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Criminal Law - Chronic Alcoholism as a Defense to Public Intoxication Statute

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section 12 (b) (3) will prove silly and unwise, and demonstrate itself to be the product of passion which seeks to suppress the voice of dissent. But the *Miller* case made it manifestly clear that redress will not be found in the courts. If any relief from the allegedly oppressive law is to be forthcoming it will be through the process of the ballot box and the pressures of public opinion.

Alan Sobel

CRIMINAL LAW–CHRONIC ALCOHOLISM AS A DEFENSE TO PUBLIC INTOXICATION STATUTE

Defendant, Easter, was accused of violating a criminal public intoxication statute in the District of Columbia.[1] His defense was chronic alcoholism, and he presented evidence that he had been consuming alcoholic beverages intemperately for over thirty years and had been previously arrested for the same offense approximately seventy times. Easter was found guilty in the trial court, and the conviction was affirmed by the Court of Appeals for the District of Columbia.[2] The United States Court of Appeals reversed, holding that chronic alcoholism, though not amounting to insanity, is a defense to the crime of public intoxication. *Easter v. District of Columbia*, 361 F.2d 50 (D.C. Cir. 1966).

The ruling that chronic alcoholism is a defense to the crime of public intoxication represents a change from the still prevailing common law which does not recognize chronic alcoholism not amounting to insanity as a defense. The only other jurisdiction which has adopted this view is the Fourth Circuit in the case of *Driver v. Hinnant*,[3] a habeas corpus proceeding involving the same issues. It will be the purpose of this note to trace the development of intoxication as a defense to the crime of public intoxication and to analyze the reasoning followed by the court in breaking with the common law and the overwhelming majority of states. This paper will not attempt to explore the legal ramifications of the possibility of extending the defense.

Intoxication as a defense to a crime may be divided into three areas: (1) involuntary intoxication, (2) voluntary intoxication and (3) chronic alcoholism. Involuntary intoxication has long been recognized, even at common law, as a defense to a crime.[4] It has repeatedly been held that where one becomes intoxicated without his consent, through the force or fraud

[1] D.C. Code Ann. 25-128 (1961). "(a) No . . . person shall [in the District of Columbia] be drunk or intoxicated in any street, alley, park, or parking."

[2] Easter v. District of Columbia, 209 A.2d 625 (D.C. Ct. App. 1965).

[3] 356 F.2d 761 (4th Cir. 1966).

[4] Bartholomew v. People, 104 Ill. 601 (1882); Carter v. State, 12 Tex. 250 (1854); Choate v. State, 19 Okla. Crim. 169, 197 Pac. 1060 (1921).

of another person, he is in a state of involuntary intoxication. This condition can be introduced as an affirmative defense to acts committed which are a result of the intoxication.[5]

On the other hand, it has also been a well recognized rule at common law that voluntary drunkenness is no excuse for a crime.[6] However, where the existence of some specific intent or malice is required, such intoxication, although voluntary, which suspends the individual's power of reasoning thereby rendering him incapable of forming that intent, may, even at common law, excuse him of a crime provided the intent was not formed before the intoxication. It has been held that such voluntary intoxication may negative the specific intent required in cases such as murder,[7] indecent liberties with a minor,[8] larceny,[9] and burglary.[10]

Chronic alcoholism when not amounting to insanity[11] is still not recognized as a defense to any crime. In *Choice v. Georgia*,[12] it was noted that an inordinate thirst for liquor produced by the habit of drinking is no excuse legally or morally for the consequences of the appetite.[13] In another leading case the court said that our law does not recognize dipsomania or distinguish between an irresistible impulse for intoxicating drinks and a mere inordinate appetite for them as a defense to a crime.[14] These holdings are indicative of the attitude of the overwhelming number of jurisdictions towards chronic alcoholism. These courts refuse to acknowledge the na-

[5] State v. Pike, 49 N.H. 399, 435 (1870). See also ILL. REV. STAT. ch. 38, § 6-3 (1965). "A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition either (b) [i]s involuntarily produced. . . ."

[6] Rafferty v. People, 66 Ill. 118 (1872). See also Hopt v. Utah, 104 U.S. 631 (1881); Springfield v. State, 96 Ala. 81, 11 So. 250 (1892); People v. Freedman, 4 Ill. 2d 414, 123 N.E.2d 317 (1954); Flanigan v. New York, 86 N.Y. 554 (1881).

[7] People v. Trillman, 26 Ill. 2d 552, 187 N.E.2d 731 (1963).

[8] People v. Klemann, 383 Ill. 236, 48 N.E. 2d 957 (1943).

