

school population could be evaluated with the same battery.

The present project should prove sufficiently provocative to stimulate juvenile justice personnel to systematically inventory the learning status of the major sub-groups which they serve. For example, status offenders and chronic offenders should be evaluated and on the basis of this data, dispositions as well as rehabilitation efforts would be well served with this available information.

It has, of course, been repeatedly shown in treatment efforts of many different types that it is an absolute necessity to have precise diagnosis precede attempts to remediate or correct. This has been true with those specific problems categorized by the amorphous term of learning disabilities. It now appears that we have an effective

and reasonable diagnostic capability with the added bonus of widespread applicability.

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## Issues in the Decriminalization of Public Intoxication

BY PAUL C. FRIDAY, PH.D.

*Department of Sociology, Western Michigan University, Kalamazoo*

THE DECADE of the sixties represented a shift in the legal approach to public intoxication. Since the first written law in North America making public intoxication a criminal offense was established in 1619, the number of persons processed through the criminal justice system for this crime has ranged from one-third to one-half of all offenders. Throughout the 1960's, arrests for public intoxication in the United States reached the two million mark, representing almost one-third of all arrests in the country. In cities like Seattle, it was estimated that 70 percent of police man hours were spent on this type of offense and 80 percent of the jail population were alcoholic offenders (Spradley, 1970).

Underlying the legal position regarding public intoxication was a deep-rooted moralistic view which saw all use of alcohol, and especially its misuse, as evidence of moral turpitude and therefore as punishable behavior. The shift which occurred in the 1960's was to redefine the misuse of alcohol and alcoholism as a medical problem and as a disease rather than as a voluntary, "free-will" decision by the inebriate. This decision

created a dilemma in enforcement. Clearly, the number of public inebriates was high, their visibility reflected on the community, their behavior was offensive to the public, and the need for control remained high. Yet how does one justifiably deal effectively with a public health problem within the criminal justice structure and meet both the social needs of the public and the health care and other needs of the inebriate?

Ten years after the President's Commission on Law Enforcement and Administration of Justice Task Force Report (1967) on Drunkenness recommended a public health approach be substituted for criminal procedures, the dilemma remains and the legal debate continues. The essence of the conflict revolves around the inability of the legal process to deal effectively with a public health or social problem and the community's continued insistence that law-enforcement remain an integral part of the social solution. Thus, the dilemma and conflict are perpetuated in the current decriminalization trend by emphasizing the social and medical needs of the inebriate while simul-

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taneously depending upon the police to locate, detect, process and transport him.

There is continued awareness that a criminal justice response to the public inebriate contributes to the cosmetic and public safety aspects of the community, yet such a response is totally incapable of coping with the rehabilitation of public inebriates. The failure of the criminal justice system to rehabilitate the public inebriate is indicated in the following issues (Clarke, 1975):

(1) It is contrary to our sense of justice for a person to be incarcerated for a major portion of his adult life for no more serious "crime" than public intoxication.

(2) The very fact of repeated arrests clearly indicates the failure.

(3) It is extremely costly, especially in view of the fact that its success ratio is low.

(4) It discriminates (frequently out of necessity) against the low socio-economic level, especially those who have no adequate home to which they can be taken.

(5) Permitting those who are financially able to "bond out" to do so without any attempt to intervene allows their personal, social, and economic deterioration to proceed unabated.

Awareness of the criminal justice system's inability to deal with chronic public intoxication was first recognized by the courts. In *Easter v. District of Columbia*, 1966, the U.S. Court of Appeals for the District of Columbia Circuit held unanimously that an action committed involuntarily cannot be held criminal. This was an affirmation of an English common law concept. Inherent in the decision was a recognition that alcoholism was considered an illness and that involuntary public intoxication was a symptom of the illness. It rules, therefore, that one cannot be convicted for involuntary action, i.e., manifesting the symptoms of his illness.

In *Driver v. Himant*, 1966, the United States Court of Appeals for the Fourth Circuit ruled that conviction of an alcoholic for public intoxication constituted cruel and unusual punishment, and, therefore, was in violation of the eighth amendment to the United States Constitution.

Subsequently, in *Powell v. Texas*, 1968, the United States Supreme Court ruled inconclusively on the constitutional implications of the arrest-incarceration process by upholding Powell's conviction while still reflecting unanimity in the belief that invoking the criminal process was inappropriate. The court went on to reiterate the general disease concept of alcoholism.

