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### Recommended Citation

M. I. El-Kayal, *A Comparative Study of Narcotics and the Law in the United Arab Republic and the United States*, 20 DePaul L. Rev. 859 (1971)

Available at: <https://via.library.depaul.edu/law-review/vol20/iss4/2>

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A COMPARATIVE STUDY OF NARCOTICS AND  
THE LAW IN THE UNITED ARAB  
REPUBLIC AND THE  
UNITED STATES

M. I. EL-KAYAL\*

INTRODUCTION

**T**HE NARCOTIC problem is one of the more serious problems in modern urban life. It is a complex one which involves social, psychological, medical and legal aspects:

The problem of narcotic drugs is in no sense a problem confined to one continent or civilization.

In themselves narcotic drugs are neither dangerous nor harmful. Indispensable to modern medicine, they are used the world over to alleviate pain and restore health. Thus used they bring a great benefit to mankind. But abused they cause havoc and misery. The social dangers of drug addiction are well known.<sup>1</sup>

The past two decades witnessed intense public interest in the problem. Public and legislative attention has focused on the problem, because of reports of narcotic and drug abuse, reports of possibilities of abuse, and reports of the consequences of abuse to the individual user, to persons he has contact with, and to society. Some narcotic addicts and drug users engage in dangerous behavior, harmful to others, which would not have occurred had the narcotic addiction, the drug habit, or the narcotic and drug not been present. Organized crime engaged in narcotic and drug traffic are making large profits. Narcotics and drug addicts are stealing millions of dollars worth of property every year, to support their habits, and contributing to the public's fear of robbery and burglary. The police, the

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1. Trygve Lie, the first Secretary-General of the United Nations, in an introduction to the first issue of the UNITED NATIONS BULLETIN ON NARCOTICS (October 1949).

courts, prisons, and social service agencies of all kinds are devoting great amounts of time, money and manpower to attempt to control narcotic and drug abuse. The burden of cost to the community arising from crime, from social welfare efforts, from police efforts, and from processing of addicts through the courts and to prisons or hospitals is undoubtedly great. Worst of all, thousands of human lives are being wasted.

Debate has raged continuously over such basic questions as the dimension and seriousness of the problem, the causes of addiction, and the appropriateness of a strict prohibitory policy. There is at present considerable disagreement among knowledgeable and well-intentioned persons regarding this problem. They disagree on the relationship between narcotics and dangerous behavior, on choices of controls over offenses, and on the best means to handle the problem. There are questions about the likelihood of stamping out dependency or addiction through harsher laws, through public health clinics and medical care for addicts or by making narcotic and drug use not a proper concern for the criminal law. Those issues revolving about the effectiveness of punishment, and about the capacity of any criminal law to control behavior, are some of the points which intrude in discussions of how the narcotic problem is best to be handled. There does not seem to be strong disagreement over the fact that the problem exists and that something must be done about it. The difficulty comes in deciding what to do.

In addressing the White House Conference on Narcotics and Drug Abuse, the late President Kennedy decried the "dearth of hard, factual data." At the same meeting the Attorney General of the United States, voiced "the depressing truth" that "we don't know very much about [narcotics]" and that we need "to start building a reasonable and reliable body of information."<sup>2</sup>

It is the purpose of this research to discuss, analyze and evaluate narcotics laws and to make preliminary recommendations. The narcotics laws of the United Arab Republic will be compared with those of the United States and the British narcotics systems.

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2. PROCEEDINGS, WHITE HOUSE CONFERENCE ON NARCOTIC AND DRUG ABUSE (September 27-28, 1962).

## THE NARCOTIC PROBLEM—SOME ASPECTS AND OBSERVATIONS

The goal of an objective evaluation of current narcotics problems must begin with an examination of the drugs themselves and an understanding of the role they have played in the past. There must be a recognition of the factors involved, determination of the facts and an intelligent appraisal of opinion.

The dictionary defines a "narcotic" as a substance that induces sleep, dulls the senses, or relieves pain. In law, however, it has been given an artificial meaning. It does not refer, as might be expected, to one class of drugs, each having similar chemical properties or pharmacological effects. It is applied rather to a number of different classes of drugs that have been grouped together for purposes of legal control.<sup>3</sup>

Drugs classified medically as narcotics include opium and its derivatives, moxchime, codeine, heroin, which have a potential for physical and psychological dependence. In addition, the body will develop a tolerance for their usage, requiring increased dosages to induce the desired effects. Although cocaine and marijuana are not considered medically to be narcotic drugs, they are included as narcotics under state narcotic laws and are treated in the same manner.<sup>4</sup>

In terms of their action on the nervous system, drugs may be divided into two general categories: a) depressants; and b) stimulants. The former include the opiates, the synthetic analgesics, and the hypnotics and sedatives. The latter include derivatives of the coca leaf, benzedrine, and mescaline.<sup>5</sup>

## ORIGIN OF NARCOTIC USE

Aldous Huxley has said, "It is very unlikely that humanity at large will ever be able to dispense with artificial paradises. Looking at man's past and present, we have almost no ground on which to dispute the proposition."<sup>6</sup>

From time immemorial, human beings, in the search of a more

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3. UNITED STATES PRESIDENT'S ADVISORY COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE (1967) [Hereinafter TASK FORCE REPORT].

4. COLORADO LEGISLATIVE COUNCIL'S CRIMINAL CODE COMMITTEE, DANGEROUS DRUGS AND DRUG ABUSE CONTROL 3 (1967).

5. NEW JERSEY COMMISSION ON NARCOTIC CONTROL, REPORT OF STUDY AND RECOMMENDATIONS 12 (1959).

6. ELDRIDGE, NARCOTICS AND THE LAW 144-45 (1967).

pleasurable life and suppression of discomfort and pain, have discovered certain substances which were effective, but which could make one emotionally or physically dependent upon them; thus, enslaving human beings without outside coercion or violence. Since prehistoric times, narcotics have been used by virtually every class of people. The use of narcotics is not a recent development, although some of their more dangerous forms—as well as certain methods of administration—are very recent products of medical and pharmacological research. Opium, hashish and cocaine, some of the most dangerous substances known to man, date back many centuries. Often these substances were taken in connection with man's attempt to achieve detachment, selflessness, or the sensation of having made contact with divine sources of energy. Sometimes they were taken to prepare warriors for battle.<sup>7</sup>

Today narcotic and drug use is common to most countries of the world. There have always been people physiologically and psychologically in need of some type of support in order to function in society. Some derive this support from narcotics and drugs which affect the central nervous system. There are very few societies in the world where no narcotics or drugs are used. With the ever-present strain of technological life, there is a strong reason to expect an expansion in the use of narcotics and drugs. Some risks and bad effects should also be expected, at least within the present generation: The obvious lesson of history is that a certain segment of the population, probably a much larger one than we would like to believe must find release or relief in drugs . . . . [I]t is up to society, therefore, to find the means by which this may be accomplished with minimal hazard to the individual and to itself.<sup>8</sup>

#### WAYS OF TAKING NARCOTICS

Narcotic addicts usually start by oral dosage—swallowing tablets or capsules of the drug. While there are many degrees of addiction and many kinds of addicts, the general rule is that, as tolerance develops, the addict needs more and more of the drug to give him the same effect that he originally obtained from a small dose. If this dose

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7. MAURER & VOGEL, *NARCOTICS AND NARCOTIC ADDICTION* 3, 142 (1967).

8. TASK FORCE REPORT, *supra* note 3 at 33. (Blum, *Mind-Altering Drugs and Dangerous Behavior: Dangerous Drugs*. Paper by Richard H. Blum, Director of the psychopharmacology project at the Institute for the Study of Human Problems, Stanford University).

was taken originally by mouth, the increasing dosage becomes both expensive and difficult to purchase; therefore, the addict begins to use the hypodermic needle, because of the greater potency of small amounts of drugs introduced into the system in that manner. A small proportion of addicts succeed in remaining on drugs taken orally, but most of them eventually adopt the needle, especially those who use opiates.<sup>9</sup> Another method of taking drugs is by smoking. It is an ancient method of introducing them into the body, especially hashish, marijuana, and opium. They are smoked in the form of cigarettes or in water pipes.<sup>10</sup>

#### THE EFFECTS OF NARCOTIC USE

The fundamental effects of narcotic drugs upon the human system are still obscure:

The action of the opiate drugs and their synthetic equivalents upon human beings is still imperfectly understood. This fact is striking when we consider that opium has been used generally for thousands of years, and that no single medicine is more useful or more generally used by the physician than the modern opium derivatives and opium-like synthetics. Certain fundamental questions are still unanswered; many peripheral or incidental problems remain to be solved. With some of the basic reactions of opiates upon the human physiology and neurology still obscure, it is not surprising that the nature of addiction to drugs of the opiate series . . . should still be a controversial matter.<sup>11</sup>

Narcotic drugs have the ability to reduce sensitivity to both psychological and physical stimuli and to produce a sense of euphoria. They are depressants to the central nervous system, and can produce drowsiness, sleep, and reduction in physical activity. Under their influence the addict is usually lethargic and indifferent to his environment and personal situation:

The euphoria of the addict is a feeling of temporary well being, induced by the drug's suppression of discomfort or pain. The addict's "high" is a feeling of aloofness from current situations and a postponement of decisions or urgencies. The drug is the decision. It provides a feeling of security and self-sufficiency. It temporarily helps to establish self-confidence and quell any disturbing aggressiveness. The drug itself is so fulfilling that it becomes the center of the user's life.<sup>12</sup>

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9. *Supra* note 7, at 43, 44.

10. *Supra* note 7, at 48.

11. AMERICAN BAR ASSOCIATION AND AMERICAN MEDICAL ASSOCIATION JOINT COMMITTEE ON NARCOTIC DRUGS, DRUG ADDICTION: CRIME OR DISEASE? 37, 38 (1961). [Hereinafter A.B.A.].

12. *Supra* note 6, at 21.

Side effects can include nausea and vomiting, constipation, itching, flushing, constriction of the pupils of the eyes, and respiratory depression.<sup>13</sup>

Abuse of narcotics occurs when they are used for their psychotoxic effects and not as therapeutic media prescribed in the course of medical treatment. The abuse of some narcotics leads to a psychological dependence on them. The abuse of others leads to true addiction, with physical as well as psychological dependence, tolerance, and certain characteristic physical symptoms following withdrawal. It must be noted that the effects upon human beings differ from one drug to another and from one individual to another.

While some find the effects of narcotic drugs on human beings pernicious and state that these effects are the basic justification for the severe penalties which were recommended as a means of dealing with the drug traffic and problems of drug addiction, others believe that [t]he extreme feelings apparent, and the catering to bias in popular and purportedly authoritative publications, reflect more, . . . than a reasonable worry about drugs . . . [T]he general evidence is that drugs in fact play a very small part in the production of our overall rates of trouble. They do play some part of course, and in so far as they do, they add to the already great social burden. What we suggest is that the worry about drugs is extreme because somehow these substances have come to be symptoms of individual uncertainty and distress and can be used as explanations of why bad things are happening. As an explanation of the otherwise inexplicable willingness—or compulsion—of humans to damage themselves and one another, drugs are scientifically insufficient, but in terms of public explanation they seem to serve that purpose.<sup>14</sup>

Whatever may be the degree of harmfulness of narcotic drugs there is no doubt that they must be considered as a serious social evil, to the individual, to his family, and to society as a whole. The least that can be said is that persons indulging in these forms of drug vice are less useful to society than those who do not have the habit.

#### NARCOTIC ADDICTION

It should be recognized, first, that our problems in the narcotics area stem from the lack of scientific understanding of addiction. The meaning of "addiction" is imprecise and ambiguous, and this hampers the development of clear thinking in this field. Pharmacologists

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13. *Supra* note 4, at 3, 4.

14. TASK FORCE REPORT, *supra* note 3, at 32.

favor one definition, psychiatrists another, sociologists another, and law enforcement officials still another.

Sociologists speak of "assimilation into a special life style of drug taking." Doctors speak of "physical dependence," an alteration in the central nervous system that results in painful sickness when use of the drug is abruptly discontinued, of "psychological or psychic dependence," an emotional desire, craving or compulsion to obtain and experience the drug; and of "tolerance," a physical adjustment to the drug that results in successive doses producing smaller effects and, therefore, in a tendency to increase doses. Statutes speak of habitual use; of loss of the power of self-control respecting the drug; and of effects detrimental to the individual or potentially harmful to the public morals, safety, health or welfare.<sup>15</sup>

While some prefer to define addiction as "a state in which a person has lost the power of self-control with reference to a drug, and abuses the drug to such an extent that the person or society is harmed,"<sup>16</sup> the Expert Committee on Drugs Liable to Produce Addiction, now a subdivision of the World Health Organization agreed in 1950 upon the following:

Drug addiction is a state of periodic or chronic intoxication, detrimental to the individual and to society, produced by the repeated consumption of a drug (natural or synthetic). Its characteristics include:

- (1) an overpowering desire or need (compulsion) to continue taking the drug and to obtain it by any means;
- (2) a tendency to increase the dose;
- (3) a psychic (psychological and sometimes physical) dependence on the effects of the drug.<sup>17</sup>

The three characteristically related phenomena, noted in the definition of the World Health Organization (hereinafter WHO), namely, (1) tolerance, (2) physical dependence and (3) emotional dependence, have been described as follows:

By tolerance is meant a decreasing effect on repetition of the same dose of a drug. Physical dependence refers to the development of an altered physiologic state which requires continued administration of a drug to prevent the appearance of a characteristic illness, termed an "abstinence syndrome." Emotional dependence is defined as a substitution of the use of the drug for other types of adaptive behavior.<sup>18</sup>

Because there has been so much difficulty in defining the term "addiction" medically and psychologically the WHO Expert Committee on Addiction Producing Drugs has recommended international aban-

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15. TASK FORCE REPORT, *supra* note 3, at 1.

