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GEORGE DESSION

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The author is Professor of Law at the Yale Law School where he has been a member of the faculty since 1950. He participated with the late George H. Dession in giving various courses and seminars in criminal law and criminology. From 1948 to 1950 he taught at the University of Virginia Law School. His main teaching interests are Criminal Law and Evidence and he has published numerous articles in legal periodicals in these fields.—EDITOR.

When George Dession died tragically young on June 17, 1955, criminal law and criminology lost a keen and creative scholar.

One of his greatest traits was the zeal with which he identified with the important problems in his chosen field. Upon graduation from the Yale Law School in February, 1930, he was persuaded to fill a vacancy in criminal law. To prepare himself for this task he first took a position in the State's Attorney's office to learn something of the problems and role of the prosecutor. Then, in the fall of 1930, by special arrangement with the Yale Medical School, he enrolled for advanced work in anatomy, psychiatry, and psychology. Thus began a fruitful collaboration which continued throughout his life. Even in his first year of teaching he joined with a psychiatrist and a member of the law faculty in giving a seminar in the legal, psychiatric, and psychological aspects of crime.[1]

In 1932 he spent a year abroad as a Social Science Fellow studying the administration of the criminal law in France and Belgium. Several years later he studied along similar lines in Italy and England as a Guggenheim Fellow.

He retained the diversity and breadth of interest thus engendered throughout his life, collaborating steadily with his colleagues of the Medical School and other departments of the university in courses, seminars, and articles which always transcended departmental lines.[2] He exemplified in his own person the interdisciplinary training so many others have advocated.

Still he was no cloistered scholar. He gave himself generously to the public service. He was a trustee of a state mental hospital for many years and a member of the New Haven City Commission on Legal Aid. He held various positions with the Federal Government for many years and was an effective prosecutor in antitrust cases.[3] He rendered important service as a member of the Supreme Court's Advisory Com-

[1] A by-product of this seminar appeared six years later in his path-breaking article entitled *Psychiatry and the Conditioning of Criminal Justice*, 47 YALE L.J. 319 (1938).

[2] As an example see DESSION & ASSOCIATES, *Drug-Induced Revelation and Criminal Investigation*, 62 YALE L.J. 315 (1953), the collaborative effort of two law teachers and two psychiatrists. And see current article in YALE LAW J. with LASSWELL.

[3] One result was the valuable and informing monograph on *The Trial of Economic and Technological Issues of Fact*, 58 YALE L.J. 1019, 1243 (1949).

mittee on Rules of Criminal Procedure—a service marked by a sensitive concern for the accused.[4]

The results of this broad and varied experience are apparent in his writings and in his original teaching tool, his provocative materials on Criminal Law, Administration and Public Order published in 1948.[5] It is perhaps too soon to appraise the full impact of his work upon basic criminal law theory. Indeed, his greatest contribution was to his colleagues and students for his mind was a veritable cornucopia of stimulating ideas. But two themes permeated his work. First, an effort to develop a comprehensive and conceptual framework within which inquiry into community responses to nonconforming individuals may fruitfully proceed. Second, a passionate concern for the dignity of the individual including the "criminal" whom he called "the low man on the social totem pole and as such the most eligible scapegoat." He was never satisfied with the conventional distinction between criminal proceedings in general and those deemed to present special issues of civil liberties. He doubted that arbitrariness could be tolerated in the first and successfully opposed in the other.

I shall attempt to summarize the state of his thinking regarding the first of these themes.[6]

Law is concerned with public order. It refers to the pattern or cluster of institutional arrangements which are backed with community force and exercisable through formally authorized community agencies. The "criminal law" is charged with the delicate role of coping with those deviational acts, personalities and conditions considered so destructive of community values as to require drastic intervention in the name of the community as a whole. Deviation is not synonymous with "crime." The "criminal law" is concerned with all deviation which, if not responded to by recourse to a sanction-equivalent such as a welfare program to prevent it or a positive sanction such as the offer of a reward or incentive to do otherwise, touches off severe negative (value depriving) sanctioning of the deviate.

