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THE PROPOSED CRIMINAL CODE OF PENNSYLVANIA.

On July 25, 1917, the then Governor of Pennsylvania approved a joint resolution requiring him to appoint "five competent citizens, learned in the laws of this Commonwealth, as commissioners, to revise, collate and digest all acts and statutes relating to or touching the penal laws of the Commonwealth—one of whom shall be designated by the Governor as draughtsman and secretary of the commission."¹

The Resolution made it the duty of the Commission to collect and reduce into one act all existing penal statutes of the Commonwealth in force,—to designate such acts as should be repealed and to prepare new acts as such repeal might render advisable; and, generally "to execute the trust confided in them in such a manner as to render the penal code of Pennsylvania more efficient, clear and perfect, and the punishments inflicted on crimes and misdemeanors more uniform and better adapted to the suppression of crime and reformation of the offender."

¹ The Governor appointed the following gentlemen to compose the Commission: Edwin M. Abbott, Clarence D. Coughlin, Lex N. Mitchell, George C. Bradshaw, and William E. Mikell, designating Mr. Mikell, draftsman and secretary. At the first meeting of the Commission Mr. Abbott was elected Chairman. Mr. Bradshaw having died after his appointment, Mr. Richard W. Martin was appointed in his stead, and designated by the Governor as draftsman of a new Code of Criminal Procedure which was authorized by the Legislature of 1921.

The Resolution provided that the Commission should report the result of their labors to the Legislature on or before the first day of January, 1919.

Due to the amount of work involved, the Commission was unable to make its report at the prescribed date, and on June 23, 1919, the Legislature continued the Commission and ordered it to report to the Legislature of 1921.

The Commission presented its report to the Legislature of 1921, and it was referred to the Committee on Judiciary General. This Committee wisely decided that there was not sufficient time before the date set for adjournment of the Legislature for an adequate study and discussion of the bill and therefore did not report it out. It will be brought before the Legislature of 1923.

The last previous revision of the penal laws of Pennsylvania was made in 1860 by a commission appointed by Governor Packer in obedience to an act passed April 19, 1858.²

This revision of 1860 was not, and was not intended to be, a Code, in the sense that it comprised the entire body of criminal law of the Commonwealth. It expressly provides that all existing offenses not specifically provided for by the act shall be punishable as heretofore.³ It is therefore still possible to indict a person for an offense not mentioned in the Code of 1860 if such offense was punishable before the Code either at common law, or by statute, if the common law or statutory provision was not repealed either expressly or by implication by some provision of the Code. Nor did the Code of 1860 attempt to codify the general principles relating to liability for crime, such as infancy, incorporation, etc.; or of defenses, such as insanity, drunkenness, self-defense, etc. These matters were left where the common law left them. Neither did the Code of 1860 incorporate all existing statutory law containing penal provisions. There is a great body of such law that it was thought not wise to include. No good purpose would have been served by abstracting a single penal section from an

² This Commission consisted of Edward King, John C. Knox and David Webster.

³ Section 178.

act of say fifty sections regulating factories or banks or fire escapes, or the seasons at which persons might hunt or fish, and placing it in the Code divorced from the body of the act of which it was a part.

In all these respects the proposed new Code follows the Code of 1860.

THE NEED FOR A NEW CODE.

Sixty years have passed since the Code of 1860 went into effect. During that time many hundreds of penal acts have been passed by the Legislature. Acts creating new offenses; acts repealing in whole or in part existing offenses; acts changing the punishments attached to existing offenses; acts amending acts creating offenses; acts amending acts amending acts creating offenses, etc.

A large number of these acts were drawn without any reference to previously existing acts, with the result that the body of the penal law as it exists today is a jumble of inconsistencies. Many sections are badly drawn; many are inconsistent; many are in conflict; there is much over-lapping due to different acts covering in part the same subject matter; many are obsolete. In addition, the penalties provided for the various offenses under the existing law are inconsistent with each other. For crimes of the same character very different penalties are prescribed; some venial offenses are punishable more severely than serious ones; the mere attempt to commit a crime is even in some cases punished more severely than the completed crime itself.

