

BOOK REVIEWS

Narcotics and the Law

The Addict and the Law. ALFRED R. LINDESMITH. Bloomington: Indiana University Press, 1965. Pp. xiii, 337. \$7.50.

Crimes Without Victims: Deviant Behavior and Public Policy: Abortion, Homosexuality, Drug Addiction. EDWIN M. SCHUR. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1965. Pp. ix, 180. \$4.95.

Narcotics. DANIEL M. WILNER & GENE G. KASSEBAUM, EDS. New York: McGraw-Hill Book Co., 1965. Pp. xxvi, 302. \$13.50.

The Drug Takers. TIME-LIFE. New York: Time, Inc., 1965. Pp. 128 (illustr.). \$1.50.

The most familiar and pervasive image the public has of the drug addict is the view resulting from the perceptions of those who have the most transient interest in him. The view propagated by law enforcement personnel is task-oriented. Interest in making an arrest, preserving evidence, and gaining a conviction is as pragmatic as it is short-run. Too much thought devoted to the methods adopted to achieve this task would only complicate a difficult job and lead to confusion. The police and prosecution view of the drug addict is not, nor should it normally be expected to be, sociological, psychological, or civil-libertarian. It goes without saying that the law is not medicine.

Similarly, the interest of the mass media in the drug addict is utilitarian and lies in his news value. If his case has some element of drama that can be exploited for its human interest, the story can get some "play." The mass media, despite their protestations about educational intentions and despite a few respectable gestures to the contrary, have shown little disposition to present the real dimensions and implications of the drug problem in this country. By and large they are content to serve public relations functions for the official bureaucracy that is almost inextricably entangled in a mutually determining web that constitutes the problem. The time is long overdue for the mass media to quit repeating the same old stereotypes and complicating the process of

public education that is necessary in order to make a more rational attack on this serious social problem.¹

I. THE PRESENT SYSTEM

As originally passed, the Harrison Act of 1914² was a revenue measure related to drugs and made no mention of addicts. Nevertheless, through a series of administrative regulations and a series of carefully selected Supreme Court cases,³ the Federal Bureau of Narcotics made the Harrison Act the basis of some of the most punitive sanctions in the criminal law. In 1920, enforcement of the act passed into the hands of prohibition agents⁴ who zealously erected the legal and bureaucratic structure

1 Cf. TIME-LIFE, THE DRUG TAKERS, which contains a lead editorial, nine articles that appear to give comprehensive coverage to the subject, a technical appendix containing a directory of "treatment centers," a glossary of slang terms and even an index. To give credit where credit is due, it must be said that some of the signed articles that previously appeared in *Life* magazine contain some excellent material. "Karen and John: Two Young Lives Lost to Heroin," by James Mills is a fine case study of two young, white addicts hustling to survive in the drug subculture of New York City. Two articles on law enforcement, both international and local, give the facts on the more dramatic cases, and the latter is quite candid about the use of informers. A theme taken by the report is suggested by one of the many maps and charts with which the book is illustrated profusely, supplied apparently by the Federal Bureau of Narcotics, which illustrates the supposed salutary effects of stiff sentences on the narcotic problem.

What most disturbs the informed reader is that although many facts are there, others seem to be missing, and that the interpretation of the given facts is one-sided. For an explanation of this shortcoming we have to go to the "Acknowledgments" section. There we see a parade of editors, policemen, Federal Bureau of Narcotics agents, and federal and local governmental doctors, and a scattering of university and research people, only one or two of whom contributed to the serious books reviewed here. For Time-Life, Lindesmith, Schur, Eldridge, and Chein do not exist; nor do Finestone, Clausen, and King, all of whom have articles in a special issue of *Law and Contemporary Problems* (Vol. XXII, No. 1 (1957)). Apparently, the world of Time-Life intersects at only a few points with the world of scholars who have devoted their lives to a study of the drug problem. Apparently, also, Time-Life is addicted to one of the most potent drugs peddled free in the United States, the official propaganda line of the FBN.

