

1962

Book Reviews

Follow this and additional works at: <http://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Book Reviews, 27 MO. L. REV. (1962)

Available at: <http://scholarship.law.missouri.edu/mlr/vol27/iss1/17>

This Book Review is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized administrator of University of Missouri School of Law Scholarship Repository.

Book Reviews

DRUG ADDICTION: CRIME OR DISEASE? By the Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs. Bloomington, Indiana: Indiana University Press, 1961. Pp. xiv, 173. \$5.00.

In the past fifteen years an increase in the number of American narcotic addicts has created a new social awareness and interest in the problems of drug addiction. Congress and state legislatures have indicated concern by continually increasing the penalties for narcotics offenses. But in addition the narcotics problem has stimulated much scholarly work directed at understanding rather than punishment, one manifestation of which was the formation in 1955 of a joint committee composed of members of the American Bar Association and the American Medical Association to study the treatment of drug addiction under American law. Aided by a grant from the Russell Sage Foundation this committee surveyed the existing literature and formulated the basic areas in which further research was needed. This was presented to the two Associations in 1958 by an interim report. It is this report, with two studies by Judge Morris Ploscowe and Rufus King attached as appendices, and a Final Report which comprise the contents of this book.

The basic aim of the joint committee was to formulate some common principles on which the ABA and the AMA could unite in seeking to achieve improvements over present methods of treating addicts and controlling the illicit drug traffic.¹

The overall tenor of the committee's work is that drug addiction is a medical problem first and foremost and should only indirectly be a subject of the criminal law. This is certainly not a startling innovation. Drug addiction was treated in this same manner in the United States prior to 1914 when the Harrison Act was passed,² and it is still the approach used by most countries of Western Europe.³ Treatment of addicts as patients and not criminals has been suggested by doctors, lawyers, correctional officers, and in fact, almost everyone but the Federal Bureau of Narcotics, Congress and state legislatures.⁴ This book successfully demonstrates

1. Pp. 13-14.

2. 38 Stat. 785 (1914), in 26 U.S.C.A. § 4701 ff (1954). The case law that has developed under the Harrison Act is discussed at pp. 68-83 and King, *The Narcotics Bureau and the Harrison Act: Jailing the Healers and the Sick*, 62 YALE L.J. 736 (1953).

3. See text, *infra* at note 11.

4. See, e.g., Howe, *An Alternative Solution to the Narcotics Problem*, 22 LAW & CONTEMP. PROB. 132 (1957); Bailey, *The Supervision of Paroled Drug Addicts*, 5 NAT. PROB. PAROLE ASSN. J. 53, 56 (1959); Cantor, *Criminal Law and the Narcotics Problem*, 51 J. CRIM. L., C. & P.S. 512, 520-26 (1961).

that medically and pragmatically the punitive approach to addiction is not tenable. The pathology of addiction negates the assumption that heavy penalties for narcotics crimes have a deterrent effect. Furthermore, in practice the punitive approach has simply not worked.

The Ploscowe study,⁵ which is published as Appendix A to the interim report, is a thorough analysis of the medical and legal facets of drug addiction. Starting with the proposition that the "failure to understand the nature of the phenomena of drug addiction and the practical problems in controlling it are responsible for the fact that drug addiction has such serious consequences in this country,"⁶ Judge Ploscowe presents an easy to understand analysis of the pathology of addiction, which is a prerequisite to any intelligent discussion of the narcotics problem. Based on analysis of the physical effects of opiates, Ploscowe observes that once a certain stage of tolerance is reached the addict cannot be persuaded to give up the "stuff" in fear of legal punishment. His physical punishment during withdrawal is too great.⁷ Moreover, Ploscowe demonstrates that drugs are not inconsistent with a physically healthy body and a reasonable degree of normality. And contrary to the journalistic conception of the "drug fiend," the addict is likely to be contented and tranquil. Since the opiates are depressants and not stimulants, crimes of violence and sex are not necessary after-effects of these drugs.⁸

