

## THE SYMPTOMATIC ALCOHOLIC<sup>1</sup>

By STANLEY JOHNSTON, B.A., LL.B.

*This essay was awarded the Stewart Macarthur prize for 1953.*

"It is with government as with medicine; its only business is the choice of evils. Every law is an evil, for every law is an infraction of liberty."—Jeremy Bentham.

"Certainty generally is illusion, and repose is not the destiny of man."—Oliver Wendell Holmes.

"The young are life, and there is no hope but in them."

—H. G. Wells.

THIS is an essay primarily to describe. But it may well be that description of the subject in one field will highlight a need which description from another angle will reveal has not been met; that formal analysis will dam reformatory suggestions sired by social necessity.

Our pursuit is divided into two sections, which are confined, roughly, to the medical and the legal aspects respectively of the problem. The first part commences by attempting to define the limits of our inquiry; discusses the importance, from the point of view of treatment, of the alleged distinction between primary and secondary alcoholic addiction; outlines the causes of symptomatic alcoholism; and notes some theoretical implications of the established premises; making, throughout, references to the work of Alcoholics Anonymous.

In the second part, an indication is given of the importance of this problem to our community; the relevant legislation is summarized; allusions are made to petty sessions procedure, to current sentencing and treatment techniques, and to the "spend-thrift trust"; and an appendical reference is made to a question of special significance to Australian alcoholism—Aborigines.

### I

#### *Definition*

We shall come to grips with our topic by first characterizing alcoholics in general.<sup>2</sup> The following breviate should serve as

1. "One of the questions to which research workers have still to find the answer is what distinguishes the potential alcoholic from those who keep their drinking within reasonable limits."—World Health Organization Report, 21 December 1953.

2. Some most valuable scientific and lay material can be found in the *Quarterly Journal of Studies in Alcohol*, published since 1940 from the Laboratory of Applied Physiology, Yale University, Connecticut.

at least an introductory foundation for our search. It is a classification suggested by Hampton.<sup>3</sup>

(1) *The normal drinker*

(a) The moderate drinker may need occasional and only temporary escapes from the responsibility and burden of mature emotional life and its decisions. *Ex hypothesi*, he needs no therapy, since he has control.

(b) The habitual drinker continually needs these temporary escapes from reality. Or rather, since they are but temporary, he needs alcohol to make reality more acceptable. When the habitual neurotic drinker loses control altogether, he becomes a symptomatic drinker.

(2) *The symptomatic drinker*, who may suffer from—

(a) Acute alcoholic hallucinosis, which is diagnosed as symptomatic of schizophrenia. The patient hears one or more voices, and he himself is always the pivotal point of the conversations or the reproachful or criticizing remarks. It is most vicious, for there is no disorientation of time, place or person.

(b) Alcoholic paranoid condition, where overindulgence in alcohol represents the patient's attempt to solve his problems. Such patients, who may be suffering from repressed homosexual impulses, tend to bring on the incipient alcoholic psychoses and hasten their final breakdown by consuming alcohol, the effect of which is to weaken the repressive forces.

(c) Dipsomania, a manifestation of, say, a maniac-depressive psychosis. In the maniac stage the subject may drink from recklessness, exuberance, and the desire to attract attention. He then resorts to alcohol to blot out the depression.

(3) *The psychotic drinker*, whose troubles embrace—

(a) Delirium tremens, a periodic mental disorder of brief duration, resulting from at least ten to fifteen years of habitually excessive indulgence in alcohol, and characterized by hallucinations, suggestibility, impaired learning ability, spatial and temporal disorientation, motor excitation, hyperactivity, and illusions.

(b) Korsakow's syndrome: amnesia.

3. "Descriptive Portrait of a Drinker", *Journal of Social Psychology*, 1947, pp. 69-132 and 151-168.

(c) Pathological intoxication: brief and violent psychotic reaction to small quantities of alcohol.

(4) *The feeble-minded drinker*

It is not only mental deficiency, but also the unfavourable environment generally concomitant therewith, that is instrumental in producing this sort of alcoholism. Hampton records that 8 per cent of all inebriates are feeble-minded (a figure representing more than ten times the normal incidence of feeble-mindedness in the population), and that another 10 per cent of inebriates have borderline intelligence.

The present significance of this category to us is that it means that 82 per cent of alcoholics are of average or above average intelligence. It is generally considered that those with whom the methods of Alcoholics Anonymous succeed are of above average intelligence. Such superiority may conceivably be necessary for carrying out Steps 4 and 10 of their Recovery Programme.<sup>4</sup>

4. In a word, the therapy used by A.A. is a group therapy. Groups meet regularly, and really practise the undermentioned twelve steps. Yet their organization is very lax—a feature lauded by A.A. members—no rolls are kept, no membership fees charged, no pledges to keep, no rules to obey, no minutes taken. “The only requirement for membership after you admit you are an alcoholic, is to have an honest desire to stop drinking.”

Realizing that compulsion and even persuasive entreaties are worth nothing without the subject's wholehearted co-operation, this informality is preserved at great cost. Part of the price paid is the non-treatment of borderline alcoholics, who, with some, perhaps initially unwelcome, supervision, would respond to the therapy offered.

This may account for the comparatively high recovery rate claimed by A.A. On the whole, about 60 per cent of potential ‘members’ recover absolutely. About 50 per cent recover from the inception of ‘treatment’, and another 25 per cent recover after one or more relapses, in which the value of A.A. methods is indirectly made real to them. So A.A. claims a recovery rate of 75 per cent of those who really try its methods. Even allowing for the high criterion of ‘membership’, this rate is consistently higher than that (15 to 75 per cent) claimed for conventional therapy in a controlled environment—sanitaria, hospitals, and farms—where treatment is on a strictly voluntary basis.

The twelve steps are:

1. We admitted we were powerless over alcohol—that our lives had become unmanageable. (This is the hardest step.)
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God as we understood Him.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs. (This exploits the high therapeutic value of

*(5) The compulsive drinker*

This one is usually typified by an uncontrollable craving for intoxication, and not simply for alcohol. This indicates a "desire to remove by external means a permanent, tormenting disturbance of psychic equilibrium inherent in the personality".

These categories are, of course, arbitrary. We might assert, for example, that all problem drinking is symptomatic of social maladjustment. Even "normal" drinking is, strictly speaking, symptomatic of localized tension and therefore of temporary maladjustment. But the categories are helpful from the point of view of treatment. Although the same root cause may have led a patient through normal, symptomatic, compulsive, and finally psychotic, drinking, different methods of therapy would be appropriate to each of these stages.

In this essay we may exclude normal, psychotic and feeble-minded drinkers, and those compulsive drinkers whose drinking is not at the same time symptomatic of an underlying disease—for the fifth category cuts across all the other types.

A definition which more readily fits our purpose is that used by A.A.:

- "1. Do I ever drink alone?
2. Do I crave a drink the morning after, or at any other time?
3. Do I get the inner shakes when drink is cut off?
4. Is it ever impossible to have a few social drinks and stop?

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confession; and during testimony-giving at meetings one can readily perceive the high degree of identification with the speaker on the part of his audience.)

6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except where to do so would injure them or others.
10. Continued to take personal inventory, and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry it out.
12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics, and to practise these principles in all our affairs.

5. Do I drink to be as good as or better than others in company?
  6. Has drinking made me careless of my obligations?
  7. Is drinking affecting my peace of mind?
  8. Have I ever felt 'remorse' after drink?
  9. Have I ever had a complete loss of memory through drink?
  10. Do I drink to escape worry or trouble?
- If you answer YES to TWO you probably are an alcoholic; THREE you definitely are an alcoholic."

In terms less pragmatic, this includes habitual, symptomatic, compulsive, and possibly psychotic, drinkers.<sup>5</sup>

#### *Primary and Second Addiction*

Before discussing the etiology of symptomatic alcoholism, we should notice a sub-classification made in the case of compulsive drinkers, and comment briefly on the relation of this to current medical treatment.

A distinction is drawn between primary and secondary addiction. Broadly speaking, in the former the craving serves the purpose of artificial social adjustment, while in secondary addiction the purpose is that of counteracting the physical effects of previous drinking.<sup>6</sup>

Physical theories of the etiology of alcohol addiction are in general limited to factors inherent in secondary addiction. Rather than admit their own incapacity to adjust, or their lack of willpower, many alcoholics, and many psychiatrists in their behalf, aver that alcoholism is due to an inherent, and as yet irremediable, organic intolerance for alcohol. Hence the theory oft-quoted in A.A. literature, that alcoholism is a "disease", the common connotation of which word relieves the alcoholic from any responsibility in the matter.