2 Harrison Act, 38 Stat. 785 (1914) (now INT. REV. CODE OF 1954, §§ 4701-77, 7237-38).

3 *United States v. Behrman*, 258 U.S. 280 (1922); *Jin Fuey Moy v. United States*, 254 U.S. 189 (1920); *Webb v. United States*, 249 U.S. 96 (1919). All of these were "flagrant abuse" rather than "practicing medicine in good faith" cases, but they served as the basis for administrative regulations that intimidated the medical profession so that doctors would no longer treat addicts. Yet the Court in *Linder v. United States*, 268 U.S. 5 (1925), said that *Behrman*: "[C]annot be accepted as authority for holding that a physician who acts *bona fide* and according to fair medical standards may never give an addict moderate amounts of drugs for self-administration in order to relieve conditions incident to addiction. Enforcement of the tax demands no such drastic rule, and if the Act had such scope it would certainly encounter grave constitutional difficulties." *Id.* at 22. Despite *Linder*, the addict (especially the lower class addict) has been abandoned by the medical profession and left in the hands of the illegal drug peddlers, the police, the courts, and the prisons.

4 COMM. OF INT. REV. ANN. REP. 31 (1919).

that exists today.⁵ The result is a public policy that does little more than punish addicts, while the foreign producers of illicit drugs, the international smugglers, the syndicate racketeers, and the nonaddicted distributors and sellers for the most part profit from the system and seldom get involved with the law. On the rare occasion when a non-addicted seller is arrested and tried, he is able to mobilize the resources that accrue from a profitable enterprise and escape with a minimum penalty, if any. As Lindesmith perceives in *The Addict and the Law*:

This is probably a basic reason for the lack of attention given the problems of addiction by the appellate courts, by the legal profession, and by legal scholars. The latter are primarily concerned with opinions of the higher appellate courts, to which cases involving addicts rarely come. Competent defense lawyers would much rather represent drug peddlers than drug users because the former can afford to pay substantial fees and the latter cannot. This is also no doubt the reason for the fact that the higher courts devote a disproportionately large part of their time to cases involving the defenses of entrapment and illegal search and seizure in prosecutions of narcotics, peddlers and very little time to issues pertaining to the legal rights of addicts.⁶

Other unfortunate consequences of the present system are the law enforcement practices in the area of transactional crimes, where willing buyers and sellers come together to exchange goods and services. Because there is no one who conceives of himself as a victim and hence no effective complainant, the police rely on special techniques. Most of these are unlovely, if not illegal: the use of addict informers who have either been intimidated by the threat of heavy penalties or who are exempted from penalties for their services; the use of "buy and bust" techniques of entrapment, accompanied by illegal searches and seizures; and the use of enforced withdrawal illness to gain information or confessions, a process which is termed "death on the installment plan"; and

⁵ Under the Narcotic Drug Control Act of 1956, 70 Stat. 567, INT. REV. CODE OF 1954, §§ 4744(a), 4755(b), 4774, 7237, 7607-08, 21 U.S.C. §§ 174, 176, 184(a) (1964), which has served as a model for many state statutes, the penalties for sale or possession of narcotics (including marihuana) are: first offense, mandatory imprisonment for 5 to 20 years, plus a discretionary fine of not more than \$20,000; two or more offenses, mandatory imprisonment for 10 to 40 years, plus a discretionary fine of not more than \$20,000. The penalty for the sale of heroin by one who has attained the age of eighteen years to any person who has not attained the age of eighteen years is imprisonment for 10 years to life, or death if the jury shall so direct, plus a discretionary fine of not more than \$20,000. It goes without saying that these penalties fall most heavily on possessors (*i.e.*, mainly addicts) rather than sellers, and that large-scale sellers tend to be first offenders.

⁶ LINDESMITH, *THE ADDICT AND THE LAW* 79 (1965).

the support of addict-informers in their habits with seized drugs. At the same time there is the spectacle of the police, state's attorneys, and other officials blandly testifying before a variety of congressional committees that they are aware of these practices but arguing that they must be tolerated to deal with the "dope menace."⁷ In light of such desperation measures the question must be seriously entertained whether the greater menace to a democratic society is the drug addiction problem or the law enforcement practices adopted to deal with it.

