



1962

Constitutional Law--Right of States to Punish for Narcotic Addiction

William L. Montague
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Constitutional Law Commons](#)

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Montague, William L. (1962) "Constitutional Law--Right of States to Punish for Narcotic Addiction," *Kentucky Law Journal*: Vol. 51 : Iss. 2 , Article 12.

Available at: <https://uknowledge.uky.edu/klj/vol51/iss2/12>

This Comment is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@sv.uky.edu.

Recent Cases

CONSTITUTIONAL LAW—RIGHT OF STATES TO PUNISH FOR NARCOTIC ADDICTION.—The defendant was convicted for violating a California statute which made it a misdemeanor to “use, be under the influence of, or be addicted to the use of narcotics.”¹ He was sentenced to a short prison term as provided in the statute. The trial court’s instruction stated that the jury need not believe that the defendant took narcotics within the jurisdiction, but only that he was addicted to narcotics. This was affirmed by a California appellate court. Appeal was then taken to the United States Supreme Court. *Held*: Reversed. A state law which imprisons a person merely because he is addicted to narcotics inflicts a cruel and unusual punishment in violation of the fourteenth amendment. *Robinson v. California*, 370 U.S. 660 (1962).

The Court’s decision rests upon the premise that narcotic addiction is not a crime but a sickness. In a six-to-two opinion, the majority reasoned that although a short jail term cannot be construed as cruel and unusual when considered in the abstract, it becomes so when the punishment is for being sick. The medical profession generally adheres to the view that an addict is a sick person.² The addict is dependent on narcotics both psychologically and physiologically.³ Psychological dependence is defined as “a substitution of the use of the drug for other types of adaptive behavior. [U]se of the drug becomes the answer to all of life’s problems.”⁴ Physical dependence is defined as an altered physiologic state which requires the habitual use of narcotics sufficient to prevent the onset of withdrawal sickness.⁵ Withdrawal sickness refers to the physical and mental anguish the addict suffers when he is deprived of narcotics.⁶

Once physically addicted, the addict’s life becomes centered around his compulsion for narcotics. The addict fears withdrawal above all else—probably even death.⁷ Fear of punishment will not

¹ Cal. Health & Safety Code §11721.

² deRopp, *Drugs and the Mind* 157-59 (1957).

³ Weston, *Narcotics*, U.S.A. 47-48 (1952).

⁴ Isbell and White, *Clinical Characteristics of Addiction*, 14 *Am. J. Med.* 558 (1953).

⁵ *Ibid.*

⁶ See deRopp, *op. cit. supra* note 2, at 152-54.

⁷ Cantor, *The Criminal Law and The Narcotics Problem*, 51 *J. Crim. L., C. & P.S.* 512, 523 (1961).

deter the addict from either seeking or using narcotics.⁸ Deterrence presupposes rationality, and the addict is not rational. Since addiction is considered a sickness rather than a crime and fear of punishment is of no use as a deterrent, it seems that a sound decision was reached in the principal case.

But a distinction should be made between addicts and non-addicted users. Although non-addicted users may be somewhat psychologically dependent on narcotics, they are not physiologically dependent to the point of suffering withdrawal sickness if narcotics are withheld.⁹ These non-addicted users, who may be thrill-seekers searching for a new adventure or teen-agers using narcotics to fit into a particular delinquent sub-culture,¹⁰ help support the illegal trade and make themselves susceptible to becoming addicts.¹¹ Unlike addicts, they do not experience an overwhelming compulsion to take narcotics. Since the non-addicted user is not considered to be sick by medical criteria and has the capability of thinking rationally, the law recognizes that the fear of imprisonment is a substantial deterrent to their using narcotics. In order to convict a non-addicted user, the prosecution must only prove actual use within the jurisdiction.¹²

Conceding that the addict should not be imprisoned, what then is the most effective method to handle his problem? There is a wide variance of medical opinion in the United States as to the best ways of treating the addict. Two of the most frequently advocated methods are (1) a system of legal distribution of narcotics to addicts, and (2) a system of compulsory civil commitments.¹³ The legal distribution plan is in existence in England. Under this plan clinics are established to provide the addict with narcotics sufficient to prevent withdrawal sickness. The addict is not required to stay in these clinics. The proponents of this plan point out that legal distribution curtails the illegal traffic in narcotics and reduces the need for the addict to engage in illegal activities to obtain money to buy narcotics.¹⁴ The opponents of this plan argue that it is unworkable and immoral. It is unworkable because, although the addict is kept free from discomfort by the legally administered narcotics, he still desires more to provide the sought after euphoria. It is immoral in that it merely perpetuates

⁸ A.B.A.-A.M.A. Joint Committee on Narcotic Drugs, Drug Addiction: Crime or Disease? 85 (1961).

⁹ *Id.* at 25.

¹⁰ *Narcotics*, 22 Law & Contemp. Prob. 3, 55-56 (1957).

¹¹ Cantor, *supra* note 7, at 527.

¹² *Robinson v. California*, 370 U.S. 660, 663 (1962).

¹³ Eldridge, *Narcotics and the Law* 108-15 (1962).

¹⁴ *Ibid.*

the illness from which the addict suffers. The addict will not be motivated to seek a cure as long as he is receiving narcotics.¹⁵

Some states have adopted the compulsory civil commitment plan for treating addicts.¹⁶ Under this plan the addict is actually confined to a hospital. During this period he is gradually taken off narcotics and attempts are made to rehabilitate him. This seems to be a sound solution to the problem but it is presently impracticable because of the lack of adequate facilities. The only institutions built especially to treat addicts are in Lexington, Kentucky, and Forth Worth, Texas; in addition, a small hospital is maintained in New York City for juveniles.¹⁷ One reason for this present lack of facilities is that the public is unaware of the nature and magnitude of the addiction problem. As long as this unawareness exists, compulsory civil commitment will remain impracticable.

The status of addiction is a sickness and not a crime. Providing facilities to cure this sickness is a responsibility of the public. The state and federal governments should take immediate steps to educate the public about this problem so that a progressive plan of treatment and rehabilitation can be undertaken.

William L. Montague

TORTS—STANDARD OF CARE FOR MOTORISTS AT RAILROAD CROSSINGS—A CASE FOR COMPARATIVE NEGLIGENCE—The decedent approached defendant's railroad crossing on a two-lane, paved, county road on a clear afternoon. Two railroad signs and an official county "stop" sign were posted to warn motorists of the crossing. From the "stop" sign, which was ten feet from the nearer of the two tracks, a motorist could see only 140 feet down the track to the right. Because of weeds growing on the defendant's right-of-way vision beyond 140 feet was impossible until the front wheels of the decedent's automobile were almost on the first track. As he was crossing the tracks, his automobile was struck from the right by the defendant's train which was going 45 miles per hour. There were no eye-witnesses to the actual impact. The lower court entered judgment for the decedent on the jury's verdict of \$162,121.50. *Held*: Reversed with directions to enter a judgment for defendant. Although the defendant was negligent in permitting the weeds to obscure vision, the court found that the decedent could

¹⁵ *Ibid.*

¹⁶ See, e.g., Cal. Welfare & Institutions Code §§5350-61.

¹⁷ Eldridge, *op. cit. supra* note 13, at 113.