It would appear that when a psychiatrist prescribes a drug, say antabuse, or tetraethylthiuram disulfide, or injects adrenal-

5. Some famous accounts of the symptomatic alcoholic personality are the lives of Sydney Carton in Dickens' *A Tale of Two Cities*, Marmeladov in Dostoyevsky's *Crime and Punishment*, William Pitt the Younger, and Henry Lawson.

6. This mind-body dichotomy is useful. But it is more useful when he who uses it understands how arbitrary it is, and that it has in the final analysis been exploded by advances in such fields as neurology and endocrinology.

cortex extract, he does not and cannot effect a real cure. Antabuse has effects so violent when alcohol is taken on top of it that the patient is forced to give up either the new drug or the old drug (the alcohol). Not surprisingly, it is usually the new drug which the alcoholic gives up.

This and other conditioned reflex therapies, the unconditioned stimuli of which have been painful shock, apomorphine, or ipecac, overlook the originally and fundamentally symptomatic character of alcoholism. Such Pavlovian conditioning techniques tackle the patient at the digestive, or physical level. They fail to embrace the fact that man is an infinitely more socially sophisticated, intellectually refined, and emotionally complex animal than the dog.

A.A. also defines an alcoholic as a "drinker who cannot stop entirely when and where he sincerely wants to, or who cannot control the amount he takes, even after a long period of sobriety". The claim is that an alcoholic can never be "cured"; that, though he may attain sobriety, he will never be able to take even one drink with impunity; that, because of some physical defect, he is forever a potential drunkard. But it seems equally tenable to posit the formation of a powerful, well-ingrained, psychological habit which causes the drinker, once he feels the effects of the first drink or two, to follow out the sequence of actions to their apparently inevitable end.<sup>7</sup> It is submitted, therefore, on the basis of this latter hypothesis, that a truly effective therapy would enable the symptomatic alcoholic to become once again a normal drinker. This would entail building up new drinking habits by supervising the early drinking of the patient after the underlying personality defects have been adjusted.<sup>8</sup>

### *Etiology*<sup>9</sup>

An examination of actual case histories of symptomatic

7. The vicious circle which must be broken has been epitomised thus: When the patient takes a drink he feels a new man; then the new man needs a drink.

8. Discussions of the "physical" effects of alcohol are included in—C. S. Myers, *Experimental Psychology*, C.U.P., 1911; V. Horsley and M. D. Sturge, *Alcohol and the Human Body*, London, Macmillan, 1920; E. Mellanby, *Alcohol: Its Absorption into and Disappearance from the Blood*.

9. The difficulties which in the nature of things attend research in this field would be greatly diminished were all who go on benders to complete hangover charts for a World Hangover Museum proposed by one, A.P.H., in "A Lead for UNESCO", *Punch*, November 1953, 45-46.

alcoholics reveals a fairly consistent pattern of causes.<sup>10</sup> Can we pinpoint any factor common to all these causes? Of course, it is not necessary that we should discover one omnibus psychological etiology; but if there were one it would prove useful from the point of view of treatment.

Before we answer this question, let us examine a prominent feature of the occupations of members of a Melbourne group of A.A. It is significant that these occupations bring the subjects into no lasting, stable relationships with other people. This would augment any innate predisposition to isolationism. The following occupations are chosen at random:

hotel manageress,	hotel domestic
barmaid	steward
wool valuer	caterer
motor lorry driver	furniture remover
taxi driver	housewife
estate agent	nurse
commercial artist	waterside watchman

10. Typical are the following causes, garnered from reading and from a study carried out by the present writer on a Melbourne A.A. Group:

Shy, timid, and having an inferiority complex; the neurotic drinker has to overcome his fear of people and things before he can regain control over alcohol; hallucinosis; alcoholic paranoia—a symptom of paranoid schizophrenia or of paranoia of jealousy; sensitive, broody, jealous ambition overreaching capacity and the consequent inferiority feelings derived from the everyday rebuffs that come to the man who over-reaches himself; homosexual proclivities; cycloid tendencies; insecurity; fearful, distressed, miserable, and ill-at-ease; frustration; poorly integrated personality; economic competition; lack of interest depriving him of any gregariousness; emptiness of inner experience; temporary relief of tension, escape from reality; lacking in goals; egocentric, irritable; anxiety; fatigue; shyness, awkwardness; to produce endogenic pleasure and thus to silence depressive effects; wish-fulfilment; relaxing inhibitions and producing euphoria; a sense of loneliness and isolation; a striving for affection; very self-conscious; deficient in independence; a capacity for ecstatic peaks in which all hostile emotions become temporarily submerged in an overflow of affirmative feeling; feelings of inferiority and superiority existing in rapid oscillation; psychopathic disposition; emotional instability; feelings of inadequacy; conflicts with environment; to promote the social instincts and alleviate and narcotise the many mental conflicts to which we are all to some extent victims; suspicious; self-conceited, selfish, stubborn; scornful of the ideas of others, steadfast in adherence to own ideas; difficulty in controlling his moods and desires and their overt expression; oral eroticism, sexual activity in which forepleasure becomes the end, and castration anxiety; abnormal craving for emotional experience which calls for removal of intellectual restraint; a self-pampering tendency manifesting itself in refusal to tolerate, even for a short time, unpleasant states of mind such as boredom, sorrow, anger, disappointment, worry, depression, dissatisfaction, and feelings of inadequacy; laziness; defiant individuality; her only friends drank; family duties.

radio performer	hospital sister
traveller	hospital domestic
salesman	seaman

With his confreres, customers, and other associates forever and quickly changing, the subject could only with difficulty feel that he really belonged to any particular group. And this tendency is never offset by membership of any club, cricket team or other social grouping.

We may now venture the proposition that, in terms of reference group therapy, the frame of reference of the symptomatic alcoholic is himself. He is egocentric.<sup>11</sup>

Dr. Dax argues similarly. "Alcoholism is a symptom, probably more of civilization with its artificial social life than of anything else. This artificial life of to-day is beset with conflicts and frustrations and boredom. Thousands have lost their sense of values. There seems nothing on which to build a solid life. In new communities, where are the churches, clubs, halls, hospitals, organizations of culture, and the other amenities that fashion a solid and proud community? One wonders why hotels are drinking houses, instead of being clubs."<sup>12</sup>

That narcissism may be the common root cause of problem alcoholism is borne out by a remarkable and consistent change in subject alcoholic ambitions after A.A. therapy has been applied. Generally grandiose, high ambitions drop down to a contentment with one's lot and a determination to fulfil to the utmost one's present position in society, whatever it may be. The reference group of an ambitious man, that is the group of people with whose standards of behaviour the man constantly compares himself, is a group other than that in which he is at present a member. This is sound enough if the subject has the drive, the innate capacity, and the environmental support to attain membership in the higher group. But if any of these conditions are lacking, the principal effect of such ambitions is dysfunctional, both for the group and for the subject.

The relevant "physical" effect of alcohol, after passing successively through stomach, small intestine, liver and heart, is

11. Amongst the volume of literature on this recent medical discovery, group psychotherapy and group psychology, Tiebout's "Therapeutic Mechanism of A.A.", *American Journal of Psychiatry*, January 1944, is useful.

12. In his address to the fifth anniversary meeting of Melbourne A.A., 22 October, 1952. Gordon Powell describes the setting up of A.A. in Melbourne in the Introduction to his *Personal Peace and Power*, O.U.P., 1950.



temporarily to depolarise and render inexcitable the highest evolutionary neural centres of the cerebral cortex.

One of the treatments of alcoholic hallucinosis is prefrontal leucotomy—the removal or severance of some of that part of the brain which exerts an inhibitory influence over the patient. This fact might be thought to constitute a *prima facie* difficulty in our holding generally that egocentricity is the universal cause of symptomatic alcoholism. For the prefrontal lobes, when over-active, make the patient so conscious of group standards that he dare not enter wholeheartedly into the group and pit himself against those standards. It transpires, then, that alcohol is consumed with the purpose and effect<sup>13</sup> of achieving the same result as that afforded by the leucotomy.