The high incidence of property crimes committed by addicts to obtain money for purchasing their drugs at the black market's inflated prices⁹ has led many to suggest government operated clinics which would dispense drugs to addicts free or at cost. They argue that by taking the profit out of the illicit market it will be stopped and simultaneously the property crimes committed by addicts will be reduced.¹⁰ Although favoring this approach over the present institutional treatment of addicts, Judge Ploscowe raises certain problems inherent in the clinic idea which its advocates have often overlooked. One of these is the problem of an individual's degree of tolerance increasing and a method to handle his additional need within the clinical framework. Another is the problem of self-administration as opposed to clinical administration of the drug. Ploscowe shows that whereas ambulatory treatment is often criticized for fear the addict will peddle the "junk" and create new addicts, clinical administration of the drug means that the addict must visit the clinic several times a day thereby reducing his chance of keeping a job. Finally

5. P. 15.

6. Pp. 22-23.

7. Pp. 36-45. This book deals only with opium and its derivatives, for it is only with these drugs that physical dependence occurs. Cocaine and Marihuana, although habit forming, do not lead to the withdrawal syndrome on abstinence, and are not considered in any detail in this book.

8. Pp. 45-51.

9. The addict may spend anywhere between \$5 and \$250 per day for illicit narcotics depending on his tolerance level. Comment, 62 *YALE L.J.* 751, 758 (1953).

10. Narcotic Addiction, Citizens' Advisory Committee to the Attorney General on Crime Prevention, *Report on Narcotic Addiction* 40 (Cal. 1954); Comment, 62 *YALE L.J.* 751, 787 (1953); and authorities cited in note 4 *supra*.

he points out that clinical dispensing of drugs will not alone get at the serious personality disorders that afflict many addicts.

In the other appendix to the interim report, Rufus King presents a brief discussion of the approach of various countries in Western Europe to drug addiction.¹¹ While the information on Great Britain can readily be found elsewhere in American writings, the materials on countries such as Sweden, Denmark and Italy cannot.¹² The lesson of this comparative study is that the United States stands alone in treating addiction as a criminal offense. Moreover, these European countries which treat addiction through doctors rather than jailers boast of little addiction, a small or non-existent illicit traffic, and a low crime rate among addicts. King's study thus reinforces Judge Ploscowe's contention that our punitive approach does not work and a more effective replacement exists.

Based on the findings of these two studies, the joint committee recommended to each of its two parent organizations that further research be done on each of the following: the effectiveness and problems of the clinical approach based on an experimental outpatient clinic; relapse and the causative factors of addiction; the effectiveness of educational programs which would publicly disseminate accurate information about addiction; and the premises and administration of our present laws on addiction and the control of the illicit drug traffic.

So mild and clothed with caution are the reports and their suggested areas of research that it is amazing to find these proposals censured at every turn by the Federal Narcotics Bureau. In fact one of the reasons for publishing this work was to make available the studies which were attacked in a vituperative manner by the Narcotics Bureau.¹³ The view adopted by the joint committee has been described by Commissioner Anslinger of the Narcotics Bureau as "foreign to the traditional concept of unrelenting effort to eliminate a social vice . . . catering to and perpetuating drug addiction . . . [and] a long step backward in civilization."¹⁴ The Bureau opposes educational programs for fear they "would arouse undue curiosity on the part of impressionable persons of tender years,"¹⁵ and as well stands firmly against any dispensing of drugs through clinics even for limited experiment.¹⁶ The Bureau still persists in calling for heavier penalties as the answer to addiction.¹⁷

To conclude, this book is an excellent summary of the medical, social and legal aspects of the American treatment of narcotics addiction. It deserves to be read

11. P. 121.

12. Schur, *British Narcotics Policies*, 51 J. CRIM. L., C. & P.S. 619 (1961); Lindsmith, *The British System of Narcotics Control*, 22 LAW & CONTEMP. PROB. 138 (1957).

13. P. x.

14. Anslinger, *The Treatment of Drug Addiction*, 14 FOOD DRUG COSM. L.J. 240, 241-43 (1953).

15. Tennyson, *Federal Narcotic-Law-Enforcement Policy in Relation to Drug Addiction*, 14 FOOD DRUG COSM. L.J. 639, 645 (1959). (Alfred Tennyson is the Chief Counsel, U.S. Bureau of Narcotics).

