der its control, Frick v. Pennsylvania, supra, and that his rights as cestui que trust in a trust of property within the state, Safe Deposit & Trust Co. v. Virginia, supra, may be taxed there and not elsewhere, makes no such harmonious addition to a logical pattern of state taxing power as would warrant overturning an established system of taxation. The capital objection to it is that the due process clause is made the basis for withholding from a state the power to tax interests subject to its control and benefited by its laws; such control and benefit are together the ultimate and indubitable justification of all taxation.

I think the judgment should be affirmed.

Mr. Justice HOLMES and Mr. Justice BRANDEIS concur in this opinion.

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284 U. S. 299

BLOCKBURGER v. UNITED STATES.

No. 374.

Argued and Submitted Nov. 24, 1931.
Decided Jan. 4, 1932.

1. Criminal law ⇐198.

Each of several successive sales of narcotics without compliance with statute constitutes distinct offense, however closely sales may follow each other (Harrison Anti-Narcotic Act, § 1, as amended, and § 2 [26 USCA §§ 692 and 696]).

2. Criminal law ⇐198, 984.

Separate sales of morphine hydrochloride to same purchaser on successive days, not in or from original stamped package, and without written order, *held* separate offenses, separately punishable (Harrison Anti-Narcotic Act, § 1, as amended, and § 2 [26 USCA §§ 692 and 696]).

Sales of morphine hydrochloride charged in separate counts of indictment, although made to same person, were distinct and separate sales made at different times. The evidence disclosed that, shortly after delivery of the drug which was the subject of the first sale, the purchaser paid for an additional quantity, which was delivered the next day. The payment for the additional drug was the initiation of a separate and distinct sale completed by its delivery.

3. Criminal law ⇐195(1).

Test of identity of offenses is whether each separate statutory provision requires proof of additional fact which other does not.

4. Criminal law ⇐200(1).

Sale of morphine hydrochloride not in or from original stamped package, and without written order, *held* two separate offenses, although transaction was same (Harrison Anti-Narcotic Act, § 1, as amended, and § 2 [26 USCA §§ 692 and 696]).

Harrison Anti-Narcotic Act, c. 1, § 1, 38 Stat. 785, as amended by chapter 18, § 1006, 40 Stat. 1131 (26 USCA § 692), makes it unlawful for any person to purchase, sell, etc., any described drugs "except in the original stamped package or from the original stamped package. * * *" Harrison Anti-Narcotic Act, c. 1, § 2, 38 Stat. 785 (26 USCA § 696), makes it unlawful for any person to sell, barter, exchange, or give away any described drugs, "except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue."

5. Poisons ⇐9.

Language of penal provision of Harrison Anti-Narcotic Act *held* not to impose single punishment for violation of separate prohibitory provisions (Harrison Anti-Narcotic Act § 9 [26 USCA § 705]).

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Harry Blockburger was convicted of violating certain provisions of the Harrison Anti-Narcotic Act. To review a judgment of the Circuit Court of Appeals [50 F.(2d) 795], affirming the judgment of conviction, the defendant brings certiorari.

Judgment affirmed.

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*Mr. Harold J. Bandy, of Granite City, Ill., for petitioner.

The Attorney General and Mr. Claude R. Branch, of Providence, R. I., for the United States.

Mr. Justice SUTHERLAND delivered the opinion of the Court.

The petitioner was charged with violating provisions of the Harrison Narcotic Act, c. 1, § 1, 38 Stat. 785, as amended by c. 18, § 1006, 40 Stat. 1057, 1131 (U. S. C. Title 26, § 692 [26 USCA § 692]);[1] and c. 1, § 2, 38

[1] "It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the aforesaid drugs [opium and other narcotics] except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs

Stat. 785, 786 (U. S. C., Title 26, § 696 [26
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USCA § 696]).[2] The indictment *contained five counts. The jury returned a verdict against petitioner upon the second, third, and fifth counts only. Each of these counts charged a sale of morphine hydrochloride to the same purchaser. The second count charged a sale on a specified day of ten grains of the drug not in or from the original stamped package; the third count charged a sale on the following day of eight grains of the drug not in or from the original stamped package; the fifth count charged the latter sale also as having been made not in pursuance of a written order of the purchaser as required by the statute. The court sentenced petitioner to five years' imprisonment and a fine of $2,000 upon each count, the terms of imprisonment to run consecutively; and this judgment was affirmed on appeal. (C. C. A.) 50 F.(2d) 795.

