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DRUGS AND CRIME

(Report of Committee of the Institute)¹

FRANCIS FISHER KANE, Chairman²

There are three matters to which, we think, the attention of the Institute should be directed at this time. They are (1) the recent amendments of the Harrison Act, (2) the recent decisions of the Federal Courts sustaining the law, and (3) the Report and recommendation of the National Committee of Investigation appointed March 25, 1918, by the Secretary of the Treasury.

(1) THE AMENDMENTS OF THE HARRISON ACT BY SECTIONS 1006, 1007 AND 1008 OF THE REVENUE ACT OF FEBRUARY 24, 1919.

(a) Section 1 of the Harrison Act is re-written with certain important changes. Those who "distribute" the drug are dropped from the enumeration of the various classes of persons who must register and pay the tax. The word was superfluous. There are no persons who are distributors and who do not sell or dispense, deal in, etc.—the classes of persons who must register and pay.

Under the Harrison Act all persons in the several classes paid a one dollar (\$1) tax. Now, under the law, as amended, importers, manufacturers, producers and compounders pay twenty-four dollars (\$24); persons who sell in the original stamped packages provided for in the act are regarded as wholesalers and pay twelve dollars (\$12), and persons who sell or dispense from said packages are regarded as retailers and pay six dollars (\$6) per annum.

Section 1 of the Harrison Act made it unlawful for any person required to register and pay the tax to produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give way, to do any one of these things. The amendment adds the word "administer."

The amending act provides for a stamp tax—this is entirely new. The stamp tax is at the rate of one cent per ounce, any fraction of an ounce in a package to be taxed as an ounce. Such tax is to be paid by the importer, manufacturer, producer or compounder, and is to be

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²The personnel of the committee is as follows: Francis Fisher Kane, United States District Attorney, Philadelphia, Chairman; Dr. H. C. Stevens, Chicago; Dr. L. L. Stanley, San Quentin Prison, California; Albert Weber, New York City.

represented by a stamp, and the stamp must be affixed to the bottle or other container, so as to securely seal the stopper, cover or wrapper. And it is made unlawful for any person to purchase, sell, dispense or distribute except *in* the original stamped package or *from* the original stamped package. The absence of the stamp is made *prima facie* evidence of a violation of the law, and the possession of any original stamped package containing any of the aforesaid drugs, by any person who has not registered and paid the special taxes as required by the act, is made *prima facie* evidence of liability to such special tax, it being added that this provision shall not apply to persons who have obtained the drug from a registered dealer, "in pursuance of a prescription written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon or other practitioner, registered under this act," and where the bottle or container in which the drug is put up bears "the name and registry number of the druggist, serial number of prescription, name and address of the patients, and name, address and registry number of the person writing such prescription; or to the dispensing, administration, or giving away" to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner, in the course of his professional practice, and where said drugs are dispensed or administered to the patient for legitimate medical purposes, and record kept, as required by this act, of the drugs so dispensed, administered, distributed, or given away.

This is a most valuable extension of the law, and it ought to enable the authorities not only to deal more effectively with the petty, illicit dealer, but also to close in upon the medical practitioners who, under the cover of a gradual reduction treatment have been competing with the peddler of the tenderloin in enabling addicts to get their drugs. Since the cases of *United States v. Doremus*, and *Webb and Goldman v. United States*, decided by the Supreme Court, March 3, 1919, the duties of the doctor under the Harrison Act have been made clear, so clear that there ought to be now no difficulty in fully enforcing these additional provisions in the amending act. We shall allude to the *Webb and Doremus* cases later.

