not care about those users who are so affected by the drug that they are catatonic (as per the inhabitants of the den in *The Man with the Twisted Lip*). The strongest connection, then, between the law and literature of the nineteenth century is the mid-century juxtaposition of the lack of knowledge about the actions in *R v M'Naghten* and the lack of culpability in the opium-“impelled” theft of *The Moonstone*.¹⁴

Furthermore, these connections can be considered in light of the nascent psychological studies of the time. First, it is clear that the “science” of the mind was not well developed at the beginning of the nineteenth century. Thinkers like John Locke, David Hume and David Hartley had their ideas of the processes of human understanding – but their work may be best understood in terms of the history of philosophy rather than that of psychology. The eighteenth century had seen the privileging of sensibility in which ‘sensation’ was understood to lie at the ‘basis of our relation to the physical world’ (Gaukroger, 2012: 390) which can be seen to be behind the literature on vision and touch (see the various readings from the relevant period in Dennis 1948). This, in turn, enabled a greater recourse to the physiology of the brain – Charles Bell, for example, could state that the ‘operation of the senses in rousing the faculties of the mind, and the exercises of the mind over the moving parts of the body is through the brain and the senses’ (quoted in Iseli, 2013: 326). By the middle of the nineteenth century, there was the ‘school of psycho-physicists’ (Terman, 1919: iv). Finally, at that time, there was, of course, no psychoanalysis:

¹⁴ One point of contrast, that cannot be dealt with in depth here, is the ‘sensation novel’s [of which *The Moonstone* is one] tendency to punish its villains without recourse to law’ (Pykett, 2011: 136). The law, of course, does not avoid itself.

for example, William James did not publish his *Principles of Psychology* until 1890. Inputs, therefore, were central to the understanding of the mind, rather than a complete and coherent conception of it, at least up until the time of publication of *The Man with the Twisted Lip*.

Considering this assessment in light of the literature and law described above, the “birth” of the detective novel, as a genre, suggests a new engagement with the operation of the minds of detectives, if not of villains. The focus of detectives, from Edgar Allan Poe’s C. Auguste Dupin to Holmes, on observation and deduction (Thomas, 2006: 68) echoes the work of the psycho-physicists and their predecessors. Second, the autobiographical accounts of opium by De Quincey and Collins facilitate a closer connection between their fiction and psychology. Such points have been well-made elsewhere. For example, ‘Collins’ work is remarkable not only for his exploitation of psychological principles, but also for his recognition of these principles before their discovery by psychologists ... [including] drug disassociation’ (Siegel, 1985: 580).¹⁵ Additionally, the references to dreams, and their importance, in both De Quincey and Collins predates the work of Freud by decades. Expressed differently, ‘What Jennings says [in *The Moonstone*] provides a basis for much of twentieth-century dream psychology’ (Lawson, 1963: 61). Finally, there is nothing in the law, beyond the couple of references to the mind being acted upon, that suggests any connection between the nascent school of psychology and the law – the fact that the law is limited, and delimited, by legislation and precedents renders such a conclusion unsurprising.

To wrap up this brief analysis, neither the law nor the literature of the nineteenth century were focused on the impact of drugs on the mental functioning of individuals; in part because the study of human psychology was in its infancy. Somewhat obviously, the law did not rule on them because there was no legislation to make that course of action available. That legislation was not there because there

¹⁵ Proudfit also uses *The Confessions* to highlight similarities between De Quincey’s and Freud’s linking of memory and the unconscious mind (1985: 95).

was no precedent for the operation of the mind to be the subject of legal intervention in the way that it is now (such as in the *Psychoactive Substances Act 2016*). The law had been much more interested on the effects of the actions of individuals (so, the outputs of their minds – not that they used this characterisation). Over the course of the century, there was an increasing acknowledgement of the mind's inputs (such as knowledge); it was, however, too soon to have a nuanced conception of the internal processes of the mind. Without that conception, there was no basis outside literature and popular discourse for the assessment of the effect that drugs such as opium could have on the mental functioning of the legal subject.

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Competing Interests

The author has no competing interests to declare.

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