

The Alcoholic and the Law

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NOTES AND COMMENTS



THE ALCOHOLIC AND THE LAW

Alcoholism is thought of by some as a disease, by others as the symptom of a disease.¹ Science and the medical profession can offer no single-factor etiological explanation of the phenomenon; however, it is generally agreed that psychological, physiological, social and cultural factors may all be involved.² While disputes as to the nature and causes of alcoholism continue, few authorities disagree with the premise that alcoholism presents an urgent problem to modern-day society,³ viz., the best method of dealing with the alcoholic segment of our population.

¹ 315 ANNALS 1 (1958).

² See CHAFETZ & DEMONE, ALCOHOLISM & SOCIETY 17 (1962); NOYES & KOLB, MODERN CLINICAL PSYCHIATRY 193 (1961).

³ The National Council On Alcoholism, Inc. reports that there are over five million alcoholics in the United States today. One author has gone so far as to call the problem of alcoholism "epidemic." See Terhune, *The Rising Tide of Alcoholism*, Reader's Digest, June 1965, p. 123.

The purpose of this note is to examine some of the problems created by alcoholism and alcoholics, and to comment on past and present attempts at solution of these problems.

Alcohol and the Alcoholic

The stereotype of the alcoholic as a worthless derelict, homeless and jobless, is inaccurate. Of approximately five million alcoholics in the country today, only about three percent can properly be classified as the "skid row" type; the remaining ninety-seven percent are distributed throughout the economic and social strata of society.⁴

While most people are able to control their consumption of alcohol, of the seventy million Americans who drink, one in fourteen will become an alcoholic.⁵ The alcoholic differs from other drinkers in that he drinks *compulsively*, even though

⁴ National Council On Alcoholism, Facts on Alcoholism (May 1965); see also Business Week, Sept. 21, 1963, p. 136.

⁵ Facts on Alcoholism, *op. cit. supra* note 4.

he may "hate liquor, hate drinking, hate the taste, hate the results," and hate himself for succumbing to the habit.⁶

Whether alcoholism is a disease in itself or only the symptom of a disease, the alcoholic is a sick person.⁷ His illness costs industry two billion dollars annually in the form of accidents, absenteeism, inefficiency and severance pay,⁸ and is responsible for the disruption of marital, social and economic relationships. In addition, it is known that:

where we find alcoholic parents, the chances of alcoholism occurring in the children is much greater than where the parents are not alcoholic, not because the disease is inherited, but because the environment which obtains in the home where an alcoholic is a parent is such that the child finds himself in an environment which makes it very difficult for him to learn how to live normally.⁹

Even if the children of the alcoholic do not become alcoholics themselves, "many problems of emotional instability and juvenile delinquency have their origin in the drinking problem of a parent."¹⁰

Not only does the alcoholic affect the persons with whom he comes in contact, but his drinking may also alter his own psychological and physical condition. Psychologically, the advanced stages of the alcoholic's illness are symptomized "(1)

by continual . . . pain, (2) by a set of responses which may be summed up as immaturity, and (3) by an over-all attitude of extreme egocentricity."¹¹ Physically, the latter stages of the alcoholic's disease may be manifested by undernourishment, highly irregular routine and inadequate sleep, resulting in an over-all attitude of hopelessness in an atmosphere of unrelied tension.¹² The alcoholic's condition is chronic, becoming progressively worse until, if left unchecked, death results. Thus the alcoholic is suffering from more than a disease, he is suffering from a potentially fatal disease.¹³

Alcoholics and Penal Sanctions

The failure of the public to recognize alcoholism as a disease, or at least as the symptom of a disease, and the common conception of the alcoholic as a morally weak individual whose drinking could be curbed by the exercise of will power alone, are probably responsible for the existence of penal provisions relating to intoxication. Blackstone included a discussion of the "vice of drunkenness" in his *Commentaries* under the heading "Offenses Against God and Religion," and said that "if committed publicly, in the face of the world, it's [*sic*] evil example makes it liable to temporal censures."¹⁴

Public intoxication, an offense¹⁵ in New

⁶ Bacon, *Alcoholism: Nature of the Problem*, 11 Fed. Prob. No. 1, p. 3 (1947).

⁷ See ROCKY MOUNTAIN REGIONAL CONFERENCE OF MUNICIPAL JUDGES, PROCESSING THE ALCOHOLIC DEFENDANT 6-20 (1959) [hereinafter cited as REPORT].

⁸ Business Week, *supra* note 4, at 137.

⁹ REPORT 8.

