

AESOP IN THE COURTS

Example of the Working of an Economic Principle

ONCE upon a time a hired killer found himself for the time being in a most unfortunate situation. His predicament was that "the time being" bid fair to be all the time there was for him. Due to gross negligence in the performance of a contract for a sum certain, he had killed the wrong man. This had caused untold embarrassment to the organization that had hired him and roused a predictable rancor among the associates of the deceased. Representatives of both met to discuss a suitable sanction.

There was early agreement that the blunder was of such a character that existence of the one at fault could no longer be tolerated, and the only subject open for discussion was the means by which this desired eventuality was to be realized. One group suggested that, by certain oblique channels, the evidence necessary to convict be supplied to the prosecuting authorities and the matter left in their hands. To this the other raised several objections. It was pointed out that, in view of several decisions which penalized mistakes in procedure by either the police, the prosecution or the trial court by the illogical consequence turning the wrongdoer out without any serious inconvenience to him, the processes of the law were far too uncertain for

their purposes. Secondly, the delays engendered by the available procedures would utterly negate the beneficent effects of prompt retribution. Lastly, the abolition of capital punishment was a complete bar to the consummation agreed upon.

Instead, it was agreed upon that the demise of the wrongdoer should be accomplished by a scheme left to the ingenuity of a more capable practitioner, to be compensated by both groups jointly and severally. It was understood that reprisals might possibly follow, but this was philosophically accepted as a necessary business risk, to be met as the occasion might call for. It was furthermore realized that the inadvisability of committing the agreement to writing would leave certain aspects of the agreement subject to the defense of the Statute of Frauds, as to which a degree of mutual trust would be the alternative.

Actually, both parties met their respective obligations promptly. And while their agent, in the carrying out of their joint venture, did suffer from the friends of the original killer, the matter went no further.

Moral: When the state discontinues a service, private enterprise will inevitably fill the gap. — S.

Arnold A. Weinstein, a lawyer and president of the HGS, enjoys the short articles titled "Aesop in the Courts" which appear every week in the New York Law Journal. The author is a highly placed New York judge who prefers to remain anonymous. (Not recommended for rapid reading).