16. *Supra* note 7, at 37.

17. A.B.A., *supra* note 11, at 23.

18. A.B.A., *supra* note 11, at 18.



donment of that term in favor of "drug-dependency," qualified by the type of that dependency. "But addiction seems too deeply imbedded in the popular vocabulary to be expunged."<sup>19</sup>

#### CAUSES OF ADDICTION

The question of the underlying causes of addiction is still unanswered. However, it is a well known fact that many persons became addicted to narcotics through their legitimate use in the relief of pain, that others take them as an escape from misfortune or unhappiness, and that still others learn to abuse narcotics through association with narcotic takers, through general physical and psychological degeneration, or even simple curiosity.

Basic knowledge is lacking about the causes of drug abuse. It may be triggered by curiosity, or a search "for kicks," or a desire to conform to a group pattern. A person may become addicted following prolonged use of a drug during legitimate medical treatment. The habit may stem from a sense of social inadequacy or be an escape from pressures and frustrations. It may reflect a deep-seated personality disturbance or the influence of cultural forces.<sup>20</sup>

Narcotic addiction is one expression of personality disturbance or maladjustment. An individual takes narcotics to overcome the shortcomings of personality which make it difficult for him to cope with the world in which he lives. He needs narcotics to enable him to deal with the anxieties and tensions arising from familial conflicts, sexual difficulties and the necessity of growing up and taking one's place in an adult society.<sup>21</sup>

When the fundamental emotional stability and equilibrium of the individual is not equal to these environmental stresses, some persons consciously or unconsciously seek the psychological or chemical means which may be available for a measure of relief, even though that relief is overshadowed by involvement in greater conflicts and tensions, which may be of a permanent nature.<sup>22</sup>

It is hard to make any simple generalization as to the motives for using narcotics and the causes of addiction. It is also hard to find any particular motive or set of motives that can be ascribed to all addicts. The situation is complicated by the facts that the motives for first use characteristically differ from those for continued use to the

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19. TASK FORCE REPORT, *supra* note 3, at 2.

20. UNITED STATES PRESIDENT'S ADVISORY COMMISSION ON NARCOTIC AND DRUG ABUSE, FINAL REPORT 21 (1963).

21. A.B.A., *supra* note 11, at 52.

22. *Supra* note 7, at 192.

point of physical dependence, that motives for use after dependency is established are not the same as those at earlier stages, and that motives for relapse have their own characteristics.<sup>23</sup>

From a study of youthful Negro narcotics users in Chicago, Harold Finestone has provided an excellent analysis of the motivations of a relatively new type of drug user. The title of the article, "Cats, Kicks, and Color," suggests its themes. The Negro "cat," says Finestone, substitutes "hustle" for legitimate work, which he aristocratically disdains; the main purpose of his life is to experience the "kick" from performing acts tabooed by "squares" and beyond their comprehension. The use of drugs from the standpoint of the Cat's revolt against middle class morality, is the supreme, the ultimate kick. It gives excitement to the cat's life and in his own eyes at least, sets him off in an elite conspiratorial group.<sup>24</sup>

The illegality and expensiveness of narcotics give them a symbolic significance and attractiveness to some segments of the population which they would not otherwise have. To quote an addict:

The reason they stick with it is narcotics brought them a new way of life. It's an adventure. Let's face it: if narcotics was easy to come by, there wouldn't be half as many addicts. To take narcotics right now, it is cloak-and-dagger, it's spy work, it's something out of television, believe me. You have to walk the street, you have to secure a pusher, you have to locate the money to buy this narcotics, you have to check in dark hallways, on roofs, go through cellars, all this running about, all the time keeping one eye out for the police. All this, this is an adventure for a young man. And when you finally get your narcotics back to your pad where you can use it, you say to yourself, man, I did it, I beat the fuzz. I made the scene. And you feel relieved.<sup>25</sup>

This statement is consistent with a recent theory on narcotic addiction that assumes that a certain pre-mental pattern must be present before a person will become an addict.<sup>26</sup>

#### THE CONTROVERSIAL NATURE OF ADDICTION

The nature of narcotic addiction is not fully understood. Up until the seventeenth century, opium was regarded as possessing certain supernatural or God-given powers to relieve pain, exalt the individual, and remove him from the conflicts and sufferings of human existence. During the late eighteenth century and well into the nineteenth century, narcotic addicts were regarded as the victims of slow poisoning. During the last quarter of the nineteenth century and the first quarter of the twentieth century, there was much controversy over whether

23. WILNER & KASSEBAUM (ed.), *NARCOTICS* 126, 127 (1965).

24. LINDSMITH, *THE ADDICT AND THE LAW* 283, 284 (1965).

25. LARNER, *THE ADDICT IN THE STREET* 99, 100 (1964).

26. *Supra* note 4, at 20.

narcotic addiction was a disease or a vice. By about 1925, the theory that a narcotic addict is a sick person, and that addiction per se does not mean that the addict is necessarily either vicious or criminal, was generally accepted by the medical profession.<sup>27</sup> At the present time there are many different points of view concerning the nature of addiction. While some medical writers take the view that every addict is sick of a diseased condition insufficiently recognized and insufficiently studied, and that drug addiction is a disease, a pathological condition just as much as the psychoneuroses of any of the various toxic states, there are others who do not adopt this concept but state that: "All the research done on drug addiction within the past two generations indicates that addiction is not a disease, rather a symptom of personality difficulties, which if they did not lead to drug addiction would lead to difficulties of other types."<sup>28</sup>

As a result of this controversy the question of whether a narcotics addict should be considered as a sick person requiring the care of society or as a delinquent who should be punished is subject to a substantial divergence of opinion. The law has largely acted on the premise that he is a delinquent and imposed harsh penalties on him so that he will make the effort to get rid of his vice.

The present trend toward the civil type of commitment and treatment of addicts supports the concept that addiction is a disease and that criminal behavior is best minimized by treating the addict:

Although addiction is . . . generally considered to be a disease, it might be better considered as a symptom of a disease—a symptom of the social disease in a community where minority groups are under-privileged socially and economically, where the pattern for juveniles to drop out of school and become identified with community juvenile delinquent gangs, with inadequate housing and less-than-equal job opportunities, without normal development in a competitive and capitalistic community.

Treatment of the individual is important, of course, but more significant treatment must be directed toward the community of which addiction is but a symptom.<sup>29</sup>

One of the most significant problems in that area is the lack of statistical and empirical study. It is impossible to foretell from FBI Uniform Crime Reports whether more addicts commit more crimes, or more crimes are committed by non-addicts. In addition there is

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27. *Supra* note 7, at 29, 30.

28. A.B.A., *supra* note 11, at 34.

29. MAURER & VOGEL, *supra* note 7, at 27-28.

no indication as to whether the increased crime rate is due to a greater number of persons committing crimes or rather to an increase in incidence of crime per person. What is definite is that crime increase may be due to the fact that the possession of narcotics by a user who is not an addict is a crime, and apparently the number of such persons is increasing particularly in the use of non-hard drugs.<sup>30</sup>

Professor Bassiouni, commenting on drug addiction warns against secondary criminalization by making addiction a crime of status. He concludes that while the eighth amendment prohibits punishing a person who is sick, *i.e.* an addict, it does not seem to have prevented, so far, punishment of certain manifestations of addiction which are unavoidable and thus indirectly make the condition of addiction subject to criminal punishment.<sup>31</sup>

#### FEATURES AND CHARACTERISTICS OF ADDICTS

There is no special set of features and characteristics that will apply to all addicts. But probably there are character types which are more readily vulnerable to narcotics addiction than the so-called "normal" person. There are many descriptions of the personality of addicts, most of them suggesting that addicts lack initiative and self-reliance, and are passive, inadequate and immature.

Psychiatric and clinical psychologic studies have indicated the existence of severe personality disturbances among addicts. Certain characteristics seem to be most common: They are not capable of enduring intimate relations with others; they have difficulty in assuming their appropriate sex roles; they are frequently overcome by a sense of futility, expectation of failure, and general depression; they are easily frustrated and made anxious and find frustration and anxiety intolerable, and, in psychoanalytic terms, they suffer from weak egos and inadequate functioning superegos.<sup>32</sup>

Addicts usually come from the most deprived areas of the cities where incomes are the lowest, the incidence of crime highest, and family ties the most tenuous. Most addicts are members of minority groups, and come from the lower socio-economic classes.<sup>33</sup>

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30. See the "overreach of criminal law in MOVIS & HAWKINS, *THE HONEST POLICIAN'S GUIDE TO LAW ENFORCEMENT* (1970).

31. BASSIOUNI, *CRIMINAL LAW AND ITS PROCESSES: THE LAW OF PUBLIC ORDER* 148-52 (1969).

32. *Supra* note 23, at 111, 112.

33. *Supra* note 23, at 46.

The President's Advisory Commission on Narcotics and Drug Abuse, in its final report of Nov., 1963, found that most of the addicts were from deprived social groups and that most suffered personality maladjustment. The report also noted that most addicts lack vocational skills, economic opportunities or personality strength. Oriented toward the short-term drug experience, rather than the long-term life road, the users' pattern of conduct both before and after drug use often is delinquent.<sup>34</sup>

#### ADDICTION AND CRIME

There are sharp differences of opinion concerning the possible correlation between narcotic addiction and crime. This subject is complicated by the lack of adequate evidence and by conflicting public attitudes. Some believe that holdup men, murderers, rapists, and other violent criminals take narcotics to give them courage or stamina to go through with acts which they might not commit when not drugged. Others consider this notion an "absurd fallacy."<sup>35</sup>

Law-enforcement officials generally believe that addiction in itself is a potent cause of crime. In a statement of the Senate Committee investigating illicit narcotic traffic, we find an emphatic presentation of this position:

Drug addiction is responsible for approximately 50 per cent of all crimes committed in the larger metropolitan areas and 25 per cent of all reported crimes in the nation. . . . In addition to direct narcotic law violations, drug addicts are responsible for a large majority of the burglaries, thefts, prostitutions and other offenses committed to support their drug habits costing from \$10 to \$100 a day. Addicts also have been associated with crimes of violence, such as murder, armed robbery, safe-cracking and rape.

The subcommittee is convinced that crime . . . would be substantially reduced if drug addicts were taken off the streets.<sup>36</sup>

The larger body of representative medical opinion is critical of any direct cause-effect relationship between narcotic addiction and crime. Although present legislation forces the addict to deal with criminal sources and the high cost of drugs functions as a powerful incentive toward certain forms of theft, medical authorities tend to be skept-

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34. *Supra* note 20, at 4.

35. A.B.A., *supra* note 11, at 67.

36. THE ILLICIT NARCOTIC TRAFFIC: SUMMARY OF PRELIMINARY FINDINGS AND RECOMMENDATIONS REP. NO. 1490, 84th Cong., 2d Sess. 2, 3 (1956).

tical about the involvement of addicts generally in more serious forms of crime.

Dr. Lawrence Kolb of the Public Health Service analyzed this subject and concluded:

There is a close and definite connection between drug addiction and crime—although that connection is not what it is generally supposed to be, and, with some exceptions, there seems to be little evidence to show that drugs, per se, motivate violent crimes. While many nonviolent crimes—and occasional crimes of violence—are committed by underworld addicts, these crimes are committed in order to get money to buy drugs, and are not generally the direct result of any physiological action of drugs on the human organism or the human personality. It should also be noted that drugs are often taken by persons already suffering from various mental disturbances ranging from mild psychopathy to, in rare cases, advanced psychoses. There is a general tendency . . . to conclude mistakenly that the erratic or criminal behavior of these persons is the direct result of some mysterious criminogenic narcotic, never identified, but firmly believed to account for their behavior.<sup>37</sup>

Dr. Kolb also holds that crime rates would not be altered—except for narcotics crimes per se, theft, and prostitution—were all illicit drug use to be eliminated.<sup>38</sup>

Possibly the best summary of this subject is the following treatment by Dr. Blum in a paper to the President's Crime Commission:

[T]he best evidence to date suggests that the drug-crime relationship depends upon the kinds of persons who choose to use drugs, the kind of persons one meets as a drug user, and the life circumstances both before drug use and those developing afterward by virtue of the individual's own (*e.g.*, dependent or addictive) response and society's response to him (prohibition of use, arrest, and incarceration, etc.). In spite of popular beliefs to the contrary, one dare not assume that drug-dependency *qua* dependency leads inevitably to any particular type of social conduct, including criminality. Insofar as some activities are part of obtaining and using the drugs themselves, these will be repeated but there activities may or may not be criminal, depending, as we have noted, on the laws and social circumstance of the person.<sup>39</sup>

#### ADDICTION AND SOCIETY

Society has made a judgment that narcotic addiction is an evil to be stamped out at any cost. The public has viewed all addicts as criminals and their criminality as the manifestation of their addiction. This attitude is present in the large body of legislation aimed at ostracizing the narcotic addict, on the ground that he presents a

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37. *Supra* note 7, at 267.