The report of the commission appointed in 1917 to draft a new code, is an attempt to remedy these and other defects of the existing law.

It is proposed in this article to discuss in a general way the proposed new code. In order to do this, it will be necessary to point out more specifically the defects in the existing law, and the manner in which these defects have been corrected.

FELONY AND MISDEMEANOR.

Without going into nice historical questions, we may say that the term "felony" at common law was applied to the more heinous offenses, "misdemeanor" to the more venial ones. In the statute law both of England and of this country, these terms have in general been similarly employed.

In the Code of 1860, and in penal statutes enacted since, the Legislature of Pennsylvania has in the majority of cases designated as a felony or a misdemeanor each crime provided against, and has in general stigmatized the graver crimes as felonies.

Viewing the Code of 1860 and subsequent statutes as a whole, however, there is an utter lack of principle in the grading of crimes as felonies and misdemeanors, either according to the moral gravity of the offense or the severity of the penalty annexed. Embezzlement by a servant is a felony,⁴ while embezzlement by a banker, trustee or guardian is only a misdemeanor.⁵ An attempt to rape is a misdemeanor only,⁶ while an attempt to burn a stable or a mill is a felony.⁷ Assault and battery with intent to rob is a felony,⁸ with intent to rape, is a misdemeanor.⁹ Uttering counterfeit gold or silver coins is a misdemeanor only,¹⁰ but uttering copper coins for less than their value, is a felony.¹¹ Purposely and of malice aforethought cutting out a person's tongue, eye or hand is a misdemeanor only;¹² but giving away a toy on which is painted by way of advertisement a flag of the United States, is a felony.¹³

⁴ Code 1860, Sec. 107.

⁵ Act 1850, Apr. 16, P. L. 477, Sec. 20. Code 1860, Sec. 144; Act 1863, Apr. 22, P. L. 531, Sec. 1.

⁶ Code 1860, Sec. 93.

⁷ Code 1860, Sec. 137.

⁸ Code 1860, Sec. 102.

⁹ Code 1860, Sec. 93.

¹⁰ Code 1860, Sec. 160.

¹¹ Code 1860, Sec. 162.

¹² Code 1860, Sec. 80.

¹³ Act 1907, May 23, P. L. 225.

From the point of view of the severity of the punishment annexed to various crimes in the Code of 1860 and subsequent statutes, the inconsistencies are equally marked. Larceny, the penalty for which is a fine of not more than \$500 and three years' imprisonment, is made a felony,¹⁴ while malicious burning of a warehouse is a misdemeanor only; yet the latter is punished by a fine of \$2000 and ten years' imprisonment.¹⁵ So embezzlement by a servant, while a felony, is only punishable by three years' imprisonment,¹⁶ while embezzlement by a factor is a misdemeanor, yet punishable by five years in prison.¹⁷ Selling an article on which is printed or painted by way of advertisement a flag of the United States or of Pennsylvania, is a felony, but is punished by a fine of only \$500 and imprisonment for six months.¹⁸ Receiving stolen goods is a felony, punishable by a fine of \$500 and three years' imprisonment,¹⁹ while forgery, a misdemeanor only, is punishable by twice as great a fine, and imprisonment three times as long.²⁰

This stigmatizing of an offense as a "felony" or a "misdemeanor" is not a matter of nomenclature only. It is of great practical importance in the administration of the criminal law. Under the general principles of the law, serious differences followed and still follow the naming of a crime "felony" and "misdemeanor," differences both of substantive law and of procedure. One who in the commission of a felony unintentionally kills another, is guilty of murder at common law, and of murder in the second degree in Pennsylvania (unless the killing is done in the commission of arson, robbery, burglary or rape), while one who, while engaged in the commission of a misdemeanor, so kills another, is guilty of manslaughter only. One may lawfully kill a fleeing felon, if necessary to effect his arrest; one is

¹⁴ Code 1860, Sec. 103.