¹⁰ Address by the Honorable John M. Murtagh, Chief City Magistrate of New York City, presented at a meeting of The Ohio Probation and Parole Association, Jan. 21, 1960.

¹¹ *Supra* note 6, at 4.

¹² *Ibid.*

¹³ At least 12,000 alcoholics die each year from chronic alcoholism. NOYES & KOLB, *op. cit. supra* note 2, at 191.

¹⁴ 4 BLACKSTONE, COMMENTARIES* 41 (1809). By the statute, 4 Jac. 2, c. 5 (1601), drunkenness was punishable by fine or "the sitting six hours in the stocks."

¹⁵ N.Y. PEN. LAW § 1221.

York, accounts for almost 50 percent of the criminal arrests in the urban areas of the United States—roughly 1,000,000 arrests a year.¹⁶ However, laws proscribing public intoxication have been described by one judge as “notoriously futile.”¹⁷ Such laws seek to punish the drunkard rather than to correct the cause of his drinking. Furthermore, public intoxication statutes generally affect the “skid row” alcoholic more immediately than his financially secure counterpart who can drink at his club or in his home rather than on the street or in an alley. It has been estimated that not more than 10 to 20 percent of the alcoholic population ever come into contact with the police until these unfortunates have reached the advanced stages of the disease.¹⁸

The futility of penal statutes lies in their failure to deal squarely with the cause of the drunkenness. The high rate of recidivism¹⁹ among the “skid row” alcoholic and chronic drinkers is evidence of the inadequacy of laws which seek merely to punish rather than cure. Whether the policy stems from a realization of the futility of such statutes or from a recognition of the near impossibility of incarcerating all of those found to be publicly intoxicated, New York City has made it a practice not to arrest intoxicated persons unless they are also disturbing the peace.²⁰

¹⁶ Time, Nov. 27, 1964, p. 52.

¹⁷ *Supra* note 10.

¹⁸ Zappala & Ketcham, *Toward Sensible Rehabilitation of the Alcoholic*, 69 PUB. HEALTH REP. 1189 (1954).

¹⁹ *Supra* note 10. The speaker noted the example of a drinker who had been arrested on five hundred drunk and disorderly charges.

²⁰ *Supra* note 10.

It is not suggested that there is no place in the law for punishing inebriety. While all unreformed alcoholics drink, not all drinkers are alcoholics. Those drinkers who are not alcoholics, but who drink to excess because of choice or inadvertance rather than compulsion, may very well threaten the safety of others or interfere with their property rights, and in so doing, they justifiably subject themselves to social and legal censure. To the extent that immoral acts (in this case drunkenness) interfere with the rights of others, the state has the right to impose criminal sanctions.²¹

This argument does not apply to the alcoholic, however, for the reason that he is not morally at fault for his drinking since his drunkenness is the result of an irrational drive caused by disease rather than by an exercise of free choice.²² While the law punishes men for acts committed because of moral weakness, the alcoholic should no more be punished for his drunkenness than should any other sick person for his disease.

The more modern approach to the problem of alcoholism recognizes the fact that the alcoholic is a sick person, and should be treated as such. Because alcoholism affects the psychological as well as the physical condition of the alcoholic, treatment must be directed at both aspects of the disease. Although the alcoholic cannot be cured, his condition can be arrested, and social readjustment is possible.²³

²¹ REPORT 87.

²² *Supra* note 18.

²³ NATIONAL COUNCIL ON ALCOHOLISM, *THE MODERN APPROACH TO ALCOHOLISM* 4, 13 (1965).

Voluntary Associations

Social rehabilitation is greatly aided by associations such as Alcoholics Anonymous which affords an opportunity for alcoholics to meet with fellow sufferers of the disease in an atmosphere where discussion of their common problems does not result in social condemnation or disdain. Founded in 1935 by two alcoholics, A.A. has but one stated purpose: "to help the alcoholic remain sober."²⁴ To accomplish this purpose the society has established what it calls the "Twelve Steps," as sobriety guidelines for its members. The "Steps"²⁵ rest on a spiritual base, the alcoholic admitting that he is powerless over alcohol and in need of a power greater than himself. This power is not the God of any one religion or sect, but rather God as that term is understood by each individual member.²⁶ A.A., therefore, attracts members of all religious persuasions, and is not unattractive to the nonsectarian.

