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J. E. Ingersoll[1]

The Relevancy of Drug Control in the United States during the Seventies

With the spread of drug use and abuse in this country, events relating to drugs have become increasingly prominent in the news. It is anticipated that throughout the seventies this problem will continue to be one of the major social problems in the United States. If an answer to curbing the drug problem is to be found in the next decade, the activities of the Federal government in the past must be examined with a view towards correcting prior mistakes and reducing or eliminating them in the future.

This paper will analyze the problem in three steps. The first part of the paper will present a brief historical analysis of drug controls in the United States and the reasons why these controls came about. The theme of this part of the paper will include reflections on how the government *reacts* toward already existing problems rather than how it initiates moves toward resolving a potential drug problem before it becomes a *fait accompli.* The second section will deal with control mechanisms, both theoretical and pragmatic, that could be employed by the Federal government as a means of preventing drug abuse in dealing with those individuals who are involved in drug abuse. The third portion will discuss present and future directions in effective drug abuse control. In that section, emphasis will be placed on the recently enacted Controlled Substances Act (P.L. 91-513), the role of the Federal government *vis-à-vis* the States, and the thrust of law enforcement as a viable mechanism in this area.

A Short History of Drug Use

Drug use has been with us through the ages. It has accompanied man throughout his modern history and has been a source of profit, medicine, comfort, and religion to him. Though the date of the earliest evidence of opium use is in dispute among historians and archeologists, it is generally recognized that opium was used for therapeutic purposes in ancient Assyria under the name "arit. pa. pa." (a possible origin of the Latin word *papaver*), while the Sumerians knew the plant as "hul gil" meaning joy plant. Knowledge of opium passed from one ancient civilization to another, primarily in the land areas of Egypt, Syria, and Persia. Through succeeding civilizations, it continued to be used as medicine among the ruling classes. The famous Ebers Papyrus of Egypt (1500 B.C.) prescribed opium to be taken in the form of eyedrops, ointment, and powders as a remedy for external disorders or internally for the relief of pain. P. G. Kritikos and S. P. Papadaki of the University of Athens, in a book entitled *The History of the Poppy and of Opium and*

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[1] Director, Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, Washington, D.C. 20535.

Their Expansion In Antiquity in the Eastern Mediterranean Area, which appeared in English translation in the *U.N. Bulletin on Narcotics*, Vol. XIX, No. 3, Sept. 1967, extensively discussed the ancient use of opium as a hypnotic and pain reliever, as well as its religious significance in the early Greek and Egyptian civilizations. They traced the drug as far back as the eighth century B.C. The medical uses of opium are further documented and discussed at length in Saber Gabra's book, entitled *Papaver Species and Opium Through the Ages, Bulletin de l'Institute d'e Egypte*, 1956.

As a result of contact with the ancient Middle Eastern civilizations, the use of opium spread to Rome and throughout its empire. Although opium was introduced to the general public by itinerant quacks and shopkeepers, the respected medical community, including the famous Greek physician of the second century A.D., Galen, enthusiastically endorsed opium as a remedy for various ills. In his work entitled *Medicorum Graecorum opera quae exstant*, Galen stated that

> Opium is the strongest of the drugs which numb the senses and induce a deadening sleep; its effects are produced when it is soaked in boiling water, taken up on a flock of wool and used as a suppository; at the same time some can be spread over the forehead and in the nostrils. If it is mixed with a drug that mitigates its power, its effects are greatly reduced.

The drug occasionally appeared in Greco-Roman mythology, and it is even reported that opium was used by the Roman nobility to promote happiness and hilarity among the guests at dinner parties. Opium also appeared in the New Testament under the name of "gall." Both Winifred Walker's *Plants of the Bible* (London, 1959) and Alex Tschirkhs' *Handbuch der Pharmakognosie III/I* (Leipzig, 1923) spoke of the gall mixed with vinegar that the Hebrews offered to Christ on the cross in order to alleviate his suffering:

> And as they came out, they found a man of Cyrene, Simon by name: him they compelled to bear his cross. And when they were come unto a place called Golgotha, . . . they gave him vinegar to drink mingled with gall: and when he had tasted thereof, he would not drink.[2]

Both authors tend to believe that gall was a species of the opium plant now known as *Papaver setigerum*.

Opium was carried to the Far East by Arab and Middle Eastern traders, where it was introduced into China in the seventh century A.D. by overland traders from India. These two countries were the first to have any kind of a problem with widespread nonmedical use of opium among the general population.