38. TASK FORCE REPORT, *supra* note 3, at 56.

39. *Supra* note 4, at 22.

substantial threat to the well-being of society. An increasing number of responsible individuals and organizations have manifested dissatisfaction with this judgment in recent years. They are questioning the harsh penalties applied in an effort to stamp out the use of narcotics—except by patients suffering serious pain from illness other than that which is the result of addiction—and are advocating “more progressive approaches,” such as free distribution of drugs or medical dispensation as in the British system.<sup>40</sup>

There is a current controversy over the question of whether a person has the right to choose to use a narcotic drug and become addicted to it to seek a personal or social gratification when there is no approved medical reason for what he does, whether he has the right to glorify inner experience and become disinterested in the world of other people, whether he may seek pleasure through means disapproved as long as no one else is harmed, and whether he may play while others must work, and perhaps even to support him as he becomes a public charge.<sup>41</sup>

In a careful consideration of the use of narcotics, we can not deal in absolutes of right and wrong; we can not assume that our behavior is necessarily right, while that of others is wrong; and we must admit that some individuals, while behaving in a way which seems unjustified to us, may in fact be meeting *their own* social demands. We must understand that the moral exclusion from society of the narcotic addict has effects not only on the treatment of the disease but on the very apprehension of the phenomenon.

#### INTERNATIONAL CONTROL OF NARCOTICS

In the past, every country was free to adopt any policy concerning narcotic drugs, since legislation was then secondary. There were no statistics showing the quantity of narcotics needed either for scientific or medical purposes. A central organization collecting information about narcotics manufactured, exported, imported or consumed was non-existent; neither was there any international body responsible for co-ordinating the efforts of governments or for supervising the narcotics traffic. Therefore, one could not easily differentiate between licit and illicit traffic from the international point of view.

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40. *Supra* note 6, at 10, 11.

41. TASK FORCE REPORT, *supra* note 3, at 66, 67.

On May 2, 1921, the Opium Advisory Committee of the League of Nations (now the Commission on Narcotic Drugs of the United Nations Organization) was established. It was a nucleus which approximated the various viewpoints of governments concerning the control of illicit traffic in various countries. The Committee succeeded greatly in its task. Because of its continuous efforts, many nations benefited from its work.<sup>42</sup>

THE NARCOTIC PROBLEM AND THE LAW  
IN UNITED ARAB REPUBLIC

DEVELOPMENT OF THE NARCOTIC PROBLEM

Hashish and opium were the only narcotic drugs known in Egypt until the First World War. Large areas of poppies were cultivated in Upper Egypt and the product, opium, was exported, except for a very small portion which remained in the country for local consumption. Hashish, which has been in use in Egypt for over two hundred years, was at that time imported from Greece, Turkey, Bulgaria, India, Syria, and Lebanon. It was a major evil of slums in the cities, but this harm was comparatively light as hashish smokers were few in number.

Just at the end of World War I, white drugs, chiefly cocaine and heroin, spread in the cities and capitals of provinces, with the result that some of the younger adults of the country became addicted to these drugs. Addiction spread widely throughout the country causing anxiety among competent authorities. Approximately half a million of the best educated youth of the country became users of cocaine and heroin, and more than half a million workers followed the steps of the educated youth and also became users of these drugs, for cocaine and heroin were more easily obtainable and cheaper than hashish.

The spreading use of cocaine did not last long because its price rose to such a level that people of the middle class were unable to obtain it. Heroin, being cheaper in price, found its way into Egypt after the immigration to the country of certain smugglers of foreign

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42. UNITED NATIONS, *THE UNITED NATIONS AND NARCOTIC DRUGS* 19 (1959). Since the 1961 Single Convention was adopted by over one hundred nations, U.N. Doc. E/Conf. 31/22, 520 U.N.T.S. 204, T.I.A.S. 6298, noted in 61 A.J.I.L. 802 (1967). For a survey of international control, see Waddell, *International Narcotics Control*, 64 A.J.I.L. 310 (1970).



nationality, who discovered a thriving market for their illicit traffic. Soon some Egyptians, desiring to participate in these enormous profits, adopted this illicit traffic and began smuggling the narcotic drugs into the country.<sup>43</sup>

#### THE LAW AND THE PROBLEM

Until 1925 there was no deterrent law providing for harsh penalties to deal with these traffickers and smugglers of narcotics. The increasing use of narcotics presented a serious challenge to the nation. The authorities proposed that a law providing for somewhat severe penalties should be instituted to combat narcotics traffic. The proposal was favorably received, and on March 31, 1925, a law on narcotic drugs was issued, providing that trafficking and addiction would be punishable by terms of imprisonment varying from three months to three years and fines varying from L.E. 10 to L.E. 300.<sup>44</sup>

This law had no effective result in stopping the smugglers, traffickers or addicts, as the desire for the easy profits and the habit of addiction were so strong that arrest and conviction had little or no deterrent effect. This was also the case with respect to addicts; in many instances immediately upon release they were found to resume taking narcotics.

#### LAW NO. 21 OF 1928

As this experiment proved to be unsuccessful, a harsher law was suggested and, consequently, Law No. 21 of 1928 was issued. Penalties that could be inflicted according to this law were terms of imprisonment varying from six months to three years with fines varying from L.E. 30 to L.E. 300 for addicts, and terms of imprisonment varying from one year to five years with fines up to L.E. 1,000 with respect to importers and traffickers.<sup>45</sup>

The police, coast guard, and frontier and customs authorities put the activities of these smugglers, traffickers and addicts under close surveillance, but this only caused them to be more cautious and to

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43. UNITED ARAB REPUBLIC, ANNUAL REPORT, ANTI-NARCOTIC ADMINISTRATION (1958).

44. Egypt, Law on Narcotics of 1925.

45. Egypt, Law No. 21 of 1928.

devise various methods for smuggling and concealing contraband, with the result that it became greatly difficult to trap an experienced smuggler or shrewd trafficker. "The criminal who knows that he faces extremely severe penalties upon apprehension and conviction tends to take unusual precautions to avoid arrest."<sup>46</sup>

It was, therefore, considered necessary that an Anti-Narcotics Bureau be established with a staff engaged only in combating narcotics. The Central Narcotics Intelligence Bureau was established by a decision of the Council of Ministers dated March 20, 1929. The main duties of this Bureau comprised the detection and control of narcotics both in their original sources and as found, in order to protect the inhabitants of Egypt against this evil. Anti-narcotics authorities thus were able to save the country from the evil of the white drugs, which are now virtually unused in the United Arab Republic.

#### POST WORLD WAR II DEVELOPMENTS

After World War II a torrent of "black market" drugs, *i.e.*, hashish and opium, reached the country across the Suez Canal and via the coasts of the Mediterranean and Red Sea. Their cultivation spread in some Arab countries; consequently, addiction to these narcotics increased greatly. The harm caused by black drugs was equivalent to that of white drugs, and the society became aware of the new threat.

In 1943 the Central Narcotics Intelligence Bureau was replaced by the Anti-Narcotics Administration, which now has branches in the majority of the Provinces. This administration is in direct contact with the Secretariat of the Commission on Narcotic Drugs of the United Nations Organization and with anti-narcotics bureaus all over the world.

Due to the spread of black narcotics cultivation in the certain territories of the Arab States, a bureau composed of a member of each Arab State of the League of Arab States was established in September, 1950, and attached to the League's Secretariat. Its aims were to supervise the measures taken or to be taken by each member state for controlling the cultivation, manufacture, trafficking, and addiction to narcotic drugs within its territory, and preventing smuggling narcotics into or out of these states.

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46. *Supra* note 24, at 77.

This bureau started its work during March, 1951, by requesting that the authorities in the Arab States prevent the cultivation of hashish and poppy and to collect and destroy their seeds in order to make their growth impossible in future cultivation seasons. These authorities were also requested to take quick measures for the seizure of quantities of hashish and opium found in stock in these states or remaining from previous crops, and for the prevention of smuggling narcotics from or to the said states. They were also asked to establish anti-narcotics bureaus on the model of the Egyptian Anti-Narcotics Administration for the same purposes, with the understanding that these bureaus would co-operate with each other and with the permanent Bureau of the League of Arab States for Narcotics Affairs.<sup>47</sup> In spite of all efforts, however, Egypt, largely because of its central geographical position, was having considerable difficulty in preventing the smuggling of narcotics into the country.

Egypt has built its narcotics policies around the twin judgments that narcotics abuse is an evil to be suppressed and that this could most effectively be done by the application of harsh laws with severe penalties. One traditional response to an increase in narcotics abuse has been to increase the penalties for narcotic offenses. The premise has been that the more severe the punishment, the more it would serve as a deterrent. This response has taken the form of long terms of imprisonment increasing in severity with repeated offenses and provisions which make the narcotic offender ineligible for suspension of sentence. In 1952, Decree No. 351 was issued, which raised the penalty for trafficking to life imprisonment and also raised the sentences for various terms of imprisonment for illicit possession of narcotics, and at the same time raised the fines imposed.<sup>48</sup>

A judgment about the results of the enforcement of this law is difficult to make. Despite the dearth of conclusive evidence of the effect of the more severe repressive punishments, there are persuasive reasons to believe that the law has caused a significant reduction in the flow of narcotics. The best evidence is the high price, low quality, and limited supply of hashish and opium after the law's enactment, as contrasted with the former easy availability of cheap and potent

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47. *Supra* note 41.

48. Egypt, Law No. 351 of 1952.

forms of these narcotics. Arguments based on comparisons of the number of addicts at different points in time are difficult to assess because of the uncertainties in the estimates being compared. However, using the statistics supplied by the Anti-Narcotics Administration, there is a widespread conviction that addiction in the general population has declined since the enactment and enforcement of this law.

Surely, this law has not completely stamped out narcotics. Its objectives were to reach the highest possible sources of narcotics supply—counting on the assumption that stamping out the source will eliminate the problem—and to seize the greatest possible quantity of these narcotics before use. These are difficult goals, given the fact that narcotics transactions are always consensual. There are no complaining witnesses or “victims;” there are only sellers and willing buyers. The enforcement officer must therefore initiate cases. He must find and take up positions along the illicit traffic lanes. The standard technique for doing this is undercover investigation, during which an officer assumes another identity for the purpose of gathering evidence or making a “buy” of evidence. The use of informants to obtain guidance and to arrange introductions is also standard and essential.

In an area such as narcotics, which is by its very nature covert and personal, information concerning significantly high elements of the traffic is particularly difficult to acquire. Drug offenses do not involve a “victim” in the traditional sense. There is rarely a non-crank complainant to bring offenses to the attention of the authorities. As a result, it is necessary for the police to seek out offenses. It is the need for information, the need to know what is happening, and the isolation of higher echelons by intermediates that make enforcement in this area especially difficult.<sup>49</sup>

While the proponents of this law justify its severity by saying that the harsh penalty is the only action the narcotic merchants fear and the only language they understand, and that the trend is almost unanimous toward increasing the severity of penalties in all the countries which have the same problem, it may be argued that:

Severe penalties and strict enforcement may deter or discourage some drug peddlers. But there will always be others attracted by the lure of the large profits to be made in the drug traffic. The very severity of law enforcement tends to increase the price of drugs on the illicit market and the profits to be made there-

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49. LITTLE, DRUG ABUSE AND LAW ENFORCEMENT 49 (1967) (paper submitted to the President's Commission on Law Enforcement and Administration of Justice).

from. The lure of profits and the risks of the traffic simply challenge the ingenuity of the underworld peddlers to find new channels of distribution and new customers, so that profits can be maintained despite the risks involved.<sup>50</sup>

The advocates of this law found good evidence of its "judiciousness" in the fact that a few years after its issuance the international bodies called for the strengthening of the penalties in cases of illicit traffic in narcotics. In its twenty-fourth session, the General Assembly of the International Criminal Police Organization adopted recommendation No. 4 calling for the necessity of increasing the penalties in cases of illicit traffic. The same Organization emphasized this recommendation in its 26th General Assembly by requesting that governments of member states report on the laws that had been enacted for imposing severe penalties in narcotics offenses and avoid any leniency in the application of these penalties. Furthermore, the United Nations Commission on Narcotic Drugs decided during its 12th session, held in New York in April and May of 1957, in paragraph B of its Resolution No. II, in respect of illicit traffic, that governments of member states should impose severe penalties on persons convicted in cases of illicit traffic. The Arab Conference on Narcotics held its first session at the Secretariat-General of the League of Arab States, Cairo, February, 1956, and recommended member states to increase the penalties to be more of a deterrent if they had not already done so.<sup>51</sup>

In 1954, Law No. 451 was issued giving encouragement allowances to the combating forces and to persons who give information concerning violation of the narcotics laws. This law is similar to the arrangement whereby informants of customs violations are rewarded. In view of the numerous opportunities which exist for the smuggling of valuable but small volumes of narcotics, this law is important and is a valuable tool of the Anti-Narcotic Administration.

