

MR. JEFFERSON, THE STATE OF WEST VIRGINIA, AND THE RIGHTS OF VICTIMS OF CRIME

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The movement on behalf of crime victims in the United States has been premised on a fundamental, albeit often unstated, belief that government—federal, state and local—has a moral obligation towards those who have been murdered, raped, robbed or otherwise violated by the criminal elements in our society.

Actually, there is nothing new about this “moral obligation” theory. Thomas Jefferson summed it up in his Preamble to a “Bill for Proportioning Crimes and Punishments in Cases heretofore Capital” for the Virginia Legislature:

Whereas, it frequently happens that wicked and dissolute men, resigning themselves to the domination of inordinate passions, commit violations on the lives, liberty and property of others, and, the secure enjoyment of these having induced men to enter into society, *government would be defective in its purpose*, were it not to restrain such criminal acts by inflicting due punishments on those who perpetrate them . . .¹

What Mr. Jefferson was referring to, in so many words, was that, because under The Social Contract, we, as citizens, have laid down our arms and entrusted the protection of our safety to the government, (*i.e.* police, prosecutive and correctional functions). Government has a moral obligation to protect its citizens from the depredations of the lawless and violent.

One would suppose that the law courts in this country, the self-appointed bastions of our liberties, would have long ago resoundingly endorsed and enforced this moral obligation. As a matter of fact they have not. The liberal trend in American jurisprudence, simmered on the stone of the pronouncements of the “Warren” Supreme Court (c. 1956-1978), was ever vigilant to enunciate, and even create out of whole cloth, “rights” protecting citizens from government, but little of a useful nature was put forward regarding the government’s duty to protect.² The moral obligation espoused by Thomas Jefferson was consigned to obscurity.

The State of West Virginia has, generally, an undeserved reputation of being a rather backward state. Aside from a recent, momentary flurry of publicity over the purchase of a seat in The United States Senate by West Virginia’s Governor Rockefeller in 1984, one usually thinks of hillbillies, moonshiners and people of that ilk, if one thinks at all of the Mountaineer State.

Consequently, it is somewhat ironic that the only court decision holding foursquare that government has a moral obligation to victims of crime arose in West Virginia. The “liberal and enlightened” states, for example New York,³ Pennsylvania⁴ and California,⁵ have taken a stony attitude towards victims’ rights when

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¹ *The Writings of Thomas Jefferson*, Washington, D.C. (1905) Vol.I, p. 218 (Emphasis added).

² See, e.g. *Mapp v. Ohio*, 367 U.S. 643 (1961), *Miranda v. Arizona*, 384 U.S. 436 (1936).

³ *St. George v. State*, 308 N.Y. 681, 124 N.E.2d 320 (1954).

⁴ *Freach v. Commonwealth*, 23 Pa. Comm. 546, 354 A. 2d 908 (1976).

⁵ *Thompson v. County of Alameda*, 614 P.2d 728 (1980).

it comes to litigation.⁶ Apparently alone, West Virginia has heeded truly to the dictum of Thomas Jefferson.

The case is *State ex. rel. Davis Trust Co. v. Sims*.⁷ It is worth digesting at some length, as follows:

On January 20, 1945, Lucy Ward, a lady “. . . past seventy-three years of age . . . and a respected citizen of Randolph [West Virginia],”⁸ was raped and murdered by James Chambers, who walked away from the West Virginia Medium Security Prison at Huttonsville, where he was serving a life term for murder. The court characterized Chambers’ record in prison, after his first murder commitment in 1935, as follows:

In 1941, during his confinement in the maximum security penitentiary at Moundsville, Chambers attacked [another] female inmate of that institution [he had previously attacked a female inmate during his prison confinement] and stabbed her in the hip with a knife because she refused to have sexual relations with him. On another occasion he accosted her in the bathroom of the prison. For his misconduct he was punished by being confined to his cell and restricted to two meals a day for a period of sixty days. Some time later, while working as a member of a prison road crew, he attacked a fellow prisoner with a knife. He was afterwards transferred to the [medium security] prison at Huttonsville.⁹

On the day of the murder of Miss Ward, Chambers left the prison unaccompanied and unobserved, went to the nearby Ward farm, raped and murdered Miss Ward, and then returned to the prison. His absence from the prison was not known by the authorities until after the commission of the crime. (Chambers was later hanged for this crime.)

