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Comments to Starrs Speech

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COMMENTS TO STARRS SPEECH

DR. MYERSON:

I have been dealing with alcoholics both in a hospital setting and in a penal setting, and the only conclusion I can make is that the middle class alcoholic or the upper middle class alcoholic never goes to jail for alcoholism. In a middle class setting the sheriff would simply push his friend aside and drive the car home. My feeling is that there is, indeed, a tremendous unfairness in the handling of the alcoholic population and that we are groping, each with our own individual philosophies, to find a more just way of handling this problem. I think this is especially true in the narcotics field, where we are faced with the dilemma of not only the addiction problem but also the fact that these people are stealing the community blind. The community is entitled to some protection, perhaps more so than from the alcoholic.

PROFESSOR SWARTZ:

I would like to just pursue some of the topics discussed by talking about the consequences of a finding at the trial that there was unconsciousness and lack of a voluntary act. Take for example, as perhaps an extreme case, the instance Professor Starrs gave of the woman who in her sleep picked up an ax and, in a dreamlike state, thinking that she is protecting her daughter, swings that ax and kills an innocent human being. The provision of the criminal law at the present time is that a finding of a lack of voluntary conduct results in a straight acquittal. The individual is free to walk out the courthouse door, in contrast with the provision in the defense of insanity that an acquittal on grounds of insanity requires an inquiry into the possibility of commitment to the hospital for the criminally insane, or perhaps even an automatic commitment. Does this straight acquittal perhaps pose a problem? It is relevant to what we have been saying at this workshop concerning the chronic alcoholic because if the chronic alcoholic is not acting voluntarily, he will also be free to walk out the courthouse door. We have a question here about what mechanisms of the law we are dealing with in this broad category of defense.

PROFESSOR STARRS:

In the case you mentioned, the lady showed some indications of some basic disorder which needed treatment. I might have slighted treatment facilities in discussing criminal law theory. I am concerned where the concentration upon treatment has a direct impact upon the notion of responsibility. I don't have to point out that the consequences of conviction are greater than merely fine or time in jail. The loss of civil rights comes immediately to mind. The loss of the right to serve in the military, on a jury, to be licensed and so many other items results from criminal convictions. It is important, therefore, to keep separate and distinct the questions of criminality and punishability. While I am concerned about what is done with these people once they're acquitted, I do not believe that this at all challenges the theory of the acquittal. It merely indicates there has to be a follow-up somewhere along the line.

What has happened in the *Easter* case is that throughout the country there has been a misreading of the case because of the language used. The courts are seeing in the *Easter* case an opportunity to continue to convict chronic alcoholics. Mr. Hutt left it to the court to permit them to remain in a confused state about the distinction between *actus reus* and *mens rea*. The judge merely has to say that the statute does not require *mens rea*. That's exactly what many have said. It seems to me that this position does not serve the objectives that Mr. Hutt sets out. In other words, if he is truly convinced of his objectives, he should use criminal doctrines that would accomplish that objective.