(b) Section 6 of the Harrison Act, which was the section applying to preparations and remedies containing small limited amounts of the forbidden drugs, contains in its new form a material addition. The amending act, as well as the old law, still provides—the word "manufacture" being alone added—that the provisions of the law shall not apply to the manufacture, sale, distribution, giving away, dispensing or possession of preparations and remedies which do not contain

more than two grains of opium, one quarter of a grain of morphine, one-eighth of a grain of heroin, or one grain of codeine, in the fluid ounce, or in the avoirdupois ounce of a solid, or to liniments, ointments, or other preparations for external use only, "except liniments, ointments, and other preparations which contain cocaine or any of its salts, alpha or beta cocaine or any of their salts, or any synthetic substitute for them," provided such remedies and preparations are sold, distributed, given away, dispensed or possessed as medicines and not for the purpose of evading the intentions and purposes of the act. So far the provisions of the original act are re-enacted, but there follows this important addition to the law. Manufacturers, producers, compounders, and vendors (including dispensing physicians) of such preparations and remedies must (1) if not already paying a tax under the act, pay a tax and register with the collector, and (2) they must keep a record of all sales, exchanges or gifts of such preparations and remedies in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall direct, and such records must be preserved for two years and be readily accessible to inspection by agents of the Treasury Department, State and Municipal Governments. The important effect of these provisions is, of course, to make it necessary for the original manufacturer, who makes the compound, and who sells to the wholesale druggist or retailer, and the retailer himself, whether he be a druggist or grocer, or in fact any kind of dealer, to register, pay a tax and keep a record of his sales. No longer can paregoric, Bateman's pills, Godfrey's Cordial, or other such habit-forming and habit-maintaining remedies be sold without at least the treasury officials being able to keep tab on the sales, and where sold without a previous compliance with the provisions of the statute, or for the express purpose of evading its provisions, as for instance, when a wholesaler sells paregoric to another person in order that such other person may dispense it illegally to addicts, he, the wholesaler, as well as the person retailing the drug may now be haled into the Federal Court and punished for a violation of law. With the advent of prohibition, causing, as at first it undoubtedly will, a considerable increase in the sale of narcotics, one can see the value of these additions to the Harrison Act.

(c) The last amendment, contained in Section 1008 of the Revenue Act of February 24, 1919, covers an omission in the Harrison Act, with respect to the ultimate disposition of drugs seized. Nothing had been said in the original act as to what should be done with them, and as a fact, the amounts seized and in possession of the

government have been of considerable value. It was therefore provided in the amending act that the drugs already seized and such as should be thereafter seized shall be forfeited to the government on conviction of the person from whom they have been taken, and be delivered for medical or scientific purposes to any department, bureau, or other agency of the government, upon proper application and under such regulations as the Commissioner might prescribe.

(2) THE RECENT DECISIONS OF THE FEDERAL COURTS SUSTAINING THE LAW.

In *United States v. Doremus*, and *Webb & Greenbaum v. United States*, 249 U. S. page 86 and page 96, respectively, the Supreme Court had occasion to affirm the constitutionality of Section 2 of the Harrison Act, and to construe its provisions as respects the duties of physicians and druggists. Section 2, it will be remembered, is the provision making it unlawful for any person to sell, barter, exchange or give away any of the drugs mentioned in the act, except in pursuance of a written order on a form issued in blank by the Commissioner of Internal Revenue. The section, it will be remembered, is not to apply (a) "to the dispensing or distribution of any of the aforesaid drugs to a patient by a physician * * * registered under this act in the course of his professional practice only" * * * or (b) "to the sale, dispensing or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician * * * registered under this act."

It was contended in the *Doremus* case that these restrictions thrown around the dispensing of drugs by physicians and druggists were unconstitutional, because in no way in aid of the revenue, but the Supreme Court, speaking through Mr. Justice Day, held that such provisions might possibly have been inserted in the law by Congress in order to prevent persons so obtaining the drugs, presumably for their own use, passing the drugs on to others without paying the tax. "He"—the patient—"might sell some to others without paying the tax; at least Congress may have deemed it wise to prevent such possible dealings because of their effect upon the collection of the revenue." "Congress, with full power over the subject short of arbitrary and unreasonable action, which is not to be assumed, inserted these provisions in an act specifically providing for the raising of revenue. Considered of themselves, they tend to keep the traffic above board and subject to inspection by those authorized to collect the revenue. They tend to diminish the opportunities of unauthorized persons to obtain the

drugs and sell them clandestinely without paying the tax imposed by the federal law." * * *

"We cannot agree with the contention that the provisions in Section 2 controlling the disposition of these drugs in the way described, can have nothing to do with facilitating the collection of the revenue, as we should be obliged to do if we were to declare this act beyond the power of Congress, acting under its constitutional authority to impose excise taxes. It follows that the judgment of the District Court must be reversed."