16. *Ibid.*

17. *Id.* at 647; Anslinger, *supra* note 14; Testimony of Commissioner Anslinger in *Report on Narcotic Addiction*, *op. cit.* *supra* note 10, at 15-16.

by every member of the Bar for it will be through the Bar, in cooperation with the medical profession, that any changes in the present law will come about. Addiction cannot be solved by labeling it a vice and making it illegal. The first step in any rational solution lies in knowing the facts and the problems. This book is recommended for a trenchant and acute discussion of both.

D. L. A. KERSON*

JUSTICE AND THE LAW: AN ANTHOLOGY OF LEGAL POETRY AND VERSE. Compiled by Percival E. Jackson. Charlottesville, Virginia: The Michie Company, 1960. Pp. xli, 620. \$7.50.

This is a most interesting anthology of American verse more or less related to the ideology of Justice and the Law. As it does not include British poetry such outstanding pieces as Oscar Wilde's "The Ballad of Reading Gaol" are missing. Despite this limitation in scope the book is bound to be attractive, especially to lawyers browsing through it with a view to picking out items that are particularly agreeable to their individual tastes. Such browsing is facilitated by separate indexes for titles, first lines and authors. It is regrettable that but for a few references to the judicial profession of certain authors there are no biographical indications, for the book includes pieces from anonymous sources, products of lawyers, and works of professional writers and other nonlawyers. Also, the selection includes verse of well known authors as well as of less known ones, and covers various periods of the literature of this country. A more serious criticism that could be raised is that in this anthology "less would have been more," since it includes not only items that are outstanding by the thought expressed or the manner of expression, but also many which are shallow in thought or flat in poetical form or that have only a very loose relation to the world of law. However, enough items that are excellent in every respect are included to render the book a collection of treasures of American legal poetry.

In view of the reasonable limits of this review, it is not possible to summarize here the abundant contents of the anthology or even the most precious parts of it. Only a cursory sampling will be presented. To begin with, since this is to be published in a law review, attention is called to a poem by Karl N. Llewellyn, entitled "Song of the Law Review." The piece humorously describes the responsibility and the corresponding plight of a law review editor. Another humorous item that deserves attention is a poem by Francis Scott Key, a lawyer who is best known, of course, as the author of the National Anthem. In "Petition for Habeas Corpus" he fictionalizes, in a most entertaining way, such a petition submitted by an old mare who is in a miserable condition because she has been turned out into the street by her master. She prays that the Honorable Judge send her to a stable and her master to jail. Also belonging to the humorous line

* Member of the California Bar.

of legal poetry is Otto M. Sternfeld's "Why Corporations Do Not Go to Hades," ending as follows:

"In order not to crowd this hole,
 'Twas thought most beneficial
 To make them bodies without soul,
 As beings artificial."

Less fictional, but an excellent sample of humor in legal poetry, is the same Sternfeld's analysis of "The Female Advocate." Rhymes of fun about the lawyer's use of that abominable phrase, "and/or" are presented by A. U. Zinke's "The Demise of 'And/Or'" and also by other included items, as for instance "A Lawyer Writes of Summer" by Wilfred J. Funk. However the emphasis of the last-mentioned poem lies in parodying another phrase frequently appearing in legal texts, namely "To-wit." Modern pleading practice is the butt of Judge Bailey Aldrich's gentle scorn in his "Rules of Uncivil Procedure," wherein he nostalgically looks back to the ancient pleading rules.

Among the items penned by luminaries of American literature is Carl Sandburg's "The Lawyers Know Too Much," a famous poem that ends with the frequently quoted words, "tell me why a hearse horse snickers hauling a lawyer's bones." Other Sandburg pieces are included, as well as a number authored by Walt Whitman, the American bard of humanitarianism and democracy. Representative of the trend running through most of Whitman's poetry is "You Felons on Trial in Courts," ending with these lines:

I walk with delinquents with passionate love,
 I feel I am of them—I belong to those convicts and prostitutes myself,
 And henceforth I will not deny them—for how can I deny myself?

Among the extracts from Stephen Vincent Benet's famous Civil War poem, "John Brown's Body," is an elegiacal one that contains these thoughtful lines:

The law's our yardstick, and it measures well
 Or well enough when there are yards to measure.
 Measure a wave with it, measure a fire,
 Cut sorrow up in inches, weigh content.
 You can weigh John Brown's body well enough,
 But how and in what balance weigh John Brown?