Deviation sometimes refers to a large continuing complex of past events, e.g. a public nuisance condition such as a slum, a house of ill-fame, or a home in which children are reared without parental affection or example conforming to the mores of the community. It sometimes refers to a smaller complex of past events, e.g. a deviant personality such as a psychotic or a sex offender. It sometimes refers to a

[4] See DESSION, *The New Federal Rules of Criminal Procedure*, 55 YALE L.J. 694 (1946), 56 *id.* 197 (1947): also *The Proposed Federal Rules of Criminal Procedure*, 18 CONN. B.J. 58 (1944).

[5] See also, DESSION & COHEN, *The Inquisitorial Functions of Grand Juries*, 41 YALE L.J. 687 (1932); DESSION, *From Indictment to Information—Implications of the Shift*, 42 YALE L.J. 163 (1932); DESSION, *The Mentally Ill Offender in Federal Criminal Law and Administration*, 53 YALE L.J. 684 (1944); DESSION, *Justice After Conviction*, 25 CONN. B.J. 215 (1951); DESSION, *The Gowers Report and Capital Punishment*, 20 N.Y.U. L. REV. 1061 (1954).

The articles cited in these footnotes are but a sampling of the product of Professor Dession's versatile pen. He was a prolific and effective author and was much sought after as a reviewer for the various law journals.

[6] For detailed statements of his position see DESSION, *The Technique of Public Order: Evolving Concepts of Criminal Law*, in the forthcoming issue of the UNIVERSITY OF BUFFALO LAW REVIEW; DESSION, *Deviation and Community Sanctions* in PSYCHIATRY AND THE LAW (HOCH & ZUBIN ed. 1955); Book Review, 68 HARV. L. REV. 1477 (1955).

single deviant overt act. Three very different foci of attention are reflected in this three way classification of deviation. Each implies quite different types of response. The first raises the question: What condition should be abated? The second: What individual or personality should be reconstructed or isolated? The third: What act should be prohibited and what deprivation prescribed for the offender? The focus of the traditional criminal law is upon the third. Furthermore, this emphasis still characterizes "criminal" as distinguished from "civil" law insofar as there remains an articulable constitutional and jurisprudential difference. The difference between the questions asked with respect to each of the classifications sharpens when it is considered that a deviational act may not be symptomatic of a deviational personality, as in the case of an accidental or situational offender, and that a dangerously deviant personality may exhibit no tendency to overt aggression prior to his ultimate explosion into violence.

A functional-developmental rather than a symptomatic classification of offenders is desirable. This puts the focus on career lines of behavior likely to produce a variety of public order problems in a variety of situations. It is more useful for purposes of exploring the responses of individuals to personality and culture factors of the kind usually considered in studies of delinquency and crime causation. It also appears more promising as a basis of inquiry into both the etiology of deviation and the manipulative possibilities of various kinds of sanctions. An "arsonist," for example, is a symptomatic classification. But he may represent any one of several quite unrelated clinical patterns and may even be essentially a sex offender. For purposes of this line of inquiry a tentative classification of personality types or offenders was devised: The paranoid, the psychopath (character neurotic), the incapacitated (physically or mentally), the neurotic, the addict (usually also neurotic), the unintended provocateur (victim proneness), and the ideational offender (whether white-collar, religious, or political).

Such a classification of deviates is important for several reasons. First of all, all of these personality types are found not only among overt offenders but also among non-offenders. Of the latter, some may be reacted to and treated as mentally ill while others may continue as components of the general population. A recognition that these various personality types will respond quite differently to a given type of sanction is suggestive for the legal and administrative classification of offenders and the sentencing function. A recognition that a similar diversity of types is to be found in the general population is likewise suggestive in terms of the responses of third parties to the type of sanction prescribed for or imposed in a given case—the operation and effectiveness of "deterrents", for example.

