

Fines for book theft may be illegal

Is York open to charges of extortion?

By JOHN STOCKWELL

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Our society has, through trial and error, evolved processes for dealing with the problems that confront it. One of these processes is the criminal law which is capable of dealing with persons who contravene established principles of conduct.

Persons in authority in our society have abstracted certain principles of action to elicit from and maintain in those persons or groups over which they are placed certain criteria of conduct. One such principle is to deal unhesitatingly, strongly and effectively with any breach of established criteria in order to discourage future breaches by others.

One of the purposes of the criminal law is also discouragement of breaches of criteria, in this case criteria established by society. The criminal law is well able to deal effectively with the crime of theft, including theft of books by members of the university community.

The only element lacking in the effective solution of the problem of theft by students is the unhesitant, strong and effective action required of the university administration. The action required is to promptly turn over any person caught stealing to the public authorities (police) and immediately to lay a charge of theft against that person.

I find the proposal by John Becker (EXCALIBUR — March 11) to be just one more example of

the lack of courage and foresight of the university community to face an issue directly, and in a practical way, and to take the action required.

TO FLY IN the face of the established modes of dealing with such problems, modes verified by experience to be the best, though not necessarily the ultimate modes of solution, is to invite complication of the problem and thwart an effective solution.

In the present case, Becker proposes that if a student who is caught stealing books from the university bookstore signs a confession and submits to payment of a fine of \$25 or more, the university will not prosecute the thief. The bookstore committee even had the advice of a "criminal lawyer" in considering this proposal. However, what apparently escaped the notice of the "criminal lawyer" and was not brought to the attention of the committee was, firstly, section 291 of the Criminal Code, and, secondly, the principles of the criminal law in respect of confessions.

Section 291(1) of the Criminal Code deals with the crime of extortion. That section provides:

S.191 (1) Every one who, without reasonable justification or excuse and with intent to extort or gain anything, by threats, accusation, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or to cause anything to be done, is guilty of an indictable offense and is liable to imprisonment for fourteen years.

The proposed action by the bookstore may well come within the intent of this section. The element of threat is certainly present, for if the student does not submit to the fine and to confessing the act, the bookstore is threatening criminal prosecution. The element of gain is also present — the gain of a \$25 fine to the bookstore.

THE ONLY ELEMENT that may be in doubt is whether the university is acting with reasonable justification. I would say it is not. It has the machinery of the society available to it to discourage theft.



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educational institution make the act less criminal? Are the members of the university above the law? Is the university a law unto itself? Does "academic freedom" mean academic licence to the university to set up its own government and laws contrary to or in competition with those of the society of which it is a subordinate part?

Further, is it not possible that a timid person who may be suspected of theft and who may have a good answer to a charge of theft might be intimidated into submitting to the Becker procedure to avoid any further embarrassment? Does the university have the sophisticated machinery of ascertaining guilt or innocence that the society has evolved?

With regard to the extraction and use of the confession, I can see only bad consequences. Firstly, a confession elicited on the promise of immunity from criminal prosecution would be thrown out of court. It could never be used in evidence against the accused.

SECONDLY, IF THE written confession, or photocopies of it in the event the original were destroyed, happened to fall into uncharitable hands after the student had paid for his crime on the Becker plan, the resulting consequences to the student are easily imaginable by even the most naive.

The university community is but a small segment of the total society. It is in the business of teaching, and not the administration of justice. It has all the machinery of the society at its disposal to deal with problems common to it and the society. There is no justification for the university community arrogating unto itself powers properly and solely the function of the public authorities.

The university has the responsibility of utilizing the machinery established by society and of cooperating with the public authority. This failure of the university to take effective action to deal with its problems and to realize that the university is a part of the society and subject to the laws of the society can lead only to destruction of the university community by erosion of its authority from within and by public reaction from without.

Take for example, the case of the management of a department store whose staff apprehends a thief and, with all good intention of deterring the thief from future acts and with the intention of not suffering the thief pain and embarrassment at the hands of the law for this act, the management extracts from the thief a "fine" of \$25 and a written confession. Would the management of the department store be guilty of extortion? I would say so.

It was held in one case on this section that an honest belief by a person accused under this section in his right to the money demanded did not absolve him of guilt under this section once it had been shown that threats had been made, in that case threats of bodily harm.

However, a threat of anything under this section is enough to establish that element of the offense, even a threat that criminal prosecution will result if demands made by the extortionist are not met, and even if these threats are made indirectly as in the case of an implication that prosecution will not result if demands are met.

IF THE MEMBERS of a commercial institution took action similar to that proposed by Becker they would be guilty of extortion. What then is the difference between the members of a commercial institution and the members of an educational institution such as the university?

Does the fact that the act contemplated by section 291 is committed by members of an

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