#### A NEW TREND IN DEALING WITH THE PROBLEM

Despite bitter and continued combating by the Egyptian authorities, which resulted in the seizure of enormous quantities of hashish and opium from time to time, and despite the severity of the decree No.

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50. A.B.A. *supra* note 11, at 21.

51. *Supra* note 41.

351 for 1952, the use of these two drugs was still widespread throughout the country and large quantities of both drugs were smuggled into the interior whenever carriers found an opportunity for smuggling.

Those involved in illicit narcotics traffic are either suppliers or consumers. They range from the organized crime boss, who organizes a huge narcotic shipment, to the college student who smokes a single hashish cigarette. The importers, top members of the criminal cartels, operate on an international scale. They are professional criminals. They have large quantities of money and powerful allies, as well as expert knowledge as to how to evade the law and to escape detection. Their role is supervisory and financial. They are not themselves addicts. In fact, they seldom even handle narcotics. Their traffic is run by others who do the transporting and the selling. They operate behind a shield of henchmen. Fear of retribution, which can be swift and final, and a code of silence, protect them from exposure. Through the persons working under their direction, the hashish is distributed to high-level wholesalers, who are also members of the cartels. Beyond this point the traffic breaks out of the hands of the organized element becoming increasingly diffuse. At the next stage are the low-level wholesalers. Retailers, street peddlers, who are often themselves addicts, and addicts round out the system.

The top members are hard to identify and harder to implicate with legal evidence. By not handling the narcotics themselves, they remove their liability to prosecution under laws which prohibit possession, sale, or other such acts. The Egyptian legislature found that the conspiracy laws are the most useful weapon against such persons. The Minister of the Interior was authorized to arrest for an unlimited period of time any person suspected of dealing in narcotics on a large scale and confiscate his money and properties. More than 720 top members of the criminal cartels were arrested on evidence developed by the Anti-Narcotics Administration. They were put in jail, their money and properties confiscated. This was a turning point. The number of cases and the quantities of narcotics which were seized during the following months were so few that the success of this approach was apparent to all. But not for long, for a few months later the low-level wholesalers replaced the importers and the flow of narcotics continued again. The evidence of that was the relatively low price and availability of potent hashish in the streets.

It seems that the Egyptian legislature, in issuing this law, was under the impression that

[i]f a dozen or so of these racketeers in the higher brackets could be apprehended . . . , the illicit drug traffic would be dealt a sound blow; on the other hand, enforcement against the small addict-peddler will always be expensive and inefficient as long as the major pipe-lines for smuggled drugs are open. The small-time peddler can always be replaced quickly by another addict greedy for the income and the guaranteed source for drugs; it is not easy, however, to replace a kingpin in the smuggling rackets.<sup>52</sup>

However, the law was found to be unconstitutional and, hence, was not in effect for any substantial period of time.

#### NEW LEGAL APPROACHES

Under these circumstances the Egyptian legislature enacted a new, more severe law for treatment of narcotics offenders, assuming that the imposition of harsh penalties would deter trafficking by making the risk disproportionately great. On the other hand, the undiminished persistence of addiction and its related ills led ultimately to reappraisal of past policy and a greater interest in new approaches. Public acceptance of addiction as an illness, rather than a crime, has provided a strong impetus and respect for proponents of new policies, especially after it became clear that orthodox measures for controlling deviant behavior were singularly unsuccessful in solving the problem and that treating the addict by placing him in jail had no particular benefit to the individual or society:

Many sociologists and criminologist contend that arrest and subsequent experience when one is treated as a criminal produce many injurious consequences and increase the likelihood of expanded rather than reduced criminal and socially maladaptive behavior. Especially in the field of drugs . . . has been discussion of the undesirable features of "turning the person into a criminal" through treating him like one and exposing him to contact with "genuine" offenders.<sup>53</sup>

The arrest of addicts only aggravates the situation as it makes dependents of their family, which thus creates a social and economic problem.

The new legislation (Law No. 182, 1961) avoided treating all narcotic offenders alike by dividing offenders into five groups: (1) those who export, import, produce, extract or manufacture narcotics. They are subject to mandatory life imprisonment and fines varying from

52. MAURER & VOGEL, *NARCOTICS AND NARCOTIC ADDICTION* 264 (1967).

53. TASK FORCE REPORT, *supra* note 3, at 31.

L.E. 3,000 to L.E. 10,000; capital punishment is available for the second offense and for the law enforcement officers who commit any of these crimes; (2) those who possess, buy, deliver, transport, or present for use narcotics with intent to sell, and those who are allowed to possess narcotics for medical purposes in case they use it for other purposes, and those who run a place for using narcotics; they are subject to fifteen years of imprisonment or life imprisonment, and fines varying from L.E. 3,000 to L.E. 10,000; life imprisonment is mandatory for the second offense; (3) those who present narcotics for users or facilitate its use without intent to sell; they are subject to a term of imprisonment not less than seven years and not to exceed fifteen years, and fines varying from L.E. 3,000 to L.E. 10,000; life imprisonment is available for the second offense; young adult treatment is not available for any of the three previous categories; (4) those who possess, buy, produce, extract, or manufacture narcotics for personal use; they are subject to a term of imprisonment not less than three years and not to exceed seven years and fines varying from L.E. 500 to L.E. 3,000; young adult treatment is available and the mandatory minimum term in this case is six months; as an alternative, the court has full discretion to order confinement in a special treatment facility for a period not less than six months and not to exceed one year; and (5) those who are present in a place where narcotics are used or consort with other known addicts; they are subject to a term of imprisonment not to exceed one year and fines varying from L.E. 100 to L.E. 500.<sup>54</sup>

These gradations as to the seriousness of the offense are sound in principle. The object of this law is to restrict the supply of narcotics in the country; to reach this goal it became necessary to impose severe penalties in order to deter traffickers—hence, the aggravation of penalty for the importation, production, extraction and manufacture of narcotics. The capital punishment in this statute is a maximum and not a mandatory sentence. It is available for extreme cases and will put greater fear into all persons who might otherwise continue smuggling narcotics into the country.

Features of this law deny judges the flexibility to deal with the infinitely varied types of violations and offenders in accordance with

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54. United Arab Republic, Law No. 182 of 1961.



facts in each case. It would be preferable rather that the judge be relied on to take account of the nature of the offense and the record and status of the offender in making his decision. Long terms of imprisonment for major narcotics violations are essential, but there now exists a considerable body of evidence to support the conclusion that most judges in Egypt do not favor the high mandatory minimum provisions, particularly when accompanied by restrictions on the power of the courts for suspension. The judges in Egypt feel that it may be unjust to deny judicial discretion in the sentencing of prisoners. They refuse to support the law because it does not provide for consideration of the surrounding circumstances, the seriousness of the offense, or the amount of narcotics involved. Studies in jurisdiction conducted by the Egyptian Bar Association reveal that defendants are seldom convicted of crimes carrying heavy mandatory minimum penalties, and that judges are more willing to grant motions for suppression of evidence because of a feeling that the minimum imprisonment is unwarranted in a particular case. "It isn't a healthy situation at all to have a law that is so rigid in its provisions that judges feel that they have got to disregard its plain language in order to come out with what they think is a just result."<sup>55</sup>

While there is nothing in the penalty structure of this law to suggest any change in the basic approach to control, there is one innovation that presents an attempt to respond to the shift in the public attitude. The inclusion of a provision in this law authorizing commitment of narcotics addicts for purposes of treatment has been the most important development in recent years in the narcotics abuse field in Egypt. This trend has now broad public acceptance as there is a growing awareness that narcotics addiction is a *medical* illness and that a clear distinction should be made between addicts and other offenders. The establishment of centers for the treatment of narcotics addicts, who are patients rather than criminals, in a medical atmosphere under supervision of specialist doctors, social workers and psychologists will promote a cure for the individual addict rather than merely imprisoning him. After cure they will rejoin society as useful members. Furthermore, as a result of what they perceived and endured during their narcotics addiction, they will become efficient anti-narcotics propagandists, especially within the circle of their own

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55. *Supra* note 24, at 76.

community. The results are still too fragmentary and experience still too limited to permit anything more than tentative judgments. But it seems very appropriate to permit the court to decide whether an addict should be confined in a prison or sent to a treatment facility. This discretion should be largely unrestricted.

In addition to the involuntary commitment of criminal addicts, the law has adopted the concept of the voluntary commitment on request of noncriminal addicts, *i.e.*, those who have been neither charged with crime nor are under sentences after conviction of a crime. The administration has provided special facilities for treatment of addicts upon their request. Although programs of this type have been singularly unsuccessful in effecting cures, they have been the primary source of valuable information about the characteristics of addicts and addiction. A factor frequently assigned for the extremely low rate of cure under this voluntary program is the short period of time that most addicts remain under treatment. Many addicts who become unable to supply themselves with sufficient narcotics to satisfy their steadily increasing physical needs will commit themselves to a treatment facility and stay for the short period it takes to be withdrawn from physical dependence. This can be accomplished in a matter of weeks, after which the addict, who under this law cannot be kept against his will, departs from the facility without having received any meaningful treatment. This difficulty could be partially avoided by making the use of this program available only to addicts who consent to stay in the treatment facility for a minimum period. Release prior to this minimum period could be permitted only upon consent of the treatment officials. It is possible that imposition of this condition might discourage some addicts from requesting treatment. But at least those who join will be with the program long enough to receive the start of treatment and perhaps will be induced to stay beyond the maximum enforceable period.

Serious attention should be given to changing the focus of police control to exclude from criminal penalty acquisition or possession of narcotics without intent to sell. This would have the great advantage of no longer turning a large number of persons into serious criminals. Emphasis on higher echelon importation and distribution for illicit purposes would remain a police task—a very difficult task for which additional technical and statutory support for law enforcement

would no doubt be required. Furthermore, furnishing or sale of narcotics to minors should be considered an aggravating circumstance leading to increased penalties, so that we can protect the innocent and deter those who might prey upon them.

#### THE NARCOTIC PROBLEM AND THE LAW IN THE UNITED STATES

In 1952 the special committee of the Board of Corrections of the State of California studied the narcotic problem and wrote in its report:

The Committee on Narcotics firmly believes that the true import of the narcotic problem may not be fully realized at the present time but will, in the years to come, have a direct effect upon the health and social life of our communities.<sup>56</sup>

This statement proved to be very true, as narcotic addiction became a serious problem in the United States and has recently begun to spread among the very young to the point where it is now nearly as common a problem as smoking and drinking were among the youth of two or three decades ago.

#### DEVELOPMENTS OF THE PROBLEM

The habit of opium smoking was introduced to America by the Chinese who came to this country in the second half of the nineteenth century. Some Americans acquired the habit, which was not illegal until the passage of the Harrison Anti-Narcotic Act in 1916.<sup>57</sup> The practice spread widely and as one commentator observed: "[U]ntil the turn of the twentieth century, the use of opium and its derivatives was generally less offensive to Anglo-American public morals than the smoking of cigarettes."<sup>58</sup> While opium smoking by Americans followed the oriental practices for a time, it soon changed when it found its way into the underworld. It then began to lose its mystical appeal and assumed, in popular opinion, the dimensions of a menace.<sup>59</sup> The extent of the use of narcotics in the United States before the enactment of the Harrison Act in 1916 remains unknown, but it can be said that

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56. SPECIAL COMMITTEE OF THE BOARD OF CORRECTIONS, STATE OF CALIFORNIA, NARCOTICS AND HYPNOTICS 7.

57. *Supra* note 24, at 132, 133.

58. *Supra* note 23, at 21.

