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ANOMALOUS PENALTIES IN THE CRIMINAL LAW OF PENNSYLVANIA

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THE PENAL LAWS of Pennsylvania abound with incongruent penalties. An examination of the criminal statutes reveals the lack of any definite standard in prescribing the punishment for offenses. There is often no discernible relation between the gravity of the crime and the penalty directed for its commission, and diverse punitive measures are frequently imposed for similar offenses. Adequate penal laws should be devoid of such faults. By these criteria the Pennsylvania criminal statutes are deficient.

I.

PENALTIES FOR LICENSE LAW VIOLATIONS.

There are more than eighty distinct laws relating to license requirements, many of which provide inconsistent penalties. The penal provisions of these statutes could have been written with uniformity so as to direct accordant punishment. For example, the promoter who conducts a boxing contest without a license, is punishable by a fine of 5,000 dollars and/or three years' imprisonment;¹ the dealer who sells securities without first having registered with the Pennsylvania Securities Commission, is liable to a fine of 5,000 dollars and/or five years' imprisonment;² but, the person who practices medicine or surgery without a license, is only subject to a penalty of 500 dollars and/or six months' imprisonment for the first offense and can only be penalized for the second offense by a fine of 1,000 dollars and/or one year's imprisonment.³ It is questionable whether a third or subsequent violation is even punishable, since no penalty is provided in the statute for such offenses.⁴

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1. PA. STAT. ANN. tit. 4, §§ 30.302, 30.801 (Supp. 1956).
2. PA. STAT. ANN. tit. 70, § 52 (Supp. 1956).
3. PA. STAT. ANN. tit. 63, § 401 (1941).
4. PA. STAT. ANN. tit. 63, §§ 401-12 (1941).

The pawnbroker who operates without a license, could be punished by a fine of 5,000 dollars and imprisoned for three years;⁵ the person who engages in the business of an installment seller of motor vehicles without having obtained a license, could be penalized by the same penalty;⁶ but, for one to practice law without being a member of the Bar of a Court of Record, would subject that person to a penalty of only 500 dollars and/or six months' imprisonment.⁷

Likewise, the peddler who plies his occupation without having obtained a license, could be penalized by a fine of 500 dollars and/or one year imprisonment;⁸ the secondhand dealer, in cities of the second class, who carries on his business without a license, could be punished by a fine of 1,000 dollars and/or six months' imprisonment;⁹ but, for one to practice osteopathy without a license, which in Pennsylvania is similar to the practice of medicine, would only subject that person to a penalty of from 100 to 500 dollars and/or thirty to ninety days' imprisonment for each offense.¹⁰ A wonder unlicensed peddlers or secondhand dealers do not turn their wits to the practice of osteopathy and relieve the shortage of doctors!

II.

PENALTIES FOR HEALTH LAW VIOLATIONS.

Penalties, prescribed for the violation of laws enacted to protect the public health, are not as severe as the punishment directed for the adulteration of fertilizer or insect poison, or for the attempt to poison animals, fowl or birds. Thus, the person who sells any article of food for human consumption which is adulterated, for the first and second offenses could be penalized by a fine of from 60 to 100 dollars, and for the third or subsequent offenses, by a fine of from 500 to 1,000 dollars and/or one year imprisonment in a county jail;¹¹ for one to knowingly sell, or expose for sale, the flesh of any diseased animal, or any other unwholesome flesh, bread, drink or liquor, would only subject that person to a fine of 100 dollars and/or six months' imprisonment in a county jail;¹² but, the one who exposes any poisonous substance, with intent that it shall be taken or swallowed by animals, fowl or birds, is

5. PA. STAT. ANN. tit. 63, § 281-31 (1941).

6. PA. STAT. ANN. tit. 69, § 637 (Supp. 1956).

7. PA. STAT. ANN. tit. 17, § 1610 (Supp. 1956).

8. PA. STAT. ANN. tit. 60, § 23 (1930).

9. PA. STAT. ANN. tit. 53, § 25257 (1957).

10. PA. STAT. ANN. tit. 63, § 270 (1941).

11. PA. STAT. ANN. tit. 31, §§ 1, 7 (Supp. 1956).

12. PA. STAT. ANN. tit. 18, § 4635 (1945).

subject to a penalty of 1,000 dollars and/or three years' imprisonment in a penitentiary.¹³