Even before the voyages of exploration by Europeans, the natives of the Western Hemisphere had discovered and used their own narcotic preparations. The Incas of Peru and Bolivia chewed the leaves of the shrub *Erythroxylon coca* to experience the stimulating and euphoric effects of the plant. The use of coca leaves was limited primarily to the priests and nobility. With the conquest of the Incan empire, Spanish rulers learned to encourage the practice of using coca among the native laborers to assure their acquiescence to the harsh treatment imposed upon them. Although the Spanish rulers in South America encouraged the use of coca leaves, the medical community in Europe was slow to accept cocaine as a useful medical remedy.

Drug Abuse and Control

During its colonial period, the United States had no real problem with the abuse of opium or cocaine. Only in the late 19th century, with the substantial immigration of Chinese coolies into the west coast, did opium smoking become a subject for governmental

[2] Matthew 27:32, 33, 34.

concern. The use of opium spread to other segments of American society, notably the underworld and the entertainment industry. At the turn of the century the discovery and refinement of heroin and the development of the hypodermic needle resulted in a large number of new addicts. Still others became addicted by intentional or unintentional repeated use of popular bottled medicines containing narcotics, and it was estimated that there were almost 120,000 addicts in the United States by 1910.

Realizing the seriousness of the narcotics problem, Congress in 1909 enacted the first legislation to control the abuse of opium,[3] specifically prohibiting the importation of opium for other than medicinal purposes. That same year the United States was represented at the Conference of the International Commission in Shanghai, the first international body to seek the control of the world opium trade. The opium commission recommended that each delegate ask its own government to take measures for the gradual suppression of opium smoking, to prohibit the nonmedical use of opium, and to take drastic measures to control the manufacture, sale, and distribution of morphine.

A second important conference, the International Opium Convention of 1912, was designed to bring about the gradual suppression of the abuse of opium, morphine, and cocaine. The contracting powers specifically agreed to enact effective laws for the control of the production and distribution of raw opium and prevention of its export to those countries that were controlling it. They also agreed to gradually suppress manufacture or internal trade in prepared opium and to enact regulations to limit exclusively to medical and legitimate purposes the manufacture, sale, and use of morphine and cocaine.

To implement its obligation under the Convention of 1912, Congress enacted a law prohibiting the exportation of opium or cocaine and absolutely prohibited the export of smoking opium.[4] However, this legislation and all that followed for the next 50 years was to be of a *post facto* nature, that is, a plugging of the dike approach which only solved the immediate problem but did not look to the future.

The most significant legislation to appear after the 1912 Convention was the enactment of the Harrison Narcotic Act of 1914,[5] a comprehensive control of narcotics transfer by means of the taxing power of the Constitution. One section of the act required registration and imposition of a special tax on all persons who dealt in narcotics, while another section made it unlawful for any person to sell, barter, exchange, or give away narcotic drugs unless pursuant to an official written order. When the legitimate consumption of opium continued to rise to a very high level, estimated to equal a *per capita* consumption of 36 one-grain doses of opium per year in the United States,[6] and no legitimate medical reasons for the use of such quantities could be given, the Act was amended in 1919[7] to stop the maintenance of nearly 73,000 addicts by physicians[8] and to decrease the sale of over-the-counter exempt narcotic preparations such as Bateman's Drops, Godfrey's Cordial, and paregoric.[9]

In 1919, the Supreme Court in *United States vs. Doremus*[10] upheld the constitutionality of the Harrison Narcotic Act, stating that the act bore a reasonable relationship to the raising of revenue. The Court went on to say the act "may not be declared unconstitutional because its effect may be to accomplish another purpose as well as raising revenue."[11]

[3] Act of 9 February 1909, C. 100, 35 Stat. 614.
[4] Act of 17 January 1914, C. 9, P. 6, 38 Stat. 275, 276.
[5] Act of 17 December 1914, C. 1, 38 Stat. 785.
[6] Report of Special Committee of Investigation, appointed by the Secretary of the Treasury 25 March 1918, 9 June 1919.
[7] Act of 24 Febraury 1919, C. 8, Title 10, P. 1006, 40 Stat. 1056.
[8] Harrison Narcotic Act, p. 10.
[9] Harrison Narcotic Act, p. 11.
[10] *United States vs. Doremus*, 249 U.S. 86, 1919.
[11] *United States vs. Doremus*, p. 94.

Even though the Harrison Narcotic Act contained adequate provisions for the control of domestic traffic in narcotics, it soon became apparent to Federal authorities that new legislation was essential to establish tighter controls over the importation and exportation of narcotics. The Narcotic Drug Import and Export Act[12] was intended to amend the deficiency in Federal law by carefully restricting the importation of opium and coca leaves to those quantities necessary to provide for medical and other legitimate needs.