This unhealthy overconsciousness of the group operates in one of two ways:

- (a) The subject does not regard himself at all in relation to the group. He thinks mostly of the group, and (unavoidably) slightly of himself, but never of the two as being companionate. He fails to see any conformity or lack thereof to group mores. He is asocial.
- (b) He thinks of himself and of the group, and of the former in relation to the latter. He regards himself not as an ingroup member, but as an outgroup man. He is conscious of nonconformity; but he has neither motivation nor faith to bridge the gap. He is unable to think of himself as an ingroup man, and, in that light, to adjust as best he can to the demands of "his own" group, surmounting his present disabilities. This is one basis, if not *the* basis, for the so-called inferiority complex or the abject shyness of many symptomatic alcoholics.<sup>14</sup>

Here, then, we are left with a paradox. The capacity for superior group-consciousness, or for sensitivity to the "normal" social pulse, can operate in certain circumstances to make one more egocentric than persons who lack this capacity.

13. Doubtless this explains the four stages of inebriety: jocose, bellicose, lachrymose, and comatose. The stages of intoxication are better treated by Bowden in "Mollison's Forensic Medicine Lectures", 201-206 (1949).

14. Cf. the case of the shy Highlander in the film *Whisky Galore*, who was "two drinks below par".

Northridge, *Psychology and Pastoral Practice*, 74 (1938), writes: "The chronic drinker is usually most sensitive and good-natured."

... *pour mieux sauter*

We may now follow out this reasoning on a theoretical basis. The conclusions might be simply fantastic. But they must be regarded as startling at the least.

Subjectively, we may say, the end of adolescence and the maturation into adulthood come when a person perceives and accepts his rôle within his environment. Most symptomatic alcoholics are over twenty-one. But are they really "adult"?

The symptomatic alcoholic has an undeniable need—indicative of a dependency pattern—to follow out with practical living, both personal and evangelical, the lofty ideals of his top brain. In this picture, the commanding ideals may represent the force which a dominant parent has now ceased to symbolise.<sup>15</sup> Failure so to live and the incessant rebuffs of perceiving others not so living requires the exorcising of this tormenting neuronic deity. This is expressed in an ex-alcoholic's letter to *The Reviver*:<sup>16</sup>

"My life is a life of peace; and harmony has taken the place of discord in my home. But to maintain all this I cannot afford to lapse into a state of complacency, which is enemy number one to my peace of mind. I find it necessary for me to be an *active* member in A.A. to hold these precious possessions. For me, it is essential to apply the A.A. programme constantly. I regard the chance of helping a suffering alcoholic as a duty which brings untold reward, and as a special insurance against that alcoholic coskureness which precedes a crash."

That this is the nature of the symptomatic alcoholic is the claim of Banay, who writes: "The common denominator in every case of alcoholism is immaturity, unwillingness to grow up to adult stature and responsibility. Parents can best protect the child by weaning him early from infantile dependence and assuring him of a normal opportunity to grow and mature. In this way he will live in a world of reality and will not seek instead a world of dreams and phantasies that lead only to self-destruction. Thirty out of every hundred of the offspring of alcoholics follow the trail blazed by their parents and in their

15. If we can accept Bowlby's thesis, stated in the W.H.O. Report, *Maternal Care and Mental Health*, then it may be that excessive *maternal* domination or protection is a key factor in this unhealthy overconsciousness of society's standards.

16. No. 8, June 1952. This is a publication of Melbourne A.A.

turn become victims of the disease. It is *the deterioration of family life*, the inevitable result of excessive drinking, which deprives children of their right to grow up into stable, well-adjusted adults."<sup>17</sup>

The line between resilient adaptability and infantile dependence is a very fine one. "Those who drive themselves to a premature grave," says Hutschnecker, "will be found to be people whose goals were from the first unrealistic and unrealizable. To keep our goal clear, and to judge it by rational standards, is the task of our conscious reasoning mind. When the dynamic energies of the rebel have been translated into action or teachings, the world has found another of its great leaders and reformers."<sup>18</sup>

This, therefore, is the need of the symptomatic alcoholic: To combine with his highly evolved, sometimes ineffably insightful, perceptual acuity, the practical living-out of the demands of his personality, without the use of intoxicating liquor; that is, the holistic, dynamic integration of the resources of his personality so that he subserves some all-consuming goal promulgated by his idealistic super-ego.

It would be more accurate to call the symptomatic alcoholic, before he becomes integrated in that fashion, *homo sentiens*—sentient, or self-conscious, man—rather than *homo sapiens*, that man who, having (now unquestionably) resolved and accepted his life's station, is proceeding rationally to evaluate the means to his goal. Thus, Hutschnecker would see perfection in the transition from *homo sentiens* to *homo sapiens*.

When we take a wider view of our environment, we notice how the rapid development of that peculiarly human trait, tool-using, or technology, has, since, say, 1738, been nothing short of staggering. War, speed and scientific advance add dis-

17. Colliers' Magazine, 11 December, 1948, 30-32.

It must be remembered, however, that there are many immature, willing "followers" who nevertheless do not display what we may call an alcoholic personality. These people are as stable as their personal or impersonal gods. And it is only when he is cut off from his god that a person of this type can show an egocentric instability. Furthermore, it does seem that the person must have become self-centred before he is alcoholic.

On the other hand, not all egocentric people can be said to have an alcoholic personality.

My own research has not enabled me to conclude anything as regards parental influence in the alcoholic personality. It is likely, however, that the egocentricity seen in the alcoholic must have come as a result of or in conjunction with the childhood conditions described by Banay.

18. *The Will to Live*, Gollancz, 1953.

cordant notes to the music of our traditional spheres. Our psychological and sociological adjustment to these features of our environment is as yet inadequate.

Couple with this the fact that that legendary laboratory scientist whose open mind makes only hypotheses and tentative theses, never assertions, is at last being understood by the common man. The light of western religion has paled before the brilliance of intellectual understanding. Even the lawyer, slowest of all to admit that his discipline could become a social science, has abandoned for the time being the blind boldness of natural law thinking with its "immutable" principles.<sup>19</sup>

In considering these things, let us draw an analogy with an earlier period. "The creature called *homo sapiens* emerged from among the earlier Hominidae very evidently, as another of those relapses of the life-cycle towards an infantile and biologically more flexible form, which have played so important a rôle in the chequered history of living things. He was not the equivalent of the clumsy adult Heidelberg or Neanderthal man."<sup>20</sup>

What step must the present *homo sentiens* take to determine his insecure and goalless groping, to gain that temporary asylum held only by the animals and *homo sapiens*?<sup>21</sup> What must the

19. Such developments fall under the head of historical, rather than biological, evolution. These two, however, are inseparably linked, and but arbitrarily distinguished. Moreover, the distinction cannot be regarded by the lawyer, and should be in no more than the subordinate service of that physician who treats his patient as a whole.

20. Wells, *A Short History of the World*, Pelican (1951), 356.

21. It has been said that man is now the superior evolutionary being in the field because he, alone of all the animals, has not succumbed to the temptation to specialize; he alone can develop at will in all directions. This is not so. Man has specialized: he has extended and sophisticated his brain, cortex and prefrontal lobes; and this process may continue. This development gave man a self-consciousness, a sense of "me and thou", which is only rudimentary in the animals.

But who is to say that the symptomatic alcoholic, the creature with the highest association-sensory area ratio yet, is not, like the freak with three or four legs, the more "limited"? That this high ratio obtains from birth is not established. It may be simply a comparative "growth", whether instilled by the patient's own family or by the wider social environment. "Comparative"—because it is the person who (unlike the symptomatic alcoholic) early fixes his goal who suffers his association area to atrophy in so far as it does not serve his predetermined destination.

Species have become extinct because they developed overmuch in one direction, and could not in that condition protect themselves from the forces of their environment. There is no guarantee that man, especially as seen in the symptomatic alcoholic, has not developed to such a dangerous condition. Assuredly, it is a specialized and freakish development to enjoy the capacity to cerebration concerning purpose, justification, values and dangers.

symptomatic alcoholic do to avoid that which, in his over-evolved enlightenment, he will dub his "self-destruction? What must humanity, of whose malady alcoholism is symptomatic,<sup>22</sup> do to avert her utter disintegration?