Further, the person who knowingly adulterates any drug intended to be used on man or animal for the treatment of disease could only be penalized for the first offense by a fine of 50 dollars and, for subsequent offenses, by a fine of 100 dollars;¹⁴ the person who manufactures or sells adulterated candy, although guilty of a misdemeanor, is only subject to a fine of from 50 to 100 dollars;¹⁵ but, the person who adulterates natural horse manure, is guilty of a misdemeanor and liable to a penalty of 1,000 dollars and/or six months' imprisonment.¹⁶

Moreover, entering upon enclosed land on which is erected a reservoir, and polluting the water stored for public use, could, for either the first or any subsequent offenses, subject the offender to a penalty of 500 dollars and/or one year imprisonment;¹⁷ but, the person who sells any pesticide which is deficient or misbranded, for the third offense, could be penalized by a fine of 1,000 dollars and/or one year imprisonment.¹⁸

III.

NONUNIFORMITY OF PENALTIES.

There are many penal laws that, for comparatively lesser offenses, prescribe a more severe punishment than is provided for those crimes of a more serious nature. Such defects should be rectified by the stipulation of uniform penalties. Thus, the person who places bets, in some cases, is subject to a greater punishment than is the person who receives them, even though the latter be a common gambler. In this manner, placing a bet on the result of a boxing or wrestling match, could subject the offender to a fine of 1,000 dollars and/or two years' imprisonment,¹⁹ while the person who takes such bets,²⁰ the number backer,²¹ the bookmaker,²² the common gambler,²³ or the person who races horses for money²⁴ could only be penalized by a fine of 500 dollars and/or one year's imprisonment.

13. PA. STAT. ANN. tit. 18, § 4941 (1945).

14. PA. STAT. ANN. tit. 35, §§ 783, 790 (1949).

15. PA. STAT. ANN. tit. 31, § 231 (1930).

16. PA. STAT. ANN. tit. 3, §§ 84, 89 (Supp. 1956).

17. PA. STAT. ANN. tit. 18, § 4640 (1945).

18. Pa. Sess. Laws, 1957, No. 125.

19. PA. STAT. ANN. tit. 4, § 21 (1930).

20. PA. STAT. ANN. tit. 18, § 4607 (1945).

21. *Id.* at § 4602.

22. *Id.* at § 4607.

23. *Id.* at § 4603.

24. *Id.* at § 4699.5.

Further, the person who transports "any female" into the Commonwealth of Pennsylvania with the intent to induce such woman to become a prostitute is subject to a penalty of 5,000 dollars and/or ten years' imprisonment,²⁵ while the person who entices a "female child under the age of sixteen years" into a house of ill-fame for the purpose of prostitution, could only be punished by a fine of 2,000 dollars and/or five years' imprisonment.²⁶

The penalties prescribed for violations of the counterfeiting laws are likewise lacking in uniformity. There is frequently no correlation between the punishment for the crime and the penalty for compounding it, or the penalty for being an accessory after the fact to those counterfeiting offenses classified as felonies. The result is anomalous. One who knowingly passes a counterfeit quarter to another person is guilty of a felony and subject to a penalty of 5,000 dollars and/or ten years' imprisonment;²⁷ but, the person who uses such coin by inserting it into an automatic telephone is only guilty of a misdemeanor for which the Penal Code directs a penalty of 200 dollars and/or six months' imprisonment,²⁸ while a prior statute, still in effect, creating the same offense provides a lesser penalty of 50 dollars and/or sixty days' imprisonment.²⁹ An accessory after the fact to the felony of passing such counterfeit coin to another person would be liable to a penalty of 1,000 dollars and/or two years' imprisonment,³⁰ while an accessory after the fact to the use of the coin in an automatic telephone, would not be subject to any punishment, since the offense, in the use of the coin in this manner, is designated as a misdemeanor.³¹ There is no provision for the punishment of an accessory after the fact to a misdemeanor, either at common law or in the statutory law of Pennsylvania.³² However, the person found guilty of compounding the crime of passing counterfeit money, regardless of the method employed, would be subject to a penalty of 1,000 dollars and/or three years' imprisonment,³³ which is a penalty of five times greater a fine and six times greater an imprisonment than that prescribed for the commission of the crime of using a counterfeit coin in an automatic telephone.³⁴

25. *Id.* at § 4517.

26. *Id.* at § 4508.

27. *Id.* at § 5004.

28. *Id.* at § 4861.