Regarding conditions at the Huttonsville prison, the court found

that prisoners were allowed to leave the prison at will, unaccompanied by any guard; that they had attempted to rape women in the neighborhood, for which they had not been punished; that they had been arrested for other offenses while absent from the prison late at night; that they possessed keys to gasoline tanks and outside buildings of the prison; and that the knife with which Chambers killed his victim was obtained by him from articles of prison equipment. There was neither proper discipline nor adequate supervision of the prisoners.¹⁰

The court considered Chambers’ record and the conditions at Huttonsville in combination, and found as follows:

The recital of the foregoing undisputed facts indicates beyond question that the authorities in charge of the Huttonsville prison and their agents completely disregarded the duty imposed upon them to keep Chambers securely confined to the prison at

⁶ See generally, Carrington, *Victims Rights Litigation: A Wave of the Future*, 11 U. Rich. L. Rev. 447 (1977).

⁷ 46 S.E. 2d 90 (W.Va. 1945).

⁸ *Id.* at 92.

⁹ *Id.* at 92.

¹⁰ *Id.* at 92.

all times. Instead they afforded him the opportunity to leave the prison at will, without their knowledge of his absence, and without any surveillance whatsoever of his whereabouts or his behavior. Those responsible for his confinement were fully aware of his vicious character and his dangerous propensity to engage in dangerous and murderous conduct. He was prone to commit revolting sexual offenses. His criminal record from April 1, 1935, when he murdered his first victim, and while he was serving his sentence of life imprisonment as punishment for that crime, gave warning of his dangerous and vicious disposition and marked him as a killer and a sexual degenerate of a violent type. Those whose duty it was to guard him, and who disregarding that duty, failed to watch and confine him, should have known and indeed expected that he would commit rape or murder, or both, whenever the opportunity occurred for him to perpetrate either of those crimes. Instead of being kept in close confinement in the penitentiary at Moundsville during the full term of his imprisonment he was, without any excuse or discernable justification, transferred to the West Virginia Medium Security Prison, which by statute was then deemed to be a part of the penitentiary, Section 1, Chapter 23, acts of the Legislature of West Virginia, 1939, Regular Session, where he remained under relaxed and indifferent supervision and where he was free from any effective surveillance. In these wholly unwarranted circumstances that which should reasonably be expected to happen did occur. In reality a man known to be a killer was allowed to roam at will, unguarded and unobserved. It would have been surprising if, under those conditions, an event of that nature had not come to pass.¹¹

The estate of Miss Ward filed a claim for damages resulting from her death. The State Court of Claims awarded the estate \$2,500 and recommended to the legislature that it authorize payment. By a special act the West Virginia legislature found that Chambers' escape and subsequent murder of Miss Ward was due to "the gross and inexcusable negligence" of the prison authorities, and authorized a \$5,000 payment from state funds to her heirs for mental anguish and loss of her services. The state auditor refused to pay the amount on the grounds that: 1) the allegations did not establish a "moral obligation" on the part of the state; 2) the payment would be void as a "gift"; 3) the appropriation was not constitutionally authorized; 4) the operation of the prison was a governmental function and the state was not liable for the acts or omissions of its employees; and 5) the state was immune from liability and had received no benefit for the payment.

The representative of Miss Ward's estate brought an action in the West Virginia Supreme Court for a writ of mandamus to compel the auditor to make payment. The court ruled in favor of the estate and granted the writ.

The court defined the issue as whether or not the facts, as alleged, created a "moral obligation" upon which the legislature could validly base an award of compensation. It held first that a legislative declaration of a "moral obligation," while entitled to serious consideration, was not binding on the courts; rather, it was up to the courts to determine whether the declaration comported with the law. It continued:

¹¹ *Id.* at 92 (Emphasis supplied).

In the Cashman case, this Court stated a general rule by which, subject to certain exceptions, the existence of a moral obligation of the State in favor of a private person may be recognized and for the payment of which a valid appropriation of public funds in the public interest may be made by the legislature in any particular instance. An obligation or a duty, legal or equitable, not imposed by statute but created by contract or *resulting from wrongful conduct*, which would be judicially recognized as legal or equitable in cases between private persons, is within the scope of the rule.¹²

The court held there was a duty on the part of the West Virginia correctional authorities to “exercise due care to keep the convict Chambers in continuous and secure confinement and to prevent his escape while his sentence of life imprisonment remained in force and effect.”¹³ It held that private persons or institutions charged with such a duty could clearly be held liable if that duty were breached, and so could the state.

