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Constitutional Law - Criminal Law - Statutory Construction and Interpretation

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Notes

CONSTITUTIONAL LAW—CRIMINAL LAW—STATUTORY CONSTRUCTION AND INTERPRETATION—Defendants were prosecuted under Article 104 of the Louisiana Criminal Code of 1942,[1] for intentionally maintaining a place "to be used habitually as a meeting place for prostitutes and men desirous of their company. . . ." In dismissing the prosecution, the Louisiana Supreme Court held that Article 104, "insofar as it defines the crime of keeping a disorderly place as 'the intentional maintaining of a place to be used habitually for any . . . immoral purpose,' " is unconstitutional in that it is vague and indefinite and leaves to the court the determination of the crime, which power is reserved to the legislature alone. *State v. Truby,* 211 La. 178, 29 So. (2d) 758 (1947).

Article 7 of the Louisiana Criminal Code[2] was cited in the instant case as authority for the statement that in Louisiana "nothing is a crime which is not made so by statute."[3] That article is a restatement of the civil law principle *nullum crimen sine lege,* which has been interpreted as meaning merely that a legislative basis must be found for each crime, and that each charge must be based on some specific code article.[4] It is submitted that the rule does not involve a general conclusion that every article must be subjected to the narrowest interpretation in favor of a defendant.[5] Justice Hawthorne, speaking for the court, stated, "it is equally true that a penal statute must be strictly construed and cannot be extended to cases not included within the clear import of its language, and that nothing is a crime which is not clearly and unmistakably made a crime."[6]

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1. Art. 104, La. Crim. Code of 1942: "Keeping a Disorderly Place is the intentional maintaining of a place to be used habitually for any illegal or immoral purpose. . . ."

2. Art. 7, La. Crim. Code of 1942: "A Crime is that conduct which is defined as criminal in this Code, or in other acts of legislature, or in the constitution of this state."

3. State v. Truby, 211 La. 178, 29 So. (2d) 758, 759 (1947).

4. Morrow, The Louisiana Criminal Code of 1942—Opportunities Lost and Challenges Yet Unanswered (1942) 17 Tulane L. Rev. 1, 8. See also Hall, Nulla Poena Sine Lege (1937) 47 Yale L. J. 165.

5. Ibid.

6. State v. Truby, 211 La. 178, 29 So. (2d) 758, 762 (1947), citing as authority Arts. 3, 7, La. Civil Code of 1870; United States v. Reese, 92 U. S. 214, 23 L. Ed. 563 (1875); State v. Breffeihl, 130 La. 904, 58 So. 763 (1912); State v. Comeaux, 181 La. 930, 60 So. 620 (1918). In *State v. Breffeihl,* the defendant was acquitted, not because of any defect or indefiniteness in the statute, but, in the words of the court, "If interpreted as here contended, the statute would be made to say

Although the common law rule of strict construction[7] was not expressly abrogated in the Louisiana Criminal Code, it seems that Article 3 of that Code[8] necessarily operates to suppress it.[9] The Louisiana State Law Institute, in compiling the Code, refused to enunciate this rule of *strict* construction. The language and development of Article 3 of the Louisiana Code leads to the conclusion that it provides for neither a strict nor a liberal construction, but for a *logical* one. The court cannot give the provisions of the Code "a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision,"[10] and still indulge in the strict construction methods of the common law.[11]

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something which it does not expressly say, and does not even by necessary implication say." *State v. Comeaux* is distinguishable, in that the statute involved made no attempt to define the crime denounced, while in *United States v. Reese,* the statute was held unconstitutional, not for vagueness or indefiniteness, but because Congress had exceeded the authority conferred upon it by the Fifteenth Amendment to the United States Constitution. In fact, the court in the latter case said, "If Congress had the power to provide generally for the punishment of those who unlawfully interfere to prevent the exercise of the elective franchise without regard to such discrimination, the language of these sections would be broad enough for that purpose."

7. United States v. Wiltberger, 18 U. S. 76 (1820); United States v. 84 Boxes of Sugar, 32 U. S. 453 (1833); Bishop, Commentaries on the Written Laws and Their Interpretation (1882) § 119; 3 Sutherland, Statutory Construction (Horack's 3 ed., 1943) 49, § 5604. However, there has been diversity of opinion in virtually every jurisdiction as to the merits and demerits of the rule. See Hall, Strict or Liberal Construction of Penal Statutes (1935) 48 Harv. L. Rev. 748.

8. Art. 3, La. Crim. Code of 1942: "The articles of this Code cannot be extended by analogy so as to create crimes not provided for herein; however, in order to promote justice and to effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of their ords, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision."

9. The writer here shares the opinion of Professor Morrow, one of the reporters of the Louisiana Criminal Code; Morrow, supra note 4, at 10. As originally drafted Article 3 expressly abolished the rule of strict construction. However, this provision was later deleted and even though the remainder of the article was left intact, it can hardly be said with any degree of certainty that this rule was completely eliminated.

10. Art. 3, La. Crim. Code of 1942.

11. Even if Article 3 be held to justify a rule of strict construction, there are certain well established rules of statutory interpretation which were overlooked in the instant case. It is universally recognized that, even if a rule of strict construction be applied, penal statutes are not to be construed so strictly as to defeat the obvious intention of the legislature. In determining that intent, the court has authority to consider the comments under the particular statute, as well as prior and concurrent legislation. A reference to such sources beyond question that the obvious intent of the legislature in enacting Article 104 was to punish acts such as were charged in the bill of indictment in the principal case. See Reporter's Comments under Art. 104, La. Act 199 of 1912, and La. Act 241 of 1942.