In *Webb & Greenbaum v. United States* three questions were certified by the Court of Appeals. The first was:

"Does the first sentence of Section 2 of the Harrison Act prohibit retail sales of morphine by druggists to persons who have no physician's prescription, who have no order blank therefor, and who cannot obtain an order blank because not of the class to which such blanks are allowed to be issued?"

The court answered this question in the affirmative.

The second question was:

"If the answer to question one is in the affirmative, does this construction make unconstitutional the prohibition of such sale?"

The court answered that it did not.

Finally this question was propounded:

If a practicing and registered physician issues an order for morphine to an habitual user thereof, the order not being issued by him 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, is such order a physician's prescription under exception b of Section 2?

The answer to this was quite as brief and very much to the point. The court said: "*To call such an order for the use of morphine a physician's prescription would be so plain a perversion of meaning that no discussion of the subject is required. That question should be answered in the negative.*"

We may assume that although the Chief Justice, Mr. Justice McKenna, Mr. Justice Van Deventer and Mr. Justice MacReynolds dissented from the opinions of the court in these cases, the question of the constitutionality of the Harrison Act is now finally disposed of, and the limitations imposed on doctors and druggists definitely settled.

In *Thompson v. United States*, reported in Treasury Decision 2887, the Court of Appeals for the Eighth Circuit recently handed down an

opinion in a doctor's case arising under the recent act. The court had before it the decisions of the Supreme Court in the Webb and Doremus actions. The court pointed out that the Harrison Act had a moral object in view as well as the purpose of raising revenue. "If physicians * * * can sell and dispense these narcotics, regardless of whether it is done in good faith for the relief of the patient, then the moral object of the act is entirely defeated. It certainly cannot be claimed that a physician selling these narcotics not in good faith for the purpose of securing a cure of one suffering from an illness, or to cure him from the morphine habit, is doing so 'in the course of his professional practice only' as prescribed by the express language of the act. A proviso must be construed strictly, and it takes no case out of the enacting clause which does not fall fairly within its meaning." Hence, it was held that a physician who furnished narcotics to an addict in decreasing quantities and claimed to be attempting a cure of the addiction, was acting contrary to the act when it was shown that the physician had not personally attended the addict, or had given the addict some personal attention, but not sufficient attention to show, in connection with other facts and circumstances, that the physician had acted in good faith.

Oliver v. United States, another case recently decided, involved the sale of a preparation or remedy coming within section six of the act, which had not been sold as a medicine, but for the purpose of evading the intentions and purposes of the act by supplying addicts with the means of satisfying their addiction. Judge Woods charged the jury that whether the preparation in question, which happened to be paregoric, was legitimately sold as a medicine or was dispensed with the intent to evade the purposes for which the act was passed, was a question of fact to be decided by the jury; and that it made no difference if the government officer who bought the paregoric did not intend to take it himself, provided the defendant sold it to him for the purpose of administering to an addict. If the paregoric was sold for that purpose, then the offense was complete and the defendant would be guilty.

Finally in *United States v. Harris*, one of the numerous cases recently brought in the Southern District of New York against physicians, the defendant maintained that it was necessary for morphine addicts to have a certain amount of the drug in order to keep at work, and the judge expressly charged that this was no justification for the doctor's action. In other words, we now have a court expressly stating that in order to come within the exception a doctor must prove

that he was prescribing in order to effect a cure. If he was only prescribing to make the patient comfortable or to give him enough drug to enable him to keep at work, he was not acting in the course of his professional practice only."