In 1968, Congress enacted the first Federal legislation dealing specifically with the treatment of alcoholism on a national scale. Known as the Alcoholic Rehabilitation Act of 1968 (Public Law

90-574), it declares that "the handling of chronic alcoholics within the system of criminal justice perpetuates and aggravates the broad problem of alcoholism whereas treating it as a health problem permits early detection and prevention of alcoholism and effective treatment and rehabilitation, relieves police and other law enforcement agencies of an inappropriate burden that impedes their important work, and better serves the interests of the public." Two years later, Congress passed the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Public Law 91-616). Basic provisions of this law were the authorization of substantial financial support to state and local programs and the establishment of the National Institute on Alcohol Abuse and Alcoholism.

The thrust was clearly away from the social control concept and toward the public health model. During the 1970's numerous state legislatures developed laws based on a declaration of policy that alcoholism is recognized as an illness and, therefore, should be handled in the health care rather than the criminal justice system. At least three basic elements have evolved from this philosophy: (1) voiding all state, municipal, and county laws which authorize arrest for public intoxication, *per se*; (2) spelling out a broad mandate for treatment/rehabilitation services; (3) authorizing limited involuntary treatment in certain specific situations.

### Problem

There is now general agreement that arrests for public intoxication should be stopped. It is also generally accepted that it is desirable to conserve the scarce resources of the criminal justice system. But stopping the arrests and conserving the resources by decriminalizing public intoxication does not really solve the social problem of the public inebriate. Recognizing this, most reform proposals have two separate components, decriminalization and detoxification. One example of this is seen in the Task Force Report on Drunkenness (Report, 1967) which stated:

Drunkenness should not in itself be a criminal offense (decriminalization). The implementation of this recommendation requires the development of adequate detoxification procedures.

Thus, decriminalization has been linked with detoxification; one is legal, the other social and medical. Subsequently, the major source of problems in the implementation of such binary legis-

lation lies in resolving the incongruencies between the expectations of the community regarding the detoxification apparatus and the perceived legal responsibility of law enforcement officials to protect the public.

Attention must focus on the question of how policy, practice, and facilities might best be altered to reduce the criminal law role while not impairing, but perhaps even improving, the quality of the handling of the chronic public inebriate. The task of achieving this reform involves a variety of issues, including problems of financial cost and social objectives; role and legal problems of the police; and the actual and perceived effectiveness of detoxification itself.

### *Financial Costs and Social Objectives*

The first issue to be faced in achieving public intoxication reform is: To what extent can the system's burdens emanating in the arrest-prosecution procedure be relieved without the implementation of expensive service alternatives?

During periods of financial crisis or cutback, communities must find ways to save on expenses, not increase them. Given the general unwillingness of most communities even to adequately support educational institutions, many are unwilling to direct scarce economic resources to the benefit of a social deviate such as the public inebriate. A conflict for the community develops between the ideal medical or treatment response to the problem and the economic realities of providing them. Despite the emphasis on the medical model of alcoholism, the public continues to assume the same negative moralistic attitude which earlier led to criminal legislation.

The situation is, therefore, one of unresolvable incongruence between the legal and social expectations of decriminalization legislation; a conflict between the assertion that alcohol problems are medical problems and a strong moral condemnation. Ideally, the public inebriate is a medical and social problem and needs "help," but social medicine is not supported financially by public funds or even by public interest. Indeed, the medical profession and its various administrative branches (hospitals, private offices, clinics, etc.) got "out" of the alcohol treatment area and "passed the buck" to the criminal justice and law enforcement agencies some time ago (Bacon, 1968). Only a few religious groups remained committed to the social and medical needs of public inebriates.

Communities are willing to give lip-service to

the medical model of public intoxication, but are less willing to fund any new programs which may be needed. When decriminalization is considered, plans generally involve reallocating the same resources. Thus local hospitals become detoxification centers and the police become the means for transporting the inebriate.

This restructuring can lead to some basic problems regarding the police role. Police and courts may often justify the arrest of the public inebriate as serving the social objective of benefiting the drunk himself (Bittner, 1967), i.e., by providing shelter, good solid meals, and a chance to dry-out. However, arrests are generally not predicated on such altruistic motives. Instead, arrest policies are often linked with community esthetics, the inebriate's interference with or visibility in the business district, or his potential harm. In a study of public intoxication arrests in Chicago, Nimmer (1971a) found that intoxication itself was not a crucial determinant of arrest. The arrest of the inebriate plays an important role for the social functioning of the community and is thus viewed as within the purview of the police. It may be justified or rationalized in terms of the benefit to the inebriate, but such is of secondary importance. The police view this primarily as a service for the community, not necessarily a service for the inebriate.