The United States Supreme Court in its treatment of the "White Slave Traffic Act"[12] and the Immigration Act of 1917[13] has found little difficulty in interpreting the phrase "immoral purpose" and has upheld these statutes against attacks of vagueness."[14] Courts of other jurisdictions have upheld and applied statutes requiring the courts to give content to such terms as "immoral purpose,"[15] "indecent conduct,"[16] and "rude or indecent behavior."[17] The Louisiana legislature has previously enacted statutes containing similar provisions,[18] but the court was not called upon to interpret such provisions before their repeal.[19]

In *State v. Rose*,[20] the defendant contended that since the statute declared "any place . . . where lewd dancing is permitted" to be a disorderly house,[21] a conviction or acquittal would depend altogether on the trial judge's idea of graceful movement or wearing apparel. The court said:

> "It might as well be argued that the familiar statutes against indecent exposure of the person in a public place are invalid, because some . . . prudish judge might be unreasonable in his condemnation of decolleté costumes. . . . *It is too well settled to admit of argument that a statute should not be deemed invalid because a rigid enforcement of it might result in injustice. . . .*"[22]

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12. Act of June 25, 1910, 36 Stat. 825 (1911), 18 U. S. C. A. § 398 (1927).

13. 34 Stat. 898, 899, § 3 (1907).

14. United States v. Bitty, 208 U. S. 393, 28 S. Ct. 396, 52 L. Ed. 543 (1907); Caminetti v. United States, 242 U. S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917); United States v. Lewis, 110 F. (2d) 460 (C. C. A. 7th, 1940), cert. denied 310 U. S. 634, 60 S. Ct. 1077, 84 L. Ed. 1404 (1940); Cleveland v. United States, 67 S. Ct. 13, 91 L. Ed. (adv. 1) (U. S. 1946).

15. State v. Reed, 53 Mont. 292, 163 Pac. 477 (1916).

16. Tanner v. State, 21 Ala. App. 14, 105 So. 712 (1925).

17. Reeves v. State, 96 Ala. 33, 11 So. 296 (1892).

18. La. Act 287 of 1910, § 1 ("immoral pursuit or occupation"); La. Act 288 of 1910 ("place of immoral character"); La. Act 295 of 1910, § 1 ("immoral purpose"); La. Act 307 of 1910, § 2 ("immoral purposes").

19. In State v. Scallan, 201 La. 1026, 10 So. (2d) 885 (1942) however, the defendant was prosecuted under Act 139 of 1916, which made it a misdemeanor for parents or guardians to permit a child under their control and under seventeen years of age "to enter any place where the morals of such child may be corrupted, endangered or depraved, or may likely be impaired." The defendant was convicted for having taken his thirteen year old daughter into a night club. The statute set no standard as to what type of place would corrupt a child's morals and what type would not, but left the question to the determination of the judge. It would seem that if the court can validly find that a place will "tend to corrupt the morals," then it could likewise find that a place is maintained for an "immoral purpose."

20. 147 La. 243, 84 So. 643 (1920).

21. La. Act 199 of 1912.

22. 147 La. 243, 254, 84 So. 643, 647. In the same case the court, per O'Niell, J., after referring to several of the cases cited in the majority opinion of the

The court's reference to statutes against indecent exposure might well apply also to those against disturbing the peace, disorderly conduct, indecent behavior with juveniles, and others. Offenses of this kind may be committed through a wide variety of conduct, and it is not to be expected that the legislature will undertake the cumbersome and probably impossible task of providing for all detailed violations in advance. Furthermore, an incomplete enumeration would provide a technical loophole through which a guilty defendant might evade the law. The avowed intention of the reporters and of the legislature in enacting Article 104 of the Criminal Code was to draft a general definition which would "include all types of disorderly houses and places known as such, or which might become known as such in the future."[23]

While the decision in the *Truby* case might be justified by the admittedly broad scope of Article 104, it would be unfortunate if some of the court's generalizations should be extended further. If the court should extend the reasoning of the *Truby* case and adopt a policy of undue technicality, the very foundation on which the Criminal Code is based will be dealt a crippling blow.

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CONSTITUTIONAL LAW—FEDERAL-STATE RELATIONS UNDER THE UNITED STATES WAREHOUSE ACT—Defendant was charged with numerous violations of a state statute regulating grain warehouses. Included were the exaction of unjust discriminatory rates, conflict of interest as warehouseman and dealer in grain, failure to provide reasonable and adequate facilities, improper mixing of public and private grades of grain, failure to publish rates, and failure to obtain a state license. Defendant, licensee under the United States Warehouse Act,[1] set up the exclusive coverage of that act. *Held,* where a matter over which a state asserts the right to control is in any way regulated by a federal act, "the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the state." *Rice v. Santa Elevator Corporation,* 67 S. Ct. 1146 (U. S. 1947).[2]

Truby case, said: "The decisions cited supra, therefore, are not to be regarded as a departure from the doctrine, now well settled, that a statute which defines and denounces certain conduct as a crime is not rendered invalid by investing the trial judge with some discretion in determining whether the facts of a given case shall bring it within the purview of the law."

23. Reporters' Comment, Arts. 104, 105, La. Crim. Code of 1942.

1. 39 Stat. 486 (1916) as amended, 7 U. S. C. A. § 241 (1931).

2. See also the companion case of First Iowa Hydro-Electric Co-op. v. Federal Power Commission, 328 U. S. 152, 66 S. Ct. 906, 90 L. Ed. 1143 (1945). This