[9] Ryan v. United States, 26 App. D.C. 74 (D.C. Cir. 1905); Wood v. State, 34 Ark. 341 (1879).

[10] State v. Koerner, 8 N.D. 292, 78 N.W. 981 (1899); Vickery v. State, 62 Tex. Crim. Rep. 311, 137 S.W. 687 (1911). See also ILL. REV. STAT. ch. 38, § 6-3 (1965). "A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition either (a) [n]egatives the existence of a mental state which is an element of the offense. . . ."

[11] "It should be noted here that insanity produced by chronic alcoholism is treated the same as any other insanity." Beasley v. State, 50 Ala. 149 (1873); See also People v. Cochran, 313 Ill. 508, 145 N.E. 207 (1924); Dawson v. State, 16 Ind. 428 (1861). See People v. Hubert, 119 Cal. 216, 51 Pac. 329 (1897); State v. Kidwell, 62 W. Va. 466, 59 S.E. 494 (1907).

[12] 31 Ga. 424 (1860). See also Flanigan v. People, 86 N.Y. 554 (1881).

[13] See *supra* note 12, at 424.

[14] State v. Potts, 100 N.C. 457, 6 S.E. 657 (1888). However, in State v. Pike, *supra* note 5, it was held proper to instruct the jury on dipsomania.

ture of chronic alcoholism and the sociological impact that the illness has created on our society.

The present decision recognizes the serious medical and social problems involved in chronic alcoholism and attempts to give them a legal application. As a social and medical problem chronic alcoholism is one of the nation's most serious. It need only be pointed out that it is the fourth largest public health problem in this country.[15] Chronic alcoholism is now almost universally recognized as a disease which leaves its victim unable to control his drinking. In the *Driver* case the court discussed the medical aspects of the problem in detail and cited definitions by the American Medical Association, the National Council on Alcoholism and the World Health Organization.[16] The definitions reveal that the chronic alcoholic has no control over his drinking.

The social problem created by jailing chronic alcoholics for public intoxication has been criticized by numerous sources. Individuals are jailed night after night in the "street cleaning operation" and confined in the so-called "drunk-tanks" which are often poorly kept and unventilated areas with no rehabilitative facilities whatever. Their contact with the courts is often brief, and judges dole out meaningless lectures and penalties to individuals who will almost surely return.[17] This method of handling the victim has little or no preventative value as evidenced by the *Driver* case where the defendant had been jailed for the offense more than 200 times.

At the time of Easter's arrest there was a lack of proper scientific rehabilitative facilities in the District of Columbia as is the case in almost all jurisdictions. This was indicated by the court when it rejected the lack of facilities as a justification for jailing the chronic alcoholic. This lack of rehabilitative facilities was especially important since the District of Columbia, recognizing the medical and social problem created by chronic alcoholics, had enacted a statute providing for the establishment of facilities for

[15] Opening remarks by Secretary Celebrezze, Dep't of Health, Education, and Welfare National Conference, 1963.

[16] Driver v. Hinnant, *supra* note 3, at 763. See also HEW, PUBLIC HEALTH SERVICE PUBLICATIONS, ALCOHOLISM National Institute of Mental Health, No. 730 (1965). See Driver v. Hinnant, *supra* at 764 on alcoholism as a disease: "Of the myriad of authorities these citations will suffice: 2 CECIL & LOEB, A TEXTBOOK OF MEDICINE, 162; (10th ed. 1959); MANFRED S. CUTTMACHER & HENRY WEINHOFER, PSYCHIATRY AND THE LAW 318–22 (1952); JELLINEK, THE DISEASE CONCEPT OF ALCOHOLISM 41–44 (1960): "An illness or symptom which numbers more than four million adults among its victims."

[17] PITTMAN AND GORDON, REVOLVING DOOR: A STUDY OF THE CHRONIC POLICE CASE INEBRIATE (1958); Mahoney, Discussion in PROCEEDINGS OF THE MASSACHUSETTS CONFERENCE ON ALCOHOL, ALCOHOLISM, AND CRIME 34; Murtagh, *The Derelicts of Skid Row,* Atlantic Monthly, March, 1962, p. 77.

the care and treatment of those afflicted with the disease.[18] Those facilities had not been available to the defendant in the years intervening between the enactment of the law and the present case. But the court held that this fact did not detract from the legal effect of the provisions of the act which defined the nature of the sickness. Under the act a chronic alcoholic has committed no crime since the essential element of criminal intent is lacking and, therefore, cannot be validly jailed merely because of a lack of these facilities.[19]

The rulings in the *Driver* and *Easter* decisions rest on two bases: (1) that there is a lack of sufficient mental state to hold a chronic alcoholic guilty of public intoxication and (2) that to do so would constitute a cruel and unusual punishment violating the eighth[20] and fourteenth amendments.[21]

In the *Easter* case the court explained how the chronic alcoholic could not have the mental state necessary for criminal responsibility. The chronic alcoholic lacks an essential element of criminality, the criminal mind. The court in the *Driver* case also emphasized the lack of intent of a chronic alcoholic holding that a mens rea cannot exist since a chronic alcoholic cannot refrain from becoming intoxicated.[22] The social and medical problems involved emphasize this lack of intent.

