

treatment, in a legal context, of the actual operation of responsible government in the States. There is a faithful construction of the skeleton: the constitutional provisions, the letters patent, the instructions to the Governor and so on are all there. So also is the familiar discussion of the legal basis for responsible government.⁴ But the skeleton is left without flesh. The presence of convention and practice is recognized, but apart from some rather stereotyped discussion concerning the powers of the Governor, the reader is left to guess what those conventions and practices are. Presumably the lacuna is to be filled in by reference to Professor A. V. Dicey's, *The Law of the Constitution*, and the standard English text books. The fact is that Australian departures from the English model are so marked that such reference is likely to be completely misleading. What the Australian student needs to know is how responsible government works in his State. Is the concept the safeguard for the rights of citizens that it is claimed to be? Does its presence justify abdication of judicial reviewing powers? To what extent has the civil servant usurped Ministerial power? Has the Public Service Board system materially affected the position? Answers to these questions are urgently needed. Knowledge of the circumstances in which the Governor may dissolve Parliament is likely to be of great importance only to the Governor himself and his Ministerial advisers.

The final chapter of the book contains a thoroughgoing examination of the problems arising from the entrenchment of constitutional and other provisions by "manner and form" requirements. The theme is well and simply argued and it is one that could be of more than academic importance in the future. As Dr. Lumb is aware,⁵ there is always a possibility that dissatisfaction with the operation of ministerial responsibility may lead to attempts to entrench Bills of Rights by this means.

Although limitations of space have unduly restricted the full development of many topics there is much of value in this book and, deservedly, it will find a place in most University reading lists.

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Human Acts: An Essay in their Moral Evaluation by Eric D'Arcy, Lecturer in Philosophy in the University of Melbourne. Oxford, Oxford University Press, 1963. xi and 174 pp. and Index (£2/6/6 in Australia).

The great English philosopher Hume contended that an *action* can never be the object of moral approval or disapproval; only the agent's motive, or his character can be the object of moral appraisal. Bentham disagreed and so does D'Arcy—but a century separates their philosophies and D'Arcy follows in the tradition of Wittgenstein, Ryle and Hart. His starting point is ordinary language and his aim is "to look for some of the assumptions about acts, and some of the rules for their moral evaluation, which are present or implicit in our day-to-day discussions and appraisals of human action and behaviour".¹

If we propose to evaluate human acts we need to know what is meant by the term "act" and what is the relationship between an "act" and the "circumstances" surrounding it. D'Arcy borrows a hypothetical problem suggested by Professor J. J. C. Smart.² During the racial troubles in Arkansas in 1956 the

⁴ At 59ff.

⁵ At 93.

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¹ At xi.

² At 2ff.

white population believed that some crime had been committed by a negro. Since the criminal's identity was not established they proposed to lynch five negroes chosen at random. The local sheriff knew this and, after investigation, felt that the only alternative was to arrest some negro, "frame" a case against him, pack the jury and have him found guilty, sentenced to death and shot. Supposing that the sheriff himself acted as executioner, D'Arcy suggests that there are many possible descriptions of the sheriff's last act,³ including the following:—

1. He tensed a forefinger.
2. He fired a gun.
3. He killed a man.
4. He committed judicial murder.
5. He saved five lives.

Austin, and some modern lawyers, would regard the first description as the proper description of the sheriff's acts. What follows are the "consequences" of the "act". D'Arcy disagrees. His argument is that in ordinary language the act and the consequences are often elided and there may be more than one "proper" description of the act. Does this mean that all of the above descriptions of the sheriff's act are proper descriptions? According to D'Arcy there are certain very significant acts which cannot properly be elided with their consequences so that the fifth description, at least, would not be an appropriate answer to the question "What did the sheriff do?"

