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The Addict and the Law, by Alfred R. Lindesmith

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BOOK REVIEWS


The Addict and the Law is but a repetition of the sociologist’s point of view that the present policies of the United States government result not only in failure but also in inhumane treatment of addicts, that there is only one program that will be both successful and humane at the same time: a policy which not only permits but encourages doctors to furnish narcotics to an addict for as long as the addict wants them.

It may be taken for granted that when a person writes a book he has one or more purposes in mind. The author’s primary purpose or motive in writing this book is difficult to ascertain. He admits that he is biased, and I suppose that privilege may be accorded to everyone at some time or another. But is Professor Lindesmith trying to obtain support for his theory that physicians should be free to furnish narcotics to addicts, or is he venting his spleen against an arch enemy, H. J. Anslinger, former Commissioner of the Federal Bureau of Narcotics?

In the opening chapters he rehashes the controversy regarding the Supreme Court’s Linder decision and a few other decisions involving doctors which were handed down almost forty years ago. These cases all developed and were tried in the courts nearly ten years before the establishment of the Bureau of Narcotics and the administration of that Bureau by Commissioner Anslinger. The administrative interpretation and the issuance of regulations with respect to the Linder decision are responsibilities of the Bureau.

There is a dichotomy of opinion regarding this case: one view is that the Linder decision recognizes that drug addiction is a disease and that doctors may furnish narcotics to an addict for as long as the addict says he needs them. This is the view of Professor Lindesmith. The other view is that the Linder case holds only that drug addition is a disease and that in the good faith effort to cure the disease, a physician may furnish narcotics to an addict. This is the position taken by the Bureau of Narcotics and the American Medical Association.

The legal experts in the Bureau of Narcotics are not the only ones who maintain that the Bureau’s regulation is not contrary to the Linder decision. Judge William F. Smith of the United States Court of Appeals for the Third Circuit, in a document submitted in 1964 to the Senate
Permanent Sub-committee on Investigations, in disagreeing with a statement issued by the Council of Judges of the National Council on Crime and Delinquency (of which he is a member), stated: “The Council maintains that under the law, except for the prohibition of the regulation, a registered physician may dispense or prescribe narcotics even though his sole purpose is to satisfy an addict's habit. I must respectfully disagree.” The Judge goes on: “The regulation, as I interpret it, is in accord with the existing statutory provision, 26 U.S.C. § 4705(c)(1)(2), and the decisions of the Courts.”

In criticizing the Bureau of Narcotics for what Professor Lindesmith calls the Bureau's interpretation of the Linder case, he alleges that it makes possible the determination of legitimate handling of addicts within the police domain and justifies, however shaky the reasoning may seem, the continued prosecution of reputable physicians. This reviewer spent twenty-two years on the legal staff of the Bureau, the last four years prior to retirement as its Chief Counsel, and during all of that time no “reputable” physician was prosecuted for his good faith treatment of a drug addict. It is completely false for Lindesmith to say that the Bureau “continues to prosecute reputable physicians.”

In his treatment of the chapter entitled “The Strategy of Enforcement,” the author admits the difficulties experienced by law enforcement officers in procuring admissible evidence against top-rung violators. A small portion of this chapter is factual and documented. In the remainder, however, there are slaps at police officers and an assertion of some alleged strategy that is not documented and, if true, would be an exception and should be so qualified. Much of this part of the chapter is purely speculative. It is difficult to understand the author’s motive in setting forth a hypothetical instance of law enforcement techniques which purports to show how police officers may profit personally, contrary to their sworn duty to uphold the law. If narcotic law enforcement officers are the malefactors Professor Lindesmith pictures them to be, why does he resort to a hypothetical example?

In commenting on the number of addicts in this country and the unreliability of the estimates and figures furnished by the Federal Bureau of Narcotics, Professor Lindesmith proposes that “a comprehensive view ought to allow for the following (1) illegal addicts known to the police by reason of violation of narcotic laws; (2) illegal addicts known to police through violation of other criminal laws; (3) illegal addicts not known to police; (4) addicts securing legal drugs from doctors; and (5) incarcerated users.” He suggests that the Bureau figures consider primarily only the first of these categories and possibly
some of the second. He asserts the others are almost entirely disregarded. What Professor Lindesmith fails to explain is how the Bureau could take into count illegal addicts not known to it. At this point, it should be made known that doctors are not required by law to report addicts receiving drugs from them; and most physicians refuse to give such information because of the privilege based on the doctor-patient relationship. It is not entirely clear what is meant by "incarcerated users." Does the author mean those persons who were addicts at the time of their incarceration (they are counted) or does he mean those whom he alleges are using narcotics while incarcerated? If there be any such, does he expect them to volunteer such information?

Professor Lindesmith goes into considerable detail in an effort to discredit statistics issued by the Bureau. He concludes that they are virtually worthless. He complains that the Bureau has given very little information regarding its methods of gathering statistics. It is surprising, therefore, to find the author quoting, without question, statistics from Great Britain, France, and Germany. Perhaps it isn't so surprising since the statistics from these countries can be used in support of his thesis.