In an interesting paper by Arthur D. Greenfield, of New York, appearing in the New York Medical Journal for July 19th, 1919, the question is raised whether good faith on the part of the doctor is enough. "The purpose of the law," he says, "has been declared by the highest court to be the prevention of the possible disposal of narcotic drugs without tax payment, and supplying them to an addict in order to keep him comfortable has been judicially held incompatible with this purpose. There are physicians who do not agree with the policy of the law as thus laid down, and who maintain in good faith that in many cases it is medically proper to keep an addict supplied with a moderate amount of narcotic so that he can go about his business and be free from pain and discomfort until such time as he finds it practicable and convenient to be cured. This is in accordance with the customary course of professional practice which contemplates the relief of pain and discomfort." But Mr. Greenfield says that "it is hardly necessary to point out that the holding of these views by a physician cannot give him a license to nullify the plain purpose of the statute." To the extent that the maintenance of the addict's supply is forbidden by the judicial interpretation of the law, it is obvious that the court's holding was not based on the determination of a medical question, but on the decision of a legal point, and that difference of medical opinion was not considered as material to the decision. The possible and probable bad faith of the addict was the decisive feature, and the act of the physician in keeping up his habitual supply was held to be illegal *per se*. It would seem to follow from this that even though a physician might supply an addict with narcotics for the purpose of cure, honestly believing the 'ambulatory' treatment to be a medically legitimate curative treatment, he might nevertheless be held guilty as doing an act contrary to the policy of the law. He could not justify himself from the legal standpoint merely by proof that he believed from the medical standpoint that the method was meritorious, or even by proof that it was meritorious, since there are other methods of curative treatment which are medically at least as sound and which do not involve any act in conflict with the policy of the statute."

The discussion of this point is interesting because of the many cases in which addicts are still being "treated" by physicians without any proper examination of the patient and without the slight-

est control over him. Such physicians have signed prescriptions for morphine and even for cocaine in great numbers, charging a nominal fee for each prescription but in the end making large sums of money. Of course the consensus of the profession, taken as a whole, is against this practice, and everyone knows that the gradual reduction treatment, without control of the patient, is a delusion and a sham. It is therefore well that the Harrison Act is being construed so as to close the door upon the practice. Sooner or later we must accept the conclusion that drug addiction cannot be cured without absolute control of the patient. If he is a well to do person he may be put in the care of an attendant. If he is a poor person he must go to an institution, but in neither case can the addict be relied on to effect his own cure. He will get as much of the drug as he can from the doctor first prescribing for him and go to another doctor when the dosage is diminished beyond his endurance, or he will go to more than one doctor at a time. In the Southern District of New York a crusade has been entered on to drive the "dope doctor" out of business. Several cases have already been successfully tried by Assistant United States' Attorney Cahill and there are several other cases on the list remaining to be tried. Efforts are being made in this and other districts on the part of the federal and municipal authorities to care for the unfortunate addicts whose cases are now coming before the courts. It is to be hoped that the fight will be kept up.

(3) REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE OF INVESTIGATION APPOINTED MARCH 25TH, 1918, BY THE SECRETARY OF THE TREASURY.

The committee consisted of Congressman Henry T. Rainey, Reid Hunt, Professor of Pharmacology, Harvard University; B. C. Keith, Deputy Commissioner of Internal Revenue, and A. G. Du Mez, Secretary of the United States Public Health Service. Their report, a printed document of some thirty pages, was submitted in April, 1919. It is interesting reading and we shall only attempt an outline of it.

