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Criminal Law - Cruel and Unusual Punishment - Imprisonment of Chronic Alcoholic

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RECENT CASES

CRIMINAL LAW—CRUEL AND UNUSUAL PUNISHMENT—IMPRISONMENT OF CHRONIC ALCOHOLIC—Defendant was convicted for the third time of being drunk in a public place and received a 1½-2 years prison sentence. The Court of Appeals of Michigan *held* that imprisonment of a chronic alcoholic is not "cruel and unusual punishment." *People v Hoy*, 143N.W 2d 577 (Michigan 1966)

It is almost universally agreed by medical authorities that alcoholism is a disease and should be treated as such.[1] Nonetheless, some courts have been slow and chary in adopting this consensual belief to their decisions.[2] A graphic example of this is the case of one defendant who was sentenced to two years in jail on charges of public drunkenness, despite the fact that he allegedly was a chronic alcoholic and, as an impoverished inmate, could not obtain outside medical aid.[3] A more sympathetic appellate court however reversed the ruling on grounds that such a decision, in attaching criminality to his conduct, affront the Eighth Amendment's prohibition of cruel and unusual punishment.[4]

Both this reversal and a similarly successful appeal in another jurisdiction[5] focused upon the mens rea of the defendant, even though the courts were concerned with a strict liability offense, i.e. public intoxication. That defendant has lost the power to resist excessive consumption of alcohol is the rationale in these vanguard cases.

In earlier decisions, as well as the instant case, the courts have pointed out that merely violating the public intoxication act is sufficient in and of itself to convict and the issue of voluntariness is immaterial.[6] The statute, by punishing irrespective of intent to violate, comes under the general classification of police regulations,

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1. GUTTMACHER & WEIHOFEN, PSYCHIATRY AND THE LAW pp. 318-320 (1962), WALLERSTEIN, HOSPITAL TREATMENT OF THE ALCOHOLIC p. 1 (1957). There are myriad sources and these will suffice.
2. Aside from the instant case, *e.g.*, Easter v. District of Columbia, 209 A.2d 625 (D.C. Dist. Ct. App. 1965), State v. Driver, 136 S.E.2d 208, 262 N.C. 92 (1964). These two cases were later appealed and reversed, *infra*, see notes 5 and 4 respectively.
3. State v. Driver, *supra* note 2.
4. Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966).
5. Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966).
6. *Supra* note 2.

the pupose of which one court defined as being "to require a degree of diligence for the protection of the public which shall render violation impossible."[7] But with respect to the alcoholic and the public drunkenness statute, this purpose is inappropriate; the definition presupposes that the alcoholic can muster a sufficient degree of diligence to avoid drinking and public intoxication.

Moreover, a query can be raised as to the public policy involved. It is anomalous to recognize the alcoholic to be laboring under an intractable compulsion and, at the same time, impute criminality to the act toward which the compulsion is directed. Is it desirable, then, to incarcerate the alcoholic and thereby insulate him from immediate medical treatment which conceivably could cure the cause of his illness? This is the question with which the courts in the two vanguard decisions grappled and whose answer emerged from consideration of present public policy That is, they concluded that society takes cognizance of the chronic alcoholic's inability to abstain from drinking and no longer demands retribution for his public drunkenness, but in lieu recommends rehabilitation.

Generally, most courts have readily observed that an intoxicated person does not have control of his mental faculties.[8] One court opined that a drunk is a person under the influence of an intoxicant and whose mind is materially impaired.[9] For the purposes of assessing guilt in terms of responsibility for one's actions, however, the pertinent question is how did the defendant get into his intoxicated condition—did it flow from a controlled will or voluntary action or did it emanate from an overwhelmed will or involuntary action? Consistent with these realities, the strict liability in the public intoxication regulation can be interpreted, not as referring to voluntariness in the use of alcoholic beverage, but as referring to voluntariness in the subsequent drunkenness and public appearance. In short, one who voluntarily drinks, drinks at the peril of becoming drunk and appearing in public.[10] This seems to be the most reasonable construction of the statute and in some jurisdictions it has been so interpreted.[11] Hence, by considering volition in the use of alcohol, the courts can exonerate the alcoholic from the charge of

7. People v. Roby, 52 Mich. 577, 18 N.W. 365 (1884).

8. *E.g.*, State v. May, 174 Neb. 717, 119 N.W.2d 307 (1963), State v. Painter, 261 N.C. 332, 134 S.E.2d 638 (1964), State v. Hanson, 73 N.W.2d 135 (N.D. 1955).

9. State v. Painter, *supra* note 8.

10. There is a singular exception in the case of Brown v. State, 38 Ala. App. 312, 82 So.2d 806 (1955), where defendant voluntarily drank in private and, after becoming drunk, was removed to a public place by police officers. Certainly defendant's appearance in public was involuntary, but obviously is better explained in terms of coercive force operating exterior to the defendant and against his will (*i.e.*, repulsive police entrapment).