59. Eldridge, NARCOTICS AND THE LAW 4 (1967).

the problem was large enough to promote the concern which resulted in governmental intervention and the passage of the act.<sup>60</sup>

Some writers take the view that addiction to opiates in the United States during the nineteenth century and the early decades of the twentieth frequently developed from the abuse of alcohol, "for morphine provides a potent means of relieving the alcoholic hangover."<sup>61</sup>

The Harrison Act reduced drastically the flow of new addicts resulting from medical practice or through the use of legal drugs, and had the effect of forcing a countless number of users to the illicit traffic, which was expanded enormously thereby. A large number of this new variety of addict appeared within the underworld. They were motivated by "curiosity" and "search for adventure", and stimulated by "unfortunate spectacular publicity."<sup>62</sup>

With the advent of World War II it was noticed that the use of narcotics decreased as young men were recruited into the army; international smuggling was disrupted, and illicit supplies became exceedingly scarce. Even after the war ended, it appeared to officials that the narcotic problem had dwindled to almost an irreducible minimum. But this situation was only temporary, since after a short period the use of narcotic drugs appeared to have spread with epidemic force in the slum areas of the large cities, particularly among the minority groups. The New York Attorney General's Survey in 1952 revealed that: "(a) Narcotic use and addiction . . . has increased in tremendous fashion since World War II and particularly in the last two years; (b) the disease has spread with alarming rapidity through the ranks of our adolescent society."<sup>63</sup>

A serious feature of the problem after World War II was the increasing use of narcotics by youth. In 1948 an upsurge in addiction and an outbreak of teen-age use of narcotic drugs occurred.<sup>64</sup> The problem was regarded as a disease in an epidemic stage during the period of 1949-52. It was accompanied by greatly exaggerated reports to the extent that certain persons attributed the epidemic to a

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60. *Id.* at 7.

61. *Supra* note 24, at 233.

62. *Supra* note 24, at 131.

63. A.B.A., *supra* note 11, at 30.

64. A.B.A., *supra* note 11, at 30.

Communist effort to undermine the youth, and the death penalty was seriously proposed for anyone peddling narcotics to teen-agers.<sup>65</sup>

Today, as a Senate Committee concluded, "[t]he United States has more narcotic addicts, both in total number and population-wise, than any other country of the Western World."<sup>66</sup> The United States not only has more addicts than the rest of the Western World, but proportionately American addicts constitute much more serious liability than do those of Europe.

It is noteworthy that until recently interest in problems of narcotic and drug abuse in the United States centered almost exclusively on the abuse of the opiates, cocaine, and marijuana. But the focus of concern is now broader. Interest has spread to other drugs, and a new group of addicts has appeared; they are those who use the so-called "dangerous" drugs—the barbiturates, the amphetamines and tranquilizers. However, it is the opiates and their synthetics which constitute the prime problem.

#### THE LAW AND THE PROBLEM

American legislation in the narcotic area dates back to 1862, when California enacted a statute dealing with the administration of drugs with intent to facilitate commission of a felony. The first state law seeking to control the use and distribution of narcotics was that enacted in Nevada in 1877; the first legislation authorizing institutional commitment of addicts was that enacted in Connecticut in 1874.<sup>67</sup>

At the Federal level, legislation to control the market in narcotic drugs began with an 1870 import duty on raw and prepared opium. Several attempts were made between 1870 and 1914 to stop the traffic in opium. The Narcotic Drugs Import-Export Act of 1909 prohibited the importation of narcotic drugs, except in amounts determined by the Commissioner of Narcotics as necessary for medicinal purposes. Export and trans-shipment of opium were also prohibited in 1914. A prohibitive tax on the domestic manufacture of opium

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65. *Supra* note 52, at 307.

66. A.B.A., *supra* note 11, at 16.

67. *Supra* note 23, at 21.

was next, followed in December, 1914 by the Harrison Act, which forms the basis for the present federal law.<sup>68</sup>

Several factors contributed to the enactment of the Harrison Act, but there were two major influences:

One of these was that American representatives to international conferences had, before 1914 (*e.g.*, at The Hague Convention in 1912), urged other governments to establish systems for the internal control of narcotic drugs. It was therefore, inconsistent that the United States itself did not have such a system. The other influence developed from a growing realization that there were relatively large numbers of addicts in the United States and an impression that the problems posed by this fact were not being effectively met by the various measures adopted by different states and localities.<sup>69</sup>

The best illustration of this impression and of the great concern over the problem which led to the enactment of this federal act can be found in Mr. Harrison's report for his committee:

The enormous increase in the importation of and consumption of opium in the United States is startling and is directly due to the facility with which opium may be imported, manufactured into its various derivatives and preparations, and placed within the reach of the individual. There has been in this country an almost shameless traffic in these drugs. Criminal classes have been created, and the use of the drugs with much accompanying moral and economic degradation is widespread among the upper classes of society. We are an opium-consuming nation today.<sup>70</sup>

The problem which the Harrison Act set out to solve was the method of controlling opium and other narcotic drugs within the United States when some of the states would not act. The solution adopted has been to use Federal tax power, but this has been open to the objection that it interferes with the state prerogative of police power. Nevertheless, although its constitutionality has been widely questioned, the Act has survived.<sup>71</sup>

Although the Act was designed to suppress traffic in narcotic drugs and is not intended to produce revenue, it has been initiated in the form of a tax law. Writing about this feature, one commentator observes:

It is, in our opinion, a reflection on modern social intelligence that control of so vital a problem as narcotic addiction should have been initiated in the form of a tax

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68. *Supra* note 49, at 38, 39.

69. *Supra* note 24, at 4, 5.

70. *Supra* note 59, at 9.

71. *United States v. Doremus*, 249 U.S. 86 (1919).

law. It is still so written, although everyone concerned understands that its primary purpose is the control of human behavior and not the production of revenue.<sup>72</sup>

The legislative basis of narcotic policy in the United States is provided principally by two series of enactments, one at the Federal level and the other in the states. As was the case in Egypt, since the enactment of the Harrison Narcotic Act in 1914, there has been only one approach in the United States—that of criminal sanction applied to all offenders of the narcotic laws. The United States has adopted and pursued a policy aimed at destroying the traffic by harsh laws and severe penalties. Narcotic and drug abuse is considered to be a major social threat. The reaction to this threat, reflected in present law and practice, is to try to influence human conduct through punishment and confinement. The premise is that a severe and repressive system of punishment—chiefly long prison terms without possibility of probation or parole—is the best way to control narcotics and narcotic addiction. This premise underlay the approach to all forms of narcotic violation—smuggling, selling, dispensing, possession, record-keeping, treatment.<sup>73</sup>

Since the twenties, legislation and enforcement policies have aimed at total repression, with criminal sanctions of notable severity attaching to every transaction connected with the non-medical use of drugs. Drug-law enforcement has become a major police activity of federal, state and local governments, the threat of long imprisonment, even of death penalties, hangs over not only the smuggler and the peddler, but the addict-victim of the illicit traffic.<sup>74</sup>

American narcotics laws sometimes make a provision for devices other than criminal sanctions, such as authorization of civil commitment of addicts, for therapeutic purposes. But it seems that these provisions are not intended as an alternative to criminal law enforcement, which is the principle instrumentality of control. They are intended to serve and advance the purposes of law enforcement.<sup>75</sup>

Another feature of the narcotics law is that the penalties have become progressively more severe in the postwar era. Moreover, judicial discretion, which enables a judge to make the punishment fit the crime, is not permitted. Limited by high mandatory minimum sentences and deprived of the power to make use of probation, the

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72. *Supra* note 52, at 28.

73. *Supra* note 59, at 140.

74. A.B.A., *supra* note 11, at 3.

75. *Supra* note 23, at 23.

judge's ability to control dispositions is severely limited. The majority of statutes today require that illegal possession be punished by a stated number of years, regardless of the facts which may come to the attention of the judge, and in many cases that number of years is the same whether the offender is an addict or a peddler.<sup>76</sup>

#### FEDERAL NARCOTIC LAWS

"Federal Narcotic Laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs.<sup>77</sup> Federal laws regulating narcotic drugs include the Harrison Narcotic Law and others. They are enforced by the Bureau of Narcotics established in 1930 in the Treasury Department. The principal Federal Narcotic Laws are the following: (1) Harrison Narcotic Act of 1914; (2) Narcotic Drug Import and Export Act of 1922; (3) a narcotic hospital law which provides treatment facilities for persons addicted to drugs controlled by the narcotic laws; (4) Marijuana Tax Act of 1937; (5) Narcotic Transportation Act, passed in 1939, amended in 1950; (6) Opium Poppy Control Act of 1942; (7) Narcotic Control Act, passed in 1956; (8) Drug Abuse Control Amendments, 1965; (9) a new era, however, started with the 1970 Drug Abuse Prevention and Control Act.<sup>78</sup>

In the United States the basic Federal Narcotic Law is the Harrison Narcotic Act. This law initiated a policy which is still the basis of present narcotic control programs. It is a tax law, administered by the Bureau of Narcotics, an agency of the Treasury Department. As a revenue measure, the law imposes a tax of one cent per ounce on all narcotic drugs produced or imported in the United States and sold or removed from consumption or sale.

Payment of the tax must be evidenced by stamps affixed to the package or container. Transfer of narcotics is authorized only in

76. Eldridge, *supra* note 59, at 122.

77. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, UNIFORM NARCOTIC ACT HANDBOOK, 324 (1932).

78. (1) 26 U.S.C. § 4701 *et seq.* (1964); (2) 21 U.S.C. §§ 171, 173-77, 180, 182, 184, 185 (1964) and 31 U.S.C. § 529 (1964); (3) 42 U.S.C. § 257 *et seq.* (Supp. III 1968); (4) 26 U.S.C. § 4741 *et seq.* (1964); (5) 26 U.S.C. § 3224(b) (1964) and 49 U.S.C. §§ 781-789 (1964); (6) 21 U.S.C. § 181-188(n) (1964); (7) 8 U.S.C. §§ 1182, 1251, 18 U.S.C. §§ 1401-1407, 21 U.S.C. §§ 174, 176(a), 176(b), 184(a), 198, and 26 U.S.C. §§ 4744, 4755, 4774, 7237, 7607, 7608 (1964); (8) 18 U.S.C. § 1114 (1964) and 21 U.S.C. § 321 (1964); and (9) 21 U.S.C.A. § 801 *et seq.* (Supp. 1971).



the original package or container. Possession of narcotics in unstamped containers is "prima facie evidence of a violation". Except for the dispensing of narcotic drugs to a patient by a practitioner "in the course of his professional practice only" and the sale, dispensing, or distribution of narcotic drugs by a dealer to a consumer in pursuance of a practitioner's prescription, sale or transfer of narcotic drugs is unlawful. Official order forms must be used in completing all lawful transactions.

Persons in a vocation involving the handling of narcotic drugs must register annually with the Treasury Department and pay certain occupational taxes ranging from one dollar to twenty-six dollars per year. They are also required to keep records, make them available to law officers, and file returns as required by the Secretary of the Treasury.

Unauthorized possession under the law is a criminal offense, whether or not the drug is intended for personal use. Unauthorized sale or purchase also is a criminal offense. The law provides penalties of not more than \$2,000 in fines nor more than five years imprisonment, or both, in the discretion of the court.<sup>79</sup>

#### NARCOTIC DRUG IMPORT AND EXPORT ACT

This act, which was passed in 1922, is often referred to as the Jones-Miller Act. Another major step in narcotics control by the federal government, it extended the prohibitions of 1909 against opium imports to other narcotics. The act limits the amounts of narcotics that may be lawfully imported to the quantities necessary to supply medical and legitimate requirements only.

The penalty for unlawfully importing or receiving, or facilitating transportation, or sale under this act is imprisonment for not less than five, nor more than 20 years with a maximum fine of \$20,000. Subsequent offenses are punishable by a maximum sentence of 40 years, plus a \$20,000 fine.<sup>80</sup>

#### MARIJUANA TAX ACT OF 1937

This act authorizes marijuana transactions between persons, such as importers, wholesalers, physicians, and others, who have paid cer-

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79. 26 U.S.C. § 4701 *et seq.* (1964).

80. 21 U.S.C. §§ 171, 173-77, 180, 182, 184, 185 (1964) and 31 U.S.C. § 529 (1964).

tain occupational and transfer taxes similar to those applicable to narcotics under the Harrison Narcotic Act. But, since there is no accepted medical use of marijuana, only very few people are registered under the law, and for all practical purposes the drug is illegal. Unauthorized possession, which in this context means possession under almost any circumstance, is a criminal act under Federal tax law. Sale or purchase of marijuana are also criminal offenses under this statute.<sup>81</sup>

#### DEVELOPMENT OF THE FEDERAL LAW

The decade 1951-60 produced many important changes in the federal law. There have been two important changes which have greatly increased the penalties for narcotic violators. The first of these was the 1951 act known popularly as the Boggs Amendment; the second was the Narcotic Drug Control Act of 1956. The 1951 act introduced mandatory minimum sentences for all narcotic and marijuana offenses: two years for the first offense, five years for the second, and ten years for the third and subsequent offenses. At the same time, suspension of the sentence and probation were prohibited for second offenders. In 1956 this trend was extended toward more severe and more inflexible penalties. The mandatory minimum sentences were raised to five years for the first and ten years for the second and subsequent offenses of unlawful sale or importation. They remained at two, five, and ten for the offense of unlawful possession. Suspension of sentence, probation and parole were prohibited for all but the first offense of unlawful possession.<sup>82</sup> The legislature enacted mandatory minimum penalties, and denied courts discretion as to suspension, probation, and parole on the assumption that judges were too lenient in their treatment of narcotic offenders and that there would be fewer offenders willing to face the risk of harsher penalties. The thinking of the legislature can be found in the following extract from a report of a Congressional Committee which conducted inquiry into problems of drug addiction and the drug traffic: "The Committee has found that whenever and wherever penalties are severe and strictly enforced drug addiction and narcotic trafficking have decreased pro-

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81. 26 U.S.C. § 4741 *et seq.* (1964).