The current binary legislation attempts to shift the responsibility of dealing with the public inebriate back to social agencies. Such a shift still requires the police to perform the "clean-up" operation but takes the procedure out of the criminal justice system. If public intoxication is decriminalized and the criminal justice system not utilized, many police find it difficult to balance this social demand with their crime fighting responsibilities. Responsibility is not clearly defined. Everyone recognizes and defines the public inebriate as a problem, yet no one really wants to assume the responsibility for him/her.

The burden is only shifted from one agency to another; shifted from the criminal justice system to the social and medical centers. The common denominator in the shift is the police who must still detect and transport the inebriate to the responsible agency. Shifting responsibility is not that simple since not one but two separate and independent processes occur, decriminalization and detoxification. The role of the police is different when public intoxication is decriminalized since the legal basis for their involvement has been

eliminated; their legal flexibility has changed; their role has changed; and their own self-conceptions have changed. Problems encountered in reform legislation are due to the failure of most planners to recognize the dual processes of decriminalization and detoxification.

### *Police Role*

Since police do not view themselves as extensions of the social service or medical treatment facilities, but as part of the criminal justice system, the next issue raised by decriminalization is: What is the importance of the conception the police have of their role in the decriminalization-detoxification plan?

Public drunkenness, as a crime against the public order, is a police problem. Public drunkenness, when decriminalized, remains a police problem. Public drunkenness, whether defined as a crime or as a symptom of alcoholism, frequently causes and requires police action. The response of the police under either definition of the act is contingent upon the role conceptions they have of themselves and to what extent they feel they are integrated and a part of the total community social services.

Police in general have persisted in maintaining a very narrow conception of their role. They see their main role—some in fact, see their only role—as that of crime fighters and law enforcers. Virtually all emphasis in police training is centered on this issue. Police operations also stress this role. Responsibilities outside of this conceptualization carry little prestige or status.

Actual enforcement of the law, however, constitutes only a very small percentage of the total work of police officers. More than 80 percent of their time is spent in providing services rather than chasing criminals and apprehending law breakers (Bard and Shellow, 1976). But nearly 90 percent of both police training and operational routines are organized around activities which occupy less than 20 percent of their on-the-job time.

There is, moreover, a conflict between what police themselves expect to do in their jobs and what they are trained to do, and between both expectations and training, and what they actually do. Most police recruits expect action and excitement. When they get on the job, however, they learn that skills in first aid, counseling, mediation, interpersonal communication, and crisis in-

tervention are as important as the ability to use service revolvers.

The idea that policemen spend their time in proactive rather than reactive behavior is a myth, and the unfortunate consequences of this myth are enormous. It is the myth, perpetuated by modern media and the popularity of TV shows like *Kojak*, *Hawaii Five-O*, etc., which ultimately lead to a very narrow view of the police function and to a deemphasis of the skills which should be stressed. It makes judging the quality of performance in a department difficult since the quality of work is quantified into the number of arrests. Finally, unreasonable expectations based on the myth cause many officers to suffer boredom resulting in a high turnover of personnel within the first 3 years.

The disparity between role emphasis and role fulfillment has worked to the disadvantage of the police. The more the old myths are perpetuated, the more disadvantaged the police are going to be and the more the community will be deprived of basic services. There has to be a shift in role emphasis to fit the reality of the job—and that reality is not only burglaries and murder and violence, but the interpersonal strains of living and the smell of the public drunk.

The implications of this for the decriminalization of public intoxication are great. As long as public drunkenness is defined as a crime, police can legitimize their actions as enforcing the law and protecting the society from whatever menace the drunk represents. But if the behavior is not criminal and the social service function is stressed, then the police can and will argue that they have more important matters to attend to, namely protecting the community from the criminal element.

There is an inherent value conflict in the police role (the assumptions of what policing is all about), and the police function (the actual duties of policing). It becomes resolved in terms of the officer's own self-concept and values. In this sense, Rubington (1975) found that higher-ranking police officers and supervisors tended to be more supportive of "bleeding heart" laws (as the decriminalization of public intoxication is sometimes referred to), than rank and file officers. This is a reflection of the ability of the officer himself to adjust the conflict in the direction of the social realities rather than the myth. Yet, while the police command may be more supportive, the organization of the police departments still tends to support the arrest structure. The

arrest process is shaped and maintained by administrative perception of necessary conduct and it will end only when that perception is altered.