Perhaps the lay therapy of A.A. has hit on the answer in Step Two of its twelve-point programme. It is important to notice in this regard that an acceptance of a god is not simply a superficial avowal to adopt one assumption or set of assumptions provisionally. When a member of A.A. is conforming largely to the group's demands and decisions, as a result of a voluntary intellectual decision perhaps accompanied by a certain amount of cynicism, and while his conception of a god is as yet insufficient for his problem, he has attained "sobriety". But acceptance of God is the unalterable foresaking of one's provisional faith excursions; it is the subjective and undeniable *perception* of a principle as being greater than oneself. When the A.A. member has met God, conformity becomes a compelling, meaningful, and inescapably motivating force in his behaviour. He has then attained what A.A. calls a "happy sobriety". It is the end of egocentred living. No longer does he have truck with hypotheses—at once the blessing and the bane of science—for at the basis of this attitude is the assertion that he who *makes* the hypotheses is greater than the hypotheses themselves.

Perhaps the regression to infantile dependency patterns is, rightly construed, a resurgence of that intelligent adjustability essential for the survival of a species, a retreat *pour mieux sauter* along another well-settled line of historical or biological "progress". If this be the case, it follows that Banay's laying blame at the feet of the overprotective or dominant parents is misconceived. The process will work itself out, willy-nilly, as a necessary concomitant of our historical and biological standpoint.

It now behoves *homo sentiens* not to deaden mankind's most far-sighted hope for adaptation by loosing his higher neural ganglia, but to employ them incessantly in the search for a god large enough to give humanity that "natural" principle which alone will bring "happy" security.

## II

Preparatory to examining the law relating to symptomatic alcoholism, let us first gauge the social importance of the

22. Cf. Dr. Dax, above, p. 159.

problem—its incidence and its cost. We have no body, national or state, comparable with the U.S. Research Council on Problems of the Alcoholic, set up in January 1938,<sup>23</sup> or with the Swedish State Liquor Control Board.<sup>24</sup> In Australia, alcoholism is a problem essentially within the province of state legislative supremacy.<sup>25</sup> This would contribute to our general failure to appreciate the magnitude of the problem.

However, we shall limit ourselves for the most part to Victoria. It is estimated that the incidence of alcoholism<sup>26</sup> in Melbourne is 7 per 1,000 persons. That is, there are about 10,000 alcoholics in Melbourne alone. 78·5 convicted drunks per 10,000 head of population is a comparatively high drunk rate; Britain's equivalent is 6 per 10,000; and New Zealand's, 15.<sup>27</sup> The U.L.V.A. estimates that 5 per cent of hotel patrons are "no-hopers".

At the City Court, convictions for "drunkenness"<sup>28</sup> average

23. "Of 100,000,000 persons of drinking age in U.S.A., from 50,000,000 to 55,000,000 drink, most of them so moderately than they show no ill effects. Of drinkers, perhaps 2,250,000 are chronic, excessive drinkers, and either risk alcoholism or are already alcoholics. Another 750,000 have become alcoholics to such a degree that they have impaired their physical or mental health. Doctors call these chronic alcoholics and point out that there are at least as many of them as there are sufferers from proven tuberculosis.

"The economic loss runs to a billion dollars a year, perhaps more: Potential wage losses, \$432,000,000; crime, \$188,000,000; accidents, \$89,000,000; hospital and medical care, \$31,000,000; maintenance of drunken persons in local gaols, \$25,000,000. Other heavy costs—such as those involved in the break-up of families, the dulling of fine minds, and the warping of lovable personalities—cannot be reckoned."—*Alcoholism is a Sickness*, U.S. Public Affairs Pamphlet No. 118 (1946).

24. For Sweden's position, see "Amnesty for Alcoholics in Sweden", the *Melbourne Herald*, 12 September, 1953.

25. The probable significance of Constitution Section 113 is to preclude Commonwealth legislation in this field. It may be, however, that an indirect approach could be made through Section 51 (xxiii) or (xxiiiA).

26. The reader is cautioned to follow closely the words describing the type of problem treated hereafter, for no work at all has been done in an endeavour to separate out for individual treatment those whom we have called symptomatic alcoholics. So legal and other statistics often include victims of other diseases relating to intoxication. But the caveat operates also in the other direction, since the alcoholic personality enters into several otherwise-classified crimes, e.g. larceny: the more serious charge is preferred by the prosecution where possible.

27. See Turnbull, "Chains of Old Liquor Laws", *The Sun*, 29 September, 1953, 7.

28. See the Police Offences Act Sections 21 to 23, below.

The reader will notice later that classifications made at Pentridge are more detailed than those made in the returns furnished by the convicting Courts to the Crown Law Department.

from 60 to 80, or even up to 100, on a Monday morning.\* The other days, Tuesday to Saturday, average from 3 to 20 convictions. Old-age and invalid pensions and soldiers' pensions are paid fortnightly on alternate Thursdays, and this increase in liquidity is reflected in the number of convictions on Fridays, especially after the payment of the old-age pensions.

The accompanying table demonstrates that, quantitatively, drunkenness is the Court's main concern. But this bears little relation to the proportionate cost of drunks to the Court, for, of all charges, this is the one most rapidly dealt with.

<i>Quarterly Returns of Melbourne City Court</i>									
<u>(Petty Sessions)</u>									
	1937		1951		1952		1953		Qrtr. ended
	*D.	*T.	D.	T.	D.	T.	D.	T.	
Arrests ..	579	1285	1938	2861	1855	2807	2026	2829	31st
Convictions	539	1083	1929	2667	1843	2599	2017	2663	Mar.
Arrests ..	644	1345	1981	3068	1811	2854	1369	2097	30th
Convictions	644		1961	2749	1800	2614	1366	1976	June
Arrests ..	540	1330	2006	3075	1904	2943	1524	2298	30th
Convictions	540		1994	2847	1896	2767	1521	2156	Sept.
Arrests ..	577	1197	2306	3293	2211	3088			31st
Convictions	567		2282	3031	2198	2903			Dec.

\*D.: Drunkenness. T.: Total.

Those charged with drunkenness almost invariably plead (even if they do not look) guilty.<sup>29</sup> An appeal from an order made on a drunkenness charge has not been heard of at the City Court.<sup>30</sup>

To what must be attributed the dramatic rise in number of convictions? Jurisdiction of the City Court has not changed. Offenders are still tried before "the nearest court".<sup>31</sup> It may be

\* The following is an interesting extract from *The Herald* of Monday 11 October 1954: "A record number of 115 men were convicted in the City Court to-day for drunkenness. Most were fined from 10/- to £4 and discharged. A police officer said the lull between the football and cricket seasons was the reason for the big number of week-end drunks."

29. Mr. McLean, Senior Metropolitan Magistrate, estimates that from 95 per cent to 98 per cent of those so charged plead guilty.

30. *Sed vide* old cases footnoted to Inebriates Act s. 10 and Licensing Act s. 224.

31. Justices Act 1928, No. 3708, s. 86. In practice, courts of petty sessions work according to police districts. The City Court is served by the Metropolitan Police District, that is, by the Russell Street and Bourke Street West Police Stations.

due simply to the increase in population. Or possibly the police are now more astute, or drunks less so. Perhaps drinkers now prefer to drink in the city rather than in their own suburbs. Or it may be that there is in fact an increase in drunkenness.

If sentenced to imprisonment for 24 hours, prisoners are detained at the City Watchhouse. Such prisoners are released shortly after 6 p.m. on the day of conviction. They were probably arrested the night before anyway.

<i>Numbers Sentenced to Pentridge</i>									
Offence					1952	1953 (to Nov. 30)			
Common Assault	..	..	..	..	..	..	..	..	167
Drinking Methylated Spirits	..	..	..	..	18	..	..	..	35
Drunk and Disorderly	..	..	..	..	3133	..	..	..	2607
Drunk in Charge of Motor Car	..	..	..	..	18	..	..	..	23
Idle and Disorderly	..	..	..	..	..	..	..	..	167
Indecent, Offensive Behaviour	..	..	..	..	..	..	..	..	361
Vagrancy	..	..	..	..	..	..	..	..	131
Total of Offences relating to Drunkenness					..	..	..	..	3491
All other Offences					..	..	..	..	2949
Total					..	..	..	..	6440

If the sentence is greater than 24 hours, prisoners must be sentenced to D Division at Pentridge. In practice, no sentences of 48 hours are ever imposed; so the minimum committal to Pentridge is for three days.