82. 8 U.S.C. § 1182, 1251 (1964); 18 U.S.C. §§ 1401-1407 (1964); 21 U.S.C. §§ 174, 176(a), 176(b), 184(a), 198 (1964); 26 U.S.C. §§ 4744, 4755, 4774, 7237, 7607, 7608 (1964).

portionately.”<sup>83</sup> These developments led to the comprehensive Drug Prevention and Control Act of 1970, which demonstrates greater concern for the addict and rehabilitation treatment programs.

#### STATE NARCOTIC LAWS

The states share with the federal government a concurrent jurisdiction in the area of narcotics abuse. The power of the state to regulate the narcotic traffic has been explicitly recognized, and was recently reaffirmed by the United States Supreme Court. In the exercise of that jurisdiction, all fifty of the American states have enacted laws regulating narcotic drugs. The vast majority have enacted, in one form or another, the Uniform Narcotics Act.

Until 1930 narcotic offenses were generally regarded as a matter of federal concern, and very few of the states had adequate laws in this field. After the establishment of the Federal Narcotics Bureau in 1930 the federal government began securing greater cooperation from the states and a tightening up of the legal situation by urging upon them the enactment of a Uniform Narcotics Law, which had been developed over a period of five years by the National Conference of Commissioners on Uniform State Laws. A wide variety of legal and other authorities had been consulted by the National Conference before the act was finally drafted. The final draft was approved by the American Bar Association. The act has been adopted by all the states except California and Pennsylvania. This law, modeled after the federal statutes, was designed to facilitate enforcement by promoting cooperation between federal and non-federal officers, by creating uniform standards of record-keeping on state and federal levels, and by eliminating certain gaps in the provisions of the federal laws, occasioned by constitutional limitations upon the police powers of the national government.

According to the act it is unlawful to possess narcotics except in conformance with its provisions, and it is unlawful to manufacture or prepare narcotics without a license. The sale of narcotics by manufacturers, wholesalers and pharmacists is regulated, and they are to retain written orders and keep prescriptions for two years.

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83. Senate Committee of the Judiciary, Senate Subcommittee on Improving the Federal Criminal Code, S. REP. NO. 1997, 84th Cong. 2d Sess. May 14, 5 (1956).

Another section regulates the use of narcotics by professional persons in the course of their work. There is also a section which lists preparations containing narcotic drugs which are exempt from law. No person is to be prosecuted for a violation under this act if he has been convicted or acquitted under federal law for the same alleged offense.

A section was set aside for penalties, but no penalties were prescribed or suggested, so that each state might impose its own penalties. The act made no provision for treatment and did not define the status of addiction as criminal, leaving each of those questions to state discretion.

Many states have modified the act upon adoption. The greatest diversity is to be found in the sections on penalties. State penalties range from six months for a first sale or transfer offense on up to 25 years.<sup>84</sup>

#### COMMENT

Considerable controversy has surrounded the extent to which these harsh laws deter narcotic violators. Some critics attack these laws on the ground that they are ineffective. They argue that despite a half century of strict governmental control, the United States has a greater proportion of addicts than any other country of the Western World; strict law enforcement and severe penalties are, therefore, not the easy answers to the problems of drug addiction and we must look elsewhere for a rational drug control program for this country.<sup>85</sup> On the other hand, the imposition of heavy sentences is regarded by many as the ultimate weapon against narcotics traffic and use. They say that "[t]he record is clear that despite temporary setbacks we have made great strides in eliminating the narcotic drug evil in this country. The record is equally clear that much of this we owe to law enforcement."<sup>86</sup> According to data prepared by the Bureau of Narcotics, the number of drug addicts has gone down appreciably as a result of the mandatory penalties against peddlers.<sup>87</sup> Also, it has been alleged in enforcement circles that high mandatory minimums have

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84. *Supra* note 49, at 43.

85. A.B.A., *supra* note 11, at 22.

86. UNITED STATES TREASURY DEPARTMENT, BUREAU OF NARCOTICS ADVISORY COMMITTEE, COMMENTS ON NARCOTICS DRUGS 58 (1959).

87. *Supra* note 59, at 74.

driven organized criminals out of the narcotics traffic in many areas. They conclude by stating that "[h]ad the Federal, State and local governments provided carefully selected, adequately trained narcotic officers in sufficient numbers; and with sufficient funds; joined with firm support from the prosecutors; and strong, vigorous action by the courts in their sentences and decisions; the narcotic enforcement program in this Nation would have been an overwhelming success today."<sup>88</sup> To back their arguments, the proponents of the harsh laws present the state of Ohio as "a shining example" where extremely severe penalties have been applied to narcotics crimes and resulted in reducing narcotics violations 80 percent.<sup>89</sup> It is worth mentioning that the President's Advisory Commission on Narcotic and Drug Abuse, in its final report in November, 1963, arrived at the conclusion that there is need for a continuation of the policy of severe punishment as a deterrent to narcotic law violations. "The illegal traffic in drugs should be attacked with the full power of the federal government. The price for participation in this traffic should be prohibitive. It should be made too dangerous to be attractive."<sup>90</sup>

Although effective control of the vicious narcotic traffic requires vigorous enforcement and certainty of punishment and that ". . . casting the shadow of steep penalties over the path of the dope peddler will do much to deter him,"<sup>91</sup> the advocates of criminal sanction should be showing their concern over the *causes* of addiction and the plight of the addict rather than concentrating on freeing the society from the depredations of drug sellers and drug users.

As is the case in Egypt, the harshness and inflexibility of penalties and the extraordinary limitations placed upon judicial power to suspend or to mitigate sentences in accordance with circumstances surrounding individual cases, or to place certain persons on probation rather than sending them to prison, have aroused opposition from judges and many other groups. These limitations on the judiciary are manifestations of a "get tough" enforcement bias, and have provided a vehicle for legislative reaction to what they consider a gen-

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88. *Supra* note 86, at 66.

89. *Supra* note 86, at 100.

90. *Supra* note 20, at 3.

91. *Supra* note 86, at 95.

erally "over-active" judiciary.<sup>92</sup> As to the effects of application of mandatory minimums and of such limitations on enforcement, it has had the result of a substantial increase in the percentage of the Federal prison population serving sentences for narcotic offenses.<sup>93</sup> But, on the other hand, it has made it difficult to convict one of a major narcotic offense. By common consent, judges, prosecutors, and others collaborate in avoiding the imposition of these severe penalties by allowing defendants to plead guilty to lesser charges.<sup>94</sup> Judges report that they are more likely to "bend over backwards" for defendants, who, were it not for mandatory minimum sentences, would have been good candidates for probation or a suspended sentence.<sup>95</sup>

In states where normal sentencing procedures have been retained but the maximum permissible sentences for narcotic offenders have been increased, these crimes are charged, juries convict, and judges impose heavy sentences in appropriate cases. But in states where high minimums are made mandatory, and judges are denied their ordinary and traditional discretion to make sentencing distinctions between particular offenses and defendants, the system has largely failed.<sup>96</sup>

Moreover, these sentencing provisions have had discernible adverse effects. They have made rehabilitation of the convicted narcotics offender virtually impossible. Those who have dealt with narcotic offenders in prisons agree that there is little incentive for rehabilitation where there is no hope for parole.

Under these circumstances it is unwise to retain mandatory minimum penalties or to restrict the traditional discretion of the courts to fashion the punishment in each individual case in a way that will afford adequate protection for the community while taking account of the deterrent and rehabilitative effect of the sentence.

There is now a broad consensus among judges that discretion should be restored and they should be accorded the right to individualize sentences:

Utilizing the facts presented by the law enforcement agencies, psychiatrists and social workers, the judge should be free to draw upon his experience to find the

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92. *Supra* note 49, at 46.

93. TASK FORCE REPORT, *supra* note 3, at 12.

94. *Supra* note 24, at 81, 82.

95. *Supra* note 49, at 47.

96. ARANOWITZ, CIVIL COMMITMENT OF NARCOTIC ADDICTS AND SENTENCING FOR NARCOTICS DRUG OFFENSES (paper submitted to the President's Commission on Law Enforcement and Administration of Justice).

sentence which will afford society the best protection and the offender the best chance of rehabilitation.<sup>97</sup>

The President's Advisory Commission on Narcotic and Drug Abuse has recommended that

the penalty provisions of the federal narcotics and marijuana laws which now prescribe mandatory minimum sentences and prohibit probation or parole be amended to fit the gravity of the particular offense so as to provide a greater incentive for rehabilitation.<sup>98</sup>

Although the commission disagreed with the basic theory of penal provisions in the narcotics laws which treats narcotics offenses as of equal gravity and divides the various offenses into three categories according to their seriousness, it made a recommendation of appropriate criminal penalties to each category;<sup>99</sup> these recommendations have not been followed. The marked increases in the severity of penalties in the 1951 and 1956 federal laws have not been modified to take account of the distinctions between possession for use and possession for sale, nor the significance of the quantity of narcotics involved. Such indiscriminate application of penalties probably does increase the deterrent effect of the law, but it is patently unjust.

#### THE LAW AND ADDICTION

There had grown up in the United States two opposing schools of thought concerning the question of how to deal with narcotic addiction. One of these was the "habit" theory; the other the "disease" theory. The former regarded addiction to narcotic drugs as merely a vicious indulgence which could be controlled and overcome by an appropriate exercise of will power, and consequently advocated and supported the prohibitionist policies. The latter considered addiction as a disease, or something akin to it, for which punishment is inappropriate. Narcotic law enforcement officers, particularly the Federal Bureau of Narcotics, are identified with the control through criminal law approach; social scientists, some physicians, and others are in the "treat-the-addict-as-a-sick-man" group.<sup>100</sup> The advocates of the punitive approach argue that crimes committed by addicts are a direct result of the drug and that most addicts were criminals before they

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97. *Supra* note 59, at 122.

98. *Supra* note 20, at 7.

99. *Supra* note 20, at 40.

100. TASK FORCE REPORT, *supra* note 3, at 70.

became addicted. On the other hand the critics of this view argue that many addicts become criminals in order to get money to buy drugs, since there is no way in which they can obtain them legally and the cost of illegal procurement is high. They take the view that drug addiction is a problem for the physician rather than for the policeman, and that it is inappropriate to invoke the criminal process against someone solely because he is a drug addict.<sup>101</sup> This group also argues that there is no reason to distinguish the loss of control caused by the use of narcotics from the loss of control caused by alcohol. Once a person has lost control over his use, the existence of a use or simple possession offense will not deter his use. "Having lost control, he cannot choose to conform his conduct to the requirements of the law by refraining from use. He is non-deterrable."<sup>102</sup>

The status of the addict was left indeterminate in the Harrison Narcotic Law of 1914. The act did not make addiction a crime, only requiring that whatever drugs addicts obtained were to be secured from a physician registered under the law. The Supreme Court took the first important step, which ultimately led to the outlawing of the addict, when it ruled, in 1915, in its decision in the *United States v. Jin Fuey Moy* case,<sup>103</sup> that possession of smuggled drugs by an addict was a violation of the law. This decision forced the addict to go to the doctor as the only source of legal drugs left to him. This remaining source was shortly eliminated by further court decisions in other cases.<sup>104</sup> Such limitations created a new class of criminal offenders—narcotic addicts still using drugs, now obtainable only illicitly. The legal position of the addict became quite clear. He was denied all access to legal drugs.

In 1925, in the *Linder v. United States* case<sup>105</sup> the Supreme Court took the view that addiction is a disease. Of addicts, the Court said, "They are diseased and proper subjects for treatment . . ." The *Linder* case has had practically no effect as far as enforcement policies are concerned, mainly because of the legal confusion in the sub-

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101. A.B.A., *supra* note 11, at viii.

102. TASK FORCE REPORT, *supra* note 3, at 103.

103. *United States v. Jin Fuey Moy*, 241 U.S. 394 (1955). *Supra* note 24, at 5.

104. *Id.* at 5, 6.

105. *Linder v. United States*, 268 U.S. 5 (1925). *Supra* note 24, at 8.



sequent cases and because the Court has not had the opportunity to clarify its ruling in similar cases.<sup>106</sup>

On June 25, 1962, the Supreme Court decided the case of *Robinson v. California*,<sup>107</sup> and affirmed its position in the *Linder* case. The *Robinson* case involved a test of a California statute making addiction to narcotics a crime and providing that any person convicted under its provisions be punished by confinement in a county jail for at least ninety days. The Court held that making it a criminal offense to be diseased is a cruel and unusual punishment and ruled that the California statute was invalid and unconstitutional under the Eighth and Fourteenth Amendments.