The British system of dealing with the addicts is again explained, as it is understood by the author. He maintains that the same system is used in all of the European countries and that it is because of this that all of these countries have so few addicts. To the undiscerning he makes out a reasonably good case when he argues that furnishing legal drugs to addicts will reduce crime because the addict will no longer be a criminal. What he refuses to believe is that the great majority of addicts using illegal drugs are persons of anti-social behavior and possessed of criminal records prior to their use of narcotics. Surely he does not seriously believe that furnishing narcotics to an addict criminal will make him any less criminal. If he believes this, what factual basis is there to support it? FBI statistics, as recently as a year ago (Professor Lindesmith praises the FBI statistical reports), indicated that seventy-three percent of the arrested addicts had criminal records prior to their addiction.

In his discussion of the British system, Professor Lindesmith refers to the report of a study made by Drs. Larimore and Brill, a report which explodes the myth of the British system. He says it is unfortunate that the report has received so much attention. Nevertheless, he admits that the document can serve a useful purpose, for its factual content is detailed and accurate. The fault he finds is that evidently its authors allowed their preconceived biases to distort their interpretation of the facts. This, it seems to me, could well be applied to the author of this book; he has let his preconceived bias glare through the pages in such profusion that it
materially detracts from the weight he might have expected to be given his views.

The chapter dealing with "Drug Control in the Far East" is the best of the ten chapters. It has a great deal of historical information. Unfortunately, as is typical throughout the book, the author's bias creeps in when he attempts to build a case to show how the United States, after the close of World War II, forced its prohibitory policy on the Far East colonies of Great Britain, France, and the Netherlands. This results in his placing the blame on the United States—the Bureau of Narcotics in particular—for the very serious heroin addiction in Hong Kong today. He heaps praise on what he refers to as the Japanese system of gradual suppression as applied prior to the Japanese surrender, although he admits the Japanese refused to register young opium smokers. What he fails to explain is why the United States has not forced its prohibitory methods on the mother lands of these countries, or why, if the United States method is so bad and the method used in the mother lands is so good, these countries have not done anything to change the systems in their colonies, or if the colonies are not independent, why they have not changed the system.

The chapter dealing with marihuana could well have been omitted. It contributes little or nothing to the author's main theme as expressed in the title.

The final two chapters are entitled "Obstacles to Reform" and "The Pattern of Reform." Professor Lindesmith offers nothing new here. He reiterates his belief (without adequate proof) that all European countries follow a policy in handling drug addicts commensurate with the program he advocates and that the only reason it is not adopted in this country is because of the opposition of the Bureau of Narcotics. He stresses over and over that drug addition is a medical problem; but since his program does not actually have as its goal the cure of addiction he is contemptuous of the position of the American Medical Association and the National Research Council whose program does have such a goal. It is not enough to satisfy Lindesmith that the Bureau of Narcotics considers drug addiction a medical problem as well as a law enforcement problem and has given its complete approval to the 1963 AMA-NRC statement expressing the medical point of view for handling addicts. This is not satisfactory to him because the AMA considers it improper medical practice generally to maintain an addict with stable doses.

It is Professor Lindesmith's privilege and right to express his beliefs and philosophy relating to the addiction problem and he has prepared a very readable book. However, it is unfortunate that he should continue
to vilify the Federal Bureau of Narcotics, a vendetta which he has harbored for nearly thirty years.

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As General Counsel and then Chairman of the Federal Trade Commission and now as a practitioner, Earl W. Kintner has evidenced a confidence in the American businessman. Tell him the law, Mr. Kintner seems to say, and he will obey.¹ There must be sanctions to bring the few recalcitrants into compliance. The majority need only education.

More than words have marked the optimism of the vigorous Mr. Kintner. From his position as Chairman of the Federal Trade Commission he caused the agency to intensify its program for voluntary compliance. For the first time the FTC went to the businessman, not for the purpose of prosecuting but rather of educating. In language drafted for lay understanding this independent agency, charged with preventing unfair methods of competition and unfair or deceptive acts or practices in commerce, endeavored to draw from its then nearly fifty years of experience guidelines for compliance. In rapid order there came from the Commission guides ranging from those against deceptive pricing to deceptive advertising of guarantees to affirmative suggestions for meeting the sometimes complex requirements of the Robinson-Patman Act's advertising allowance provisions.²

The "revitalized"³ FTC did not rest here. It was not enough simply to have business and consumer groups copy the published guides

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¹ In this regard it is interesting to remember that which President Wilson urged and cautioned in the establishment of the Federal Trade Commission. "Businessmen," said the President, "desire the advice, the definitive guidance, and information which can be supplied by an administrative body, an interstate trade commission . . . [but] I would not wish to see it empowered to make terms with monopoly or in any sort to assume control of business as if the government made itself responsible." 51 Cong. Rec. 8840 (1914).
³ Just when this "revitalized" commission came into being is a question. Perhaps, however, the shape of things to come was evidenced while Mr. Kintner was still General Counsel of the Federal Trade Commission. See, Kintner, The Revitalized Federal Trade Commission: A Two-Year Evaluation, 30 N.Y.U. L. Rev. 1143, 1152-53 (1955).