The principal contentions here made by petitioner are as follows: (1) That, upon the facts, the two sales charged in the second and third counts as having been made to the same person constitute a single offense; and (2) that the sale charged in the third count as having been made not from the original stamped package, and the same sale charged in the fifth count as having been made not in pursuance of a written order of the purchaser, constitute but one offense, for which only a single penalty lawfully may be imposed.

[1, 2] One. The sales charged in the second and third counts, although made to the same person, were distinct and separate sales made at different times. It appears from the evidence that, shortly after delivery of the drug which was the subject of the first sale, the purchaser paid for an additional quantity, which was delivered the next day. But the first sale had been consummated, and the payment for the additional drug, however closely following, was the initiation of a separate and distinct sale completed by its delivery.

The contention on behalf of petitioner is that these two sales, having been made to
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the same purchaser and *following each other, with no substantial interval of time between the delivery of the drug in the first transaction and the payment for the second quantity sold, constitute a single continuing offense. The contention is unsound. The distinction between the transactions here involved and an offense continuous in its character is well settled, as was pointed out by this court in the case of In re Snow, 120 U. S. 274, 7 S. Ct. 556, 30 L. Ed. 658. There it was held that the offense of cohabiting with more than one woman, created by the Act of March 22, 1882, c. 47, 22 Stat. 31 (now 18 USCA § 514) was a continuous offense, and was committed, in the sense of the statute, where there was a living or dwelling together as husband and wife. The court said (pages 281, 286 of 120 U. S., 7 S. Ct. 556, 559):

"It is, inherently, a continuous offense, having duration; and not an offense consisting of an isolated act. * * *

"A distinction is laid down in adjudged cases and in text-writers between an offense continuous in its character, like the one at bar, and a case where the statute is aimed at an offense that can be committed uno ictu."

The Narcotic Act does not create the offense of engaging in the business of selling the forbidden drugs, but penalizes any sale made in the absence of either of the qualifying requirements set forth. Each of several successive sales constitutes a distinct offense, however closely they may follow each other. The distinction stated by Mr. Wharton is that, "when the impulse is single, but one indictment lies, no matter how long the action may continue. If successive impulses are separately given, even though all unite in swelling a common stream of action, separate indictments lie." Wharton's Criminal Law (11th Ed.) § 34. Or, as stated in note 3 to that section, "The test is whether the individual acts are prohibited, or the course of action which they constitute. If the former, then each act is punishable separately. * * * If the latter, there can be but one penalty."

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*In the present case, the first transaction, resulting in a sale, had come to an end. The next sale was not the result of the original impulse, but of a fresh one—that is to say, of a new bargain. The question is controlled, not by the Snow Case, but by such cases as that of Ebeling v. Morgan, 237 U. S. 625, 35 S. Ct. 710, 59 L. Ed. 1151. There the accused was convicted under several counts of a willful tearing, etc., of mail bags with intent to rob. The court (page 628 of 237 U. S., 35 S. Ct. 710, 711) stated the question to be "whether one who, in the same transaction, tears or cuts successively mail bags of the United States used in conveyance of the mails, with intent to rob or steal any such mail, is guilty of a single offense, or of additional offenses because of each successive cutting with the criminal intent charged." Answer-

shall be prima facie evidence of a violation of this section by the person in whose possession same may be found. * * *"

[2] "It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs specified in section 691 of this title, except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue."

