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Criminal Intent

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CRIMINAL INTENT.

THESIS

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In all nations and in all times the criminal law has been in a more rude and imperfect state than the civil. Even in Blackstone's time the most trivial offences were severely punished. A great amelioration of criminal law has taken place in England as well as in America during the last century. To account for the harsh and overreaching penalties suffered for trivial offences is not difficult. The cause liest in the "impetuous dictates of avarice, ambition and revenge;" in the adoption of temporary expedients on the spur of the moment and giving them a lasting efficacy; in sanctioning penalties which are commensurate with some unusual and extraordinary offence at the first recoil; in other words it is the work often of the theoretical reformer who swings the pendulum from adjudged wrong to certain injustice. Criminal laws should then be made only with jealous care, "founded upon principles that are permanent, uniform and universal; and always conformable to the dictates of truth and justice."

In this ameliorating process no one essential of crime has played so important a part as the determin-
ing of the intent with which the act was done. In tracing the parallel lines of civil and criminal jurisprudence until they are lost in remote antiquity, there is no mark of distinction or separation so plainly visible as the necessity of intent in criminal jurisprudence. In civil law the intent is often a matter of importance and as often disregarded; in criminal law, however, it is of the highest importance since in its absence, generally speaking, no crime is possible.

In this treatise we shall, of necessity, discuss criminal intent only in its restrictive sense. We shall be satisfied with the general principles underlying intent and avoid the exceptions. For instance, in stating the rule that a person intends the natural and probable consequences of his act, person is meant to be the ordinary, average, sane and normal man free from the disabilities of insanity, infancy, drunkenness duress etc.

As the first fundamental and underlying principle of criminal jurisprudence then we have that no man is guilty of any offense unless his intent was wrong. It is embodied in the short and antithetical maxim, -
"actus non facit reum nisi mens rea". The earliest case, perhaps, in which the rule is asserted is in the "Leges Henrici Primi" V., 28, in which the following language is used, "Si quis per coaccionem abjurare cogatur quod per multos annos quieta tenuerit, non ingurante sed cogente perjurium erit. Reum non facit nisi mens rea." Brown's Maxims give the earliest authority cited for its use as 3rd Institute, Chap. I., fo. 10, where it appears as a marginal reference by Lord Coke. Another maxim of the same import is, "Actus me invito factus non est meus actus" an act done by me against my will is not my act. This principle then as promulgated by these familiar maxims is immutable in its nature. It is older than the law for from it the law sprang. History records instances where it has been violated. Such instances, however, are traceable to the prejudices and passions of men rather than the calm and deliberate judgements. With every return of reason the principle reappears to assert itself with greater power than before. If legislatures or courts trample down this barrier constructed by the guiding hand of right there injustices will recoil upon themselves with redoubled severity while their intended victim will be elevated to the
seat and reputation of a martyr. The same rule holds in moral science as well. "By reference to the intention we inculpate or exculpate others or ourselves without any respect to the happiness or misery actually produced. Let the result of an action be what it may, we hold a man guilty simply on the ground of intention; or, on the same ground we hold him innocent." (Wayland's Moral Science.)

This principle is too well authorised and sanctioned to need any authorities to support it here. Whether like all rules it may be modified by exceptions we shall see later. (See generally Bishop's Criminal Law.)

In the same manner that an act unaccompanied by an intent is unpunishable so is the mere intent beyond the jurisdiction of terrestrial courts. The State which complains in criminal actions does not suffer from the mere imaginings of men and consequently some act must have followed the wrongful intent. This principle is illustrated by the cases of Rex vs. Stewart I. Russ. & Ryan 288 and Rex vs. Fuller I. Russ. & Ryan 308. This former case was decided in 1814. The prisoner was tried on an indictment charging him with having in his possession a quantity
of counterfit coin with the purpose of uttering it for good. The twelve judges, for whom the case was reserved, unanimously decided that the mere having in possession was no crime at the common law in that there was no overt act. In the latter case the indictment charged "that the defendant with force and arms unlawfully did procure twenty pieces of counterfit coin made to the likeness of good coin of this realm, with intent to utter the same etc." The court, sitting in 1815, unanimously decided that the procuring of such coin with intent to utter was an offense. While this may be considered as drawing the line very fine, nevertheless, it well illustrates the principle contended for that a mere intent is not punishable except as evidenced by some overt act. In the above cases having was held not to be such overt act while the mere procuring was sufficient that intent might attach to it constituting an offence. In some cases very insignificant acts are held to be sufficient as in conspiracy where the mere conspiring is enough.