In 1930, by act of Congress,[13] the Bureau of Narcotics, Department of Treasury, was created to concentrate the efforts of Federal enforcement of the narcotic laws under one agency. The new commissioner of the Bureau, H. J. Anslinger, initiated a policy of attacking the supply of narcotics at its source by eliciting cooperation with foreign enforcement agencies to detect the identity of the international trafficker in narcotics and by making a concerted effort to limit the widespread smuggling of narcotics into the United States. The commissioner attended the Conference for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs in 1931, convened under the auspices of the League of Nations. Though the Conference proved to be only partially successful in achieving its purpose, it is noteworthy as the first attempt at regulation of the narcotic drug industry on an international basis.

With the implementation of the new Federal narcotic legislation and the creation of a more efficient enforcement agency, the occurrence of narcotic addiction declined. (Whether in fact addiction declined because of the new law is of course, hypothetical but it did occur and can perhaps be attributable to a greater respect for law at that time than today as well as a firmer belief of the evils and dangers of these drugs.) But the drug problem was not solved. During that same period, the use of marihuana, which had been introduced into the United States in the 1920s, became a problem of considerable abuse. Again, legislation was introduced in Congress, but only to place controls on the use of marihuana. The Marihuana Tax Act[15] was enacted by Congress in 1937. The act required registration and payment of a graduated occupational tax by all persons who imported, manufactured, produced, compounded, sold, dealt in, prescribed, administered, or gave away marihuana.[16] Transfers were limited to those made on authority of official order forms.[17]

During World War II, production of the opium poppy in the United States had been encouraged by the difficulty in obtaining opium under wartime conditions. The Opium Poppy Control Act[18] was enacted in 1942 to prohibit illicit production while still maintaining this encouragement. Shortly after the war synthetic narcotics became a problem of abuse, and the Federal government sought and obtained a law which placed controls over all synthetic narcotic drugs which had an addiction sustaining liability.[19]

Two other Federal narcotics laws, enacted during the Eisenhower administration, deserve mention. The Narcotic Control Act of 1956[20] increased the penalties for violation of the existing narcotic laws and made the minimum penalty limits mandatory by eliminating suspended sentences, probation, or parole. This procedure was adopted because it was believed that the penalties up to that point had not reversed the ever-expanding rate of addiction in the United States to any great degree and that harsher penalties might

[12] Act of 21 September 1922, C. 356, 42 Stat. 856.
[13] Act of 14 June 1930, c. 488, 46 Stat. 585.
[15] Act of 2 August 1937, c. 553, 50 Stat. 551.
[16] Act of 2 August 1937, c. 553, P. 2, 50 Stat. 551.
[17] Act of 2 August 1937, c. 553, P. 6, 50 Stat. 551.
[18] Act of 11 December 1942, c. 720, 56 Stat. 1045.
[19] Act of 8 March 1946, c. 81, 60 Stat. 38.
[20] Act of 18 July 1956, Pub. L. 728, 70 Stat. 567.

reverse that trend. The act can be considered in many respects to represent the crest of the deterrence theory of the criminal law, whereby it is believed that an inverse relationship exists between the incidence of a crime and the penalty assessed. Congress further intended by this act to provide a more effective means for the elimination of illicit trafficking in narcotic drugs and marihuana by increasing the minimum mandatory penalties for the trafficker, by increasing the maximum permissible sentence for both traffickers and possessors, by increasing the authority of Federal agents, and by granting witnesses immunity where testimony was deemed necessary to the public interest.[21]

Four years later, the Narcotic Manufacturing Act of 1960[22] sought to control the manufacture of synthetic narcotic drugs just as the Narcotic Drugs Import and Export Act had controlled the manufacture of the natural narcotic drugs. To a certain degree, this act forms a partial basis for the recently passed Controlled Substances Act. The number of persons addicted to narcotics in the immediate post World War II period appeared to hover at a constant number of approximately 60,000 addicts according to the best statistics available at that time. (It is conceded that these prior statistics were, at best, inaccurate because of the voluntary nature of the input from state and local police.) At the same time, the use of marihuana, which was not considered a drug of socially accepted usage, was also limited. However, during the fifties and sixties a new and more serious problem appeared with the abuse of the synthetic central nervous system stimulants, depressants, and hallucinogens, primarily among the young. Diversion from the legitimate market into illicit channels became very serious in the United States after 1950, and it was estimated that by 1966 one half of the total production of amphetamine and its derivatives in the United States was being diverted from the legitimate industry.[23]