¹⁵ Code 1860, Sec. 138.

¹⁶ Code 1860, Sec. 107.

¹⁷ Code 1860, Sec. 125.

¹⁸ Act 1907, May 23, P. L. 225.

¹⁹ Code 1860, Sec. 109.

²⁰ Code 1860, Sec. 169.

never justified in killing a fleeing misdemeanant in order to arrest him, and so doing is guilty of murder.

Section one of the Act of 1893²¹ provides "every accessory after the fact to any felony, for whom no punishment is provided, shall be sentenced to pay a fine not exceeding \$500, and to undergo an imprisonment . . . not exceeding two years." No provision is made for the punishment of accessories after the fact to *misdemeanors* and by the common law an accessory after the fact to a misdemeanor is not punishable as such.

The result is anomalous. One who aids in the escape of a person who has attempted to burn a stable or mill is punishable by a fine of \$500 and two years' imprisonment, while one who aids in the escape of a person who has attempted to commit rape, is not punishable at all. One who aids a person to escape who has sold a pound of breakfast food in a carton on which is printed a flag of Pennsylvania incurs a penalty of two years' imprisonment, while one who aids a person to escape who has committed the crime of assault with intent to commit sodomy, this being only a misdemeanor by the Act of 1917,²² is not punishable at all.

An officer or even a private person may arrest without a warrant a person he reasonably suspects of using the State flag for advertising purposes and kill him with impunity if necessary to prevent his escape; while even an officer would require a warrant to arrest a person guilty of forgery—forgery being a misdemeanor—and would be guilty of murder if he should kill the forger while the latter was attempting to escape.

The proposed Code seeks to remedy inconsistencies of the existing Code of which the above are only a few examples, by making the more serious crimes felonies, and the more venial ones misdemeanors. In every case a severer sentence is provided for the graver offense than for the more venial, and the penalty annexed to an offense has been made the test of whether it shall be a felony or a misdemeanor. Some arbitrary standard had of

²¹ June 3, P. L. 286.

²² July 16, P. L. 1000.

course to be adopted. At common law the test was whether the offense was punishable by forfeiture of land and goods. At that time, however, some two hundred offenses were thus punished. Different tests are in force in different States. In Massachusetts all offenses punished by confinement in the State penitentiary, for any term, are felonies; all others are misdemeanors. In New York while, of course, in general, the more serious crimes are denominated felonies and the less serious ones misdemeanors, no absolute standard is fixed except in the few cases where the definition or description of the crime does not state whether the crime is a felony or a misdemeanor. A separate section takes care of this by providing that when a crime is not thus stigmatized, it shall be a felony whenever the punishment annexed is greater than one year's imprisonment, and that in all other cases it shall be a misdemeanor.

In the proposed Pennsylvania Code all offenses punishable by a maximum penalty of more than three years are denominated felonies, those punishable by a maximum penalty of three years or less, are misdemeanors.

PENALTIES.

No one can study the Code of 1860 and the penal statutes passed subsequently without being struck with the apparent haphazard grading of the penalties fixed for various offenses. The penological theories of punishment, leaving aside the theories of the individualization of punishment, and the indeterminate sentence, for the adoption of which the public seems not yet ready, are few and general in character. Serious offenses are to be punished heavily, venial offenses, lightly; constantly recurring crimes are to be penalized more severely than occasional crimes of the same magnitude. These are the theories generally known to the legislator.