Yet another weakness of the present system is our ignorance of its effectiveness in reducing the number of addicts. This is due to the absence of reliable data as to the number of addicts in this country for the periods either before or after the institution of the Federal Narcotics Bureau's punitive techniques. Estimates as to the United States addict population for the period prior to 1914 have ranged from 110,000 to more than 264,000;⁸ estimates as to the present population range from 47,000 to 69,000.⁹ For reasons that are not altogether clear, the Federal Bureau of Narcotics estimated 200,000 addicts in 1914, began the famous "ski jump curve" down to 19,000 addicts in 1946, and then recorded a slow rise to an estimated 50,000 to 60,000 addicts in 1955.¹⁰ However, this fantastic historical pattern has been so thoroughly demolished by Lindesmith¹¹ that it may well be abandoned in future official publications. One thing is certain: as long as addicts are driven underground by legal prohibitions, we will never have adequate indices of the extent of the problem.

Conviction data are likewise unreliable guides to the effectiveness of punitive techniques. While narcotics convictions typically decline after

⁷ See *Hearings on the Illicit Narcotics Traffic Before the Subcommittee on Improvements in the Federal Criminal Code of the Senate Committee on the Judiciary*, 84th Cong., 1st Sess., pt. 1, at 60 (1955) (remarks of Mr. Anslinger describing trading by Detroit officials of lesser charges for information); *id.* pt. 9, at 4195 (remarks of Lieutenant Healy describing arresting on the streets addicts only because they are addicts); *id.* at 4295 (remarks of Illinois States Attorney Gutknecht justifying as necessary violations of addicts' civil rights).

⁸ TERRY & PELLEN, *THE OPIUM PROBLEM* (1928) (most reliable source for historical information on period before and after passage of the Harrison Act in 1914); Kolb & Du Mez, *The Prevalence and Trend of Drug Addiction in the United States and Factors Influencing It*, in 39 PUBLIC HEALTH REPORTS 1179 (1924).

⁹ See note 16 *infra*.

¹⁰ The famous "ski-jump curve" graph is reproduced in many Federal Bureau of Narcotics publications. See, e.g., ADVISORY COMMITTEE TO THE FEDERAL BUREAU OF NARCOTICS, COMMENTS ON NARCOTIC DRUGS: INTERIM REPORT OF THE JOINT COMMITTEE OF THE AMERICAN BAR ASSOCIATION AND THE AMERICAN MEDICAL ASSOCIATION ON NARCOTIC DRUGS 171 (1958); ANSLINGER & OURSLER, *THE MURDERERS* 300 (1961); TIME-LIFE, *op. cit. supra* note 1, at 54.

¹¹ LINDESMITH, *op. cit. supra* note 6, at 100-22.

the passage of harsher legislation, this cannot be taken as a demonstration of the efficacy of punitive measures; rather, it generally reflects the practical neutralization of such legislation. When penalties become more severe, it becomes harder to get indictments and convictions, and local officials will tend to reduce charges. For example, what might have been a charge of selling drugs to a minor, with a possible life sentence, is converted into a charge of contributing to the delinquency of a minor, with the penalty of a year in the county jail; what might have been a charge of illegal possession, with a penalty of many years, is converted into a charge of disorderly conduct, with a penalty of a few months. Such practices result in what Lindesmith calls "a pleasant statistical mirage."¹²

The basic fact about the drug problem in the United States is that our knowledge of drug addiction and illegal drug use is largely impressionistic. The drug addict *qua* drug addict is an unknown quantity in the United States. It is true, of course, that we have some quantitative knowledge of police activity, court actions, and prisoner populations in connection with offenses against narcotic drug laws,¹³ but a comprehensive view of the problem requires knowledge of "(1) illegal addicts known to the police by reason of violation of narcotics laws; (2) illegal addicts known to the police through violation of other criminal laws; (3) illegal addicts not known to the police; (4) addicts securing legal drugs from doctors; and (5) incarcerated users."¹⁴ And there is no valid basis for extrapolating from "caught" offenders against drug laws to the

¹² *Id.* at 82.

