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Criminal Law—Minnesota Youth Conservation Act—Validity Under Constitution

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unconstitutional. The New York Court of Appeals in order to reach the contrary result would have had to hold that state action includes indirect as well as direct acts by a state or its agents. But this latter approach does not seem unreasonable. It is not stretching the concept of what constitutes state action too far to say that approval, acquiescence in, ratification of discriminatory acts, and financial assistance given to a corporation which discriminates, if done by a state, constitutes state action.

The state of New York, acting through its agent, New York City, did the very things mentioned above. But New York City was not the only agency through which New York state had acted. Both Stuyvesant Town and the Metropolitan Insurance Company are corporations. Corporations are in existence only with the consent of the state. Therefore, corporations are creatures of the state, and as such, act with state authority. Hence, it is at least arguable that, when a corporation discriminates, the state is discriminating. Corporate action can be said to constitute state action as stated in the 14th Amendment. It is conceded that the ancient doctrine of what constitutes state action would have to be amplified; but under the social conditions existing today, a contrary result in the *Stuyvesant* case would be desirable practicably and correct judicially. It is submitted that the phrase "state action" has proved sufficiently elastic in the past to bear the additional stretch necessary to make it cover such a situation.

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CRIMINAL LAW — MINNESOTA YOUTH CONSERVATION ACT— VALIDITY UNDER CONSTITUTION

The defendant, Meyer, an eighteen-year-old youth, pleaded guilty to the crime of third degree burglarly. His objection to the imposition of sentence under the Minnesota Youth Conservation Act on the ground of its unconstitutionality was sustained, and that question was certified to the Minnesota Supreme Court. The appellate tribunal reversed the trial court, stating that the Youth Conservation Act is not an invasion or infringement of the constitutional powers of any branch of government nor a deprivation of any personal liberty or right guaranteed therein[1]

1. State v. Meyer, 37 N. W. 2d 3 (Minn. 1949).

Faced by an alarming increase in crime and, more particularly, that committed by youthful offenders, the legislature of Minnesota in 1947 adopted the Youth Conservation Act,[2] patterning it with slight variations on the Youth Correction Authority Act[3] promulgated by the American Law Institute in 1940. To stem the tide of this youthful crime wave, the Minnesota act created a five man commission which was invested with extensive power and control over youths under the age of twenty-one years at the time of their apprehension who were found guilty of a felony or gross misdemeanor in either a juvenile or district court.[4]

With respect to juvenile court cases the act required that the youth be committed to the custody of the commission unless the court exercised is retained authority to place the youth on probation or to make some other disposition of the case not amounting to commitment to a state training school. As to youths convicted of a felony or gross misdemaanor in a district court, sentence to the commission for the maximum term prescribed by the statute for the crime was made mandatory unless the district court after a pre-sentence investigation placed the youth on probation. The district court under the act retained the power to commit a convicted youth directly to a penal institution in only one instance, namely, where the required penalty for the crime was life imprisonment or where a life sentence might be imposed by the trial judge in the exercise of his discretion.

The power of control granted to the commission as to both the character and duration of confinement, if any, of a youth committed to it, however, was made by the terms of the act to vary considerably depending on whether the youth was tried and sentenced in a juvenile or district court. Upon commitment by a juvenile court the commission had the right to retain control of the youth until he reached the age of twenty-one years, at which time the offender had to be discharged. The commission, however, could discharge the youth entirely from its control before the age of twenty-one years was reached. Such youths committed to it by a juvenile court could be con-

2. Minn. Laws 1947, c. 595.
3. 17 PROCEEDINGS A. L. I. 148 (1940).
4. Pirsig, *Procedural Aspects of the Youth Conservation Act*, 32 MINN. L. REV. 471 (1948).

fined by the commission in a training school, placed on probation or, after confinement, paroled, but in no event could the youth be confined in a penal institution. On the other hand, when the commitment to the commission was made by a district court, the commission had the authority to confine the youth in a penal institution, to place him on probation or, after confinement, to parole him on such terms as it might prescribe for the best interest of both the youth and society. The youth so sentenced to the commission by a district court had to be discharged at the expiration of the maximum term prescribed by the statute creating the crime. If, however, before the expiration of that term, the youth attained the age of twenty-five years, he was then to be discharged unless the commission found that to do so would be dangerous to the public, in which event the youth was to be turned over to the regular adult criminal agencies.