The court noted that, as a general rule, release or escape of a convict will not give rise to liability if the keepers were unaware of his or her vicious or dangerous propensity to kill or injure others.¹⁴ The reason for the general rule was that the actions of the wrongdoer were not foreseeable, that is, the state’s actions were not the proximate cause of the injury. It held, however, that in the facts of the instant case, given Chambers’ record and previous conduct, the murder of Miss Ward was foreseeable:

Before Chambers killed Miss Ward his vicious disposition and his propensity to attack and injure persons when in possession of a knife had been demonstrated upon at least two occasions while he was serving his sentence for the murder of his first victim, whom he destroyed by cutting her throat with a razor in 1935. His previous criminal record and his dangerous character were known to the prison authorities to whose custody and control he had been committed by the sentence of life imprisonment in the penitentiary. The natural and probable consequences of his freedom from secure and continuous confinement or restraint, which should have been anticipated and foreseen by his keepers, especially a female, whom he might encounter in circumstances which would afford him an opportunity for an attack of that nature. Yet with this knowledge, and by it warned that, if permitted to be at large, unwatched and unguarded, he would likely injure or kill a human being, they afforded him the opportunity to leave the prison alone while unaware of his absence and of his possession of a knife which he obtained at the very institution in which he should have been kept in strict confinement and denied access to any weapons at any time. That which, in the circumstances, could reasonably be foreseen or anticipated by an ordinarily prudent person did occur. It should have been expected. The negligence of the officers and the agents of the state responsible for his secure confinement,

¹² *Id.* at 94 (Emphasis supplied), citing *State ex. re. Cashman v. Sims*, W. Va., 43 S.E. 2d 805 (1947).

¹³ *Id.* at 94.

¹⁴ *Id.* at 94 citing: 38 Am. Jur., Negligence, Section 71, *Henderson v. Dade Coal Co.*, 100 Ga. 568, 28 S.E. 251, 40 L.R.A. 95; *Hullinger v. Worrell*, 83 Ill. 220; *Thomas v. Sloss-Sheffield Steel & Iron Co.*, 144 Ala. 188, 39 So. 715.

arising from these acts and omissions, was the proximate cause of the death of Miss Ward. Otherwise stated, her death was the natural and probable consequence of their negligent acts and omissions.

A person is liable for damages occasioned by his negligence where they could reasonably have been anticipated by an ordinarily prudent person.¹⁵

The court discussed the difference between a *moral obligation* (which was required to be declared by the legislature) and a *legal obligation*. The state contended that it was legally immune from liability for actions taken in running the prison system. The court conceded this; however it continued:

The doctrine which gives rise to a moral obligation of the state, in any particular instance, is not rendered inoperative by, and it is not incompatible with, the principle which recognizes the immunity of the state from suit, or the principle which denies the existence of a cause of action against it for the negligence of its officers, agents and employees. It rests upon considerations of an entirely different and independent character. If the state were subject to suit or action, or a cause of action existed against it for the negligence of its officers, agents or employees, while engaged in the discharge of a governmental function or in other activity or conduct; or if there were legal liability upon the state, or any legally recognized remedy for such against it, there would be no occasion for one aggrieved or injured to seek from the state, upon the basis of a moral obligation, the relief which he is denied by positive law but to which he would be entitled if, in the identical situation, an obligation or a duty would be judicially recognized in cases between private persons. Only when the conduct of the officers or the agents of the state, for which it is not legally liable, is such that, if engaged in by private persons, it would constitute the breach of an obligation, legal or equitable, which would be judicially recognized in cases between private persons, does the nature or the effect of such conduct require consideration in determining whether a moral obligation of this exists. And to give rise to an obligation of that character the factual situation must be such as to justify legislative action declaratory of its existence, and the obligation must be imposed upon or voluntarily assumed by the state by the enactment of constitutional legislation.¹⁶

The writ of mandamus ordering the state auditor to pay \$5,000 to Miss Ward's estate was issued by the court. Other courts might well take the humanistic approach taken by the Supreme Court of West Virginia.

¹⁵ *Colonna v. Rosedale Dairy Co.*, 166 Va. 314, 186 S.E. 94 (1936).

¹⁶ 46 S.E. 2d. at 98.