Also included are some most remarkable pieces authored by John Greenleaf Whittier, the Quaker poet and reformer. One of them is an extract from Whittier's "The Human Sacrifice" wherein he wonders about the propriety of the rule of law requiring the presence of a clergyman at the execution of capital punishment. Says he:

The hangman's ghostly ally stood,
 Blessing with solemn text and word
 The gallows-drop and strangling cord;
 Lending the sacred Gospel's awe
 And sanction to the crime of Law.

Not colored by such a tragical mood, rather in a light vein, is an extract from Whittier's "Maud Muller," delightfully describing the love-romance of a judge.

A poem entitled "The Night Court" is in the book itself ascribed to Ruth Comfort Mitchell, but in the editor's introduction to Margaret Mitchell, and thus apparently authored by the renowned creator of the best-selling novel, *Gone With the Wind*. Therein she writes:

That facile thing they've fashioned to their mode:
Smug sophistries that smother and befool,
That numb and stupefy; that clumsy thing
That measures mountains with a three foot rule
And plumbs the ocean with a pudding string—
The little, brittle code. . . .

Among the items of legal poetry that are neither tragic nor jocular, just serious thought, are several authored by Joseph Story, one time Justice of the United States Supreme Court and by his legal writings one of the brilliant stars on the firmament of American jurisprudence. His "Advice to a Lawyer" and "Advice to a Young Lawyer" are excellent suggestions, in poetical form, how a lawyer should and how he should not plead. The latter ends with the following lines:

Short be your speech, your matter strong and clear,
Earnest your manner, warm and rich your style,
Severe in taste, yet full of grace the while;
So may you reach the loftiest heights of fame,
And leave, when life is past, a deathless name.

A grand view of human life, taken by another luminary of American jurisprudence, a law reformer whose draft codes were enacted as legislation by several states, is the poem "Lines Written on My Eighty-Seventh Birthday" by David Dudley Field.

Returning to the items from the pen of Judge Joseph Story we find one entitled "With Just Enough," that is satirical of legalism and culminates in this bitter observation:

Who would not curse the hour when first he saw
Just such a man, called "learned in the law."

And satirical of the administration of criminal law toward an accused devoid of counsel is Edgar A. Guest's poem, entitled "Prisoner at the Bar," which describes the most ideal treatment given by a fictional judge to a fictional accused, but then goes on to say:

If these lines you've read
You may think them odd,
But the man was dead
And the judge was God.

There are, on the other hand, several items that are full of poetical praise for lawyers, as for instance Alexis von Adelung's "Our Lawyer," and Mr. Percival E. Jackson's "Lawyer's Lament," a poem which we like best among the several items penned by the editor of the book. To the same vein of legal poetry belongs Edgar Lee Masters' "John Keating," a lawyer of whom he writes:

But he left memory with us for a man
 Who walked this earth, as people can
 Who labor and who live without regrets—
 We think John Keating had the right to die.

Nostalgically looking back to and admiring the lawyers of bygone times, but implying or even expressing that their high level of practicing law no longer exists, are such items as William V. Lawrence's "The Old Barrister" and A. A. Bablitz's "The Old-Fashioned Lawyer."

We miss in this book the well known jingle about the *Lizzie Borden* case, and other readers may find items which, in their belief, should have been included. But, of course, in any anthology the selection of the material is a matter of discretion for the editor.

Editorially responsible for this fine collection of poetical fictions related to justice and the law is a member of the New York Bar who is the author of several legal publications as well as of books of poetry.

In his introduction, Mr. Jackson ingeniously observes that the lawyer and the poet "travel the highway of thought and advocacy, though their ways diverge at the crossroads when the lawyer takes the path of logic and utility and the poet treads the byway of emotion and beauty." Obviously law and poetry are different approaches in dealing with the phenomena of this world, law being concerned with the preservation of order in the human society, poetry indulging in the cult of artful language and appealing to emotional feeling rather than cool reasoning. It is however illustrated by the contents of this anthology that nevertheless lawyers may produce fine poems and poets may express outstanding thoughts about legal matters.

MAXIMILIAN KOESSLER*

*Member of the California and New York Bars.