¹³ See, e.g., FBI, CRIME IN THE UNITED STATES: 1964, at 106-16 (1965). Confining ourselves to FBI arrest data only, we find that in 1964, agencies policing governmental entities with a total estimated population of 132,439,000 persons made a total of 37,802 arrests for violations of narcotic drug laws. This constitutes a rate of 28.5 arrests per 100,000 population and represents less than 1% of all arrests for crime. Using the total arrest figure of 37,802 as 100% we find that 76% of these arrests were made in the fifty-two cities with over 250,000 population, and that in such cities the arrest rate for narcotic offenses increased to 71.0 per 100,000 population. We also find that 14% of the total narcotics arrests were of females, and that only 8.8% were of persons under eighteen years of age. Much has been said and written about the use of drugs by the young and while any addiction of the young is a tragedy, the facts as reflected in FBI arrest figures are as follows: under eighteen, 8.7%; under twenty-one, 23.3%; and under twenty-five, 46.1%. Thus, the majority of persons arrested for offenses against narcotic drug laws are twenty-five years old or older. Between 1963 and 1964, however, arrests of persons under eighteen years of age increased by 69.1% (alarming, but considering the low base not as impressive as it appears), while arrests of persons eighteen years of age and older increased by only 28.8%. The over-all increase in arrest rate for offenses against narcotics laws was 31.4%. Racial distributions must be figured on a different base. Only 23,730 of the 37,802 arrests for narcotics can be classified by race; of these, 60% were of whites and 40% of nonwhites.

¹⁴ LINDESMITH, *op. cit. supra* note 6, at 102.

number of drug addicts that exist in a given jurisdiction.¹⁵ In light of these difficulties, it is impossible to determine even whether the number of drug addicts falls within the varying estimates made by public agencies and private scholars who have studied the problem.¹⁶

¹⁵ The most concrete data available are on "caught" populations. Yet even they are shot through with ambiguities and imponderables. Recent figures on arrests for narcotic offenses are found in the FBI's annual reports of crime in the United States, which are based on reports, for which even the FBI is unwilling to vouch. FBI, *op. cit. supra* note 13, at 43. But even assuming the arrest figures are fairly accurate, we have no firm base upon which to build an estimate of the number of addicts. Since offenses against narcotic drug laws include unlawful possession and sale in addition to use, it is impossible to tell how many of the persons arrested under these statutes were users, much less addicts. And even if we assume that the number of addicts among the arrested can be determined, we have no apparent means of discovering the number of addicts in the other four groups. Nonetheless, the Federal Bureau of Narcotics attempts to obtain a total for all addicts, but so far as is known, Eldridge is the only outsider who got close enough to the FBN to try to evaluate the validity of its system of compiling its annual addict census. His report was that no uniform standards or instructions appear to have been given to reporting agencies and that there is a great deal of confusion about what is supposed to be done. See ELDRIDGE, *NARCOTICS AND THE LAW: A CRITIQUE OF THE AMERICAN EXPERIMENT IN NARCOTIC DRUG CONTROL* 68-80 (1962). In addition, there is no way of knowing what agencies report to the FBN, or of evaluating the reports that are received there. The whole attempt to deduce the number of addicts from "caught" populations has been called the "numbers game." See CHEIN, GERARD, LEE & ROSENFELD, *NARCOTICS, DELINQUENCY AND SOCIAL POLICY: THE ROAD TO H 7* (1964); Mattick, *Foreword: A Discussion of the Issue*, Key Issues, Nov. 1961, p. 4.

¹⁶ The various estimates are:

(a) Between 50,000 and 60,000 in 1955. *Hearings on the Illicit Narcotics Traffic Before the Subcommittee on Improvements in the Federal Criminal Code of the Senate Committee on the Judiciary*, 84th Cong., 1st Sess., pt. 1, at 10 (1955) (estimate of the Commissioner of the FBN). Yet, only a year earlier a citizens' advisory committee to the Attorney General of California reported, "Our estimated total, therefore, would be 32,000 medical or legal users and probably 20,000 illegal, a total of 52,000 persons." California Citizens' Advisory Committee to the Attorney General on Crime Prevention, Report on Narcotic Addiction to Attorney General Edmund G. Brown, March 26, 1954, quoted in *Hearings on the Illicit Narcotics Traffic Before the Senate Subcommittee on Improvements in the Federal Criminal Code of the Committee on the Judiciary*, 84th Cong., 1st Sess., pt. 8, at 3927 (1955). Other estimates given to congressional committees on the number of illegal drug addicts in various states in 1956 indicate that, in addition to the 20,000 in California, New York reported 20,000, Ohio reported 15,000 and Illinois reported 10,000, giving a grand total of 65,000 in these four states alone. *Hearings on Traffic in, and Control of, Narcotics, Barbiturates and Amphetamines Before the Subcommittee on Narcotics of the House Committee on Ways and Means*, 84th Cong., 1st & 2d Sess. (1956).