Statistics relating to individual recidivism are not available. But the following table tells its own tale, when it is realized that most of those sustaining three or more sentences are drunks. The figures relate to 1952. It is noteworthy that one prisoner established a record in 1952 by being sentenced 29 times.

									Total
Sentences	1	2	3	4	5	6-10	11-20	20+	Approx. 2808
Prisoners	383	154	82	66	41	91	39	3	859

On 15 December 1953, total prisoner population at Pentridge was 770. Of these about 120 would be drunks. (More of those drunks who are accounted as beyond recall, and who are not included here, would be residing in the Geelong Prison Hospital—"the end of the road".) More than 80 of the drunks would be completely idle and unproductive, either because of



their condition, or because their sentence is so short (the normal is 7, 10 or 14 days) that there is no justification for transferring them from D Division to the main part of Pentridge.<sup>32</sup> As a rule only convicts who are sentenced for a period of one month or more go to the labour division: the drunkards are put into Division C.6. When the female prisoners are transferred to Fairhaven, then those male prisoners sentenced for short periods will be confined in the present female division, with convenient facilities to do gardening for the duration of their stay.

Rough estimate puts the cost of the drunkard population of Pentridge, after considering both their absolute numbers and frequency of appearance,<sup>33</sup> as well as their unproductivity, at almost one-third of the total cost of the gaol.

The importance of the problem of alcoholism for the law has been lost because, by its nature, alcohol reduces its subjects to a very low rank in the popular estimation; whereas the occasional murderer or sex offender can always hit the headlines and attract the concerned attention of lawyers and alienists.

### *Legislation*

Legislative attitudes have changed only very gradually since their first expression in "An Act for repressing the odious and loathsom Sin of Drunkenness",<sup>34</sup> the preamble of which ran:

"Whereas the loathsom and odious Sin of Drunkenness is of late grown into common Use within the Realm, being the Root and Foundations of many other enormous Sins, as Bloodshed, Stabbing, Murder, Swearing, Fornication, Adultery, and such like, to the great Dishonour of God and of our Nation, the Overthrow of many good Arts and manual Trades, the Disabling of divers Workmen and the general Impoverishing of many good Subjects, abusively wasting the good Creatures of God . . ."

The penalty for every such offence was committal to the stocks for six hours, after which time "the statute presumes the offender will have regained his senses, and will not be liable to do mischief to his neighbours".<sup>35</sup>

32. For there are but two transfer days, Tuesdays and Fridays.

33. There are 50 or 60 regulars who constitute a formidable stage army of drunken "offenders".

34. 4 Jac. 1, c. 5.

35. 4 Blackstone, 64.

The current Victorian enactment is entitled "An Act to consolidate the Law providing for the Care, Control, and Treatment of Inebriates".

Unfortunately, the Inebriates Act, as it now stands, is nowhere consolidated. The Inebriates Act 1928<sup>36</sup> has twenty sections: sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 18 and 19 have since been amended.<sup>37</sup> The reader is referred to sections 4 and 7 as being the operative sections of the Act.<sup>38</sup>

The definition of "inebriate" in section 3 is wide enough to include cocaine, opium, and other drug addicts.<sup>39</sup> Having regard to the abovementioned psychological etiology of symptomatic alcoholism, this may be a very sound provision.

Under section 19, any three or more judges of the Supreme Court may make procedural rules. The Inebriates Rules 1951 are in fact, but not mandatorily, published in the Victoria Government Gazette.<sup>40</sup>

Under section 20, the Governor-in-Council may establish or license institutions for the reception, control and treatment of inebriates. This provision has not been availed of. There is, however, a reference to such a licensed institution at Northcote, in the second paragraph of the plea in *Langley v. McCarthy*.<sup>41</sup> This case was decided under section 7 of the Inebriates Act 1872, a section analogous rather to section 11 of the current Act than to section 10, to which the case is errantly footnoted.

36. No. 3703.

37. By Acts Numbers 4157, s. 2 (1933); 4654, s. 3 (1939); 4963, s. 2 (2) (1943); 5329, s. 11 (1948); and 5519, s. 24 (1950). The last Act has not been, but is expected shortly to be, proclaimed.

38. Section 4, paraphrased, reads thus: On the application of an inebriate or of his agent in that behalf, or if a close relative or business partner, or of a senior member of the police force, which application must be supported by medical evidence, a judge or the Master or a police magistrate may commit the inebriate to certain institutions.

The import of section 7 is this: Where an inebriate has thrice within the preceding twelve months been convicted for an offence involving drunkenness, a police magistrate may commit him to a government institution for inebriates for a period of not more than twelve months.

39. " 'Inebriate' means a person who habitually uses alcoholic liquors or intoxicating or narcotic drugs to excess."

40. No. 217, 27 February 1951, pp. 1547-1552. The intention of Rules 9 and 10 would be more clearly shown were those Rules amended so as to read as follows:

"9. Where an application is made under paragraph (a) of sub-section (1) of section 4 by an inebriate or any person authorized in accordance with that paragraph . . ."

"10. (1) Every other application under sub-section (1) of section 4 . . ."

41. (1876) 2 V.L.R. 278-283.

Frequent committals under section 4 of the Act used to be made to Lara and Brightside, institutions long since replaced by Royal Park and Sunbury. Such committals are now infrequently made to a ward reserved for alcoholics at Sunbury Mental Home.

Lara was a government institution for male alcoholics, situate some miles north of Geelong. Brightside is a Salvation Army Home at 400 Waverley Road, East Malvern, which was used for women alcoholics up to eight or nine years ago. The Salvation Army—the most active of the churches in this field—has similar homes elsewhere—three on islands: Roto Roa and Takatea off the North Island of New Zealand, and Kuron off Sweden; and one in Switzerland, a farm colony at Le Devens. The procedure is for the inebriates to be committed thereto indefinitely and to leave when certified by an officer. See the N.Z. Habitual Drunkards Act 1908. The Salvation Army also provides overnight accommodation for those whom they regard generally as “no-hoppers”, at Gill Memorial House, Melbourne.

Section 20 of the Inebriates Act also authorises the Governor-in-Council to make regulations. The Inebriates Regulations 1930<sup>42</sup> are still in force, though widely amended by the indirect application of subsequent legislation. The Regulations provide efficient, but unexploited, machinery. However, since the Government Printer does not stock Government Gazettes, or even extracts therefrom of Regulations and Rules, any of which are more than ten years old, he could not sell me these Regulations.<sup>43</sup> This surely is an undue persecution of the conscientious citizen labouring under the decree *Ignorantia juris*.

No relevant regulations have been made under the empowering section, section 322 (2) (c), of the Licensing Act 1928.<sup>44</sup> Sections 175 and 176 of that Act make it an offence for any person, while on licensed premises, to supply to, or to procure or attempt to procure for, any intoxicated person any liquor, or to aid or abet any intoxicated person in obtaining or consuming liquor. This, like most of the other relevant sections of the Licensing Act,<sup>45</sup> is seldom policed. It is probable, however,

42. Vic. Govt. Gaz., No. 30, 19 March, 1930, pp. 1089-1091.

43. Our University Library has not got these Gazettes for the years 1929-1936. Dr. Meadows has lent me *the* copy belonging to the Mental Hygiene Authority, the department which administers the Act.

44. No. 3717.

45. Note, for example, sections 149 (1) (b), 177, 193, 204 (1) (b), 205 and 250. Section 208 gives licensees the power correlative to their duties under section 204, etc.

that most symptomatic alcoholics stay in hotels, wine saloons or grocers' shops only long enough to purchase their supplies, and that the imbibing is done elsewhere.

For almost half a century, law reports have not included a case under section 224. Nor is the section in fact now obeyed.

"224. (1) When it is made to appear in open court or at the discretion of the justices constituting such court in chambers that any person by excessive drinking of liquor—

- (a) misspends wastes or lessens his estate; or
- (b) greatly injures his health; or
- (c) endangers or interrupts the peace and happiness of his family;

the justices having jurisdiction in the city or town or any municipal district in which such person resides in petty sessions assembled *shall* in writing under the hands of any two such justices prohibit all licensed persons from selling or supplying to him any liquor for the space of twelve months.

(2) Such justices *may* at the same or any other time in like manner prohibit the selling or supplying of any such liquor to the said person by any licensed persons of any other city town or district to which the person resorts or is likely to resort for the same during such period of twelve months.