29. Pa. Sess. Laws 1939, No. 96.

30. PA. STAT. ANN. tit. 18, § 5105 (1945).

31. *Id.* at §§ 4861, 5105.

32. *Id.* at § 5105.

33. *Id.* at § 4307.

34. *Id.* at § 4861.

Moreover, the person who "falsely makes, or counterfeits any coin, resembling, or apparently intended to resemble or pass for any copper, nickel or bronze coin" is guilty of a misdemeanor and subject to a penalty of 1,000 dollars and/or three years' imprisonment in a penitentiary,³⁵ while the person who, knowing of its intended use, "manufactures for sale, sells, or gives away any false or counterfeit coin" calculated to be used in any "automatic vending machine," is guilty of a misdemeanor but only subject to a fine of 500 dollars and/or one year's imprisonment in a county jail.³⁶ An accessory after the fact to either of these offenses would not be subject to any punishment since the crimes are classified as misdemeanors, but the person found guilty of compounding either of them would be subject to a penalty of 1,000 dollars and/or three years' imprisonment;³⁷ however, the person possessing tools, with knowledge of their intended use in the counterfeiting of nickel or copper coin, is guilty of a felony and subject to a penalty of 2,000 dollars and/or five years' imprisonment,³⁸ which is a greater punishment than could be given the person for making such counterfeit coin.³⁹ The crowning example of inconsistency is that an accessory after the fact to the felony of possessing tools with knowledge of their intended use in the counterfeiting of any coin, could be subjected to a penalty of 1,000 dollars and/or two years' imprisonment,⁴⁰ which is double the punishment that could be given to the person who makes or counterfeits coin for use in automatic vending machines.⁴¹

The person who offers a bribe to a judge "through any artful and dishonest device whatever" is subject to a penalty of 500 dollars and/or one year's imprisonment;⁴² but, the person who, with the intent of influencing a judge, "pickets or parades" near a building or residence occupied by a judge is subject to a penalty of 5,000 dollars and/or one year's imprisonment.⁴³ Further, for one to "playfully" point a firearm at any other person would subject the offender to a penalty of 500 dollars and/or one year's imprisonment;⁴⁴ yet, this is the same penalty that could be given to one carrying the firearm concealed about

35. *Id.* at § 5005.

36. *Id.* at § 4862.

37. *Id.* at § 4307.

38. *Id.* at § 5006.

39. *Id.* at §§ 5005, 4862.

40. *Id.* at § 5105.

41. *Id.* at § 4862.

42. *Id.* at § 4303.

43. *Id.* at § 4327 (Supp. 1956).

44. *Id.* at § 4716.

the person,⁴⁵ the common gambler,⁴⁶ the tramp,⁴⁷ the person polluting public drinking water,⁴⁸ the person exhibiting obscene films,⁴⁹ or the person who assaults an officer serving legal process.⁵⁰

IV.

CONFLICTING PENALTIES FOR SIMILAR OFFENSES.

The enactment of duplicating laws without repealing prior conflicting statutes, and the stipulation of different penalties for similar offenses of the same character, cause uncertainty and result in many incongruities. For example, the person who carries a firearm "concealed upon his person" is subject to a penalty of 500 dollars and/or one year's imprisonment,⁵¹ while for carrying a firearm "concealed on or about his person," another provision of the Code prescribes a penalty of 3,000 dollars and/or three years' imprisonment.⁵² Likewise, the person who exposes any poisonous substance with intent that it shall be "taken or swallowed by any bird, fowl, or wild animal" is subject to a fine of 500 dollars and/or one year's imprisonment in a county prison,⁵³ while for exposing any poisonous substance with intent that it shall be "taken or swallowed by animals, fowl or birds," another provision of the Code prescribes a penalty of 1,000 dollars and/or three years' imprisonment in a penitentiary.⁵⁴

Likewise, the person who "unlawfully, wilfully and maliciously" by means of explosives "burns, maims, disfigures, disables or does grievous bodily harm" to another, is subject to a penalty of 2,000 dollars and/or five years' imprisonment,⁵⁵ while for the person who "unlawfully, wantonly, wilfully and maliciously" by means of explosives placed or thrown on any property or vehicle, "does or attempts to do bodily harm to any person" another provision of the Code prescribes a penalty of 5,000 dollars and/or ten years' imprisonment.⁵⁶ Further, the person who "alters, defaces or falsifies" any record "of, or belonging to, any public office," is guilty of a felony and subject to a fine of 3,000

45. *Id.* at § 4416.