(b) 47,489 at the end of 1962. FEDERAL BUREAU OF NARCOTICS, *TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS FOR THE YEAR ENDED DECEMBER 31, 1962*, at 54 (1963).

(c) 61,169 at the end of 1962. Winick, *Epidemiology of Narcotics Use*, in *NARCOTICS* 5-6 (Wilner & Kassebaum eds. 1965). Winick, a careful researcher, began with the number of addicts reported by the Federal Bureau of Narcotics at the end of 1962, *i.e.*, 47,489 persons. He then averaged the number of new addicts reported during the years 1958-1962, *i.e.*, 6,840. Next he assumed that the average user would come to the attention of the authorities within two years after onset of use, and hence that 13,680 persons had begun the use of drugs during 1961 and 1962 but had not yet come to the attention of the authorities. Thus, at

II. ALTERNATIVES TO THE PRESENT SYSTEM

One of the alternatives to the present system is the treatment of addicts in clinics. In the period 1919 to 1923, some forty clinics for the ambulatory treatment of drug addicts were established in this country to deal with the consequences of the passage of the Harrison Act, which deprived thousands of addicts of their regular source of drug supplies. At least one of the motives in establishing these clinics was to prevent criminalization of what had been regarded, by and large, as a socially deviant but not criminal population. The results of this early experiment are still a matter of heated debate, although there is general agreement that most of the clinics were hastily organized, poorly controlled, and lacking in a unified concept of how to deal with the addiction problem.¹⁷ For thirty-five years the Federal Bureau of Narcotics has painted the blackest possible view of these clinics in its official publications and other public relations efforts. Lindesmith gives evidence that shows that this monolithic view is exaggerated and self-serving.¹⁸

Over the years, many persons and organizations who conceive of the drug addict as essentially a sick person rather than a criminal have recommended the legalization of drug consumption under some form of government control, with treatment and distribution handled through private medical channels. The model for such proposals is the system practiced in England and, with minor variations, in other European countries, where drug addicts are treated or, if cure seems

the end of 1962 he arrived at the figure of 61,169 drug addicts as "a reasonable approximation."

(d) 55,899 at the start of 1965. This is given as "the Federal Narcotics Bureau's admittedly inexact census figure." *TIME-LIFE*, *op. cit. supra* note 1, at 5. The same publication contains a map entitled, "U.S. Narcotics Addict Population Centers," which gives the following figures: New York, 28,098; Chicago, 7,350; Los Angeles, 2,402; Detroit, 1,789; and District of Columbia, 1,076. This amounts to a grand total of 40,715 addicts. *Id.* at 52. It would thus appear that 73% of all addicts live in these five cities. Such a count leaves Philadelphia, Baltimore, Houston, Cleveland, and St. Louis, plus the entire rest of the United States, to share the other 27% of the addicts in this country. There is obviously something wrong with such estimated figures and with a reporting system that results in such distributions.

(e) 58,824 post-1970. This estimate is based upon Winick's empirical finding in a study he is in the process of publishing that "the typical user of opiates uses them for a mean of 8.6 years." Winick, *supra* at 8. If we make the calculations required by Winick's assumptions and combine them with his empirical finding, we know we have to deal with at least 6,840 addicts for each year for a period of 8.6 years, giving us a total of 58,824 addicts. Presumably it would be this figure, rather than the 61,169 addicts for 1962, that would stabilize itself over the long run.

¹⁷ Compare TERRY & PELLENS, *op. cit. supra* note 8, at 864-72, with ANSLINGER & OURSLER, *op. cit. supra* note 10, at 240.