It has been contended that since chronic alcoholism originates from the voluntary acts of the individual at some prior time, it is not necessary to find an intent at the time of the subsequent violation of the statute prohibiting public intoxication. The court in the *Easter* case discarded this argument holding that the original voluntary act of drinking which resulted in the chronic condition leading to his intoxication was not sufficient to render his present condition voluntary. The court likened this to a sick person who is sick because he exposed himself to the contagion of a disease. Such a person is not voluntarily sick; a chronic alcoholic is not voluntarily intoxicated.[23]

Prosecution of the chronic alcoholic under a public intoxication statute has also been justified on the theory that while the intoxication may be involuntary the public exhibition of it is voluntary. The court rejected this

[18] D.C. CODE § 24-501 (1961). One of its purposes is "to establish a program for the rehabilitation of chronic alcoholics, promote temperance, and provide for the medical, psychiatric, and other scientific treatment of chronic alcoholics."

[19] Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966).

[20] U.S. CONST. amend. VIII: "nor cruel and unusual punishments inflicted."

[21] U.S. CONST. amend. XIV, § I: "nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

[22] Driver v. Hinnant, *supra* note 3.

[23] Easter v. District of Columbia, *supra* note 19, at 54.

contention by holding that, if this were so, the act would allow a person to be sick in private but would punish the same person if he appeared in a public place. The enforcement of the statute obviously does not take into consideration that the very nature of the disease may lead the individual to become intoxicated in a public place,[24] and it further causes confusion as to the distinction between a public intoxication and a disorderly conduct satute. Public intoxication statutes make it a crime merely to be intoxicated in public,[25] while disorderly conduct statutes punish public misconduct. One makes it a crime to be in a certain physical state, regardless of either an intent to do wrong or the commission of an act harmful to society. The other punishes an individual for the commission of an act harmful to society. When justifying chronic alcoholism as a defense to the crime of public intoxication this distinction must be kept in mind. For instance, the Chicago ordinance[26] is one dealing with disorderly conduct and not specifically with public intoxication. Yet, it is not inconceivable that a chronic alcoholic has been or will be prosecuted for disorderly conduct as a result of being intoxicated in a public place. In such an instance the defendant should be permitted to plead chronic alcoholism as an affirmative defense to the crime of disorderly conduct.

The possibility that the intoxication offense may be in the category of offenses requiring no intent was also considered by the court. It has been held that "intent to become intoxicated is not an element of the offense of being found intoxicated."[27] The court in the *Easter* case declared that the individual's misbehavior cannot be penalized as a malum prohibitum regulation obviating the requirement of an intent to do the crime which the regulation punishes. The court expressly stated that "the alcoholic's presence in public is not his act for he did not will it."[28]

The most persuasive justification for recognizing chronic alcoholism as a prohibition against prosecutions for public intoxication contends that to enforce the statute under such circumstances constitutes cruel and unusual punishment. Proponents of this argument rely primarily on the authority of *Robinson v. California*.[29] In the *Robinson* case a California statute[30] made it a misdemeanor for any person to be addicted to the use of narcotics. In sustaining defendant's conviction the California courts construed the statute as making the status of narcotic addiction a criminal offense for which the offender may be prosecuted at any time before he reforms. It

[24] *Ibid.* [25] State v. White, 64 Vt. 372, 24 Atl. 250 (1892).

[26] CHICAGO, ILL., MUNICIPAL CODE §§ 193-1 (1963).

[27] State v. White, *supra* note 25, at 372, 24 Atl. at 250.

[28] Easter v. District of Columbia, *supra* note 19, at 54. [29] 370 U.S. 660 (1962).

[30] CALIFORNIA HEALTH AND SAFETY CODE. § 11721 (1955): "no person shall use, or be under the influence of or be addicted to the use of narcotics. . . ."

was held that the statute inflicted a cruel and unusual punishment in violation of the eighth and fourteenth amendments. This holding demonstrated that punishment for the state of narcotic addiction is cruel and unusual. The defendant must have committed some overt, antisocial act before a crime is committed and criminal sanctions can be imposed.