The remarkable case of the Duke of Norfolk illustrates from what slight acts intent may be inferred. The Duke wrote letters to the Queen of Scotland who previously had laid claim to the English Crown. The
court held that inasmuch as the Queen of Scotland aspired to the throne of England he that married her must be presumed to claim it also in her behalf, which claim was inconsistent with the safety of the English Queen. From such acts the Duke was presumed to have compassed and imagined the Queen of England's death. He was accordingly tried and executed. Thus it will be seen that some overt act, however slight, must exist accompanied by the evil intent. This rule is sound and salutary for were it otherwise the courts would have to pass upon the state of men's minds which would necessitate the assumption of omniscience, an attribute of Deity.

Shakespeare, who was more of a jurist than many professedly so, has aptly stated this second underlying and guiding principle of criminal jurisprudence:

"My brother had but justice,
In that he did the thing for which he died.
For, Angelo, his act did not o'er take his bad intent,
And must be punished but as an intent
That perished by the way: thoughts are no subjects;
Intents but merely thoughts."

Since the intent then plays so important a part let us ascertain what is meant by the term. To enunciate a definition absolute in its nature is impossible.
As no two crimes are the same, though similar in their nature, so will it be impossible to find two minds and under different circumstances, the same. Intent can only be ascertained from a careful observation of all the overt acts that are connected with the offence. Intent, however, has been defined to be "The setting of one's self and one's powers to bring about a certain result". (Clark's Analysis of Criminal Liability, p. 73). This is its original, derivative meaning and from that standpoint is considered good. W. L. Clark in his "Criminal Law" has given the following: "A criminal intention is the state of mind of a person, when he consciously violates the law, without legal justification or excuse." (page 42)

The failure to draw a distinction between intent and motive has been the source of much litigation and confusion by courts. By motive we mean that power or action of the mind which incites or stimulates a person to do or refuse to do some act. It should always be kept in mind that motive is not an essential element of crime and is never, of necessity, proved. Motive is important in criminal law in that it may be used to show the intent with which an act is done.
For example, A. shoots and kills B. Evidence is offered to prove the killing accidental. To rebut this evidence testimony is offered to show that on a previous occasion A. had threatened to kill B. Here the motive will be seen to have been evil and thus a presumption may arise that the act was not accidental but intended. The hatred itself however of A. against B. is no part of the crime and of it the courts cannot take jurisdiction.

Neither will a motive, however good or praiseworthy, exempt one from an illegal act wrongfully committed. The motive may be a good one and yet the act will in the eyes of the law be no less criminal. A father steals bread to save his starving children. No one will here question the motive and yet the act still remains larceny. This principle, though at times it may work injustice, is sound and wise. Were the law otherwise there would be few convictions of crime, for there are few cases in which the extraneous motives are not mixed up with the particular evil intent. The Hindu mother casts her infant babe into the Ganges to appease the gods; the libertine invades the sanctuary of conjugal life believing he is rendering to society a benefit; the Mormon practiced polygamy devoutly be-
lieving, as his religion taught, that the Bible demands it; Booth fled from the Washington theatre waving his smoking pistol in the air, uttering that now famous expression, "Sic semper tyrannis", stoutly persisting that he was simply obeying the mandates of a higher power when he assassinated President Lincoln. The conscience of the wrongdoer calls these instances examples of righteous duty heroically done; society calls them crimes.