ing this question, the court, after quoting the statute, section 189, Criminal Code, (U. S. C. title 18, § 312 [18 USCA § 312]) said (page 629 of 237 U. S., 35 S. Ct. 710, 711):

"These words plainly indicate that it was the intention of the lawmakers to protect each and every mail bag from felonious injury and mutilation. Whenever any one mail bag is thus torn, cut, or injured, the offense is complete. Although the transaction of cutting the mail bags was in a sense continuous, the complete statutory offense was committed every time a mail bag was cut in the manner described, with the intent charged. The offense as to each separate bag was complete when that bag was cut, irrespective of any attack upon, or mutilation of, any other bag."

See, also, Ex parte Henry, 123 U. S. 372, 374, 8 S. Ct. 142, 31 L. Ed. 174; Ex parte De Bara, 179 U. S. 316, 320, 21 S. Ct. 110, 45 L. Ed. 207; Badders v. United States, 240 U. S. 391, 394, 36 S. Ct. 367, 60 L. Ed. 706; Wilkes v. Dinsman, 7 How. 89, 127, 12 L. Ed. 618; United States v. Daugherty, 269 U. S. 360, 46 S. Ct. 156, 70 L. Ed. 309; Queen v. Scott, 4 Best & S. (Q. B.) 368, 373.

[3, 4] Two. Section 1 of the Narcotic Act creates the offense of selling any of the forbidden drugs except in or from the original stamped package; and section 2 creates the offense of selling any of such drugs not in pur-

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suance of a written *order of the person to whom the drug is sold. Thus, upon the face of the statute, two distinct offenses are created. Here there was but one sale, and the question is whether, both sections being violated by the same act, the accused committed two offenses or only one.

The statute is not aimed at sales of the forbidden drugs qua sales, a matter entirely beyond the authority of Congress, but at sales of such drugs in violation of the requirements set forth in sections 1 and 2, enacted as aids to the enforcement of the stamp tax imposed by the act. See Alston v. United States, 274 U. S. 289, 294, 47 S. Ct. 634, 71 L. Ed. 1052; Nigro v. United States, 276 U. S. 332, 341, 345, 351, 48 S. Ct. 388, 72 L. Ed. 600.

Each of the offenses created requires proof of a different element. The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not. Gavieres v. United States, 220 U. S. 338, 342, 31 S. Ct. 421, 55 L. Ed. 489, and authorities cited. In that case this court quoted from and adopted the language of the Supreme Court of Massachusetts in Morey v. Commonwealth, 108 Mass. 433: "A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other." Compare Albrecht v. United States, 273 U. S. 1, 11, 12, 47 S. Ct. 250, 71 L. Ed. 505, and cases there cited. Applying the test, we must conclude that here, although both sections were violated by the one sale, two offenses were committed.

The case of Ballerini v. Aderholt (C. C. A.) 44 F.(2d) 352, is not in harmony with these views, and is disapproved.

[5] Three. It is not necessary to discuss the additional assignments of error in respect of cross-examination, admission of testimony,

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statements made by the district *attorney to the jury claimed to be prejudicial, and instructions of the court. These matters were properly disposed of by the court below. Nor is there merit in the contention that the language of the penal section of the Narcotic Act (section 9, 26 USCA § 705), "any person who violates or fails to comply with any of the requirements of this act," shall be punished, etc., is to be construed as imposing a single punishment for a violation of the distinct requirements of sections 1 and 2 when accomplished by one and the same sale. The plain meaning of the provision is that each offense is subject to the penalty prescribed; and, if that be too harsh, the remedy must be afforded by act of Congress, not by judicial legislation under the guise of construction. Under the circumstances, so far as disclosed, it is true that the imposition of the full penalty of fine and imprisonment upon each count seems unduly severe; but there may have been other facts and circumstances before the trial court properly influencing the extent of the punishment. In any event, the matter was one for that court, with whose judgment there is no warrant for interference on our part.

Judgment affirmed.