11. State v. Brown, 38 Kan. 390, 16 Pac. 259 (1888), Commonwealth v. Peter Hughes, 133 Mass. 496 (1882).

public drunkenness with the stipulation that he be detained for hospital care.

Notably, cruel and unusual punishment has been defined as that which shocks the conscience of reasonable men[12] and must be considered in light of the developing civilization.[13] Thus, newly developed advances in psychology and psychiatry and the enlightened treatment available for mentally disturbed people necessitate a re-evaluation of punishment of the alcoholic; and it surely does shock the conscience of reasonable men that the only recourse of the court is to stigmatize his behavior as criminal by jailing him. The better alternative is to place him in a medical institution.

The plight of the alcoholic is not unlike that of the drug addict. Both the alcoholic and the narcotic have an uncontrollable compulsion toward their respective habits and in the course of satisfying them, are drawn compulsively to commit illegal acts, i.e., public intoxication and illegal possession of narcotics. In a decision regarding an addict's possession of narcotics, the Supreme Court enunciated a broad, generic principle which would permit the instant case to fall within its ambit.[14] It declared unconstitutional as cruel and unusual punishment any criminal statute which punishes a status involuntarily assumed. This ruling was invoked in a later case to strike down a North Carolina act which criminally punished public drunkenness of an alcoholic.[15]

The language of "unwilled" and "ungovernable" excessive drinking and public intoxication[16] also comes precariously close to the irresistable impulse doctrine in insanity pleadings. In view of the alcoholic's absence of self-control, there is a strong likelihood that this plea could be presented as a defense for him to the charge of public drunkenness. One problem to resolve, though, is establishing whether the impulse originated solely from the mind or from the body (i.e., physiological) or a combination of both. That it derives wholly from the mind is the requirement.

North Dakota has not, by either judicial construction or specific statute, provided a defense for the chronic alcoholic. Creation of a statute would encounter obstacles, however. One is whether to extend the defense to major crimes, like murder, where the crime is committed in the alcoholic's state of intoxication. But without the same quantum of certainty to this solution in terms of proximate cause, it would be politic to exclude the extension in any proposed legislation for the moment and ensure passage of a defense for

12. State v. Evans, 73 Ida. 50, 245 P.2d 788 (1952).
13. *Ex parte* Pickens, 101 F.Supp. 285 (D.C. Alaska 1966).
14. Robinson v. California, 370 U.S. 660 (1963).
15. Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966).
16. *Ibid.*, Easter v. District of Columbia, 361 F.2d 50 (1966).

public intoxication, an area which is critical.[17] Another obstacle appears to be the cost of adequate facilities for treatment. This can be countervailed by eliminating the expenses of repetitive arrest, trial, and incarceration of these sick people, with only a pretrial hearing essential to ascertain defendant's status.[18] More importantly, by dispensing psychiatric and medical ministrations to the alcoholic, we would be applying all our sophistication to the cause of the disease, rather than its symptom, in an unbenighted manner

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FALSE IMPRISONMENT—MITIGATION OF DAMAGES—ADMISSIBILITY OF REPUTATION EVIDENCE—This action was instituted to recover damages arising from the plaintiff's arrest without a warrant and the resulting assault and battery The complaint also alleged damage to reputation. The Superior Court of New Jersey, Appellate Division, *held* that the trial court erred in refusing to permit cross-examination of plaintiff regarding the effect, if any, of the arrest on his reputation and in refusing to permit a neighbor to testify relative to the plaintiff's reputation in the neighborhood, such testimony being relevant to the damages allegedly suffered. *Price v Phillips,* 90 N.J. Super 480, 218 A.2d 167 (1966)

There are numerous definitions of reputation, but it is generally agreed that the term connotes the common report which others make about a man;[1] the talk about him which shows the opinion in which he is held in his community.[2] Reputation evidence offered to prove character is hearsay for it represents a statement of community opinion made out of court and not under cross-examination. To admit such evidence at all, it must be as an exception to the hearsay rule.[3] When reputation evidence is offered in mitigation

17. A bill to provide a defense for all crimes perpetrated by a chronic alcoholic where it can be established that the offense was committed while he was intoxicated was proposed and defeated by committee in the present 1967 North Dakota Legislature. This was apparently too much for the legislative body to accept at one time.

18. Obviously, one determination as to defendant's alcoholic status will preclude any further bothersome entanglement by him in the law enforcement machinery with respect to the public intoxication offense. For example, in the *Driver* case, defendant was arrested and convicted over 200 times. An early diagnosis of his alcoholism could have saved the courts a considerable amount of time and expense.

1. 1 JONES, EVIDENCE, CRIMINAL AND CIVIL § 165 (5th ed. 1958).

2. BLACK, LAW DICTIONARY (4th ed. 1951). Character and reputation are often used interchangeably by many courts. *E.g.,* Garrison v. State, 217 Ala. 322, 116 So. 705 (1928). Although there is a distinction, both are subjective. Reputation represents what others think a man is while character represents what he actually is.

3. 5 WIGMORE, EVIVENCE § 1609 (3rd ed. 1940).