Who are the deviates and how, consistently with community values, should they be treated? Against what hazards should they be protected? The focus is on persons charged with crime. But the "accused" in the world of today may be proceeded against in any one of a great variety of judicial, legislative, or administrative proceedings. Consequently, functional analysis requires an enlargement of the legal concept of crime. Developments in American law have rendered the traditional distinction between "criminal" and certain "civil" proceedings increasingly technical and, indeed, artificial. Some examples of sanctions which are, in fact, of a severely negative character but yet not classed as "criminal" are as follows: The

denaturalization of naturalized citizens; the deportation of aliens; the stigmatizing and exclusion from public employment of persons whose loyalty is found to be suspect in an administrative hearing; proceedings under anti-trust laws wherein such relief as dissolution, divorcement, and divestiture is sought; and many others in the licensing field. And, under recent legislation in a number of jurisdictions, one may be committed for an indefinite period to a penal or hospital type institution on diagnosis and adjudication as a "psychopathic sex offender" even though he may have committed no offense for which he could be imprisoned for more than a short term or, under some of the statutes, no offense at all. These statutes are justified as mere extensions of preventive and welfare concepts on which such familiar procedures as the commitment of the mentally ill or defective, the quarantine of carriers of contagious diseases, and the juvenile court commitment of delinquent and neglected children, are based. Nevertheless, negative sanctions of a severe nature are frequently imposed even though a "welfare" approach has been substituted for a punitive one. Should not the safeguards of a criminal proceeding be applied to the above situations? If not, what scheme of values should govern decisions of the kind involved and what sorts of persons should have the power of decision? If the welfare approach is desirable and if a scheme of values consistent with public order preferences can be devised, should it not be extended to other areas now embraced by the traditional criminal law?

In addition to the proceedings other than "criminal" that involve severe sanctions, what of the many private groups and organizations that wield more or less unchallenged coercive power over individuals? Here too, those against whom severe "social" negative sanctions are invoked should be included as deviates if a study of the sanctioning process is to be meaningful.

The special attribute of negative sanctioning behavior is that it consists in the infliction of value deprivation for the purpose of achieving a net value gain. Negative sanctions must, therefore, be appraised as instruments of total policy. Their use is adaptive when there is a demonstrable contribution to a net gain in the value position of the community. A democratic society is committed to placing a prime value on the individual, "any individual, be he citizen or alien, useful or harmful, sane or mad." This does not mean, of course, that a deviate may not be sanctioned under appropriate circumstances. It does mean that he will be sanctioned only in accordance with the values of the community. These values require that certain principles govern the imposition of sanctions.

First, no prescription will be favored which is not essential to the establishment or reinforcement of institutional patterns that facilitate the full self-realization of all individuals. This is the Equality principle.

Second, punishment is never good in itself. Rehabilitation, deterrence, and prevention or incapacitation may be put forth as worthy objectives of the criminal law with some hope of eliciting wide agreement. But this is no longer true of punishment. The inference is that non-depriving ways of coping with deviation, e.g., sanction-equivalents, will be employed where available and adequate. Where not available and adequate the preference is for less, as against more, depriving sanctions. This is the Economy principle.

Third, the power of decision in matters of sanctioning should be as widely as

possible, rather than narrowly, shared. This preference for wide decision rests on the belief that the knowledge of any particular individual, elite or expert group, or even whole culture, is too relative to warrant the unrestrained imposition of value judgments on others. This is the Democratic principle.

Fourth, with respect to the appropriate unit of identification, whether for resolving problems of conflicting loyalty or for defining the community to be benefited as a whole by a given sanctioning response, the preference should be for the largest possible identification consistent with freedom of a given national community from external dictation or from a minority-imposed internal structural change. This is the Humanitarian principle.

At the time of his death, George Dession was busy translating the postulates and principles I have described into concrete expression in the form of a Correctional Code for the Commonwealth of Puerto Rico. It is an irretrievable loss to criminal law and criminology that he was stricken before this herculean task was finished.