The police structure is such that actions are quantified and policemen tend to feel more comfortable if they can see the consequences of their actions. Thus, in Michigan, officers generally felt the need for mandatory detainment time at detoxification centers, and were generally pessimistic about voluntary services (Jepson-Murry, 1977).

The negative response of police to voluntary commitment to detoxification centers, i.e., the right of the inebriate *not* to stay at the center even if taken there by the police, goes back to the moral nature of the law. If the act of becoming publicly intoxicated is considered voluntary, then the act is punishable. If, on the other hand, the act is a consequence of a disease of defect, i.e., if it is medical, as the recent court cases imply, then the inebriate should be considered incapable of making a voluntary decision and should, therefore, be detained. Either way, the police see the logic as supporting detention and detention can be viewed as a legitimate police function consistent with the police role.

Police response, like the public's response to decriminalization of public intoxication, will be divided according to the interpretation one makes of the use and misuse of alcohol in general. If the value is moralistic, intoxication is evidence of moral turpitude and therefore is punishable. In a pilot decriminalization program in Kalamazoo, Michigan, it was found that officers who took an inebriate to a place other than jail tended to view problem drinking as less a moral problem than officers who took the inebriate to jail. It was also found that officers who abstained from drinking tended to view problem drinking as more of a moral and criminal problem than officers who used alcohol (Kalamazoo, 1977:98).

The value conflict, therefore, between the police role and function is exacerbated by the individual's position within the police department, the police organizational structure, and personal values. According to the Kalamazoo report:

Training does appear to affect the individual officer's resolution of the conflict. In the Kalamazoo pilot project, 41.9 percent of those who had the training continued to believe the public inebriate should be taken to jail while 58.9 percent of a control group without training preferred jail (Kalamazoo, 1977:94).

A police officer's conception of his job, of himself, and his position within the police hierarchy

all play a role in his ability to make the shift in dealing with the public inebriate. Providing communities require police to perform the "clean-up" or transportation duties, it becomes incumbent to deal effectively with these personal dimensions. To deal effectively with these issues, the following are recommended: (1) Reinforce and emphasize the social service as opposed to the social control functions of the police. (2) Create a reward status within the police for the performance of the social service role. (3) Generate support for the decriminalization-detoxification project through the command structure rather than attempting to convince young, new recruits. (4) Train only officers interested in the issues and those with less moralistic interpretations of alcohol. (5) Create specially trained squads, rather than depend simply on the individualized discretion of each officer.

#### *Police Work After Decriminalization*

What is the nature of police work after decriminalization and the legal and social implications?

Decriminalizing public intoxication will not eliminate its existence. Indeed, it may not even reduce its incidence. The police, therefore, will continue to be involved directly or indirectly. The alternative to arrest is some form of custody, and the alternative to jail is some form of treatment or rehabilitation. Such systems, especially in their early stages, and to a lesser degree permanently, depend on the police officer—or designated substitute—to take into custody and transport the inebriate to a treatment/rehabilitation facility.

The police, for many reasons including the role and image conflicts indicated above, are resistant to this. One of the arguments by the police against decriminalization in general is that there is a reduction in the discretionary powers inherent in drunkenness statutes. This is true. Drunkenness statutes are sufficiently vague that arrest usually involves *inference* from collateral actions and circumstances, i.e., that a suspected "drunk" acts as though he were under the influence of alcohol, presents a danger, etc.

This very vagueness, as may have been intended, provides the officer with a lever for using the drunk law as a tool for the maintenance of order in as arbitrary a manner as the situation requires. The "order" function is often more important than the "drunk" function, for as Nimmer (1971b) points out, men are often arrested in skid

row areas who are not drunk, and many of the men do not even drink.

On the other hand, legal alternatives to the public drunkenness ordinances are available for the police including vagrancy, trespass, loitering, and other misdemeanor statutes which are specifically designed for maintaining public order. It is questionable if the reduction in discretion through decriminalization is a legitimate concern given the fact that most drunks with whom the police deal, by the nature of their existence, are probably guilty of many other minor charges. Therefore, the police can arrest on any of these charges in the interest of preventing future escalation of trouble with the assurance that the apprehended person is probably guilty of something (Bittner, 1967).