The method of A.A. is essentially a group therapy approach whereby members meet to help each other remain sober. In this respect it may be classified as a mutual aid program. On the other hand, since membership in this association is completely voluntary, membership being determined on whether or not an alcoholic says he is a member,²⁷ it can also be understood as a self-help program. The alcoholic must actually desire to overcome his weakness for alcohol; he must desire to help himself. In a social group wherein

he is accepted, where contemporaries have similar problems, where group members have a common goal, the alcoholic may become cognizant of the fact that he is there not only to be helped, but also to help. The group helps to keep him sober, and he helps to keep the group sober.

Voluntary alcoholic associations thus provide more than a social retreat for the alcoholic; they offer him an opportunity to do something meaningful, to help others, to regain his self-confidence. Perhaps it is for this reason that A.A. has been more successful with that type of alcoholic who is outgoing, who easily shares emotional relationships with others.²⁸ Those for whom adaptation to the "give and take" atmosphere of the A.A. is difficult probably do not remain with the organization. As a follow-up method to other forms of treatment and rehabilitation, A.A. is unexcelled, and for thousands of alcoholics, it constitutes the main hope for a life free from the use of alcohol.²⁹

Legislation

In 1943, Oregon and Utah became the first states to establish alcoholism programs through legislation.³⁰ In 1945, Connecticut established the institutional pattern for alcoholism programs by creating a board having research, education and treatment functions, the emphasis being on treatment.³¹ Of the states operating an alcoholism program, all have at least one facility designated as an out-patient

²⁴ *Supra* note 1, at 109.

²⁵ *Id.* at 111-12.

²⁶ *Id.* at 112.

²⁷ *Id.* at 108.

²⁸ *Id.* at 113.

²⁹ *Id.* at 116.

³⁰ See CHAFETZ & DEMONE, *ALCOHOLISM & SOCIETY* 111 (1962).

³¹ *Ibid.*

clinic.³² In addition, some states provide special in-service hospital programs.³³

Among the rehabilitative endeavors of the various programs are individual and group psychotherapy, psychodrama and sociodrama, recreational and occupational therapy, medical care, pastoral counseling, and the services of Alcoholics Anonymous.³⁴ Medical treatment may include the use of such drugs as insulin in the case of acute alcoholism, and disulfiram, a drug which causes extreme discomfort to one who imbibes alcohol after receiving an injection.³⁵

While the various state programs are not uniform, it is apparent that legislators have been attempting to solve the problems of alcoholism by dealing with it as a disease. "By suggesting the illness concept, they reinforce the treatment programs, giving them much needed prestige and social sanction."³⁶ Once it is admitted that the alcoholic is suffering from a disease, purely penal sanctions seem not only inadequate, but also unjust. Legislation providing for hospitalization and medical care for alcoholics, similar to that provided for persons suffering from mental illness and addiction to narcotics, constitutes another part of the new approach to the problem of alcoholism.³⁷

³² *Id.* at 115.

³³ *E.g.*, Connecticut, New Hampshire, North Carolina, Georgia, and Florida. *Ibid.*

³⁴ *Id.* at 116.

³⁵ See NOYES & KOLB, *MODERN CLINICAL PSYCHIATRY* 195-96, 209-10 (1961).

³⁶ *Op. cit. supra* note 30, at 113.

³⁷ For provisions relating to the hospitalization of the mentally ill, see N.Y. MENTAL HYGIENE LAW §§ 70-88; for provisions relating to drug addiction and hospitalization of drug addicts, see N.Y. MENTAL HYGIENE LAW §§ 200-16.

New York State has recently enacted comprehensive legislation which recognizes alcoholism as a public health problem and an illness, provides for research, care, treatment and rehabilitation of alcoholics, and for prevention and control of alcoholism among the people of the state.³⁸

Within the Department of Mental Hygiene, a council has been created to formulate an extensive program for the utilization of public and private resources for the purpose of treating alcoholics and preventing the spread of the disease.³⁹ The council is authorized to advise the Commissioner of Mental Hygiene on such matters as programs for education, prevention, diagnosis, treatment, rehabilitation and control of alcoholism.⁴⁰ In addition, special facilities, approved and certified by the Commissioner, are to be established wherein alcoholics will be admitted for the purpose of medical and psychiatric treatment.⁴¹ Admission to such facilities may be on a voluntary or involuntary basis.

Voluntary Admission in New York

Upon the application of the alcoholic, or if such person is under twenty-one years of age, unmarried and a dependent or in the custody of a legal guardian, then on the application of a parent or legal guardian, the alcoholic may remain in the hospital or other facility established for the treatment of alcoholics for a period of up to twelve months.⁴² He may be discharged at any time during the twelve-month period if, in the opinion of the

³⁸ This is the stated purpose of the statute, N.Y. MENTAL HYGIENE LAW § 300.

