



12-1-1927

# Criminal Law and the Public

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## Recommended Citation

Joseph P. McNamara, *Criminal Law and the Public*, 3 Notre Dame L. Rev. 92 (1927).

Available at: <http://scholarship.law.nd.edu/ndlr/vol3/iss2/4>

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# THE NOTRE DAME LAWYER

A Monthly Law Review

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SUBSCRIPTION PRICE, \$2.00 PER YEAR: BY MAIL, \$2.50. 35 CENTS AN ISSUE

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## CRIMINAL LAW AND THE PUBLIC

The recent action of the courts of the state of Michigan in the case of one Fred Palm, who was convicted under the habitual criminal act of that state, brings to the fore a question that should be a momentous one if the acts designed to punish persons for the commission of a series of felonies are to continue on the statute books. Under the Michigan law a man who has been convicted of three felonies, must, if convicted of a fourth, no matter what this fourth may be, receive a sentence of life imprisonment.

The fact that none of the felonies would have carried with it such drastic punishment is not a proper point for consideration under such a law. In the instant case this is demonstrated. Fred Palm, the defendant, had previously been convicted of three felonies, and now was found guilty of having a pint of gin in his possession. The ownership of the contraband liquor is in itself a felony in that state, and so the defendant found himself facing

life imprisonment as a result of the statute.

Regardless of the question as to the constitutionality of the particular law under which Palm was convicted, the query as to the propriety of the classification of felonies in the American states presents itself. To insist that the ownership of a pint of gin is a felony under such circumstances is an absurdity. Herefore, the classification of acts as misdemeanors or as felonies has meant little, except that it determined the residence of the prisoner while incarcerated. It has been for some time merely an arbitrary division of the acts prohibited by law. The norm of *malum in se* has not been applied, had the designation of an act as a felony did not necessarily mean that it was a grave transgression of the law, likely to seriously affect the security of the state. Contrarywise, the fact that an act is a misdemeanor at the present time is no safe indication that it does not constitute a more serious charge than some felonies undoubtedly are. As we have noted, the nomenclature used has meant very little until this time.

That such a division or classification becomes of major import under such statutes as the Michigan habitual criminal act (which is comparable with those existing in several other states) is axiomatic. Presumably, the law wishes to protect society from further harm by these men. Therefore the intention of the legislators was that the felonies making up the chain in such a case as this should be such as militate against the security and essential decency of society. That they could have intended anything else does not seem quite possible.

The criterion is then, the protection of society. Can it be said that the possession of a pint of gin is such a matter as would justify the incarceration of a man for life, even when tacked to a previous record of three convictions? Could the possession of the liquor be taken to prove a recalcitrant disposition of such a nature that the denial of liberty is necessary for the peace and dignity of the commonwealth? We think that it will not be hard to answer these questions in the negative.

No one contends that this extraordinary punishment is given merely because of the last offense. That would be error. But the fact that the fourth offense must be classed as a felony at law and must be proved as such, makes it an indispensable part of

the case for the prosecution. Therefore, whether or not the legislature may have meant to pave the way for such a holding, the fact is that they have done so. The one way to rectify the error, if the statute is to be retained, is to reclassify crimes and to arrange the classification in such a manner that those acts denominated as felonies will be of such a character as to justify the extreme penalty meted out to those who are convicted of such offenses for a fourth time. In other words, the common sense of the proposition would suggest the return to the principle that only things clearly *malum in se* are to be felonies.

Which brings before us the dissatisfaction that is everywhere being evidenced with the workings of the criminal laws of the states. That such a movement is afoot is undeniable. That it is gaining strength is not to be controverted. So far the lawyers are the only persons who, as a body, have not become agitated with this problem. This is quite natural, as their training has led them to believe in a gradual transition rather than a sudden change.

There is danger in too strict an adherence to such an attitude, however, and it lies in this: that the laity is too apt to take upon itself the task of reforming the criminal law and procedure. If a genuine betterment of conditions could be affected by such lay action we would hold no brief against it; but the fact that it would end in confusion with greater chaos militates against it. The revision is a matter to be made by the legal profession. They are specially trained for such action.

No doubt the legalist is right in holding that the province of affecting such a change belongs to him rather than to the gentlemen of the press, or to the various associations and commissions that seem to make it their business. But unless the lawyer asserts his right and investigates the charges thoroughly, remoulding where needed, the people acting through their chosen representatives, the legislature, will take the burden upon their shoulders with a result that the reformed procedure, though temporarily expedient, in the final act will be disastrous to all and perhaps most pernicious in its effects upon the legal profession. The day for smug assurance that all will right itself in time is gone. The agitation grows with leaps and bounds every day. The lawyer must perform his duty.

—J. P. M.