These, briefly, are the provisions incorporated by the legislature of Minnesota into its Youth Conservation Act in its attack on youthful crime and delinquency, which were caused by defendant Meyer's objection to sentence to be brought before the scrutiny of the supreme judicial body of the state for comparison with the fundamental principles of government embodied in both the Federal and state Constitution. The major constitutional indictments of the act presented by the defendant were that it violated the principle of governmental separation of powers and constituted a violation of the constitutional guarantees of due process and equal protection of the law. That there was no justifiable validity in such contentions was made evident by the supreme court's review of the almost unanimous upholding of the indeterminate sentence legislation of that and other states with which this Minnesota act was similar in many respects and by an examination of the precedent established by the Supreme Court of California[5] upholding the very similar Youth Correction Act of that state against analogous arguments. Thus, the Supreme Court of Minnesota in declaring the validity of the Minnesota Youth Conservation Act neither bestowed upon the legal profession any new constitutional doctrines nor made any unprecedented expansion or development of those principles already existing.

What then is the significance and importance of the Minnesota

5. In re Herrera, 23 Cal. 2d 206, 143 P. 2d 345 (1943).

Youth Conservation statute and this supreme court decision upholding its constitutionality? Can it be said that this decision is fostering some new and novel panacea for the ills of youthful crime and delinquency? Viewed as a whole, the act is, indeed, a relatively new innovation, a product of the current decade. Since 1940 when the model act was promulgated by the American Law Institute, only four states have adopted it in some modified form. California, the pioneer state in this progressive movement, put into practice the fundamental principles and machinery of the model act in 1941,[6] and its action has been followed by only Minnesota and Wisconsin[7] in 1947 and Massachusetts[8] in 1948.

Viewed in quite another sense, however, the act is by no means revolutionary. If broken down into its integral and component parts, it is not a radical offer of new and untried practices supported only in theory. Almost every detail of the act is already the accepted law or the approved practice in one or more states. In reality the act does nothing more than gather together these practices actually in effect and accepted as wise under the legislation of numerous states, not all of which had been followed in any one state prior to the California experiment, and integrates them into a co-ordinated procedure in the hands of one single administrative body capable of effectively dealing with the peculiar problems of youth.[9] The act is, thus, unique in that it combines many features not in themselves unique.

Furthermore, the act is novel, as a whole, in that it frankly departs from the punitive approach when dealing with convicted juveniles. In theory the ancient doctrine of compensatory punishment for crime, especially as applied to youthful offenders, has long ago been abandoned, its inefficacy as a method of controlling crime being fully recognized. Yet, the Committee of the Minnesota Bar Association on the Youth Correction Authority Act had frankly to admit that, in general, the facilities available for the correction and treatment of youth in that state, especially those between the ages of eighteen and twenty-one, were no different from those existing for adult criminals, citing in its

6. CAL. STAT. 2522 (1941).
7. Wis. Laws 1946-1947, c. 546.
8. Acts and Resolves of Mass. 1948, c. 310.
9. Waite, *The Youth Correction Authority Act*, 9 LAW & CONTEMP. PROB. 600 (1942).

report numerous instances of youths being intermixed in penal institutions with hardened criminals.[10]

By limiting the power of the court to commit a youth to even a state training school and requiring it instead to sentence the youth for an indeterminate period[11] to an integrated and unified administrative body such as the commission with the facilities[12] and personnel[13] necessary for effective solution of the peculiar problems of youth, the act gives full effect to the more modern theory with its goal of rehabilitation, correction and reform by substituting for mass punishment individualized treatment and scientific methods of examination.[14] The Youth Conservation Act is, therefore, an attempt to find the most effective method of ultimately rehabilitating and reforming the criminally inclined youth as an individual and, thereby, to return to society, as useful, law-abiding citizens, youthful offenders as a whole.

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EVIDENCE—MEMORANDA TO AID RECOLLECTION—ADMISSIBLE EITHER AS PAST RECOLLECTION RECORDED OR AS PRESENT RECOLLECTION REVIVED.—In an appeal from a decision of the United States District Court affirming the conviction of one Riccardi of feloniously having transported or having caused to be transported stolen property in interstate commerce, the United States Court of Appeals, in *United States v. Riccardi*[1] affirmed the judgment of the District Court, holding that there was no abuse of discretion by the trial court in determining that a writing may be used by an owner as an aid to memory in reviving a present recollection enumerating a numerous list of household articles, as well as by an antique dealer, qualified as an expert, to revive his present recollection that he might give his opinion as to the value of the chattels based on his prior knowledge of them.

The defendant, Riccardi, transported in a truck and station

10. See 28 MINN. L. REV. 300 (1944).
11. Bennett, *Indeterminate Control of Offenders: Realistic and Protective*, 9 LAW & CONTEMP. PROB. 617 (1942).
12. Ellington, *Youth Correction: Institutional Facilities for Treatment*, 9 LAW & CONTEMP. PROB. 667 (1942).
13. Ellis, *Youth Correction: Personnel Considerations Relating to the Authority Plan*, 9 LAW & CONTEMP. PROB. 704 (1942).
14. Healy, *Youth Correction: Principles of Diagnosis, Treatment, and Prognosis*, 9 LAW & CONTEMP. PROB. 681 (1942).
1. 174 F. 2d 883 (3d Cir. 1949).