One exception to this is the situation where the individual appears intoxicated, has not violated any other laws, and is about to drive a vehicle. The police may not intervene until he acts, which may involve greater danger to others in the course of apprehending him for D.W.I. (Driving While Intoxicated). However, this is a problem with drunk driving legislation, not drunkenness legislation. This problem situation is an example of how society has misused its law by invoking one piece of legislation (drunkenness) to accomplish an objective more the prerogative of another (drinking and driving), and by attacking some legislation for not covering situations to which it was never intended to apply in the first place.

Another argument police give in resistance to the decriminalization of public intoxication is that requiring them to transport the inebriate takes time away from the more important police functions and leaves the society unprotected. This is, perhaps, the most illogical of the arguments since police behavior would be little changed from current practice. The drunk, if arrested, still requires transportation.

Second, the old myth of proactive police work interferes with the social function realities. Certainly, police would have no resistance to taking an injured or critically ill citizen to a hospital; if the medical model prevails, then logically transportation to a specialized facility is in order. But one should not forget, alcohol misuse, while disguised in palpable medical terms, is still basically a moral issue and in the final analysis resistance or acceptance of decriminalization-detoxification will be contingent upon resolving that conflict.

There may be a transportation problem in rural

areas, however, particularly when the public inebriate has traditionally been handled in less formal ways. For this reason, treatment services need to be placed in reasonable proximity to high incidence areas. It is not unreasonable to ask police to transport the public inebriate, but it is unreasonable to ask police agencies to spend extensive periods of time doing it.

In essence, the actual requirements of police will not change, only their reactions. It is doubtful that in the near future the volume of public inebriates will change; what will change is the booking and court time. In areas where decriminalization has already occurred, both in the U.S. and Europe (Norway and Hungary for example), there has been initial resistance and skepticism by the police. But when the public health and public safety function of the police role is stressed, and when police are approached, consulted, and involved in the planning and decisionmaking, they tend to be more receptive. It is easy to overlook the marginality and conflicts in the police role. Consequently, they jealously guard the status quo and react in ways which tend to inflate their mythical image. Cooperation and support will ensue if time is spent in preparing and training them.

#### *Effectiveness of Detoxification*

Once decriminalization occurs it is necessary to deal with the public inebriate outside the criminal justice system. A final issue to be discussed here is: How effective is detoxification as an alternative to utilizing the criminal justice system?

The actual success or failure of detoxification programs is an empirical question and cannot be discussed here. However, the perceived success or failure of a program may be entirely different from the reality, yet carry the same or even more important consequences.

There is a tendency to develop a bandwagon effect in legislation dealing with complex social issues. Since policy to date can be shown to be ineffective and inefficient, alternative solutions are often embraced with unrealistic expectations. In such circumstances, perceived failure may be even greater than real failure.

A relatively large amount of material has been written on why the medical model of alcoholism and public intoxication should be utilized instead of the criminal justice model. But alcoholism is essentially a social problem, not a medical problem and just as the myth of the police role interferes

with the performance of their actual functions, so too will the medical model myth interfere with the ultimate solution to the public inebriate.

The greatest danger lies in raising false expectations of success. The public or skid row inebriate may not even be an alcoholic (Nimmer, 1971b, Spradley, 1970), and to treat his drinking through detoxification is to completely ignore the basic societal causes of his present condition. Even if the public inebriate is an alcoholic, the chances of success are low. The success thus far in treating any alcoholic is questionable and is even more so when one considers the aggravating economic and social conditions surrounding skid row existence.

One must be cautious not to over-sell detoxification; the experience of other areas has shown the dropout rate to be high and the recovery rate low. Rubington (1975) indicated that in general, the public inebriate did not even define himself as an alcoholic until he had been admitted to a detoxification center at least four times.

In the meantime, the volume of public intoxication will remain approximately the same. The police will be reinforced in their cynicism by the constant re-referral to a detoxification center without even the semblance of punishment or detention or incarceration which would satisfy the society's latent moral "justice." The long-term social effects are also questionable since detoxification is basically a caretaker operation. New negative attitudes by the public are likely as the costs of these services become clearer. Disillusionment is likely to set in after high or false expecta-