Analyzing the Court decision one commentator observes that

[w]hile the strict holding of *Robinson* applies only to statutes making the status of narcotic addiction criminal, the decision also clearly forbids the use of other statutes, such as vagrancy and disorderly person ordinances to accomplish the same end. It should be noted that nothing in the *Robinson* decision makes it legal for non-dependent persons to use or possess drugs.<sup>108</sup>

Another commentator found that the distinction which the Court made between criminal provisions which punish acts, such as purchase and sale, and those punishing a state or condition, produced problems of analysis. "For if addiction is an 'illness' and cannot constitutionally be punished, what is the source of state of authority to punish acts of purchase and possession which are necessarily and unavoidably associated with the illness?"<sup>109</sup> A unique approach was taken by Professor Bassiouni who designated the subject as "status criminality."<sup>110</sup>

Prior to the *Robinson* case approximately one third of the states had statutes making addiction to narcotics a crime. State statutes varied considerably as to the definition of such offenses, and some of the provisions in these statutes were remarkably severe. Arrests for these crimes accounted for a high percentage of all narcotics arrests. Arguments about the deterrent effects of these laws, as well as their effectiveness against the "spread" of addiction, their importance as a protection for society, and their function in persuading addicts to ob-

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106. *Id.* at 11, 12.

107. *Robinson v. California*, 370 U.S. 660 (1962); *id.* at 12; see also BASSIOUNI, *supra* note 31, at 150-51.

108. *Supra* note 49, at 38.

109. *Supra* note 23, at 30.

110. BASSIOUNI, *supra* note 31, at 148-52.

tain treatment, do not hold up under scrutiny. Narcotic addiction will never be solved solely by coercive measures. There is a place and a great need for such measures, but only to the control of traffickers and exploiters. The addict has a better chance if he is not pursued as a common criminal, if he is permitted to become visible rather than thrown into torture cells which only confirm his guilt and reinforce his alienation. To quote an addict,

When a man is incarcerated for a number of years, as I have been, you get to have a hatred towards the whole world. Far from helping the addict to get cured, prison builds up a resentment, and as soon as he gets out, the addict doesn't wait one day to use more narcotics.

The incarceration just built up a resentment, whereas if I had gotten psychiatric treatment . . . , or hospitalization, it would have had far more effect.<sup>111</sup>

We must accept narcotic addicts as sick people and treat addiction as we treat other chronic diseases. Criminal treatment is warranted only when it is necessary for the protection of society or individuals. The present statutes which treat the addict as a criminal are illogical in this regard and must be replaced by statutes which require the *treatment* of addicts and not their incarceration in jails or prisons. "[A] law which is not based on facts and which has unknown effect as far as control is concerned—or in terms of making the problem worse—is not likely to solve real problems associated with drug use."<sup>112</sup>

It is noteworthy that the approach to narcotics addiction has changed fundamentally in recent years. In a recent national survey it was determined that an overwhelming proportion of the American people felt that the narcotic addict was a medical or psychiatric problem.<sup>113</sup> Present legislative efforts show a movement in the direction of medical care. There are new federal and state programs designed to provide treatment both for narcotic addicts charged with or convicted of crime, and for those who come to the attention of public authorities without criminal charge. The Narcotic Addict Rehabilitation Act allowed addicts charged under federal law to elect civil commitment to hospital rather than to face trial and imprisonment.<sup>114</sup> These laws and programs are a response to the frustrations of the

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111. *Supra* note 25, at 163.

112. TASK FORCE REPORT, *supra* note 3, at 32.

113. *Supra* note 49, at 77.

114. *Supra* note 59, at 143.

criminal approach and the public's growing dissatisfaction with the old methods:

A growing attempt on the part of many members of the community to face up to this pressing issue has made for a body of experience and an interplay of positions out of which the new law has emerged, a law which, in acknowledging the human suffering and social and economic loss associated with narcotic abuse, attempts to provide a basis upon which a psychiatric approach to this disorder might be pursued.<sup>115</sup>

The 1970 Drug Abuse Prevention and Control Act seeks to remedy this problem, but the answer lies not in new legislation but in the means and facilities needed to implement such laudable programs.

#### THE PHYSICIAN AND THE ADDICT

The exact relationship of the physician to the addict and the limits which the law sets on the right of the physician to prescribe or administer narcotics to an addict, solely because he is an addict, have been a subject of great controversy and have been warmly debated for a long time.

Prior to the Harrison Narcotic Law physicians were permitted to treat addicts as they saw fit. When Congress passed this law, which was designed to control the domestic manufacture, sale and distribution of narcotic drugs, the professional relationship between the physician and the addict was exempted, provided the physician prescribed narcotics "in the course of his professional practice only." The law did not seek to interfere with the legitimate practices of medicine, nor with the medical treatment of addicts. But the interpretation of the law by the judiciary severely restricted the situations in which the physician could legally prescribe narcotics to an addict, and during the first ten years following the enactment of the law the Supreme Court affirmed several convictions under the law involving the indiscriminate prescribing of narcotic drugs for addicts. In the *Webb v. United States* case in 1919,<sup>116</sup> the Court decided that a prescription of drugs for an addict "not in the course of professional treatment in the attempted cure of the habit, but being issued for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use" was not a prescription within the meaning

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115. *Supra* note 23, at 250.

116. *Webb v. United States*, 249 U.S. 96 (1919). *Supra* note 24, at 6.

of the law and was not included within the exemption for the physician-patient situation. In the *Jin Fuey Moy* case of 1920,<sup>117</sup> the Court ruled that a physician could not legally prescribe drugs "to cater to the appetite or satisfy the craving of one addicted to the use of drug." In the *Behrman* case of 1922,<sup>118</sup> the Court held that wholesale prescribing of drugs to an addict regardless of the physician's good or bad faith was a violation of the Harrison Act, although it observed that "it may be admitted that to prescribe a single dose or even a number of doses, may not bring a physician within the penalties of the act." As a result of the Supreme Court rulings, physicians were limited to dispensing of narcotics for treatment of somatic symptoms and for physiologically withdrawing an addict from drugs. These rulings made it almost impossible for physicians to treat addicts in a way acceptable to law enforcement officials. Most physicians stopped treating addicts in order to avoid the threat of arrest and prosecution. However, a few physicians continued to treat and prescribe drugs for addicts. One such person was Dr. Charles O. Linder, who, unlike the physicians in the previous cases, provided only four tablets of morphine and cocaine to an addict for self-administration in divided doses over a period of time. He was charged with the unlawful sale of narcotics. The lower court, following the previous court decisions and the Treasury Department regulations in force at that time, convicted him, for he had given narcotics to an addict to relieve withdrawal distress and to maintain customary usage. There had been no thought of cure. In 1925 the Supreme Court reversed the conviction and exonerated Dr. Linder. In its decision, the Court indicated that the dispensing of narcotic drugs by a physician for the purpose of relieving conditions incident to addiction was not in every instance a violation of the law. The Court discussed the previous physicians cases and while it did not specifically repudiate the doctrines drawn from them concerning the physicians' right to prescribe narcotics for addicts, it explained that these cases had involved flagrant abuse and that the decisions had to be considered in this context. In discussing the Harrison Law, the Court said:

The enactment under consideration levies a tax, upheld by the Court . . . and

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117. *United States v. Jin Fuey Moy*, *supra* note 103.

118. *United States v. Behrman*, 258 U.S. 280 (1922). *Supra* note 24, at 6.

may regulate medical practice in the states only so far as reasonably appropriate for or merely incidental to its enforcement. It says nothing of 'addicts' and does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment, and we can not possibly conclude that a physician acted improperly or unwisely or for other than medical purposes solely because he has dispensed to one of them, in the ordinary course and in good faith, four small tablets of morphine or cocaine for relief of conditions incident to addiction. What constitutes bona fide medical practice must be determined upon considerations of evidence and attending circumstances.<sup>119</sup>

The *Linder* case then lays down the rule that a physician acting in good faith and guided by proper standards of medical practice may give an addict moderate amounts of drugs "in order to relieve conditions incident to addiction." However, the regulation of the Bureau of Narcotics founded on the language of the *Webb* and *Behrman* cases was not in accord with this rule. This regulation stated:

An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment but for the purpose of providing the user with narcotics sufficient to keep him comfortable by maintaining his customary use, is not a prescription within the meaning and intent of the act; and the person filling such an order as well as the person issuing it, may be charged with violation of the law.<sup>120</sup>

As a result of this confusion, physicians were still reluctant to treat or prescribe for addict patients. They feared the danger of arrest and prosecution, especially because they did not have any criteria to guide them in dealing with drug addicts, since what constitutes appropriate medical procedures and good faith depends on the facts and circumstances of each case. The Joint Committee of the American Bar Association and American Medical Association on Narcotic Drugs observed, in its report issued in 1958, that this is the very area in which the medical profession itself has a responsibility for establishing criteria and standards. The report noted that if the American Medical Association or other appropriate groups were to establish clear cut standards, a physician would know what proper medical practice would be in dealing with addicts *before* he engaged in any treatment of addicts. The report pointed out that a physician, under such circumstances, would hardly be afraid of being prosecuted if he adhered to the standards of his own profession. The Committee, concluding its examination of the law, stated that

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119. *Linder v. United States*, *supra* note 105. *Supra* note 24, at 9.

120. UNITED STATES TREASURY DEPARTMENT, BUREAU OF NARCOTICS, PRESCRIBING AND DISPENSING OF NARCOTICS UNDER THE HARRISON NARCOTIC LAW (1946).

the present law provides the framework within which the medical profession, acting through the American Medical Association, can authoritatively determine what the role of the doctor should be in the treatment of addicts and in the treatment of problems of addiction.<sup>121</sup>

The President's Advisory Commission on Narcotic and Drug Abuse recommended, in its final report in 1963, that

federal regulations be amended to reflect the general principle that the definition of legitimate medical use of narcotic drugs and legitimate medical treatment of a narcotic addict are primarily to be determined by the medical profession.<sup>122</sup>

The Commission also requested that the American Medical Association and the National Research Council of the National Academy of Sciences, submit a joint statement as to what, in their opinion, constitutes the legitimate medical treatment of a narcotic addict, both in and out of institutions. In response to the Commission's request, the two organizations submitted a joint statement<sup>123</sup> which pointed out that it is proper ethical practice, after consultation, and subject to keeping adequate records, to administer narcotics over a prolonged period to patients, when reasonable alternate procedures have failed, or to maintain an aged or infirm addict, when withdrawal would be dangerous to life; but continued administration of drugs for the maintenance of addiction is not a bona fide attempt at cure. In other words withdrawal of the drug must be accomplished before the rehabilitation phase of the treatment can begin.

The Bureau of Narcotics accepts this statement as the authoritative definition of legitimate medical practice against which all medical practice is to be measured. But there are some within the medical profession who consider it neither authoritative nor complete.

Commenting on this statement, the President's Commission on Law Enforcement and Administration of Justice stated that it has no doubt that it

was an accurate expression of the consensus of medical opinion about treatment. It has been given the explicit approval of the Bureau of Narcotics . . . . Whatever the situation might have been before 1963, there is now no reason for any confusion or apprehension on the part of physicians about their legal right to treat addict-patients in most circumstances that are likely to arise.<sup>124</sup>

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121. A.B.A., *supra* note 11, at 82.

122. *Supra* note 20, at 8.

123. AMERICAN MEDICAL ASS'N NARCOTICS ADDICTION: OFFICIAL ACTIONS OF THE AMERICAN MEDICAL ASSOCIATION 51 (1963).

124. TASK FORCE REPORT, *supra* note 3, at 19.

However, the Commission noted that the current Bureau of Narcotics regulation is ambiguous, makes no allowance for research, has caused much unnecessary misunderstanding, and that consideration should be given to clarification of this regulation.

The inescapable fact is that medical science has not come very far or very fast in this extremely puzzling field. The need for expanded research is fundamental. It is in the interest of both the medical profession and good law enforcement that no obstacles be put in the way of such research.<sup>125</sup>

#### THE NEW TREND OF TREATING THE ADDICT

Owing in part to the manifest failure of simple incarceration as a means of reducing narcotic use, two states and the federal government have in recent years adopted the civil commitment of narcotic addicts. As is the case in Egypt, the public's dissatisfaction with the old methods, and the growing awareness that narcotic addiction is a disease, have led to the enactment of laws for the civil commitment programs. This idea is actually quite an old one, for many of the states have long had laws authorizing such commitment, although they have been largely unused.<sup>126</sup> The expression "civil commitment" is generally understood to mean "court-ordered confinement in a special treatment facility, followed by release to outpatient status under supervision in the community, with provision for final discharge if the patient abstains from drugs and for return to confinement if he relapses."<sup>127</sup> The program is aimed at providing institutional care and therapy for addicts who have run afoul of the narcotic or other criminal laws, without classifying the addicts as criminals and without confining them in penal facilities. There are four types of this program: (a) involuntary commitment of "noncriminal addicts;" (b) involuntary commitment of "criminal addicts;" (c) commitment upon request or consent of "criminal addicts;" (d) commitment upon request of "noncriminal addicts."