Certain comments may be made about D'Arcy's thesis. Obviously there is no fixed and permanent rule to determine what acts are elidable and what acts are not. This will depend on the context in which the terms are used and D'Arcy is concerned only with the *moral* evaluation of acts. Even in this context it seems surprising that D'Arcy is apparently content to accept ordinary language. One would have expected that moral philosophers, like lawyers, might want to analyse the "act" with greater subtlety than a layman. Although it is impossible to defend Austin's definition of an act as the only proper definition, it might be argued that Austin placed such emphasis on a physiological description of the act because in some areas of the law it is necessary to analyse the facts in these terms (for example, where it is alleged that an accused did not know the nature and quality of his act). Depending upon the terms of a particular legal rule, acts and consequences which are elidable in every-day language may be non-elidable in legal discourse.

Consistently with his general theory D'Arcy finds it unnecessary to draw any rigid distinction between "acts" and "consequences" providing that, in ordinary language, the act may be elided with the circumstances. There are, he asserts, "some kinds of act—'moral species'—so significant for human living that they seem to complete a chain; they are an act not just part of an act . . . they warrant explicit mention in a separate act-description".⁴

A moral evaluation of an act, so defined, may be made by considering (1) qualifying circumstances (D'Arcy asserts that it is impossible for us to make a moral evaluation of an act, where the actor has no capacity to control his actions); (2) specifying circumstances (the elements in the definition of a moral "species-term"); and (3) quantifying circumstances (circumstances which affect the degree of goodness or badness which the act is judged to have). Within this framework D'Arcy discusses "intentionality" and "consciousness". His conclusion is that intentionality and consciousness are not qualifying circumstances in determining whether an act is a bad act but they

³ D'Arcy, in fact, suggests 12 possible descriptions (at 3) and it is clear that he does not think this list is exhaustive.

⁴ At 70.

are qualifying circumstances in determining whether an act is a good act. His general discussion of intentionality, consciousness and negligence will be enlightening to the lawyer as well as the philosopher.

The final step in the moral evaluation of an act is, according to D'Arcy, an examination of the motives for the act. It is impossible accurately to summarise D'Arcy's views on the relevance of motives to the moral evaluation of an act. Probably his most significant conclusion is the conclusion that, in relation to bad acts, "there are some kinds of acts which we know quite well how to characterise even before we know the agent's motive".⁵ These are the non-elidable "moral species" which D'Arcy discussed earlier.

Not everyone will accept D'Arcy's thesis. It depends to a considerable extent on the distinction between "elidable" and "non-elidable" terms. D'Arcy assumes that the boundary between these terms is to be found in every-day language and that ordinary language is the proper language for moral evaluation. No further justification is presented. This, of course, carries the consequence that an argument about the moral evaluation of an act may become a barren argument about how a particular set of circumstances is properly described in ordinary language. Moreover an advocate of a particular school of moral philosophy might reject ordinary language as inadequate and that would involve a rejection of D'Arcy's thesis.

Again D'Arcy assumes that when an act is properly described it will fall almost automatically into its appropriate genus—good, bad or indifferent. This will be rare unless the descriptions we choose already presupposes the genus. Consider, for example, D'Arcy's treatment of Smart's problem. Would the solution have been as simple if we had insisted that a preferable description of the sheriff's action was "He killed a man"? After all, it is doubtful whether a precise meaning can be attached to "judicial murder" in day-to-day discussions.

Lastly it might be argued that when D'Arcy begins to discuss the effect of motives on the moral evaluation of human acts he practically admits Hume's contention that an action can never be the object of moral approval or disapproval. With one exception (non-elidable bad acts) D'Arcy assumes that an act can be evaluated only if we have regard to both (1) the act; and (2) the actor's motive. Indeed it might be thought that D'Arcy is in a dilemma. For we do find that acts are described as "good" or "right" in every-day language even when it is known that the actor was prompted by improper motives. If D'Arcy replies that those terms in those contexts have no moral significance is it still possible for him to avoid Hume's conclusion?⁶

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⁵ At 168-9.

⁶ It is true that D'Arcy argues that a non-elidable bad act is bad whatever the motive but D'Arcy considers few illustrations of this proposition, and it is doubtful whether D'Arcy would maintain this universally. Suppose X murders a sadistic dictator. Would D'Arcy agree that the act is morally bad—or would he seek some other description of X's act?

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