46. *Id.* at § 4603.

47. *Id.* at § 4617.

48. *Id.* at § 4640.

49. *Id.* at § 4528.

50. *Id.* at § 4314.

51. *Id.* at § 4416.

52. *Id.* at §§ 4628e, 4628p.

53. *Id.* at § 4638.

54. *Id.* at § 4941.

55. *Id.* at § 4713.

56. *Id.* at § 4917.

dollars and/or seven years' imprisonment,⁵⁷ while the person who "fraudulently makes a false entry in," or "alters" any public record, by another provision of the Code is only guilty of a misdemeanor for which a lesser punishment of 1,000 dollars and/or two years' imprisonment⁵⁸ is prescribed.

Moreover, the person who carries bombs or explosives either on his person or in a vehicle, with intent to use them against another unlawfully is liable to a penalty of 5,000 dollars and/or ten years' imprisonment,⁵⁹ while for the person who, with intent to do bodily harm to another, explodes any substance or throws any explosive at another, a different section of the Code prescribes a penalty of 2,000 dollars and/or five years' imprisonment.⁶⁰ Also, for one to place any "sample of any medicine" upon a porch or in a yard would subject that person to an indictment for the commission of a misdemeanor and a penalty of 100 dollars and/or three months' imprisonment,⁶¹ while the distributing of any "free or trial samples of any medicines" upon porches or in yards is, by another provision of the Code, designated as a summary offense, not indictable, and for which a penalty of 50 dollars is prescribed.⁶² As a result of duplication, contradiction and failure to repeal, a very interesting situation exists which can cause burdensome work for the courts in attempting to untangle the conflict in sentences. With at least two similar statutes prescribing different penalties, and the indictment not setting forth the act under which the prosecution is brought, what can follow but a nol-pros?

V.

LACK OF STANDARD IN FIXING PENALTIES.

The primary cause for the existence of inconsistent penalties is the failure to employ a definite principle in prescribing them. For example, perjury, classified as a felony, is punishable by a fine of 3,000 dollars and/or seven years' imprisonment in a penitentiary,⁶³ while bigamy, which often involves the commission of perjury, is designated as a misdemeanor and punishable by a fine of 1,000 dollars and/or two years' imprisonment in a county jail.⁶⁴ Firing another's personal

57. *Id.* at § 5020.

58. *Id.* at § 4323.

59. *Id.* at § 4417.

60. *Id.* at § 4714.

61. *Id.* at § 4657.

62. *Id.* at § 4658.

63. *Id.* at § 4322.

64. *Id.* at § 4503.

property of the value of 25 dollars without consent, is classified as a misdemeanor and punishable by a fine of 1,000 dollars and/or two years' imprisonment in a county jail,⁶⁵ while larceny, which does not encompass the destruction of personal property, is designated a felony and punishable by a fine of 2,000 dollars and/or five years' imprisonment in a penitentiary.⁶⁶ Assault and battery is penalized by a fine of 1,000 dollars and/or two years' imprisonment,⁶⁷ while to commit assault and battery upon an officer executing any legal process, is only punishable by a fine of 500 dollars and/or one year's imprisonment.⁶⁸

The partner who, with intent to defraud, destroys, alters, mutilates, or falsifies any partnership books, papers or writings, is guilty of a misdemeanor and could be penalized by a fine of 1,000 dollars and/or two years' imprisonment,⁶⁹ while the officer, director, manager or employe of a corporation, who with intent to defraud, does the same disservice to corporation books, papers or writings, is guilty of a felony and could be penalized by a fine of 5,000 dollars and/or five years' imprisonment.⁷⁰ Further, the officer, director, manager or employe of a corporation who fraudulently applies corporate funds either to his use or to the use of any other person, is guilty of embezzlement, a felony, and subject to a penalty of 5,000 dollars and/or five years' imprisonment,⁷¹ while the partner who, without consent of his associates, fraudulently converts partnership funds, is only guilty of a misdemeanor punishable by a fine of 1,000 dollars and/or two years' imprisonment.⁷² These are not the only inconsistencies.

Obscene literature and pictures are generally conceded to be an important factor contributing to the growth in juvenile delinquency and crime. The Pennsylvania Legislature, in an effort to halt the dissemination of such material, recently revised the laws pertaining to this subject. However, an examination of these enactments reveals a want of congruity. For example, the person who sells or distributes any obscene literature, drawing, photograph or figure is guilty of a felony and subject to a penalty of 2,000 dollars and/or two years' imprisonment,⁷³ which is the same punishment prescribed for the person

65. *Id.* at § 4907.