¹⁸ LINDESMITH, *op. cit. supra* note 6, at 135-61.

improbable after a conscientious effort by the physician, placed on a maintenance dose of narcotics without the intervention of punitive authorities.¹⁹ The effectiveness of this system, practiced in England since 1920, is demonstrable by a few simple facts: at the beginning of 1965, according to the Federal Bureau of Narcotics, the United States had 55,899 addicts in a population of about 190,000,000; and in England, at the same time, there were 635 addicts²⁰ in a population of about 55,000,000. Thus, with a population less than 3½ times that of England, we have 88 times as many addicts as they do. Such apparent efficiency in dealing with the drug problem bears investigation by the official agency in this country that is charged with the responsibility for coping with narcotics.²¹

Lindesmith advocates the adoption of neither the British plan nor a clinic plan like the one tried in the early 1920's. He rejects the latter because it would entail congregate treatment and would therefore, by permitting the maintenance of a special community of interest among addicts, foster the underground addict subculture which is a byproduct of the present system of handling addicts. According to Lindesmith:

The most effective program for achieving these ends in Western nations seems to be one which gives the drug user regulated access to the medical profession with the physician determining the mode of treatment in accordance with the circumstances of the particular case. Characteristically, this type of program almost invariably involves, wherever it is used, some sort of supervision and regulation of medical practice with regard to addicts by public health officials. Police measures enter the picture only infrequently when medical controls fail

¹⁹ See generally *id.* at 162-83; SCHUR, *CRIMES WITHOUT VICTIMS: DEVIANT BEHAVIOR AND PUBLIC POLICY: ABORTION, HOMOSEXUALITY, DRUG ADDICTION* 152-56 (1965).

²⁰ TIME-LIFE, *op. cit. supra* note 1, at 118. See also SCHUR, *NARCOTIC ADDICTION IN BRITAIN AND AMERICA* 119 (1962) (454 reported British addicts in 1959). Wilkins, another careful researcher, had this to say about Schur's estimate: "I have no reason to doubt this figure, nor to doubt the other data which he derived from various sources and has reported in his works. His descriptions of the facts as he found them do not differ from my personal experience. I have no reason to believe that the standard official publications dealing with the British system of control and our criminal statistics are biased or incorrect in any detail." Wilkins, *Some Sociological Factors in Drug Addiction Control*, in *NARCOTICS* 140-41 (Wilner & Kassebaum eds. 1965).

²¹ *But see* ADVISORY COMMITTEE TO THE FEDERAL BUREAU OF NARCOTICS, *op. cit. supra* note 10 *passim*. The vilification of those who disagreed with FBN policies was so objectionable that about a year later these remarks had to be deleted. See *Chicago Tribune*, March 20, 1960, p. 3, col. 3. The FBN, of course, has its own methods of disposing of the British system, one being to refer to the drug addiction problems in "The United Kingdom." This enables them to include the large addict population in Hong Kong, which is handled more on the American-punitive plan than on the English-treatment plan.

The final result or goal of the reform program which is implicit in this entire book is a situation in which most of the addicts in the United States would be in the hands of private physicians. The latter would be free to treat addicts in accordance with accepted medical standards, without fear of prosecution. The Public Health Service might be the logical agency to exercise a supervisory and advisory control over practitioners with drug users under their care The police and federal narcotics agents would be expected to inspect the records of drug stores, drug manufacturers, importers, and distributors as they do at present, and to apprehend persons engaging in illicit traffic—including any addicts who might do so.²²

At the heart of Lindesmith's proposal is his contention that drug addiction is a medical problem which can best be treated by those who are specially equipped and trained to deal with such problems. Assuming that the M.D.'s, psychologists, and psychiatrists can in fact cure or control drug addiction,²³ it follows that adoption of Lindesmith's treatment program would have many beneficial effects. It would, for example, eliminate the exploitation of addicts for financial or legal purposes by syndicate racketeers and law enforcement officials, obviate the need for addicts to commit crimes to support their habits, reduce the availability of illegal drugs to nonaddicts, and enable even addicted persons to lead legitimate and productive lives. Perhaps a clue to the central question of whether medical treatment can effectively cure or control addiction is the successful use of what was essentially the Lindesmith plan by Harry J. Anslinger, the director of the FBN for thirty years and Lindesmith's old antagonist,²⁴ in treating two socially

²² LINDSMITH, *op. cit. supra* note 6, at 270-71.

