North Dakota Law Review

Volume 12 | Number 8 Article 2

1936

Some Questions Involved in the Application of the "Public Interest" Doctrine

Dexter Merriam Keezer

either in the business world or any other of the many activities of life, has worked out a 100 per cent formula for the American people to follow.

In this American life of ours, we have many religions, and it is a great truth that our Constitution does not recognize a state religion, but leaves to all our people the right to worship God Almighty according to the dictates of his own conscience. What a sound doctrine that is. It is written in our fundamental law and in the constitutions of the different states of the Union, but not all our people follow the great fact laid down in our Constitution some years ago.

In this state we have had our share of dissenting opinions by the Supreme Court. I am not aware of any decision where a dissent has been later adopted by the Supreme Court as the law of the state.

All over the land there is a great growing interest as to our courts. A good judge is a valuable asset to any community; a poor judge is an awful liability. On the whole, we have been quite fortunate in having honest, upright, far-reaching judges on the bench, and it is becoming general throughout the country that when, either by appointment or by election, a good judge is found and elevated to the bench—the very highest of our positions in this country—that it is good, hard common sense to keep such a judge in the public service.

M. A. HILDRETH, President,
State Bar Association.

SOME QUESTIONS INVOLVED IN THE APPLICATION OF THE "PUBLIC INTEREST" DOCTRINE

By DEXTER MERRIAM KEEZER

In 1876, the United States Supreme Court, in the now famous case of Munn v. Illinois, first gave sanction in this country to the doctrine that an enterprise may become "affected with a public interest," and in consequence be subject to public regulation. The doctrine has been steadily expanded, bringing within its scope an increasing range and diversity of enterprises. There is a basis for the belief that the classification of enterprises held to be "affected with a public interest" will continue to be enlarged. It therefore becomes important to see whether there is any economic pattern into which such enterprises can be fitted.

The legislatures may pass laws declaring an enterprise to be "affected with a public interest," and subject to the liabilities which may attach themselves to that classification; but this is not conclusive, for the circumstances are always a subject of judicial inquiry.

Chief Justice Taft, in the Wolff Packing Company case, divided the public interest businesses into three classes; but this classification is not complete, for it does not include all cases, nor does it exclude cases that are not clothed with public interest.

Specific Considerations Leading to Judicial Approval of Regulation in the Public Interest

In Munn v. Illinois the Supreme Court of the United States found the regulation by the State of Illinois of rates charged by grain elevators

in Chicago to be a reasonable regulation of enterprise "affected with a public interest;" because the Chicago elevators occupied a strategic position to take a "virtual monopoly" toll from an important volume of commerce in agricultural products. The condition which warranted the regulation of rates seemed to be the fact that a virtual monopoly in an important service did exist, or was seriously threatened.

State regulation of railroads has been sustained on the ground that the railroads are engaged in a public employment affecting the public interest and are subject to legislative control by their charters.

Insurance business was held to be "affected with a public interest" on the ground that insurance so far affects the public welfare as to invoke and require governmental regulation. Banking business was also held to be subject to regulation.

In the Wolff Packing Company cases, the Kansas Industrial Court held that it had the power to regulate the wages paid to the employees of the meat packing company. But the Supreme Court of the United States held that the Industrial Court did not have the power to regulate wages of these employees, on the ground that this industry "was not affected with a public interest."

It is practically impossible to generalize about characteristics of "public interest" enterprises. In determining what constitutes a public use, legislation cannot be depended upon. Precedents are of little avail for what is today a public use may not be tomorrow, but each case must be decided upon its facts.—*Michigan Law Review.*

A UTILITARIAN TEST FOR CRIMINAL RESPONSIBILITY

By Anderson Woods

The legitimate social reactions to crime are three: (1) direct restraint of the offender himself from further misdeeds; (2) moral education of the offender directed toward his reformation, or cure; (3) punishment, with a view to deterrence from crime, not only of the particular offender, but as well of other persons unlawfully disposed.

Punishment has for its primary end, deterrence. A lawbreaker is put into prison only if it is desirable to deter him as well as others through fear of the penalty. "Only the so-called responsible can, under the law, be punished." One who is not sufficiently subject to deterrence or intimidation by fear of the penalty so as to overcome his impulse to act, is irresponsible.

"When punishment is not useful and necessary in the combatting of evils worse than itself, it is wicked and cruel." Though this view may be said to do away with a deterrence of others similarly inclined, in effect it does not; as those individuals know that they are in a class which would be punished in a like situation; as they are responsible.

One theory is that irresponsibility cannot exist without mental disease. Legislatures merely specify a disease which takes away the knowledge of right and wrong. If this knowledge amounts to knowing