In 1960, with the ever-increasing abuse of amphetamines and barbiturates, the Federal government began to press for Federal legislation to control their use. On 15 July 1965, Congress finally enacted into law the Drug Abuse Control Amendments (DACA).[24] The act increased statutory controls over depressant and stimulant drugs with regard to record keeping, registration, inventory restrictions, authority of FDA inspectors, and the period and number of times prescription drugs could be refilled. Violators were subject to criminal misdemeanor prosecutions, with the exception of fraud violations which were treated as felonies. As with all of the other Federal drug laws which had preceded it, this law also had serious loopholes and limitations, not the least of which was that it was limited to dangerous drugs, with no realistic attempt being made to fit it within a larger framework of the narcotic and marihuana laws. Once again, Congress reacted in a specific rather than general, comprehensive manner.

In 1968, in order to remedy the penalty inadequacies, the Drug Abuse Control Amendments were further amended to increase certain penalties for felonies.[25] However, this amendment did not affect exemptions nor require continuing inventories. One point worth noting, however, is the fact that DACA contained extensive administrative procedures to control central nervous system stimulants and depressants. This idea served as a focal point for the control of drugs in the recently enacted Controlled Substances Act which will be discussed later.

As late as 1968 the main thrust of Federal legislation in drug control and enforcement was in the form of reaction, rather than through a plan or scheme to deal with the total problem in the future. This is not surprising, since little time or attention had been focused

[21] U.S. Cong. & Adm. News, 84th Congress, Second Session, 1956, pp. 3274–3286.
[22] Act of 22 April 1960, Pub. L-86-429, 74 Stat. 55.
[23] Sudush, J. B., Jr., *Journal of the American Medical Association*, JAMAA, Vol. 196, 1966, p. 707.
[24] Act of 15 July 1965, Pub. L. 89-74, 79 Stat. 226.
[25] Act of 24 October 1968, Pub. L. 90-639, 79 Stat. 227.

on this problem by the general public in the early 1960s until drug abuse reached startling frequencies and spread to the middle class suburban areas. Realizing the magnitude of this problem, many theoretical and practical approaches to drug control and drug law enforcement at the Federal level may be utilized to solve it.

Modern Approaches to Drug Control

Let us first discuss the theoretical approaches to drug control. Probably the most restrictive approach to total drug control is to stringently control all legitimate drug movement through the order form method, whereby persons receiving drugs can only do so by sending the shipper a government order form. This method places serious burdens upon both the legitimate industry and the Bureau of Narcotic and Dangerous Drugs and, practically speaking, is not workable. A more pragmatic approach has been to control only the most abusable or most addicting drugs in this manner and place lesser controls on the rest of the drugs. This also has the salutary effect of decreasing the great flow of paper through the Bureau.

In the illicit area a number of theoretical approaches to control have been suggested: they include the vice model and the medical model. The vice model would allow legal possession of controlled substances but retains trafficking as an illegal act. This theory, while appearing plausible on paper, is in reality a prosecutor's nightmare. Whatever quantity was determined to be legal for one's own use by statute or court decision could be possessed and sold with almost total immunity. However, individuals who maintained more than this quantity, even for their own use, would be subject to the trafficking penalty. The medical model assumes that physicians would be willing to prescribe such drugs as marihuana or LSD for pleasure. Based upon the present posture of the medical community, there is little liklihood that they would prescribe for nonmedical purposes and, even if they did, the demand would soon outweigh the time available for such a function. As for highly addicting drugs, such as heroin, Great Britain tried this approach and the number of narcotics addicts has increased to a figure many times as great as the number that existed before the medical approach was tried.

Turning now to the pragmatic approach, the enactment of the Drug Abuse Control Amendments (DACA) created the need for a Federal agency to enforce its provisions and administer the necessary attendant regulations. DACA itself contained provisions to satisfy this very need by vesting in the Secretary of Health, Education, and Welfare law enforcement powers to control the abuse of the stimulant and depressant drugs. Accordingly, a new agency entitled the Bureau of Drug Abuse Control (BDAC) was created from a reorganization of the Food and Drug Administration as a bureau of the parent organization. However, even at its inception, the Bureau of Drug Abuse Control was something of an anomaly. It was an agency possessing enforcement and police powers within the Department of Health, Education, and Welfare, a department which traditionally has not concerned itself with such matters.