66. *Id.* at § 4807.

67. *Id.* at § 4708.

68. *Id.* at § 4314.

69. *Id.* at § 4845.

70. *Id.* at § 4846.

71. *Id.* at § 4827.

72. *Id.* at § 4835.

73. *Id.* at § 4524, as amended, Pa. Sess. Laws 1957, No. 420.

who creates photographs, prints, publishes or otherwise produces such obscenity, making its distribution or sale possible.⁷⁴ The statute further directs that the person who employs or uses "any minor or child" to sell or distribute such obscenity is likewise guilty of a felony and subject to a penalty of 2,000 dollars and/or two years' imprisonment;⁷⁵ yet, another law, enacted the same day, prohibits the sale or distribution of obscene comic books or picture periodicals to "anyone under the age of eighteen years," classifies this offense as a misdemeanor and prescribes a punishment of 500 dollars and/or one year's imprisonment for its violations,⁷⁶ although it would seem that the sale or distribution of obscene material to minors is a more serious offense than to employ them to distribute obscenities.

The corrupt solicitation of any public officer by offering money to influence the performance of any act is punishable by a fine of 1,000 dollars and/or two years' imprisonment;⁷⁷ yet, the person who follows the occupation or practice of soliciting public officers to corruptly influence their official action would only be subject to the same punishment.⁷⁸ Moreover, embracery, the corrupting or improper influencing of a juror, is only punishable by a fine of 500 dollars and/or one year's imprisonment,⁷⁹ while offering a bribe to an athlete with intent to influence him to lose a contest is punishable by a fine of 10,000 dollars and/or ten years' imprisonment.⁸⁰ These incongruous penalties certainly illustrate the importance attributed to our jury system!

VI.

INCONGRUENT PENALTIES FOR LARCENY AND BURGLARY.

The Penal Code classifies larceny as a felony, prescribes a penalty for its commission, but omits any definition for the crime.⁸¹ Consequently, the common-law definition of larceny applies.⁸² There are, however, offenses created by the Code which are either termed larceny or satisfy the common-law requirements for this crime. Some are classified as felonies, some as misdemeanors, and different penalties are provided for similar offenses. This has caused uncertainty and confusion in the administration of the criminal law.

74. *Ibid.*

75. *Ibid.*

76. *Id.* at § 3831, as amended, Pa. Sess. Laws 1957, No. 419.

77. PA. STAT. ANN. tit. 18, § 4304 (1945).

78. *Id.* at § 4305.

79. *Id.* at § 4308.

80. *Id.* at § 4614 (Supp. 1956).

81. *Id.* at § 4807.

82. *Commonwealth v. Meinhart*, 173 Pa. Super. 495 (1953).

For example, the person who commits larceny is guilty of a felony and is subject to a penalty of 2,000 dollars and/or five years' imprisonment;⁸³ the person who steals any "letters patent, charter, testament, will or deed" is guilty of larceny, a felony, and is subject to a penalty of 1,000 dollars and/or five years' imprisonment;⁸⁴ but, the one who steals any kind of property whatsoever "growing or being on the land of another" is only guilty of a misdemeanor and subject to a penalty of 2,000 dollars and/or three years' imprisonment,⁸⁵ although the receiver of such stolen property would be guilty of a felony and subject to a penalty of 1,000 dollars and/or five years' imprisonment.⁸⁶

The person who steals a "fixture" attached to any building, is guilty of larceny, a felony, and is subject to a penalty of 2,000 dollars and/or five years' imprisonment;⁸⁷ the person who steals a "veteran's grave marker" is guilty of larceny, a felony, and subject to a penalty of 1,000 dollars and/or one year imprisonment;⁸⁸ but, the one who "mines or digs out any coal, iron or other minerals" from another's land without consent of the owner is subject to a penalty of 1,000 dollars and/or one year's imprisonment though only guilty of a misdemeanor.⁸⁹ An accessory after the fact to felonies of stealing fixtures attached to buildings, veteran's grave markers, or letters patent, etc., would be guilty of a misdemeanor and subject to a penalty of 1,000 dollars and/or two years' imprisonment,⁹⁰ which is a greater penalty than could be imposed upon the thief committing the offense of stealing a veteran's grave marker.⁹¹ However, the accessory after the fact to either of the misdemeanors of stealing growing property, or coal, iron or other minerals by mining them would not be subject to any punishment at all, since there is no provision for the punishment of accessories after the fact to misdemeanors either at common law or in the statutory law of Pennsylvania.⁹² Yet, the person found guilty of compounding the crimes of larceny or knowingly receiving stolen goods, regardless of the type of property taken or the classification of the crime, would be subject to a penalty of 1,000 dollars and/or three

83. PA. STAT. ANN. tit. 18, § 4807 (1945).

84. *Id.* at § 4808.