(3) The said justices or any two of them *shall* in like manner from time to time renew any such prohibition as aforesaid as to all such persons as have not in their opinion reformed within such time."<sup>46</sup>

Section 4 of the Maintenance Act 1928<sup>47</sup> is not, but well could be, employed to great advantage in the circumstances contemplated by section 224 of the Licensing Act.

Sections 21, 22 and 23 of the Police Offences Act 1928 are the most important provisions relating to the convicting of alcoholic "offenders". The manifest emphasis of these sections

46. Sections 225-227 give machinery herefor.

An analogous, but more comprehensive, provision is that of the automatically-applying section 129.2 of the Iowa Code 1950. Like our own section, and after the fashion also of its nearly identical Illinois counterpart, this is scarcely used. See "Civil Remedies for Intoxication", 2 Drake Law Review (1953), 54-65.

47. No. 3722, amended by Act No. 4314.

is on the maintenance of public order, and penalties are allocated with that, and not the reformation of the offender, in mind.<sup>48</sup>

### *The Spendthrift Trust*

Some legal systems have a most useful provision for tying up the estate of an alcoholic. In America it is called the "spendthrift trust". Continental systems have quite an elaborate learning on the topic. But English and Australian law have no recognized counterpart for the spendthrift; although it will be seen that, at least in Victoria, we have the means of readily implementing such a device.

Amos and Walton comment as follows on the French provisions:<sup>49</sup>

48. "21. Every person found drunk in or on any public place or on the premises of any licensed victualler or Australian wine licensee may be arrested by any member of the police force (but not by any other person) and may be lodged in safe custody and upon conviction for such offence shall be liable to a penalty of not more than Ten shillings and on a second conviction within a period of twelve months shall be liable to a penalty of not more than Twenty shillings and on a third or subsequent conviction within such period of twelve months shall be liable to a penalty of not more than Forty shillings.

"22. Every person found drunk and disorderly in or on any public place shall for the first offence be liable to a penalty of not more than Two pounds or to imprisonment for a term of not more than three days, and for any second or subsequent offence to a penalty of not more than fourteen days.

"23. Every person who in or on any public place is guilty while drunk of riotous or disorderly behaviour or is drunk while in charge of any carriage horse cattle or steam-engine and every person who is drunk when in possession of loaded firearms shall be liable to a penalty of not more than Five pounds or imprisonment for a term of not more than one month."

Other important sections in this Act, No. 3749, are sections 28, 29, 30, 70 (1) and 72.

Further material legislation includes Children's Welfare Act 1928, No. 3654, c. 18 (a) (iii); Maintenance Act 1928, s. 6 (3) (d) and (4) (a) (iii) and (4) (b), and s. 16 (2) (c) (ii); and perhaps the amended Temperance Halls Act 1928, an exact repetition of its 1877 forbear, 51 Vict. No. 955.

49. Articles 489 through 515 of the French *Code Civil* constitute the legislative authority for this trust in France. The central Articles are the following:

"489. Le majeur qui est dans un etat habituel d'imbecillite, de demence ou de fureur, doit etre interdit, meme lorsque cet etat presente des intervalles lucides.

"499. En rejetant la demande en interdiction, le tribunal pourra neanmoins si les circonstances l'exigent, ordonne, que le defendeur ne pourra desormais plaider, transiger, emprunter, recevoir un capital movilier, ni en donner decharge, aliener, ni grever ses biens d'hypotheques, sans l'assistance d'un conseil qui lui sera nomme par le meme jugement.

"512. L'interdiction cesse avec les causes qui l'ont determinees: neanmoins la main-leeve ne sera prononcee qu'en observant les formalites prescrites pour parvenir a l'interdiction, et l'interdit ne pourra reprendre l'exercice de ses droits qu'apres le jugement de main-leeve."

"The law provides a status of minor incapacity for prodigals, who may be placed under the supervision of a *conseil judiciaire* (who is a counsellor, not a council). A *prodigue* is a person who, owing to the disorder of his mind or of his morals, dissipates his fortune by excessive and foolish expenditure. He can make a will, subject to the possibility that his heirs may be able to prove that he was not of sound mind. The courts have moulded the interpretation of the texts in the general sense of permitting the prodigal person to do all acts of *administration*, and no other acts relating to his patrimony."<sup>50</sup>

There is a tendency in France to extend the application of these provisions to the case of alcoholics. Both the German Code and the Italian Code of 1942 expressly include cases of alcoholism in their provisions, which are similar to the French.

I think the only reference in our case law to the subject is contained in *Re Selot's Trust*.<sup>51</sup> This is a decision of Farwell J., which at first sight is not very encouraging to any judicial introduction of the spendthrift trust into our law. His Lordship agrees with the rule that where a disability or disqualification "arises from the principles or custom or positive law of a foreign country, especially of a penal nature, it is not regarded by this Court". His decision, therefore, is limited to this: Where a French subject of full age, who has been adjudged a prodigal, and placed under the control of a *conseil judiciaire* by the judgment of a French Court of competent jurisdiction, becomes entitled to a fund in court in England, he is entitled to payment out of the fund to himself on his sole receipt, notwithstanding the opposition of his *conseil judiciaire*. But the learned trial judge went further than this, and said *obiter*: "I have no discretion at all. . . . The Court has no jurisdiction to refuse to pay out to a man that which is his property." It is submitted, however, that our social conscience has changed radically during this century, and that a courageous Court of Appeal would have no difficulty now in reaching a conclusion different from that embodied in Mr. Justice Farwell's dictum.

In Victoria we have enabling legislation for what could be called a spendthrift trust. That legislation is Division 2 of Part II of the Public Trustee Act 1939.<sup>52</sup> Section 26 (1) thereof reads:

50. *Introduction to French Law*, Oxford, Clarendon, 43 and 326 (1935).

51. (1902) 1 Ch. 488.

52. No. 4654.

"If it is proved to the satisfaction of the Public Trustee that any person is by reason of senility disease illness or physical or mental infirmity incapable of managing his affairs the Public Trustee may sign and seal a certificate in the form in the Third Schedule or to the like effect that such person is an infirm person for the purposes of this Act."<sup>53</sup>

This legislation, however, has not yet been exploited in the case of alcoholism, unless, perchance, an alcoholic who has been committed to a mental hospital has been certified on some ground other than his alcoholic tendencies. But surely a confirmed alcoholic is suffering from one at least of the grounds specified in section 26—"disease illness or physical or mental infirmity". The Public Trustee would handle the affairs of an alcoholic if a physician were prepared to give the required certificate; and there would appear to be no difficulty attached to that.

Such an application was clearly in the mind of the Legislature, for section 9 of the Inebriates Act has been amended (by s. 3 of this same Public Trustee Act) to read as follows:

"(1) Where it is proved to the satisfaction of the Supreme Court or a judge thereof, that any inebriate the subject of an order under this Act is incapable of managing his affairs, the court or judge may make all proper orders for rendering the property and income of the inebriate available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a lunatic within the meaning of the Mental Hygiene Act 1928 or a patient or infirm person within the meaning of the Public Trustee Act 1939; and may, if necessary, appoint any person, either with or without security, to undertake the care and management of his property under the order and direction of the court.

"(2) The person so appointed shall, subject to the said orders and directions and to the rules of the court, have the same powers and be subject to the same obligations and control—

53. Other relevant sections of this Division are ss. 30(1), 32(p), 41, and 49(a).

- (a) if such person is the Public Trustee—as the Public Trustee has or is subject to in relation to the estate of a patient or infirm person under the Public Trustee Act 1939; or
- (b) in the case of any other person—as the committee of the estate of a lunatic has or is subject to under the Mental Hygiene Act 1928—

and the provisions of the Public Trustee Act 1939 and the Mental Hygiene Act 1928 shall with such adaptations as are necessary apply with respect to the estates of such inebriates accordingly.”

### *Sentencing*

Justitia has opened her eyes to the extent of perceiving that “six hours in the stocks” is now an impracticable order; and her sword has grown ever blunter since the slaughter of the early nineteenth century. But doubts arise as to whether she weighs up the merits of the individual case accurately enough to get an even balance—or as to whether her weights are not now outmoded.