With the tremendous increase in the abuse of dangerous drugs and marihuana in the late 1960s, it became apparent that more effective enforcement procedures were required and that greater control over the distribution of controlled drugs in legitimate channels was needed. The enforcement problem constituted a split of authority in the drug control area: namely, the Bureau of Drug Abuse Control held the responsibility for enforcement of Drug Abuse Control Amendments, while the Bureau of Narcotics was responsible for enforcement of the hard narcotics and marihuana laws. Neither agency was placed within the most appropriate division of government for this function, the Department of Justice. As early as 1963, the President's Advisory Commission on Narcotics and Drug

Abuse had recommended that the functions of the Bureau of Narcotics be transferred to the Department of Justice.[26] However, it was not until 7 February 1968, that President Johnson in a message to Congress recommended that the functions of both the Bureau of Narcotics and the Bureau of Drug Abuse Control be transferred to the Department of Justice.[27] This message was the genesis of the new and powerful Bureau of Narcotics and Dangerous Drugs. In *practical* effect the new Bureau, formed by a merger of the old Bureaus of Drug Abuse Control and of Narcotics, provided cohesive Federal control over the drug abuse enforcement spectrum.

The New Bureau and the Systems Approach

This consolidation provided the opportunity for more effective enforcement of the drug laws, as well as the opportunity to utilize new procedures through a coordinated systems approach to enforcement activities relating to drug trafficking and regulation. Termed the "systems operational plan," this approach is part of an overall management-by-objectives approach employed by the Bureau of Narcotics and Dangerous Drugs to accomplish its primary mission, which is to decrease drug abuse in the United States. Part of that mission is to significantly affect the availability of narcotics and dangerous drugs by immobilizing or eliminating major drug trafficking operations. Such operations are dependent upon an extensive distribution network which is both interstate and international in nature. The Bureau defines each network as a system and has identified well over 200 component systems. After extensive review of information obtained from the field, 58 of these systems were found to be interrelated into nine major systems. These nine major systems, which cover the entire spectrum of narcotics and dangerous drugs and involve well over a thousand identified individuals, were selected as primary targets.

Three of the nine systems are comprised of organized criminal groups in this country operating with related groups in Canada and Italy. Close ties also exist between the Italian ethnic groups and criminal groups in France providing a capability of delivering multikilogram quantities of heroin to the United States. One of the most important systems involves an international heroin organization which is global in nature and, according to current intelligence, is responsible for more heroin being introduced into the United States than by any other single organization. Another of the major systems relates to a distribution network controlling large amounts of drugs entering the United States via Mexico. It is estimated that these nine major systems account for approximately 80 percent of the heroin, almost 100 percent of the cocaine, tons of marihuana, and millions of dosage units of dangerous drugs being used yearly in the United States.

As our intelligence gathering systems are improved, we will be better able to target our enforcement efforts against those systems whose immobilization will have the greatest effect on constricting drug traffic in the United States. Even with this new emphasis, it is recognized that the Bureau must work within certain definable limits. The state and local communities have an important role in the control of drug abuse. It has been the policy of the Bureau, possessing limited resources in terms of manpower, to focus its enforcement activities upon the major violators of the law, those who traffic in drugs on a regional, nationwide, or international basis. This policy has proven effective, as was made evident by the recent Operation Eagle conducted by the Bureau of Narcotics and Dangerous Drugs on 20 and 21 June 1970, which netted approximately 140 defendants and cut the

[26] The President's Advisory Commission on Narcotics and Drug Abuse, Final Report, 1 November 1963, p. 8.

[27] Reorganization Plan No. 1 of 1968 Weekly Compilation of Presidential Documents, week ending 9 February 1963, p. 2.

cocaine traffic to the United States by about 80 percent for a short time. The policy has left to the state and local enforcement agencies jurisdiction over the apprehension of local traffickers, the middlemen of the underground drug system, and the users of such drugs.

The Future of Drug Control

Looking towards the future, the Federal government will continue to accelerate its role in the area of drug abuse control and prevention. Congress, after careful consideration has enacted into law an Administration sponsored act entitled Comprehensive Drug Abuse Prevention and Control Act of 1970 (also known as the Controlled Substances Act). It supersedes all existing narcotics and dangerous drugs laws and, for the first time, focuses in one statute the totality of the Federal law enforcement effort relating to dangerous drugs. In addition, the National Conference of Commissioners on Uniform State Laws, on 6 August 1970, adopted the Uniform Controlled Substances Act sponsored by the Department of Justice by which the states can update and revise their narcotics, marihuana, and dangerous drugs laws to complement the new Federal act. The Uniform State Act will form an interlocking federal-state trellis of drug law enforcement and regulatory control. On an international level, the Federal government is attempting to persuade the governments of foreign countries to place tighter controls on the drug systems within their respective countries, since most of the narcotics and marihuana are produced abroad and illegally imported into the United States.