³⁹ N.Y. MENTAL HYGIENE LAW § 302(4).

⁴⁰ N.Y. MENTAL HYGIENE LAW § 302(4)(b).

⁴¹ N.Y. MENTAL HYGIENE LAW § 305.

⁴² N.Y. MENTAL HYGIENE LAW § 306.

director of the facility, he has either recovered or is not suitable for further treatment in the institution.⁴³

The voluntary admission permitted by the New York statute is similar to the voluntary admission provisions found in statutes dealing with alcoholism in several other states.⁴⁴

Involuntary Admission in New York

A person over twenty-one years of age, certified as an alcoholic by two physicians, and for whom application has been made by a father, mother, spouse or other person enumerated in the statute, may be certified for admission by the director of a state institution for alcoholics.⁴⁵ No notice of the application need be given to the alleged alcoholic until five days, excluding Sundays and holidays, after admission to the institution.⁴⁶ The statute provides for a judicial hearing on the question of the need for hospitalization, and if the court determines that continued hospitalization is required, an order authorizing continued retention of the alcoholic may be issued.⁴⁷

Again, similar provisions for the involuntary commitment of alcoholics are found in the statutes of other states.⁴⁸

Prior to the New York statute, there was no statutory authority in that state for committing an alcoholic who was not mentally ill to a state hospital for treat-

ment. While there was a provision for certification of inebriates to private institutions for periods of up to one year, there was no similar provision for certification for treatment in a *publicly* supported facility.⁴⁹ Since an alcoholic was not deemed to be "mentally ill" within the involuntary commitment provisions of state mental hospitals, alcoholics who did not voluntarily commit themselves were excluded from these hospitals.⁵⁰ Thus, the result of the prior statutory scheme was that unless penal commitment of the alcoholic was imposed for such a crime as public intoxication, there was no way of compelling him to undergo treatment in a publicly supported facility.⁵¹

An obvious shortcoming of the statute providing for certification on court order to private institutions was that only those who could afford to pay the costs of institutionalization would be so certified and treated. Under the new statute, however, the institution may charge fees for care and treatment furnished "provided that such care, treatment or services shall not be refused to any person because of his inability to pay therefor."⁵² Thus, the benefits of hospitalization are afforded to all, regardless of the ability to pay, and those victims of alcoholism who are financially unable to afford private hospitalization may now share in the benefits of

⁴³ *Ibid.*

⁴⁴ See, e.g., GA. CODE ANN. § 88-409 (Supp. 1964); KAN. STAT. ANN. § 74-4410 (1964); MASS. ANN. LAWS ch. 123, § 86 (1965); VT. STAT. ANN. tit. 18, § 2951 (1959).

⁴⁵ See N.Y. MENTAL HYGIENE LAW § 307(1).

⁴⁶ *Ibid.*

⁴⁷ N.Y. MENTAL HYGIENE LAW § 307(2).

⁴⁸ See, e.g., GA. CODE ANN. § 88-405 (Supp. 1964); KAN. STAT. ANN. § 74-4408 (1964).

⁴⁹ See statement of Assemblyman Ferdinand J. Mondello, cosponsor of the New York alcoholism legislation, reported in N.Y. Times, June 19, 1965, p. 31, col. 8. Certification of inebriates to private institutions is now governed by N.Y. MENTAL HYGIENE LAW § 423.

⁵⁰ See N.Y. Times, *supra* note 49.

⁵¹ *Ibid.*

⁵² N.Y. MENTAL HYGIENE LAW § 308.

medical advances in the treatment of alcoholism.

Involuntary commitment to an institution for the purpose of treatment of a disease, even a non-contagious disease, is not necessarily repugnant to constitutional guarantees. The United States Supreme Court, in reference to compulsory treatment of narcotic addicts, has stated: "in the interests of the general health or welfare of its inhabitants, a State might establish a program of compulsory treatment"⁵³ Such a program, the Court continued, "might require periods of involuntary confinement."⁵⁴

The alcoholic is an addict in his own right. While he is addicted to alcohol instead of drugs, it would appear that any reason advanced in support of involuntary commitment of narcotic addicts would apply with equal force to alcoholics. The only basic difference between the two is the subject matter of the addiction.