²³ Instances in which medical and psychological methods have been successfully employed to cure drug addiction have included the Frankau experiment in England, see LINDSMITH, *op. cit. supra* note 6, at 184-87, and the Shreveport experiment in the United States in the 1920's, see TERRY & PELLEN, *op. cit. supra* note 8, at 863-72.

²⁴ Ever since Lindesmith wrote his famous article, "Dope Fiend" Mythology, 31 J. CRIM. L., C. & P.S. 199 (1940), he has been the *bête noire* of the FBN and a prophet without honor in his own country in the eyes of many social scientists. Until Edwin M. Schur wrote a good description of the British system of treating drug addicts, SCHUR, *op. cit. supra* note 20, Lindesmith was the chief advocate of examining that system for possible application in this country. See the following writings of Lindesmith: OPIATE ADDICTION (1947); *Introduction to DRUG ADDICTION: CRIME OR DISEASE* (1961); *Addiction, Legality and Morality*, Key Issues, Nov. 1961, p. 17; *The Argot of the Underworld Drug Addict*, 29 J. CRIM. L., C. & P.S. 261 (1938); *The British System of Narcotics Control*, 22 LAW & CONTEMP. PROB. 138 (1957); *The Drug Addict as Psychopath*, 5 AM. SOCIOLOGICAL REV. 914 (1940); *Handling the Opiate Problem*, Fed. Prob., Dec. 1948, p. 23; *A Sociological Theory of Drug Addiction*, 43 AM. J. SOCIOLOGY 593 (1938). The FBN greeted his proposals with outright denunciation, innuendo, or pointed silence. See ADVISORY COMMITTEE TO THE

prominent addicts.²⁵ These examples serve to point out Lindesmith's criticism of the present system: "[A]n unofficial medical program that is presently being applied in the United States to privileged addicts of the upper social strata . . . [should] also be extended to drug users of humble social status who have no important connections."²⁶

Two other approaches to the problem of drug addiction which have recently seen some application are civil commitment procedures for addicts and the rehabilitation program at Synanon. The civil commitment procedures in New York²⁷ and California²⁸ are being hailed because they satisfy some of the demands of both the treaters and the punishers. But both systems are so highly selective that little can be claimed for them. Moreover, there is reason to be skeptical about any treatment system based on compulsion,²⁹ especially when it leaves the rest of the current punitive system intact and when there is no clear evidence that addicts will, as a matter of fact, receive treatment after commitment.³⁰ Enthusiasm has also been expressed about Synanon, where former addicts work with addicts seeking to remain "clean" in the free community, much as Alcoholics Anonymous works with alcoholics.³¹ The absence of performance data and evaluative research make it difficult to tell, however, whether its acclaim is really based on its success in treatment or on the fact that it is the only existing alternative to the official punitive system. The Synanon experiment is a vast improvement over nontreatment in prison and ought to be given scope, but only the accumulation of cases and passage of time will tell the story.

FEDERAL BUREAU OF NARCOTICS, *op. cit. supra* note 10, at 72-75, 120-23; ANSLINGER & OURSLER, *op. cit. supra* note 10, at 236-43. Finally, with the retirement of Anslinger in 1962 and with some official tendency toward minimal reforms on the old system, *e.g.*, President's Advisory Comm'n on Narcotic and Drug Abuse, Interim Report, April 3, 1963, Lindesmith emerges scarred and weary with a dim glow of optimism. *The Addict and the Law* is Lindesmith's summation of the long, smoldering, and heretofore largely subterranean debate about the nature of the drug addiction problem and its relation to the current public policy designed to deal with it.

²⁵ Anslinger slowly withdrew a Washington society woman from addiction by arranging to have her demerol dosages decreased over time; he also placed a powerful Congressman, who was adamant about his habit, on a maintenance dosage to the date of his death. ANSLINGER & OURSLER, *op. cit. supra* note 10, at 175-76, 181-82.

²⁶ LINDESMITH, *op. cit. supra* note 6, at 302.

²⁷ See Meiselas, *The Narcotic Addiction Program of the New York State Department of Mental Hygiene*, in NARCOTICS 249 (Wilner & Kassebaum eds. 1965).

²⁸ See McGee, *New Approaches to Control and Treatment of Drug Abusers in California*, *id.* at 263.

²⁹ N.Y. Times, Feb. 24, 1966, p. 1, col. 2.