When the *Driver* case[31] was being considered by the district court, the court pointed out that the North Carolina statute made "public drunkenness" a crime rather than the "status" of chronic alcoholism.[32] They thus attempted to distinguish the North Carolina Act from the California Act which made the "status" of narcotics addiction a crime. However, the Appellate Court in the *Driver* case, in reversing the lower court, held that *Robinson v. California* "sustains, if not commands, the view we take. . . . The California statute criminally punishes a 'status'—drug addiction—involuntarily assumed; the North Carolina Act criminally punishes an involuntary symptom of a status."[33] The *Easter* court in adopting this wording added, "Since, as we have seen, public intoxication of a chronic alcoholic is not a crime, to convict one of it as though it were would also be cruel and unusual punishment."[34] Further, the court cites *Sweeney v. United States*[35] where the decision of a board revoking the petitioner's parole on the grounds that he had violated a condition prohibiting the use of alcoholic beverages in any form was reversed when the court learned that the parolee was a chronic alcoholic. The *Sweeney* decision relied upon *Robinson*.[36]

The decisions in *Driver v. Hinnant* and the case at bar are clear on the narrow issue of public intoxication. The question arises as to the scope of this doctrine's application. In the *Driver* case the court expressly restricted its holding to chronic alcoholism as a defense to prosecutions for public intoxication.[37] Judge Danaher, in his concurring opinion in the *Easter* case, said: "I am confident that Congress . . . had no thought whatever of addressing itself to some revised standards for determining criminal responsibility as to yet other crimes than public drunkenness."[38]

These decisions set out the legal justifications, i.e. lack of intent on the part of the chronic alcoholic and the cruel and unusual nature of the punishment, for recognizing chronic alcoholism as an affirmative defense to prosecutions brought under public intoxication statutes. However, they

[31] 243 F. Supp. 95 (N.C. 1965). [32] *Id.* at 98.

[33] Driver v. Hinnant, *supra* note 3, at 762.

[34] Easter v. District of Columbia, *supra* note 19, at 54.

[35] 353 F.2d 10 (7th Cir. 1965). [36] *Id.* at 11.

[37] Driver v. Hinnant, *supra* note 3, at 763.

[38] Easter v. District of Columbia, *supra* note 19, at 61.

also leave open the possibility that, because of the uncontrollable nature of his drinking, any intoxication of the chronic alcoholic will be treated as involuntary, thereby possibly excusing a murder, a rape, or an assault and battery committed under the influence of intoxicants. It remains to be seen whether such an extended application of chronic alcoholism as a defense will occur.

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CRIMINAL LAW–COURT APPOINTED COUNSEL–RIGHT TO ADEQUATE COMPENSATION

Five attorneys were appointed to defend four indigent prisoners, who had been indicted for murdering three guards during a prison riot. The trial was held approximately 150 miles from the attorneys' residences, and they were forced by necessity to take up temporary residence in the locale of the trial court for the duration of the trial. The attorneys sued the county for compensation for their services and out-of-pocket expenses. The trial court found for the attorneys, but the county claimed that there were no funds available with which to pay the attorneys. The Supreme Court affirmed the decision of the lower court and ordered the State of Illinois to reimburse and compensate the attorneys. In dong so, the Supreme Court ruled a state statute limiting compensation of the appointed attorneys unconstitutional in the case at bar. *People v. Randolph*, 35 Ill. 2d 24, 219 N.E.2d 337 (1966).

The *Randolph* case is significant because it is a case of first impression which requires the state to bear the cost of criminal prosecutions, including compensation and reimbursement for attorneys appointed as defense counsel in such prosecutions. The purpose of this note is to analyze the reasoning in the *Randolph* case by examining the precedents used, and the constitutional and statutory provisions considered by the court in its decision, and thereby show the developing recognition of the courts of the practical needs for the implementing of the recent decisions of *Gideon v. Wainwright*[1], *Miranda v. Arizona*[2], and *Escobedo v. Illinois*.[3]

The Illinois Supreme Court's reasoning can be divided into four considerations: first, the duty of the judiciary to provide indigent defendants with counsel; second, the inherent power of the court to regulate and determine the obligations of the legal profession; third, the effect of statutes limiting compensation of court appointed attorneys; and lastly, how the court's order to compensate the attorneys can be executed.

The first consideration involves both constitutional and statutory provisions, and the tradition of the legal profession. The sixth amendment to

[1] 372 U.S. 335 (1963). [2] 384 U.S. 436 (1966). [3] 378 U.S. 478 (1964).