The committee collected such statistics as were available as to the amount of narcotic drugs actually used in the United States, as shown by the registration under the Harrison Law. The committee secured also from the Treasury Department the records showing the amounts imported from Canada and Mexico, as well as through our Atlantic and Pacific ports, and through questionnaires sent out to physicians and institutions, and from other sources, they attempted to determine the number of addicts in the country. Questionnaires were also sent out by the committee to police authorities, prisons, almshouses, health offices and private hospitals and sanatoria. Only a small proportion

of the questionnaires sent out to police authorities, prisons, almshouses, private hospitals and sanatoria were returned, and in many cases the answers actually returned were unsatisfactory. Nevertheless, the committee, by sifting the material in its hands, was able to make some interesting deductions, and as regards several aspects of the problem was able to come to definite conclusions. The figures of the Treasury Department showed that importations of crude opium and morphine from Canada had enormously increased from 1913 to 1917, when the war stopped legitimate importations. The committee thinks that the increase in importations from Canada up to 1917, was, curiously enough, due to exportation from the United States into Canada by illicit dealers for the very purpose of importation into the United States.

Looking at the matter broadly, the growth in the use of narcotic drugs in this country has far exceeded the increase in population. Although the population in 1900 was only two and one-half times as great as in 1860, the amount of opium entered at our custom houses for consumption was approximately five times as great, and this computation takes no account of course of the smuggling that went on from Mexico and Canada. So far as opium is concerned the committee found that this country in 1910 consumed from thirteen to seventy-two times as much *per capita* as was consumed by other countries, the records of which were available. While we consumed thirty-six grains of opium per capita, Austria consumed less than a grain, Italy one grain, Germany two grains, Portugal two and one-half grains, France three grains, and Holland three and one-half grains *per capita*. As regards cocaine there were, according to the custom house records, enough cocaine leaves imported into the country to furnish every man, woman and child with two and one-half pharmacopeia doses per annum. From the known amount of cocaine that can be produced from coca leaves it was estimated that a total of 150,000 ounces is annually produced, and of this only 25 per cent is used in legitimate medical or dental practice.

Notwithstanding the fragmentary character of the answers received to the questionnaires, the answers received were interesting, and, as we have said, it was possible to draw some deductions from them. The committee found that notwithstanding the enactment of the Harrison Law and the efforts that had been put forth under state laws, drug addiction was increasing in several of the larger cities. In the smaller cities and in rural districts it appeared to be decreasing according to the reports received, but perhaps the conclusions in the reports were really due to the fact that little or no attention had been given to

the subject by many police and health officials, hospital superintendents and others, whose business it should have been to record the facts, but who, because of the lack of attention given to the drug evil, had kept no accurate records.

The question as to the effect of nation-wide prohibition could not be definitely determined by the committee. "The consensus of opinion," the committee says, "of those interested in the subject appears to be to the effect that the number of addicts will increase as soon as prohibition laws are enforced." These opinions are based for the most part on the theory that drunkards will seek a substitute for alcohol and that the opiates and cocaine will be found to be most satisfactory for this purpose. This opinion apparently receives some support from investigations made in some of the Southern States, where prohibition has been in effect for some years. It has been noted that in these states the sales of narcotic drugs and cocaine, especially the sales of preparations exempt under Section 6 of the Harrison Act, such as Bateman's Drops, Godfrey's Cordial and paregoric, have greatly increased during this period. Whether or not this condition will become general when national prohibition becomes effective, is a question which cannot be answered at the present time.

As to the causes of drug addiction, the committee reports that the data assembled by it show that the habit of using opiates or cocaine is acquired through association with addicts, through physicians and through self-medication with the drugs themselves or with the patent or proprietary preparations containing them. The first two ways were apparently the more common, according to the replies sent in to the questionnaires. The addict of the underworld in a large majority of cases acquires the habit through association. The addict of good social standing acquires the habit usually through a physician's prescriptions, although some few persons of social standing, of course, become addicted through self-medication, or through indulgence as a social diversion. The drugs used in order of frequency are morphine, heroin, opium in all forms, and cocaine. Codeine, laudanum and paregoric are used in about equal amounts, but to a lesser extent. Most addicts are American born, and the committee reports that it is a rare occurrence to find an addict among immigrants on their arrival in this country, although some of them become addicted to the use of drugs after reaching America, and, of course, this statement does not apply to Chinese and other nationalities of the Orient. We may add to the facts, as stated by the committee, that it has recently been authoritatively stated that morphine to a large extent is taking the place of opium in China, hypodermic syringes, we regret to

say, being furnished from America. Japan has been recently accused of fostering opium and morphine addiction in China. Indeed, a committee of missionaries has taken up the matter seriously and issued an appeal to the public on the subject.