³⁰ Allen, *Current Tendencies in Narcotics Legislation*, in NARCOTICS 19, 31-33 (Wilner & Kassebaum eds. 1965).

³¹ See Yablonsky & Dederich, *Synanon: An Analysis of Some Dimensions of the Social Structure of an Antiaddiction Society*, *id.* at 193.

III. MEANS OF CHANGE

What must be done to reach a sound policy as to narcotic addiction, as well as to other transactional crimes, is to compare alternative sets of social gains and costs. In practice this means that those who disagree with current policies must not only analyze and criticize but also make the case for change. Here sociologists have a role to play. As Schur notes:

Sociologists have, perhaps, been too much impressed by the fact that criminal laws do not always effectively curb the behavior they proscribe. One must be on guard against assuming that, because a law does not prevent certain acts from occurring, it is therefore without effect. [Laws regulating abortion, homosexuality, and drug addiction] . . . are highly ineffective from the standpoint of sheer deterrence, yet they may have pronounced impact—through their influence on the social meanings read into various acts or behavior patterns, and through their role in structuring total problem situations.³²

Sociologists ought to respond to Allen's comment that: "The question, what sorts of behavior should be declared criminal, is one to which the behavioral sciences might contribute vital insight. This they have largely failed to do, and we are the poorer for it."³³ It is Schur's notion that sociologists have hesitated to enter the field of legal policymaking because value choices are involved and no one can "prove" values. It is exactly "because a value choice must always be made and because there can never be any scientific proof of the 'right' choice," Schur argues, that the sociologist should "feel fully justified in offering any evidence he can provide which will help establish a sound basis for policy decisions."³⁴

But even if the sociologists speak out, the proponents of constructive and positive proposals for dealing with the drug problem have neither the resources nor the public outlets that the adherents of punitive policies possess. In a recent study of the California legislature the questions of where state representatives got their information on the drug problem and why they paid so little attention to doctors and social

³² SCHUR, *op. cit. supra* note 19, at 6-7. Cf. Merton's concept of "the manifest and latent functions of the law", *i.e.*, there may be a contradiction between the conscious motivations that lead to the enactment of a law (its manifest functions) and the objective consequences of its actual operations (its latent functions). MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE* 60-84 (1957).

³³ Allen, *Criminal Justice, Legal Values and the Rehabilitative Ideal*, 50 *J. CRIM. L., C. & P.S.* 228 (1959).

³⁴ SCHUR, *op. cit. supra* note 19, at 9.

scientists on this issue were explored. One legislator commented: "I've never received *any* unrequested information from any university or research faculty; I get only pressures from the police, and pamphlets from the Federal Narcotics Service."³⁵ Neither Lindesmith's *The Addict and the Law* nor Schur's exposition of the British system will achieve such wide distribution or secure subsidization as free pamphlets from the Federal Bureau of Narcotics. It is precisely the government's long-term, publicly financed, propaganda campaign that is chief among the obstacles to reform.³⁶

Furthermore, it is difficult for unaffected people in a large, impersonal, urbanized society to sympathize with the problems of such relatively small minorities as drug addicts or homosexuals. Thus, public education and elucidation of alternatives, while important elements in social change, are unlikely to be determinative. Although it is not impossible for these minorities to form political pressure groups,³⁷ it is likely that social change can be effected only if broader political support is given to efforts to eliminate punishment of social deviance as a crime. By and large, this political expression will have to come from the medical and legal professions: the medical profession because many of the problems associated with abortion, homosexuality, and drug addiction fall squarely into their province; the legal profession because law enforcement processes in these areas are so fraught with dangers for the majority that it is to everyone's interest to correct them.

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³⁵ Blum & Funkhouser, *Legislators on Social Scientists and a Social Issue: A Report and Commentary on Some Discussions with Lawmakers about Drug Abuse*, 1 J. APPLIED BEHAVIORAL SCIENCE 84, 92 (1965). (Emphasis in original.)

³⁶ LINDESMITH, *op. cit. supra* note 6, at 243-68.

³⁷ Homosexuals on the West Coast who founded the Mattachine Society and One, Inc. a few years ago have discussed the possibility of organizing the homosexual vote. See New York Times, Autumn 1965 for the contrary.

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