85. *Id.* at § 4811.

86. *Id.* at § 4817.

87. *Id.* at § 4813.

88. *Id.* at § 4814.1 (Supp. 1956).

89. *Id.* at § 4812.

90. *Id.* at § 5105.

91. *Id.* at § 4814.1 (Supp. 1956).

92. *Id.* at § 5105.

years' imprisonment,⁹³ which is a greater penalty than that prescribed for the commission of the crimes of stealing a veteran's grave marker,⁹⁴ stealing minerals from another's land by mining them,⁹⁵ or stealing a United States military decoration.⁹⁶

The thief who enters a restaurant with intent to steal and, after entering, takes another's overcoat would be subject to a prosecution for burglary and a penalty of 10,000 dollars and/or twenty years' imprisonment⁹⁷ in addition to the penalty for larceny, a fine of 2,000 dollars and/or five years' imprisonment;⁹⁸ the thief who, with intent to steal, reaches into an automobile and takes an overcoat, would be subject to a prosecution for burglary and a penalty of 5,000 dollars and/or five years' imprisonment⁹⁹ in addition to the penalty for larceny; but, the person who steals an overcoat from a department store by shoplifting is guilty of shoplifting, a summary offense not even indictable, and the thief would be subject to a penalty of from 25 to 50 dollars and/or five to ten days' imprisonment.¹⁰⁰ The technique employed by the thief in the commission of the crime of larceny, not the character of the offense, seems to be the standard used in fixing the punishment.

The Penal Code attempts to create the crime of larceny in the stealing of animals from a private game preserve, but this provision is meaningless. The statute defines a "Private Game Preserve" as a tract of land owned by private sources and stocked with "wild game."¹⁰¹ Anyone entering upon such land with intent to unlawfully and maliciously "steal any animal" therein is stipulated to be guilty of a misdemeanor and subject to a penalty of 300 dollars and/or six months' imprisonment.¹⁰² Since larceny is not defined by statute, the common-law definition applies.¹⁰³ The person taking and carrying away an animal with the intention of converting it to a use other than that of the owner without his consent fulfills the requisites of the common-law definition of larceny,¹⁰⁴ except as to animals *ferae naturae*, which are not the subject of larceny.¹⁰⁵ This provision of the Code which seeks

93. *Id.* at § 4307.

94. *Id.* at § 4814.1 (Supp. 1956).

95. *Id.* at § 4812.

96. *Id.* at § 4893.

97. *Id.* at § 4901.

98. *Id.* at § 4807; *Commonwealth v. Hellner*, 160 Pa. Super. 158 (1947).

99. *Id.* at § 4903.

100. Pa. Sess. Laws 1957, No. 282.

101. PA. STAT. ANN. tit. 18, § 4957 (1945).

102. *Ibid.*

103. *Commonwealth v. Doran*, 145 Pa. Super. 173 (1941).

104. *Commonwealth v. Quinn*, 144 Pa. Super. 400 (1941).

105. *Walls v. Mease*, 3 Binn. 546 (Pa. 1899).

to designate a penalty for attempted larceny of wild animals and thus make such animals the subject of larceny is therefore of no significance, other than to create uncertainty and confusion in the criminal law.

VII.

STATUTORY OMISSIONS.