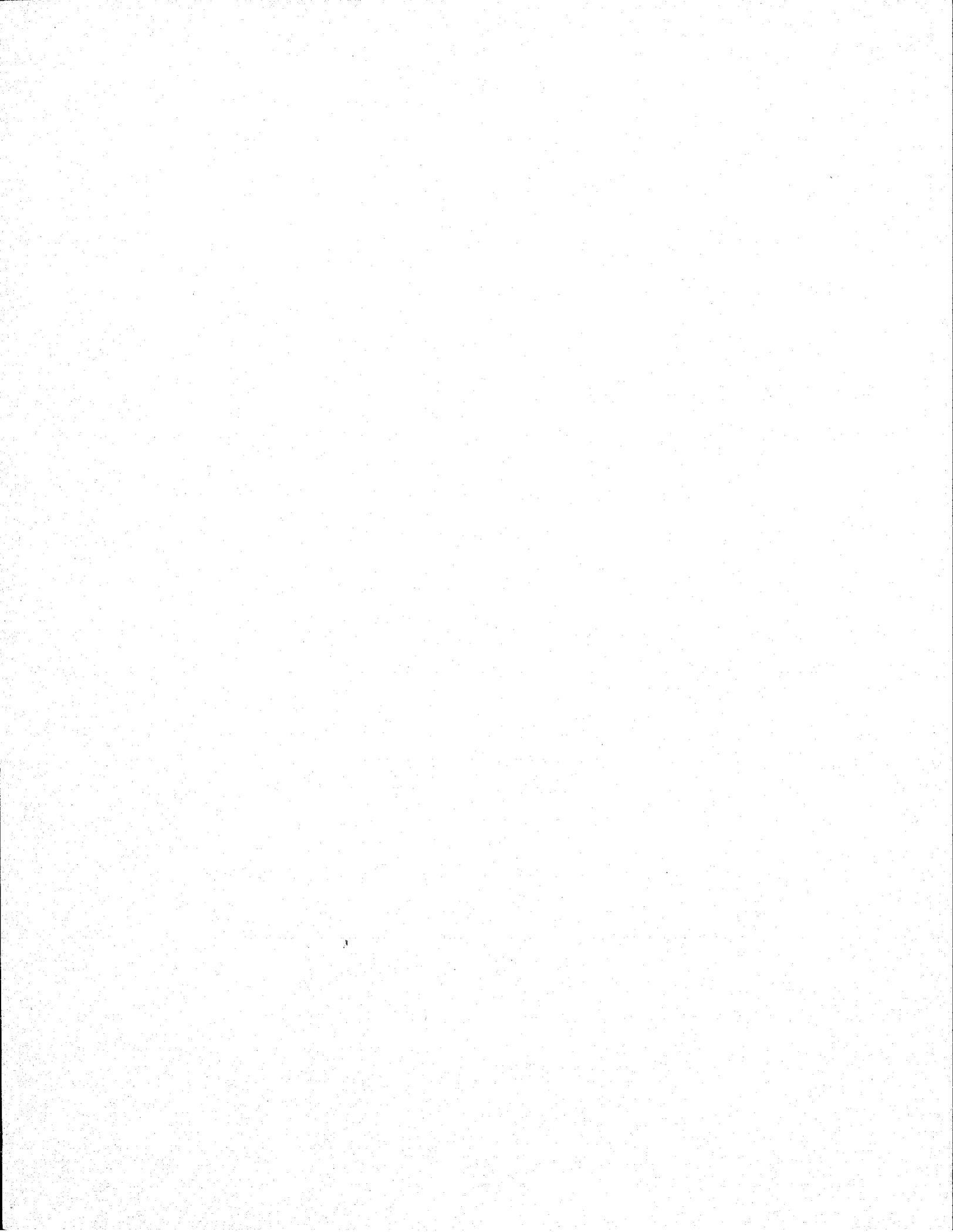
tions about the purpose of treatment are tempered by the actual probability of treatment success.

In conclusion, too much should not be expected from shifting the responsibility for dealing with the public inebriate to a public health model and facility. The biggest shortcoming will lie in unrealistically embracing a new and largely unproven program for a population which is little understood and highly intractable. In the long run, more emphasis needs to be placed on preventive efforts, on the social milieu, opportunities for the public inebriate and on long-term care and followup programs.

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**A**LCOHOLICS ANONYMOUS, founded in 1935, was the breakthrough for successfully helping alcoholics. Its philosophy focuses on not taking the "first drink" and on living "one day at a time." The organization meetings are actually group therapy sessions. The "simple but not easy" program is more complex than would first appear and forces the individual to be completely honest and realistic about his problem. He is usually able to replace the void created by abstinence through attendance at meetings and involvement in group activities. Honesty replaces pathological lying. Life is seen more accurately. Realistic goals are set and emotional growth is achieved. The success of this approach has been well demonstrated and virtually all alcoholic treatment programs today include A.A. as an integral part of their inpatient and outpatient programs.—EDWARD W. SOBEN



**END**