The Controlled Substances Act (P.L. 91-513) simplifies Federal law by codifying, in one act, all of the laws which are presently spread intermittently throughout the United States under various titles and sections. However, the act is not simply a compilation of existing law with a new title; rather, it is a meaningful change in the law, taking a realistic, and in some instances innovative, approach to the problem commensurate with the changing conditions and attitudes in our society.

The act establishes criteria for the classification of narcotics, marihuana, and dangerous drugs into five schedules. A drug may be placed into any one of these different schedules depending on its accepted medical use or lack thereof, its potential for abuse, and its liability for causing physical or psychological dependence. The schedules are significant in that greater regulatory controls are imposed on certain schedules and criminal sanctions provided in the act are related in part to the placement of substances within the different schedules. The new act authorizes the Attorney General to administratively add or delete a substance from a schedule or to transfer a substance between the schedules. This provision streamlines the procedure for placing a substance under control, a necessary requirement when so many new, abusable drugs are being developed and produced within a short period of time. It takes into consideration the fact that in the past, the procedure for placing a drug under control was often time consuming and, in certain instances, required years of administrative and court litigation to achieve control. The primary intent of the new law is to place certain dangerous substances under control before their abuse develops into a widespread problem.

The new act regulates the manufacture, distribution, and dispensing of controlled substances to a much greater degree than had been accomplished under the Drug Abuse Control Amendments. Federal authority for enforcing the law is now based on the right of Congress under the Constitution to regulate interstate commerce. Reliance upon the Congress' taxing authority as a constitutional basis for drug regulation has been dropped, primarily due to the adverse attitude of the United States Supreme Court in recent cases.[28]

[28] See, for example, *Leary vs. United States*, U.S., 1969; *Marchetti vs. United States*, 390 U.S. 39, 1968; *Grosso vs. United States*, 390 U.S. 62, 1968; *Haynes vs. United States*, 390 U.S. 85, 1968.

The act requires registration of all drug handlers in the legitimate industry and creates a closed system of drug distribution. In order to prevent overproduction and subsequent diversion, the Attorney General may place quotas on the manufacture of all controlled substances in the first two schedules, such as heroin, LSD, and morphine. The act creates a record keeping and inventory requirement in which records are to be compiled every two years and made available to Federal inspectors, thus filling a void in Federal law created by the expiration of inventory requirements under the provisions of DACA.

The offenses and penalties section of the act is perhaps the most revolutionized area of dangerous drugs and narcotics laws. Sale or facilitation of sale is no longer the criterion. Actual, attempted, or constructive transfer of a controlled drug or possession with intent to so transfer now constitutes the criminal act.

The act contains an interesting and, perhaps, unique extraterritorial provision that applies Federal drug laws to certain specified acts committed outside of the territorial boundaries of the United States. Individuals who manufacture or distribute certain controlled substances anywhere in the world knowing or with the intention that they will be illegally imported into the United States may be subject to penalties of prison sentences up to 15 years and fines up to $25,000. In addition, these individuals may be arrested at any point of entry into the United States or extradicted from those foreign countries with whom we have appropriate treaties.

Normally, under the *territorial principle* of international law the jurisdiction of a country does not extend to criminal acts which occur outside its borders. However, this concept has been expanded to include the principle of *protective jurisdiction.* This principle was recognized by the United States Supreme Court in *Strassenheim vs. Daily*,[29] wherein the Court stated on page 285,

> Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its powers.

The idea of extending criminal jurisdiction beyond a country's borders for protection of its security has also been espoused by the Supreme Court in dictum in *American Banana Fruit Co. vs. United Fruit Co.* and *United States vs. Bowman.*[30] More recently the Second and Ninth Circuit Courts of Appeals reasserted the protective principle in *Rocha vs. United States* and *United States vs. Pizzarusso.*[31] This principle is also presently applicable in Great Britain, as shown by the case of *Joyce vs. Director of Public Prosecution.*[32] However, these and numerous other international law cases all require that, if a country intends that a particular statute have extraterritoriality effect under the *security principle*, then it must be clearly set forth that intention in the legislation, as was done in section 1009 of the Controlled Substances Act.

Another, perhaps, stronger argument favoring this extraterritoriality provision is the objective principle of territorial jurisdiction. This well established principle recognizes that a person who puts into motion a force outside a country which will take effect therein is answerable at the place where the evil is done. A number of court decisions support this view.[33]

[29] *Strassenheim vs. Daily*, 221 U.S. 280, 1911.

[30] *American Banana Fruit Co. vs. United Fruit Co.*, 213 U.S. 347, 356, 1909; *United States vs. Bowman*, 260 U.S. 94, 1922.

