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A Utilitarian Test for Criminal Responsibility

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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

that a certain action is condemned, then only a half-wit would come under the line. It may mean a real moral consciousness.

To be deterred by the law, fear of it as well as knowledge of it is necessary. Non-intimidability, the test of irresponsibility, may be the result of nerve lesion or bad education. This may be treated as a disease no matter how it arises.

The prospective law-breaker may be one who has sufficient doubts of the certainty of the law's operation in regard to a specific matter that he will not be deterred. If he is intimidable to such extent that a fear of punishment, no matter how certain, will not deter him, then he is irresponsible, but if the law merely has failed to inspire him with a sufficient fear of punishment to deter him, then he is responsible. The efficiency of the legal machinery largely determines the success of deterring those who are responsible. The church, the school and the home are also responsible.

It is suggested that the following be adopted as a rule of jurisprudence: "If at the time of committing the act there was present in the mind of the actor a well founded hope of escaping the penalty prescribed therefor by law, but for which hope he would not have committed the act, he is to be held responsible, otherwise irresponsible." The "penalty" in this rule is that irreducible deprivation necessary for deterrence. The indeterminate sentence if it has the deterrence penalty as a minimum should not be done away with; as it is an effective restraint and cure as distinguished from punishment. Further deprivation may be justified as in the case of the habitual criminal who is unaffected by the fear of punishment. They are irresponsible and fit subjects for the care and observation of moral psychologists. "Well founded hope" in this rule should be given its every day meaning.—*Journal of Criminal Law and Criminology.*

The American Law Institute announces that for some time it has considered the question of drafting certain private law statutes, especially those designed to correct defects in the present law as it has been obliged to state it in the Restatement. In connection with the drafting of these private law statutes, emphasis was placed on the desirability of cooperation with the National Conference of Commissioners on Uniform State Laws, and as linked with the importance of securing their adoption by state legislatures, of the cooperation of the American Bar Association.

The Conference of Commissioners and the Council of the Institute have entered into an agreement that each organization shall notify the other of the acts which it desires to draft where it is believed the present law may be defective. The Council of the Institute has entered into similar cooperative agreement with the Law Revision Commission of the State of New York.

Three members of our association have passed away recently, Matt Murphy of Fargo, I. H. Breaw of Minot and B. D. Townsend, formerly of Devils Lake and Fargo. Suitable memorials for them will be presented at the annual meeting.

Anyone having Nos. 1 to 10, inclusive, of Volume 2 and No 1 of Volume 3 of Bar Briefs, please advise the Editor.