The contrary arguments are vicious in that they leave out of the question the idea of government by law and make each individual's conscience the sole and final arbiter of his acts. Should we follow such a rule we would sanction and allow to run riot some of the most heinous crimes to be found on the Newgate Calendars of the nations of the world. Scientific enthusiasm, then, is no defense to an indictment for disinterring a corpse; the motive of ridding the community of a bad man is no defense to homicide. No matter what may be the motive leading to a particular act, if the act be illegal it is indictable, notwithstanding that some one or more of the motives may be meritorious. Thus a case is found where a mother and father consulting the welfare of their child deemed it
better to send its little soul direct to Heaven than allow it to run its chance through this world of wickedness and woe. They accordingly did the deed which, in their eyes, was righteous and commendable. Nevertheless the State called this sacrifice of their little Isaac, murder. (See generally Com. vs. Cooley 10 Pick. 27; Com. vs. Mass 122 Mass. 40; U. S. vs. Harmon 45 Fed. Rep. 414; Reynolds vs. U. S. 98 U. S. 145; "Wheaton's Criminal Law" Vol. I., Sec. 119; Clark's "Criminal Law" pp. 40-41.)

The courts have also laid down certain presumptions in criminal prosecutions which aid in the consideration of and judgement upon the given facts. "When one does an unlawful act he is by the law presumed to intend to do it" or as is sometimes said, a man intends his acts. Again, a man is presumed to intend the natural and probable consequences of his acts on the ground that these must have been within his contemplation if he is the same man and acts with the deliberation which ought to govern men in the conduct of their affairs. (May's "Criminal Law" Sec. 7, pp. 5-6.) There are however classes of cases where the particular intent is necessarily proved and they are such that the act in itself is not criminal and is
made so only when such intent is proved. We will now consider that class of cases where the presumption, namely, that a man intends his acts and the natural and probable consequences of such acts.

In an early case 3 Maule and Selwyn, King vs. Vixon, Lord Ellenborough distinctly and unhesitatingly laid down the rule. The defendant was employed to furnish bread for the Royal Military Asylum. The indictment charged him with adulterating the food and a motion was then made in arrest of judgement for the cause that the indictment did not show that he intended to injure the children's health. Lord Ellenborough said: "It is an universal principle that when a man is charged with doing an act of which the probable consequences may be highly injurious the intention is an inference of law resulting from the doing of the act and here it was alleged that he delivered the loaves for the use and support of the children."

In the case of U. S. vs. Taintor 11 Blatchford the doctrine is distinctly laid down by the U. S. Circuit Courts. Here the defendant was charged with embezzling money from a bank of which he was cashier. On his trial in the lower court he offered evidence to
prove that his acts were known to the president of the bank and some of the directors and were sanctioned by them. This evidence was not offered to disprove his acts but to show that there was no intent to defraud or injure as charged in the indictment. Benedict, J. said: "One proposition involved is that the guilty intent charged in the indictment was shown by the proof of the acts done. It has hardly been doubted but that this proposition is correct. It is a general rule of law that a man must be held to intend the necessary consequences of his acts. This rule is applicable to criminal cases as well as civil." His motion was thus lost.

In the case of Com. vs. York 9 Metcalf at p. 103 the court said: "A sane man, a voluntary agent, acting upon motives, must be presumed to intend the natural and probable consequences of his acts." Therefore, one voluntarily and willfully does an act which has a direct tendency to destroy another's life, the natural and necessary conclusion from such act is that he intended so to destroy such person's life." The defendant in this case was charged with commission of murder, and the court laid down the rule that if it
were proved he did the act of inflicting a mortal wound upon the deceased malice was to be inferred unless such acts were proved, by a preponderance of the evidence as would extenuate the homicide and reduce it to manslaughter. See also the familiar case of Com. vs. Webster 5 Cush. at page 305, where the rule is approved and strongly reasserted.

From the above cases it is obvious that in those jurisdictions there is a presumption of law that a man intends his acts and the natural and probable consequences of such acts. This presumption is of course a rebuttable one by preponderating evidence.

We shall now turn our attention to the New York cases and see whether the rule here is in conflict with the great mass of adjudications elsewhere. In the case of Stokes vs. People, 53 N. Y., 177, the defendant was indicted on a charge of murder and the trial judge in his charge to the jury said: "The fact of the killing in this case being conceded, it becomes the duty of the prisoner here to satisfy you that it was not murder which the law would imply from the fact of the killing under the circumstances, in the absence of explanation that it was manslaughter in the third degree or justifiable homicide, because as I
have said the fact of killing being conceded and the law implying motive from the circumstances of the case, the prosecutor's case is clearly and entirely made out and therefore you can have no reasonable doubt as to that, unless the prisoner shall give evidence sufficient to satisfy you that it was justifiable murder under the circumstances of the case."