As a rule, the pecuniary amount of the fine is immaterial because of the impecunious character of alcoholics. Within the bounds of its possibilities is, however, the chance that the moneyed man, whose own personality needs are no less than, and whose duties to society are greater than, those of the penniless man, may be suffered to “offend” with impunity.<sup>54</sup> Of the fines paid for drunkenness, half go to the municipality in which the court is sitting, and half to the Police Superannuation Fund.<sup>55</sup>

City Court sentencing practice is fairly well settled. First offenders, who are usually young people,<sup>56</sup> are released on a recognisance in the sum of ten shillings. Reappearance is not insisted on, so the ten shillings is usually kept by the court. The maximum penalty is £2 or seven days.

54. “The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”—Anatole France, Cournos, *Modern Plutarch*, 27.

55. But note Penalties Act 1928, No. 3747, s. 3.

56. Mr. Bretherton, of the Records Branch at Pentridge, estimates that, of all drunkards sentenced, 50 per cent are under 30 years of age. Potential reformers might do well to concentrate on these. It is virtually impossible to inculcate the necessary subjective will to reform in the case of aged derelicts.



The maximum penalty provided for second and subsequent offences is £5 or fourteen days. The magistrate looks at the prisoner's criminal record to see the period within which the last three convictions were sustained. He increases the penalty according to the frequency of appearance before the court.

It is possible to impose a penalty of £5, and *in default* one month's imprisonment. Although this might be sound social policy, the device is not exploited because it is not in line with clearly expressed legislative intent.

Not only is a taste for alcohol frequently accompanied by a distaste for work, but drinking often produces inability to work, so that, unless the "offender" is in receipt of a pension, he can be convicted of vagrancy and sentenced to three months. In cases of wanton dissipation, pensions are sometimes withheld, thus making possible this charge of vagrancy.

Advanced alcoholism often culminates in the drinking of methylated spirits. This brings the subject within Part VI of the Poisons Act 1928,<sup>57</sup> which provides for a penalty of £20. In default thereof, Mr. McLean, s.m., normally gives a sentence of up to three months.

The sentence is intended as a punishment<sup>58</sup> with a view to deterring the "offender". But few drunks are ever in a position to ponder over the threat of punishment. This purpose is seldom achieved, unless, in the early stages of his drinking career, an alcoholic prisoner is fortunate enough to commit a serious offence and be imprisoned for a few years. The field of alcoholism furnishes us with the most blatant example to be found of the failure, as a deterrent, of punishment by simple incarceration. Reform is obviously called for.

There is no pre-sentence study of the environmental history or personality troubles of the prisoner. "Thus we find many competent courts ignoring serious physical injuries, addiction, chronic alcoholism, delirium tremens, confusing psychoses, because accompanied by intoxication."<sup>59</sup> This can be justified, at present, in the face of a lack of reliable means of altering either the prisoner's ex-prison environment or the prisoner's own personality.

<sup>57</sup> No. 3748, in *primis* ss. 59 and 64.

<sup>58</sup> The reformatory committals envisaged by s. 7 Inebriates Act are not as yet possible.

<sup>59</sup> "Intoxication and Criminal Responsibility", 57 *Harvard Law Review*, 1045-1084, 1060 (1944).

Symptomatic alcoholics themselves might not be antipathetic to an increase in the penalties. Committal for three to six months or more might be a welcome discipline. They could get the drink out of their system, grow physically and mentally healthier, become self-supporting and even profitable at their prison work, and perhaps learn to live under dry conditions. It is a frequent occurrence for such alcoholics to volunteer for hospitalization or for the security of prison or asylum.<sup>60</sup>

And need we provide only a discipline that is welcome? Why not put all alcoholics in what is now the female division, regardless of term of imprisonment, and attempt to apply some reformatory therapy. The sentence should be made indeterminate, with a maximum of, say, three years. Even if he were detained for only one year, the alcoholic could be put to productive employment which would earn sufficient to pay for his own maintenance, the maintenance of his family, and the fees of any additional staff. In fact the prison could be self-supporting on this basis even if it went to the extent of providing the most expensive (as well as the best) treatment—psychoanalysis.

This suggestion is not unrealistic. The community could turn its alcoholism to the *profit* of all concerned if it introduced such a change. As things are, drunkards come back again and again, year after year, and always at a loss to themselves and the community.

There is general agreement as to the futility of repeated short-term imprisonments. Magistrates, hospital and prison staffs, and alcoholics themselves, all subscribe to this view.

Under the New South Wales provision corresponding to our Police Offences Act section 69(2), twelve-month commitments to an institution set aside for that purpose are frequently made for habitual drunkenness.<sup>61</sup>

“69. (2) Every habitual drunkard having been thrice convicted of drunkenness within the preceding twelve months or any common prostitute *who in or on any public place behaves in a riotous or indecent manner* shall be liable to imprisonment for a term of not more than twelve months.”

60. For such examples, see *Alcoholics Anonymous*, Works Publishing, New York, 1950.

61. This is commonly termed “giving him the key”.

Following an interpretation of this section by the Crown Solicitor, Mr. McLean requires proof of three things before "giving a man the key":

- (a) proof of habitual drunkenness in fact,
- (b) three convictions as enacted, and
- (c) riotous or indecent behaviour as enacted.

Because of the third requirement, no convictions for habitual drunkenness are ever recorded in Victoria. This interpretation is clearly erroneous. Such a restriction is not paralleled by either of the analogous sections—sections 7 of the Inebriates Act and 224 of the Licensing Act. Even if the qualifying clause which is underlined is held to apply to drunkards as well as to prostitutes, the interpretative maxim *reddendo singula singulis* will apply so that the word "riotous" qualifies drunkards, and the word "indecent", prostitutes. Here, then, the word "indecent" should have no limiting effect on the construction put upon the word "riotous". Rather should the word "riotous" be read in a liberal manner as suggested by the apposition to "riotous" of the word "disorderly" in section 23 of the Police Offences Act.<sup>62</sup>

There is some valuable learning relating to habitual drunkenness in the field of marriage law.<sup>63</sup>

What, then, is a suitable treatment for the symptomatic alcoholic? He is not a "criminal" in the accepted connotation of that word. He does not consider himself an offender; he thinks of himself rather as the offended.<sup>64</sup> And after all, as a significant portion of humanity, his view is entitled to some weight, especially in view of the above analysis of his theoretical

62. For a comparison with the U.S. position re habitual drunkenness, see Hall 32 *Journal of Criminal Law and Criminology*, 297-309, at 302-304 (1941).

Illustrating the variety of penalties for drunkenness, Hall writes, at 306: "Delaware imposes a fine of 50 cents for every intoxication; in New Jersey it costs one dollar. Florida apparently allows a fine of \$3000 and imprisonment for three years, or both, for the second offence. The Arkansas statute provides for confinement until sober. In Massachusetts, the court may discharge an offender 'if satisfied that the accused has not four times been arrested for drunkenness within a year'."

63. See cases footnoted to Marriage Act 1928, No. 3726, s. 75 (b). For N.S.W., see the note contributed to 4 A.L.J. 378-380 (1931) and 5 A.L.J. 297-298 (1932). For Iowa, see "What Constitutes an Habitual Drunkard?" 40 *Law Notes*, 28 (1936), re *Leonard v. Leonard*.

64. And it may be that the symptomatic alcoholic is partly correct, though in a way which his blinkered outlook precludes his seeing.

This problem exists also in our civil law: see Lefcourt and Freedman, "Alcoholism: Self-Inflicted Injury or Disease under Disability Provisions of Insurance Policies", 23 *Temple Law Quarterly*, 39-62 (1949).

potentialities. He is a part of "humanity", not a "community man", for of all humans he is probably the most antisocial, or at least asocial. In the nature of things, he is incapable of organizing his kind into a minority pressure group, so we do not hear from him. Perhaps society owes a duty, not simply to the symptomatic alcoholic, but more generally to itself, to pay heed to this neglectful and neglected creature.

The present Governor of Pentridge recommends the establishment of an open-air inebriates' colony—a halfway house between prison and an organization such as Alcoholics Anonymous. He does not favour the depressing effects of the normal asylum, such as Sunbury.

But inebriates should be subjected to some compulsion, to an extent decreasing as they learn to discipline themselves. "The inveterate alcoholic should be detained indefinitely."<sup>65</sup> Perhaps the need is for an institution with modern training facilities and administration such as obtain at Herstedvester, Sweden.