Passing over the conclusions of the committee as to the effect of drug addiction on health and morals, we come to its conclusions as to the relation of narcotic drugs to crime. Users of opium or morphine are seldom in the courts for brutal crimes. The offenses committed by them are generally larceny, burglary, vagrancy, forgery, assault and violation of drug laws. They are frequently aiders and abettors, and less commonly the leading actors in criminal conduct. Cocaine and heroin alone seem to induce the more violent crimes. "They are the drugs most frequently used by prostitutes and those engaged in the white-slave traffic." These drugs appear to the committee to be the most obnoxious.

Finally, the committee has certain recommendations to make. It is apparent, they say, from the replies to questionnaires actually received, as well as from the absence of replies, that there is no definite or concerted action on the part of state or municipal governments to suppress the illicit traffic in and use of habit forming drugs, and there has been but little, if any, attempt made to secure accurate information concerning drug addiction as a preliminary to the enactment of proper legislation. This condition is mainly due to a lack of knowledge of the seriousness of the situation, but partly due no doubt to the old theory that drug addiction is a vice, not a disease. Addicts are held up to public scorn rather than pity, and proper records are not kept by institutions. In view of the recent amendments to the Harrison Law adopted by Congress at the suggestion of the committee in its preliminary report, no further national legislation is recommended, but it is urged that the matter of the proper care and treatment of addicts be taken up and seriously considered both by the national government and the state governments. Enactment of legislation on the part of the national government and similar measures by states and municipalities, is deemed urgently necessary. We may add that the Commissioner of Internal Revenue is at present earnestly taking up with Collectors and United States Attorneys throughout the country, the immediate necessity for securing proper institutional care for the drug addicts at an early date. Recent extensions of the Harrison Law as well as the state laws that have been passed, have created conditions calling for immediate action of some kind. The unfortunate addict must be cared for. May we add that something more is required than medical treatment inside the institutions for

temporary relief. Further institutional care of an enlightened kind, and not merely medical, must be provided to give the addict the proper means of fighting the habit after the drug is eliminated from his system. Confinement or segregation is not enough. The usual "gradual reduction" cure in an institution lasts, at most, but a few weeks. To send the addict back to his environment after such a cure is to undo all the good that has been done, and something must at least be attempted to meet the plain necessities of the case. We must have government institutions specially organized and managed along lines approved of by the modern new penology.

The Committee says that the international aspect of the opium traffic should receive consideration. The traffic must be internationally controlled, and the committee urges that this country through its State Department take the matter up with the other powers that were signatories to the international agreement entered into at The Hague in 1912, with a view to persuading such governments to enact necessary legislation to carry out the terms of The Hague protocol. Otherwise, says the committee, the task of this country in suppressing the illicit traffic will be rendered very difficult. It is also recommended that pending the ratification of The Hague Opium Convention, our government take up with Canada and Mexico the question of suppressing the smuggling of drugs from one country into the other. It would also be well for educational campaigns to be started for the purpose of informing the people, including the medical profession, of the seriousness of drug addiction, and the committee recommends that both public and private medical organizations which have research facilities, be requested to undertake the study of the drug problem. At the present time there are numerous forms of treatment for drug addiction, but none appears to have been given a thorough trial by the medical profession. None of them has received the unqualified support of those members of the profession who have had no financial interest in the matter. And, finally, the committee asks that consideration be given by states and municipalities to the question whether the manufacture, sale and administration of heroin should not be absolutely prohibited, the committee being of the opinion that the medical need for this derivative of morphine is negligible compared with the evil effects of its use. It can, says the committee, be easily replaced by one of the other alkaloids of opium with the same therapeutic results and with less danger of creating habituation.

We recommend to the members of the Institute a perusal of this report of the National Committee. We have only attempted an outline of it.