On the appeal Grover, J. held that to say that there arises a legal implication from the fact of killing in the absence of proof extenuating the circumstances was error and that while such charge was correct at common law by the New York statute was wholly wrong. "The question in this case is not what was the rule at common law as to the implication of malice from the act whether such rule is deduced from authority or principle and legal analogies. The question arises upon the statutes of the state by which homicide is made justifiable or excusable, murder in the first or second degree or manslaughter in one of four degrees, determined by the intention and circumstances of its perpetration."

This opinion argues that the crime consists of an act and an intent which must concur and it is therefore impossible to convict unless both exist. "The intention may be inferred from the act but this in prin-
ciple is an inference of fact to be drawn by the jury and not an implication of law to be applied by the court." At the common law this presumption was one of law applied by the court while here it is a presumption of fact to be drawn by the jury which amounts to nothing more nor less than an argument. It should be remembered however that this is so from the nature of the statute.

In People vs. Powell the defendants were charged with conspiracy. They had neglected to advertise for proposals for supplies for the use of the poor of Kings County as required by statute. The defendants offered evidence to show that they acted in good faith, did not know of the statute and that there was no intention to violate the statute. The trial judge held that ignorance of law or absence of intent would not avail the defence and if they did the act prohibited by statute or omitted to do that which was so required, they were guilty. This charge on appeal was held to be erroneous in that the intent was not to be inferred as a matter of law but was to be proved as well as the act itself.

In Filkins vs. People 69 N. Y. 101, the court held that whenever the degree of the offense depends upon
the particular intent with which an act is done the intent to be inferred from the circumstances is for the jury and every fact which will throw light upon that question may be given in evidence.

In People vs. Flack 125 N. Y. 324, the defendants were charged with conspiracy. Andrews J., speaking for the court said: "The presumption that a person intends the ordinary and probable consequences of his acts is, as applied to criminal cases, a rule to aid the jury in reaching a conclusion upon a question of fact and is not a presumption of law." No matter how clear and incontrovertible the proof may be as showing a criminal intention, still the question remains for the jury and must be passed upon by them alone and never can be ruled as a question of law by the court.

"Jurors may be perverse, the ends of justice may be defeated by unrighteous verdicts, but so long as the function of the judge and jury are distinct, the one responding to the law the other to the facts, neither can invade the province of the other without destroying of trial by court and jury."

In the case of Wiman vs. People reported in 32 N. Y. Sup. 1037 and in 9 Misc. Reports one decision based on an argument for statu of proceedings we find
the N. Y. doctrine stoutly adhered to by the General
Term. Wimar was charged with forgery. From the
evidence it appeared that defendant was authorized to
draw checks in the name of his employer. He did draw
a check payable to a creditor of the firm and then
indorsed the payee's name upon the back. The object
of drawing the check and making it payable to the cred-
itor was not to defraud his employer but merely to
conceal his overdrafts or the appropriation of his em-
ployer's money to his own use. The General Term in
both cases held that the act itself was not sufficient
to convict him of forgery, instead of being presumed
from the act as a question of law, was one to be passed
upon by the jury.

Let us keep our mind upon these cases while we
consider that class of cases where the act having been
done and proved there arises an irrebuttable presumption
that there was a criminal intention. Legislatures
have power to pass statutes the violation of which is
always followed by the penalty regardless of the state
of the offender's mind at the time. (People vs.
Kibler, 106 N. Y., p. 321) A statute may, for instance,
require milk to be up to a certain standard and the
mere act of selling milk not up to the standard is
ground for conviction regardless of intent. Evidence showing that he acted prudently and actually believed that the milk was pure would be of no avail. The act alone being proved criminal intent is irrebutably presumed. (People vs. Kibler, 106, N. Y., 321)

Legislatures may also authoritatively determine the distance within which powder magazines and slaughter houses may be erected from cities.