What are English experiments in this field? "For social safety, an attempt was made, by the Inebriates Act 1898 (61 and 62 Vict., c. 660), to provide State reformatories for the seclusion for three years of those offenders whose cravings for alcohol have proved incorrigible, but the experiment was a failure and the reformatories are now closed. The matter is now regulated by the Probation of Offenders Act 1907 (7 Edw. 7, c. 17), as amended by the Criminal Justice Act 1925 (15 and 16 Geo. 5, c. 86) and the Criminal Justice (Amendment) Act 1926 (16 and 17 Geo. 5, c. 13). Under this statute, any court which considers that, though an offence is proved, it is inexpedient to inflict actual punishment, may release the offender on recognisances to be of good behaviour and to appear for judgment within a time not exceeding three years, if called on. A court of summary jurisdiction need not even record a conviction. The court may attach conditions to the recognisance; e.g., as to restitution, residence, intoxicating liquor, entering a Farm Colony or a Refuge or an Inebriates' Home, or even quitting Great Britain,

65. Gordon, "Prophylactic, Administrative and Medico-Legal Aspects of Alcoholism", 4 *Journal of Criminal Law and Criminology*, 872 (1914). For more reserved approaches, Kinberg, "Alcohol and Criminality", 5 *J.C.L. & C.*, 581 (1915); and Anderson, "The Alcoholic as Seen in Court", 7 *J.C.L. & C.*, 89 (1916).

See, too, Blair, "Alcoholism—A Medico-Legal Survey", 9 *Medico-Legal and Criminology Review*, 211 (1941).

but if it is desired that young offenders should be placed in an institution, they should be sent to a Home Office School. It may, in addition, place him under the supervision of a Probation Officer; whose duty will be to visit him periodically, report on his behaviour, and 'advise, assist, and befriend him'.<sup>66</sup>

Is it an interference with the liberty of the subject to incarcerate the symptomatic alcoholic indefinitely? "Mill said that though, ordinarily, drunkenness was not a fit subject for legal interference, still a person once convicted of any act of drunken violence 'should be placed under a special legal restriction personal to himself'."<sup>67</sup> But is this freedom of the individual logically tenable, *given the assumption of law*? The aim of the law can be none other than the fostering of the *community* of interests, and the insistence on subjective rights is the very negation of social communion.

Surely, *the desire for "freedom" is the very burden of the symptomatic alcoholic*, that point at which he is frustrated at every social turn. It is just the group's norms with which he wages his lone war. Indeed, the symptomatic alcoholic has needs; and he has a social duty to see that those needs are met—but no rights.

### *Aborigines*

Finally, we must make reference to a class amongst which the incidence of alcoholism is significantly higher than the normal. Common opinion rates aborigines as innately weak: witness their congenital tuberculosis, susceptibility to cheap wines, contentment (at least in the city) with nothing but the dissolute life, and aversion to work. And the state of the law reflects this attitude to our "black sheep".

"Licensed" aborigines can reside at the Lake Tyers Reserve. And they are in fact permitted to remain there longer than the period which the Aborigines Regulations 1931<sup>68</sup> contemplate as being sufficient. This is in order to retain surveillance over aboriginal children. For the children a well-equipped State

66. Kenny, *Outlines of Criminal Law*, 597, 602 (1946).

67. Stone *Province and Function of Law*, 302 (1950).

68. Reg. 32, Victoria Govt. Gazette No. 100, 13 May 1931; slightly amended in 1937, at p. 2076 of that year's *Gazette*. The word "licensed" betrays an unconscious assimilation with caninity rather than an assimilation with the white population—the declared policy of the Victorian Board for the Protection of Aborigines. This Board is apparently so unimportant that it is not listed in the telephone book, unless it be under the name "Chief Secretary", who is *ex officio* a member!

school functions. The children do fairly well at all subjects, with the consistent exception of arithmetic—a factor significant in the syndrome of emotional insecurity. For aborigines are ever receiving signs of rejection by white persons. This is probably etiologically relevant in later alcoholism.

What are we providing for this malady? Section 12 (II) of the Aborigines Act 1928<sup>69</sup> and section 177 (a) of the Licensing Act 1928—sections patently enacted the one in ignorance of the other—prohibit the supply of intoxicating liquor to aborigines. This is a feature common to the legislation of every State.<sup>70</sup> The offender under these sections is not the aborigine, but the supplier. These provisions also are poorly policed. South Australia, Western Australia and Queensland, in addition, prohibit possession of such liquor on the part of aborigines.

Prohibition, however, is no real solution of the problem.<sup>71</sup> What more could we provide in this regard?

- (A) We should give aborigines better-defined and more respected rôles in the community. We should concentrate on their handwork abilities; cease “licensing” them; create precedents for contracts of employment modified in recognition of their nomadic needs. The process of inculcating a respect, and a self-respect, for the aborigine, will involve as well education of the white race as of the black.<sup>72</sup>
- (B) We should give facilities for and encouragement towards the secondary and tertiary training of aborigines.
- (C) We should make the State the legal guardian of all aboriginal children. This would be socially preferable to their present parental upbringing, or lack thereof. Suffice it, perhaps, if the State merely has the power

69. No. 3631. This section is reinforced by Regulation 25 (e).

70. In Tasmania, of course, the aboriginal problem has ceased to exist. The Cape Barren Island Reserve was wound up on 31 December 1950.

71. Nor is the suggested reduction of our beer's comparatively high alcohol content—7 per cent. This would probably be beneficial; but most symptomatic alcoholics are usually past the beer stage. Moreover, the craving is not so much for the liquor as for the intoxication induced by the ingestion thereof. But if it is decided to adopt this approach—and in view of the urgency of the problem any plausible approach is better than none—a statute might also ban advertisements relating to alcoholic beverages.

72. A programme of similar intensity and style to that undertaken upon the immigration of New Australians is perhaps wanted.

to take over the guardianship of aboriginal children in cases of need.

In this way, we could go some of the way to obviating those problems which are peculiar to the aboriginal. He has, in addition, most of those listed above for the white race.

The application of the Victorian Act is limited to certain specified classes of aborigines. To be lauded is the all-comprehensive provision in section 8A of the N.S.W. Act, and in sections 4 and 11A of the S.A. Act. Comparative research also reveals an omission in our Act: only the N.S.W. Act makes provision for a minimum aboriginal representation on the Board (section 4).

At present, there are unpredictable fluctuations of some States' aboriginal populations owing to seasonal and other walkabouts. This does not facilitate solution of the problem. Perhaps the seriousness of the problem would be highlighted, the treatment made easier, and unnecessary and confusing State divergencies eradicated, if resources were pooled in a central Commonwealth administration. Power so to act was requested on behalf of the Commonwealth Parliament in 1946, but was denied by that reactionary leviathan—referendum. However, the way might still be open via the forgotten placitum (xxxvii) of section 51 of the Constitution, if this may be used to circumvent s. 51 (xxvi) which expressly excludes the aboriginal race from Commonwealth legislative competence.

### *Summary*

In this exploratory essay, we have fringed many fields and elaborated several points of departure for more intensive research. We have intimated the areas of cost to the community of this mute minority group. And we have noticed how we are losing an immeasurable sum in the dulling of fine minds—finer than perhaps we imagined. We have tried to lay a helpful thread to guide an inquirer through the now complex maze of comment on this scarce-studied subject. The institution of the spend-thrift trust has been advocated. Current lay, medical and legal treatment have been described: but manifestly, the need for applied study is greatest here.<sup>73</sup>

Most important of all, we have demonstrated how the symptomatic alcoholic's sadly dependent egocentricity, far from being reformed by "maturer" persons, is exacerbated by popular con-

73. Mann's *Primer on Alcoholism* (London, Gollancz, 1952) has a useful lay summary of current treatments.

demnation, and our refusal to create an acceptable rôle for him. The feature distinguishing *homo sentiens* from *homo sapiens* is the former's retention of a scientifically open mind and his inability to perceive a large enough faith. And we have noticed two leading professions fostering an assimilation of *homo sentiens* with the species *canis familiaris*, the medical profession by resting content with administration of antabuse, and the legal by "licensing" aborigines.

But *social* reformers must beware that point at which the antisocial symptomatic alcoholic is at one with jurists of Benthamite sympathies, that is, where they both applaud the maintenance of individual *liberties*.