[31] *Rocha vs. United States*, 288 F 2d 545 (9th Cir.), 1961; *United States vs. Pizzarusso*, 388 F 2d 8 (2d Cir.), 1968.

[32] *Joyce vs. Director of Public Prosecutions*, A.C. 347 (House of Lords), 1946.

[33] For example, *Ford vs. United States*, 273 U.S. 593, 1927; *Rocha vs. United States*, 288 F. 2d 545 (9th Cir.), 1961; *Rivard vs. United States*, 375 F 2d 882 (5th Cir.), 1967; *Charron vs. United States*, 412 F. 2d 657 (9th Cir.), 1969; See "Jurisdiction With Respect to Crime," *American Journal of International Law*, Supplement 29, 1935, pp. 487–494.

Enforcement and Penalties

The penalties for violation of the provisions of the Act are more realistic and equitable than under the previous law. The major trafficker who distributes, manufactures, or imports schedule I or II narcotic drugs may be sentenced for up to 15 years in prison, a fine of up to $25,000, or both. For second or subsequent offenses, that person may be sentenced to 30 years or fined up to $50,000 or both. In addition, a special parole term of at least 3 years is provided for a first offense and at least 6 years for a second or subsequent offense. This special parole term is in addition to the sentence and is in no way a substitute for regular parole. It was felt that this additional sentencing component would allow for better supervision of drug traffickers to ensure their separation from their past activities.

Although the prison sentence provides a strong deterrent to violation, it is less severe than the old law, which required minimum mandatory sentences. The most notable reduction in penalties is for the crime of simple possession of controlled substances, which has now been relegated to the status of a misdemeanor for the first offense. Preexisting laws provided for an assortment of penalties for crimes ranging from misdemeanors to felonies. Under the Harrison Narcotic Act and the Marihuana Tax Act, any possession offense involving narcotics or marihuana was punishable by imprisonment for not less than 2 years nor more than 10 years. Second offenders were subject to a term of imprisonment of not less than 5 nor more than 20 years, with suspended sentences and probationary terms not being permitted. Dangerous drug possession offenses were punishable under the Drug Abuse Control Amendments of 1965 by imprisonment for up to 1 year if it was the offender's first or second offense. Third and subsequent possession offenses were punishable by imprisonment for up to 3 years.

Under the new law, judges will no longer be faced with the dilemma of either sentencing college students or other young drug experimenters to a mandatory prison sentence or allowing such individuals to escape the sanctions of the law altogether by giving probation before sentence. When any person is convicted or pleads guilty to simple possession, and that person has not been previously convicted of a Federal or state drug offense, the court may place that person on probation. If the defendent is a minor, upon expiration of a satisfactory probation term he may apply to the court to expunge from its official record all indication of his arrest, trial, and conviction, thus relieving him of the stigma attached to a criminal record. Similarly, the new law also treates those who distribute small amounts of marihuana for little or no profit as misdemeanants.

In keeping with recommendations by the American Bar Association's Advisory Committee on Sentencing and Review, the penalties for the more serious types of drug offenses have been segregated from the general distribution and possession penalty provisions and set off in separate sections.[34] The underlying rationale here is to set general penalty ceilings that will apply to the less harmful drug offender and provide more severe penalties, in separate provisions, for the organized professional drug trafficker, who is really the type of criminal one is referring to when speaking in terms of minimum mandatory sentences.

The first special penalty provision makes it a substantive offense to engage in drug trafficking as part of a continuing criminal enterprise. The term "continuing criminal enterprise" is defined to mean the commission of a continuing series of felony violations under the act by a defendant who was acting in concert with five or more persons and occupying a position of management and who derived substantial amounts of income or

[34] American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Sentencing Alternatives and Procedures, tentative draft, 1967, pp. 83, 160.

resources from the illicit activities. A first offense conviction under this provision will subject a defendant to a prison term of 10 years to life, a fine not exceeding $100,000, and forfeiture of all profits, interests, or property derived from the illicit activities. Second offenses under this provision are punishable by imprisonment for a term of 20 years to life, a fine not exceeding $200,000, and a forfeiture identical to that for the first offense. In no case may a sentence under this section be suspended or probation granted, and the parole provisions of section 4202 of Title 18 of the United States Code are inapplicable.

Another special penalty provision is a postconviction sentencing procedure for dangerous special drug offenders. Under this provision, if a judge, in a postconviction hearing, finds that a defendant has previously been convicted in either Federal or state court of two or more felony offenses on separate occasions for dealing in controlled substances, or that the offense for which the defendant was convicted was committed as part of a pattern of dealing in controlled substances from which he derived a substantial amount of his income and in which he manifested a special skill or expertise, or that the offense for which the defendant was convicted was committed in furtherance of a conspiracy with three or more persons among whom the defendant occupied a management position, the judge may sentence the defendant to a term of imprisonment of up to 25 years. However, any sentence imposed under this section must be proportionate in severity to the maximum term otherwise authorized for the offense.