Some provisions of the penal law describe the circumstances constituting a crime but fail either to classify the offense or prescribe a penalty for its violation. Thus, conversion by tax collectors of city, borough, township and school funds, is termed "embezzlement" by an act of 1945, but this statute omits to classify the crime as either felony or misdemeanor.¹⁰⁶ Other similar offenses are designated "embezzlement" yet are classified in some instances as felonies,¹⁰⁷ and in others, as misdemeanors.¹⁰⁸ The lack of uniformity in classifying this crime has created uncertainty in the penalty to which accessories after the fact to embezzlement are liable, since only such accessories to offenses designated as felonies are subject to punishment.¹⁰⁹

A provision of the Code creating the crime "Receiving Property Fraudulently Disposed Of," classifies it as a misdemeanor, but fails to prescribe a penalty for its violation.¹¹⁰ Crimes involved in the employment of minors under a law enacted in 1911 are classified as misdemeanors but no penalty is provided.¹¹¹ The same condition exists with reference to other statutory offenses,¹¹² yet, the Code provides for the construction of the penal provisions of any act of assembly, commanding that "the direction of said act shall be strictly pursued," leaving it to the common law to supply the punishment, if a violation at common law.¹¹³

Indecent assault is still a common-law misdemeanor,¹¹⁴ although other comparable assaults are felonies.¹¹⁵ This crime frequently occurs in large communities, yet, the lawmakers have failed to define this offense by statute and prescribe the punishment for its violation.

106. PA. STAT. ANN. tit. 72, §§ 5511.1-42 (1950). See also PA. STAT. ANN. tit. 40, § 470 (1954).

107. PA. STAT. ANN. tit. 18, §§ 4822, 4823, 4827, 4828 (1945).

108. PA. STAT. ANN. tit. 24, § 4-443 (1950); PA. STAT. ANN. tit. 51, § 1-845 (1954).

109. PA. STAT. ANN. tit. 18, § 5105 (1945).

110. *Id.* at § 4819.

111. PA. STAT. ANN. tit. 52, § 39 (1954).

112. PA. STAT. ANN. tit. 52, § 3; PA. STAT. ANN. tit. 24, § 2141 (1950).

113. PA. STAT. ANN. tit. 18, § 5104 (1945).

114. *Commonwealth v. Kettering*, 180 Pa. Super. 247 (1956).

115. PA. STAT. ANN. tit. 18, §§ 4722, 4502 (1945).

Despite this fact, the Legislature in 1952 created the anomaly of anomalies by directing in certain cases the penalty of life imprisonment for the person found guilty of the common-law misdemeanor, indecent assault.¹¹⁶ This is the only instance where a person found guilty of a misdemeanor could be subject to such a severe penalty.

VIII.

CONCLUSION.

As the law now exists, there is no codification of the criminal law in Pennsylvania. The Penal Code of 1939 is a misnomer, being in reality only a revision of the Code of 1860 and an effort to modernize that act and its numerous amendments. The criminal laws are scattered throughout the statutes with no serious attempt made to codify them. They are cluttered with deficient provisions which are permitted to remain. Revised enactments of these laws, without the repeal of prior conflicting statutes, have only aggravated the existing condition, resulting in uncertain, ambiguous and contradictory penalties being prescribed for the various offenses. Instead of a penal code, there is a patchwork of statutory criminal law intermingled with the common law, causing confusion and retarding the administration of criminal justice.

Defective penal laws can too often be the tools with which to create legal barriers to either delay judgment or elude punishment for violations. The resulting disrespect for law enforcement can of itself be the cause of an increase in crime. An efficient penal code would eliminate the defects that now exist, rehabilitate criminal justice and re-establish a respect for law and order. However, the production of an efficient penal code would require extensive research by qualified persons before commencing the arduous task of writing the proposed criminal laws. This work could be performed by an experienced commission created by the General Assembly for this purpose, or the Attorney General of Pennsylvania, who has the duty under the Administrative Code, to prepare for submission to the General Assembly revisions and codifications of laws,¹¹⁷ could initiate this undertaking and appoint special deputy attorneys general to assist him. Before adoption by the Legislature, the code should be scrutinized by

116. PA. STAT. ANN. tit. 19, § 1166 (Supp. 1956).

117. "The Department of Justice shall have the power, and its duty shall be, to prepare, for submission to the General Assembly, from time to time, such revisions and codifications of the laws of this Commonwealth, or any part thereof, as may be deemed advisable." PA. STAT. ANN. tit. 71, § 295 (1942).

the Bench and Bar of the Commonwealth who, together with the Attorney-General, would bear the responsibility for its recommendation for passage by the General Assembly.

The adoption of a new code of penal laws without the careful research and study required, merely because inadequacies are found in our present laws, would only result in a repetition of inconsistencies which could even be worse than those which presently exist. It is earnestly hoped that those responsible for the administration of the criminal law will join in an effort to obtain an efficient penal code for the Commonwealth of Pennsylvania.