In State vs. Essex Club 20 At. R. 770 the facts were these: A bona fide social club out of its common fund purchased liquor and sold them to the members of such club. The statute claimed to be violated was as follows: "Whoever shall sell any strong or spirituous liquor at any time and at any place within said city without having a license therefor shall forfeit and pay fifty dollars for each offense." This was held to be one of that class of cases which does not depend upon the intent of the offender. "In this class of cases the offense consists in the act done, regardless of the intent with which it is done. In my judgement it is wholly immaterial and not a legitimate subject of inquiry whether an intention to violate or evade the law was present or not. Intent constitutes no part
of the offense. The simple question presented is did he do the act expressly inhibited. If so, the conviction is well grounded.

In Halsted vs. State, 32 A. R. 245 the principle is clearly enunciated and authorities cited and discussed. "Whenever the law positively forbids an act to be done, it becomes thereupon ipso facto illegal to do it willfully or in some cases even ignorantly or may be to effect an ulterior laudable object", and there may be an indictment without the addition of any corrupt motive. "Nothing in law is more incontestable than that in statutory crimes, the maxim that crime only proceeds from criminal minds does not apply."

Here then we have the rule - as a corollary or modification of the principle that a man intends the natural and probable consequences of his act - that in some cases where the crimes are prohibited the intent is a question of fact for the jury, and second, that where the statute expressly and positively forbids an act to be done the mere doing is sufficient ground upon which to base a conviction regardless of the intent.

Thus it will be seen that not a great pessimistic turn of mind is required to foresee and expect trouble
ahead of us.. The different cases founded upon very similar facts apparently diverge leading us on until we are utterly lost and bewildered standing in a wilderness of clashing juristic opinions. But on a careful examination of all these cases we shall find that they can be reconciled and that all the decisions are controlled by the fundamental principle of statutory construction. Let the intent of the enacting body be ascertained and such intent if legitimate, justifiable and within constitutional sanction shall control, let the consequences be what they may.

We will now consider a few illustrative cases.

In Goodrow vs. State 65 Me. 30, a woman married a second time, believing that she had been legally absolved from her first husband by divorce. This was held to be no defense to the statute which was general in its nature.

In Com. vs. Nash 7 Metcalf 472 a woman married a second time, believing from his long absence etc. that her first husband was dead. Not allowed as a defense.

In Queen vs. Tolson 23 Q. B. Div. 168 the facts and statute were similar to those in the Nash case and while a different conclusion was reached both
decisions went upon the ascertainment of the construction theory already laid down. No case probably can be found holding that in case of a general prohibitory statute a corrupt motive must be interpolated into the statute to constitute the offence on the ground as is sometimes claimed that otherwise it would be contrary to natural justice. (Halsted vs. State, 32 A. R., 245) If this rule be followed all the cases become harmonized and apparent inconsistencies are scattered and disappear.

As to unintended results. If a person intending to do some unlawful act and wrongful, commits some crime accidentally he is nevertheless held guilty. Thus if A. shoots at B. to kill him and accidentally kills C. A. will be guilty of murder. In Com. vs. Mink 123 Mass. 422 the defendant was about to commit suicide and one to whom she was engaged attempted to prevent her and was thus shot. Here the defendant was found guilty of manslaughter. The crime intended to be done however must be malum in se and not merely malum prohibitum. (Com. vs. Adams, 114 Mass., 323.)

In Rex vs. Blackburn, 2 East P. C. 711 the defendant attempted to commit rape upon a woman and she
offered him money if he would desist. This was held to be robbery though his original intention was to commit rape. This of course would not be so held in New York.

In this thesis the principles discussed are principally the following: That no man can be convicted of a crime unless his intent is evil; That a mere intent except as evidenced by some overt act is unpunishable; That a man is presumed to intend the natural and probable consequences of his acts as well as the acts themselves; That under the New York statutes the rule is modified to the effect that the intent is never presumed as a question of law but as a question of fact to be passed upon by the jury; That where the intent is an ingredient of the crime it must be proved and can never be presumed; That the Legislature has authority to make certain acts criminal and in such cases there is an irrebuttable presumption of criminal intention; That a man is liable for his unintended acts where such are the effects or results of an intended wrongful act.

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