The new act has effectively expanded the enforcement powers of the Bureau of Narcotics and Dangerous Drugs (within the Constitutional limits laid down by the Supreme Court). The act now authorizes agents of the Bureau of Narcotics and Dangerous Drugs to make arrests for *any offense* committed against the United States, with the intention that their primary duties involve arrests for violations of the drug act. A United States judge or magistrate may issue a search warrant to be served at night if the judge or magistrate finds probable cause for issuance of such warrant. Since much illegal drug activity occurs at night, such search warrants will enable the Bureau of Narcotics and Dangerous Drusg to enforce the law more effectively. Moreover, under certain conditions, a special agent of the Bureau of Narcotics and Dangerous Drugs is permitted, in execution of a search warrant, to make an unannounced entry by breaking open a door or window without notice of his authority or purpose.[35] This provision is especially important in light of the nature of controlled drugs which allows them to be disposed of quickly down a drain or toilet. To prevent the abuse of this provision, special safeguards have been designed to comply with the requirements of the Fourth Amendment. A no-knock warrant may be issued only upon showing definite probable cause which satisfies the judge that (1) the property sought in the case is likely to be easily or quickly destroyed or (2) the special agents executing the warrant may be endangered under normal search and arrest conditions. In addition, any officer acting under authority of the warrant is required to announce his authority and purpose as soon as possible after entry to the premises.

Bureau of Narcotics and Dangerous Drugs agents are also authorized to make compliance investigations of drug manufacturers, distributors, and practitioners. However, in the absence of informed consent by the person to be inspected, the agents may enter only after obtaining an administrative inspection warrant which sets out their authority. These provisions conform to the decisions of the United States Supreme Court in *Camara vs. Municipal Court of the City and County of San Francisco*,[36] *See vs. City of Seattle*,[37] and

[35] Sonnenreich, M. R. and Ebner, S., "No-Knock and Nonsense, An Alleged Constitutional Problem," *St. Johns Law Review*, Vol. 44, 1970, p. 626.

[36] 387 U.S. 523, 1967.

[37] 387 U.S. 541, 1967.

Colonnade Catering Corp. vs. United States[38] requiring warrants in administrative inspections.[39]

International Cooperation

The enactment of the Controlled Substances Act is not the only significant means for the control of the drug problem. The determinative answer to the drug problem in the law enforcement area is to limit the drugs at their source. This can be achieved by eliciting close international cooperation. Cooperation by foreign countries, primarily Turkey, could be helpful in limiting the diversion of opium from legitimate channels. Similar cooperation from the governments of France and Mexico would do much to limit the production and exportation of marihuana and the hallucinogens. The Federal government has long been active in seeking cooperation from these and other countries through its membership in the United Nations World Health Organization and as a signatory to numerous international drug control treaties.

Perhaps, with strict enforcement and control on the national level and cooperation on the international level the drug problem will be limited. Only by analysing and understanding our mistakes in the past, by weighing the various theoretical ideas for drug control, and by trying out these ideas can we hope to eliminate the problem in the future. The answer to this problem is locked somewhere in the future. Perhaps with the keys of planned foresight and critical hindsight, the door to the elimination of this problem will be opened.

Summary

The problem of drug abuse is unquestionaly one of the most serious facing modern society today. The Federal government, through its reorganization and modernization of the drug law enforcement agency, is making every effort to find a solution.

The progressive Controlled Substances Act recently signed into law has provided both new tools for law enforcement and a new philosophy of drug control. The Federal government will now exert every effort to control the legitimate distribution of controlled substances to ensure that every legitimate medical need is met but that there is no diversion into illegal channels. Strong action will be taken to destroy organized criminal systems and break up their illegal drug trafficking patterns. In addition, continuing efforts will be made to elicit greater international and bilateral cooperation in combating the illegal international trafficking of dangerous drugs.

Hopefully, with every effort combined, the problem of drug abuse can be faced realistically and solved as expeditiously as possible.

[38] 397 U.S. 92, 1970.

[39] Sonnenreich, M. R. and Pinco, R. G., "The Inspector Knocks: Administrative Inspection Warrants Under an Expanded Fourth Amendment," *Southwestern Law Journal*, Vol. 24, 1970, p. 418.

Bureau of Narcotics and Dangerous Drugs
U.S. Department of Justice
Washington, D.C. 20537