The first type is the most controversial. Its proponents compare it to the practices of involuntarily committing the mentally ill, or isolating persons with serious contagious diseases. They argue that the addict is both a health risk to himself and a crime risk to others,

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125. TASK FORCE REPORT, *supra* note 3, at 19.

126. *Supra* note 96.

127. TASK FORCE REPORT, *supra* note 3, at 17.

that the state has the right to protect the general health and welfare of its citizens and that the commitment for treatment offers the maximum benefit to the individual and the minimum risk to society. Its opponents contend that mere proof of addiction is not a sufficient showing that a person is dangerous to himself or others, and that the commitment holds out the promise of a known method of treatment, or a reasonable prospect of cure, neither of which does exist.<sup>128</sup> They also contend that the present program does not in fact involve medical control and that there is no real qualitative difference between the "rehabilitative" program imposed upon addicts and that imposed upon those who are being punished for the commission of crimes. They attribute the program's popularity to

the fact that it seems to offer advantages to both the police and the medical philosophy of addiction. To the former it offers the continuation of the old practices of locking addicts up . . . . To the liberals and medically oriented it offers a gesture toward a new and more humanitarian approach . . . . For the addict the situation remains substantially unchanged . . . except that he may expect to spend more time in institutions.<sup>129</sup>

California was the first state to enact the Civil Addict Commitment Law in 1961, amended in 1963. New York followed in 1962 with the Metcalf-Volker Act which was revised and broadened in 1966. The President's Advisory Commission on Narcotic and Drug Abuse recommended, in its final report, in 1963, that a federal civil commitment statute be enacted,<sup>130</sup> consequently, the Narcotic Addict Rehabilitation Act was enacted in 1966. It is noteworthy that these are the three governmental jurisdictions that face the largest narcotic problems. The basic programs are the same but with some variation in each jurisdiction, the federal program being the most elaborate.

Under the federal legislation, addicts, although not charged with any criminal offense, may be committed to a hospital for a maximum of six months, and to the custody of the Surgeon General for post-hospitalization treatment for a maximum of three years. Related individuals may file petitions with the United States Attorney to have an alleged addict committed. A determination of addiction and the likelihood of rehabilitation through treatment must then be made by a physician. The court also must find, upon a hearing, that the ad-

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128. *Supra* note 96.

129. *Supra* note 24, at 292.

130. *Supra* note 20, at 9.



dict is likely to be rehabilitated through treatment before committing him to the program. The alleged addict is entitled to have all relevant evidence heard, to testify, and to present and cross-examine witnesses. All orders of commitment are subject to appellate review.<sup>131</sup>

All those who are committed under the federal legislation are sent to a hospital where they enter a group psychotherapy program and participate in a remedial educational program, vocational training, and other rehabilitative activities. After release, they are kept under close supervision, and efforts are made to reintegrate them gradually into the outside environment.

The effectiveness of the civil commitment program is difficult to assess. However, from the evidence of relapse, this program has been little more effective than regular imprisonment.<sup>132</sup> Therefore, some of its opponents state that "civil commitment is but a euphemism for imprisonment."<sup>133</sup> The President's Commission on Law Enforcement and Administration of Justice considered it imperative "that the treatment program be flexible enough to follow each promising idea and technique as it emerges" and "that the commitment laws be construed and executed to serve the purpose for which they were intended and by which alone they can be justified. This purpose is treatment in fact and not merely confinement with the pretense of treatment."<sup>134</sup> However, addicts have not been self-motivated toward rehabilitation; thus, any governmental program of institutionalization must be one based upon coercion. The civil commitment program is a creative effort to treat the addict; it offers sufficient promise to warrant a fair test. But it must not become the civil equivalent of imprisonment. The program must offer the best possible treatment, including new techniques as they become available, and the duration of the commitment, either within or outside an institution, must be no longer than is reasonably necessary.

#### THE BRITISH NARCOTIC SYSTEM

Much controversy surrounds the British narcotic system. There has been a great deal of discussion in the United States about the British

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131. *Supra* note 59, at 150.

132. *Supra* note 96.

133. *Supra* note 96.

134. TASK FORCE REPORT, *supra* note 3, at 16.

experience in controlling narcotic addiction. While some writers take the view that in Britain, legal access to narcotic drugs is permitted under medical supervision and, consequently, addiction is not a major social problem,<sup>135</sup> others state that the English have an illicit narcotic traffic of the same magnitude and seriousness as in the United States, and that the enforcement policies of the two countries are identical. The Federal Bureau of Narcotics is of those holding the latter view.<sup>136</sup>

Much of the difficulty in understanding what the British narcotic system is and how it works stems from the apparent similarity between the laws and policies of the United States and Britain, but the equally apparent dissimilarity in the actual procedures employed. The difference is that the British medical profession is in nearly full control in determining the proper treatment of addiction.

The British imposed controls on narcotic drugs for the first time by the Dangerous Drugs Law, which was passed in 1920 when the enforcement policies of the United States were being developed under the Harrison Law of 1914. The English law, like the American statute made no reference to drug addicts or to addiction, and like the Harrison Law it did not state what is regarded as the proper medical practice with respect to addicts. The Home Office issued a memorandum to doctors and dentists which stated that they can use drugs only for ministering to the "strictly medical or dental needs" of patients.<sup>137</sup> When the question of proper professional practice arose in Britain, an official committee of doctors was formed to resolve the issue and determine the proper role of the physician in addiction problems. The committee, headed by Sir H.D. Rolleston, ruled that providing addicted drug users with drugs under suitable controls was distinguishable from supplying "solely for the gratification of addiction" and recommended that narcotics may be given to addicts as part of a treatment using gradual withdrawal, or if the physician feels that the use of the drug cannot be discontinued entirely because of the severity of the withdrawal symptoms which might result, and where it can be shown that the patient is incapable of leading a relatively use-

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135. *Supra* note 24, at 164.

136. ANSLINGER AND TOMPKINS, *THE TRAFFIC IN NARCOTICS* 29 (1953).

137. *Supra* note 24, at 167.

ful and normal life without a minimum dose of drugs.<sup>138</sup> Thus, while the British statute reads very much like the American in limiting prescription of drugs by physicians to the course of their professional practice only, the interpretation of the statute and the definition of "professional practice only" was left to physicians. In the United States the interpretation and the definition was rigidly established by non-medical arbiters. On the contrary the interpretation of the Rolleston Committee gave the physicians the final word in handling addicts. As a result, the medical profession in Britain accepts and treats addicts as patients so that virtually none are forced to go to the black market. If all curative efforts fail, the incurable addict may still be provided for on a medically-supervised regimen. On the other hand, this interpretation "has created a situation in Britain such that the addict is under pressure to go to the physician, for if he does so he not only may obtain regular supplies to pure drugs but he can also avoid all entanglements with the law."<sup>139</sup> The opportunities for obtaining certain quantities of drugs by legitimate means are greater under the British program, whereas in the United States the illegitimate opportunities for obtaining drugs are greater. However, there is no compulsory treatment of drug addicts under the British system since they believe in Britain that the addict must be self-motivated to treatment for there to be any chance of success. The treatment of a patient is considered to be a matter for the doctor. He is not required to obtain permission before treating an addict. He is also not required to notify the Home Office when a drug addict calls on him. There is no statutory requirement of registration of drug addicts, yet most physicians do so and report the name and circumstances to the Home Office. Thus, it is relatively easy to determine if a given addict is obtaining drugs from more than one physician, because the Home Office would observe that the same patient was being seen by several physicians.

A physician who commits an offense against the law is liable on conviction to a fine of 1,000 pounds or 10 years' imprisonment or to both. Penalties for pushers and peddlers are also severe.<sup>140</sup>

The advantages implicit in the British system are numerous and

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138. A.B.A., *supra* note 11, at 131, 132.

139. *Supra* note 24, at 168.

140. LARIMORE & BRILL, REPORT TO GOVERNOR NELSON A. ROCKEFELLER ON

important. Narcotic addiction is regarded as a medical problem; the medical profession has complete freedom to use treatment that may be considered desirable for the welfare of the nation; and the addict must be under medical care if he is to receive licit drugs, which he will doubtless elect to do because of the nominal cost. Crime is thereby diminished and the illicit traffic forced out.

Until 1964, Britain had a relatively minor narcotic addiction problem with only about 350 known addicts in a population of 50,000,000, and only fourteen addicts among a prison population of 40,000.<sup>141</sup> While some writers insist that this is due to the program applied in Britain and, consequently, call for transfer of such system to the United States,<sup>142</sup> there are others who reason that "the British system was the result of the favorable British situation, and not the cause of it",<sup>143</sup> that the low incidence of addiction is due to "the British abhorrence of narcotic drugs and the lack of a cultural susceptibility to drug taking."<sup>144</sup> To call for any literal transfer of the British procedure to this country is unrealistic."<sup>145</sup>

With the recent influx of other cultural groups into Britain, the number of drug offenses has almost doubled. Underworld elements have moved into Britain and are now building up a trade in illicit drugs. There has been an alarming increase in drug abuse. There is now a group of young, sociopathic addicts; it appears that free sustaining of narcotic habit in these patients is less than satisfactory. It is also of interest to note that in 1965 a British commission under the chairmanship of Lord Brain visited the United States to consider a more effective way of stemming the tide of addiction in Britain and made a series of recommendations which, if implemented, would set up U.S.-type controls in Britain and would restrict the prescribing of narcotics for addicts to certain special treatment centers.<sup>146</sup>

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THE SITE STUDY OF THE BRITISH NARCOTIC SYSTEM (1959). (A revised condensation appeared in 60 N.Y. STATE J. OF MEDICINE 109 (1960).

141. *Id.* at 111.

142. *Supra* note 24, at 170.

143. *Supra* note 140, at 113.

144. *Supra* note 20, at 59.

145. NEW YORK STATE JOINT LEGISLATIVE COMMITTEE, REPORT ON NARCOTIC STUDY 70 (1959).

146. COLE, REPORT ON THE TREATMENT OF DRUG ADDICTION (1969).

## CONCLUSION AND RECOMMENDATIONS

Important differences do exist on narcotic policy and no one is certain about how narcotic laws can affect human conduct. The current evaluations of narcotic abuse by the public, by the mass media, and by government officials, are sometimes emotional and frequently not based on facts. Consequently, the programs, laws, and recommendations that arise from these emotional responses are often inappropriate. It would be intellectually desirable, and pragmatic as well, to remove from the consideration of narcotic abuse these elements of emotionality and exaggeration.

The current approach to the problem has thus far produced tragedy, disease, and crime. Undoubtedly, new techniques are worth trying, in the hope that we will achieve greater success. However, there must be a dramatic change in present methods of dealing with the problem if we are to expect significant improvements.

Public policy with respect to narcotic abuse should be to minimize the social cost of the addict population. The means for carrying out such policy should be, in addition to law and law enforcement, treatment for the dependent persons, and education of the general population.

A general revision of the narcotic laws should be undertaken. The primary aim of the law should be to concentrate upon the commercial trafficker. We should eliminate criminal prosecution provisions for simple possession of narcotics and reduce the penalties for sales under certain circumstances. We should differentiate between the person who shares his drugs with another, and the dealer who sells them for a profit. The law should provide for penalties in such a fashion that the courts would have sufficient discretion to enable them to deal flexibly with violators. To be effective, the application of criminal sanctions as a deterrent must be fairly uniform and enforcement should be consistent; otherwise, the traffic will move from place to place, taking advantage of the most favorable conditions.

With respect to addicts, the aim of the law should be educational and rehabilitative. Emphasis should be placed on treatment, rather than punishment: furthermore, it is very desirable to expand the treatment-oriented, non-punitive programs.

Narcotic addiction, although commonly spoken of as a disease, is more properly a symptom of disease which is rooted in social and economic conditions that tend to create dissatisfaction, unhappiness, conflict, tension and strife in the minds and souls of human beings. Therefore, any program directed toward the prevention of poverty and despair, the elevation of deprived minorities and outgroups to full participant status, and the prevention of individual mental disorder, strike at the heart of the problem.

Since the best cure for narcotic addiction is for it never to occur, our main and most practical concern must be with the non-addict population. A program should be undertaken to educate the public to the nature and dangers of narcotics use. If such a program is properly presented, it would serve a very useful purpose in eliminating or curtailing conditions that may lead to addiction before addiction occurs. The public will become conscious of the full range of harmful effects that narcotics can produce and will become aware of the burden narcotics imposes on the nation. An informed citizen is, no doubt, the most effective deterrent of all. However, a problem as complex and difficult as narcotic addiction cannot be resolved immediately in a fashion which will satisfy all the various elements of society.