While a preliminary judicial order is not a condition of involuntary admission, it would seem that the statutory scheme for compulsory commitment does not involve any infringement of the civil rights of the alcoholic. No court ordered certification is granted until after a hearing, and the alleged alcoholic must be given notice prior to such hearing.⁵⁵

While the statute does not require that notice of the application be given to the alcoholic before admission to the institution, it is unlikely that a constitutional

attack on this ground would be successful. In *Matter of Coates*,⁵⁶ the New York Court of Appeals upheld a section of the Mental Hygiene Law which did not provide for a hearing of the issue of mental illness until after certification of the person alleged to be mentally ill. The Court noted that the finality of the order was subject to the right of review, and thus the constitutionality of the section was presumed. In addition, it was stated that the alleged mentally ill person was "merely hospitalized in the first instance for not more than 60 days," and that such hospitalization could be continued beyond that period only where it was established that the patient needed further care and treatment.⁵⁷

The new alcoholism statute provides for a hearing after admission of the patient to the institution. Furthermore, whether or not requested by the alleged alcoholic, a court order for continued hospitalization beyond the initial sixty-day period must be obtained.⁵⁸ It is apparent that these provisions are similar to those considered by the Court in *Coates*. Since those provisions were found not violative of due process, it is submitted that the provisions of the new statute will be similarly upheld.

Education

The dissemination of educational information directed toward understanding and discovering prospective alcoholics is essential. "It produces a more positive attitude toward the alcoholic, so that with

⁵³ *Robinson v. California*, 370 U.S. 660, 665 (1962).

⁵⁴ *Ibid.*

⁵⁵ See N.Y. MENTAL HYGIENE LAW §§ 307(2), (3).

⁵⁶ 9 N.Y.2d 242, 173 N.E.2d 797, 213 N.Y.S.2d 74 (1961).

⁵⁷ *Id.* at 250, 173 N.E.2d at 802, 213 N.Y.S.2d at 80.

⁵⁸ N.Y. MENTAL HYGIENE LAW §§ 307(2), (3).

a measure of self-respect he may ask for help with his problem."⁵⁹

Among the leaders in the educational movement is the National Council On Alcoholism, Inc., whose dual objective is "to arouse public opinion and to mobilize it for action on the problem of alcoholism."⁶⁰ Its Summer 1965 *Catalogue of Publications* lists 123 pamphlets, reprints and books available through the association, as well as information kits and posters dealing with alcoholism.

The dissemination of "information relating to public and private facilities . . . available for the assistance of alcoholics and potential alcoholics"⁶¹ by the Commissioner of Mental Hygiene is authorized by the recent New York statute pertaining to alcoholism. In addition, the Education Law provides that instruction be given in public schools as to the nature of alcoholic drinks and their effects on the human system.⁶²

These and other educational programs⁶³ are directed at the prevention and early detection of alcoholism, which like most other diseases, is better treated by early detection and best treated by prevention.

Conclusion

Past experience has shown that sanctions, solely penal, cannot curb the rising

tide of alcoholism. Moreover, helpful voluntary associations such as Alcoholics Anonymous cannot alone solve the problem; the worldwide membership of A.A. is but a quarter of a million—there are over five million alcoholics in the United States alone.

The approach to alcoholism adopted by the New York statute indicates an effort to bring the law of this state more closely into line with the modern conception of alcoholism as a disease. It brings current medical and scientific advances to bear upon the plight of the alcoholic; it suggests treatment both involuntary and voluntary; and it offers a means for rehabilitation rather than the mere application of punitive measures as a solution to the problem. Thus, it represents a positive legislative attempt to deal with a growing social ailment which, until the present, has been largely ignored or neglected by the society which it afflicts. The policy behind this legislation seeks to foster an acceptance of the alcoholic as a sick person against whom prevalent attitudes of hostility and contempt should be finally recognized as unavailing.

It cannot be overlooked that in the past the stigma attached to the words "alcoholic" and "alcoholism" has been at least partially responsible for the failure of numerous victims of this disease to voluntarily submit themselves to institutional care. Hopefully, the public health approach underlying the recent New York legislation will do much to obviate this difficulty, thereby encouraging many alcoholics to submit to institutionalization and to the medical and psychiatric help they desperately need.

⁵⁹ CHAFETZ & DEMONE, *ALCOHOLISM & SOCIETY* 117 (1962).

⁶⁰ *Id.* at 142.

⁶¹ N.Y. MENTAL HYGIENE LAW § 304(6).

⁶² N.Y. EDUC. LAW § 804(1).

⁶³ Among the more prominent educational programs is the Yale Summer School of Alcohol Studies, a four-week course which deals primarily with the scientific aspects of alcoholism. Yale University also sponsors a periodical entitled *The Quarterly Journal of Studies on Alcoholism*, which deals solely with the problems of alcoholism.