The Code of 1860 and subsequent legislative enactments in Pennsylvania follow none of these rules consistently. Persons may intelligently differ as to the comparative degree of seriousness of various crimes, as for example as to whether larceny

should be more severely punished than assault and battery with a deadly weapon, or whether bigamy or perjury is deserving of the greater penalty. There would seem to be no reason, however, why, as the existing law provides, the maximum penalty for the actual bribing of a member of the General Assembly or of a judge should be a fine of \$500 and imprisonment for one year,²³ and the penalty for the mere *offering* of such bribe be a fine of \$1000, and imprisonment for two years²⁴ while either the bribing or offering of a bribe to a burgess is punishable by a fine of \$1000 and imprisonment for five years.²⁵ Having in possession, with intent to exhibit, indecent pictures would certainly seem to be less serious than the actual exhibition of such pictures, yet the Act of 1887²⁶ provides a fine of only \$300, and no imprisonment for the exhibition of such pictures, while punishing one who possesses them with intent to exhibit, by a fine of \$500 and one year's imprisonment. The same anomaly of punishing more severely the possession of articles with intent to use them than the actual use of them is shown in many parts of our existing criminal statutes.²⁷ These are only a few illustrations of scores of existing sections of our penal laws by which graver penalties both of fine and imprisonment are provided for offenses less serious from any point of view than for other offenses palpably more heinous, and *vice versa*. The proposed Code seeks to remedy this defect by a careful regrading of all penalties.

ATTEMPTS AND CONSPIRACIES.

Our existing Code has no general provision covering solicitation, or attempt or conspiracy to commit offenses; but in a haphazard manner in providing for a few offenses also provides for the solicitation, attempt or conspiracy to commit the same. In the cases in which such provision is made the same anomalies

²³ Code 1860, Sec. 48.

²⁴ Act 1874, Apr. 29, P. L. 115, Sec. 1.

²⁵ Act 1901, May 2, P. L. 120, Sec. 2.

²⁶ May 6, P. L. 84.

²⁷ Compare Secs. 161 and 162 and Secs. 156 and 161 of the Code of 1860.

above mentioned appear. No principle has been followed either in stigmatizing the crime or in prescribing the penalty. Thus mayhem is a misdemeanor,²⁸ while the attempt to commit it is a felony.²⁹

The penalty for an attempt to commit arson is the same as for the crime of arson itself,³⁰ for an attempt to commit robbery, the same as for the completed robbery;³¹ for the attempt to administer poison or the attempt to cut, stab or wound,³² the same as for the actual administration of poison, cutting, stabbing or wounding,³³ but the attempt to commit rape is not punished by the same penalty as rape, but with only one-third as severe a penalty.³⁴ Nor is the attempt to commit murder given the same penalty as murder, *viz.*, death or twenty years' imprisonment, but seven years' imprisonment only.³⁵ The attempt to rob by stopping a railroad train has the same penalty as the completed robbery³⁶ but the attempt to maim, wound, injure or kill by stopping such train is not given the same penalty as the completed maiming, wounding, injuring or killing, but is instead given the penalty prescribed for robbery.³⁷ Robbery of a bank vault is punished by a fine of \$1000 and five years' imprisonment,³⁸ while attempting to rob such vault (forcibly or fraudulently attempting to compel the owner to surrender the key to said vault, with intent to rob) though the robbery is not consummated, is punished by a fine of \$10,000, and twenty years' imprisonment.³⁹ No provision is made for attempts to commit such crimes as larceny, embezzlement, extortion, and a host of others.

²⁸ Code 1860, Sec. 80.

²⁹ Code 1860, Sec. 83.

³⁰ Code 1860, Sec. 137.

³¹ Code 1860, Sec. 102.

³² Act 1876, May 1, P. L. 92, Sec. 1.

³³ Code 1860, Sec. 81.

³⁴ Code 1860, Secs. 93 and 90.

³⁵ Act 1876, May 1, P. L. 92, Sec. 1.

³⁶ Act 1895, June 25, P. L. 290.

³⁷ Act 1895, June 25, P. L. 290.

³⁸ Code 1860, Sec. 102.

³⁹ Act 1876, May 8, P. L. 139, Sec. 1.

In only a very few cases does the existing statute law provide for solicitation and conspiracy to commit offenses. These—what might be called uncompleted offenses—solicitation, conspiracy and attempt to commit some other crime, while not so dangerous to the public welfare as the completed crimes themselves, and therefore not to be punished so severely, are sufficiently serious to be penalized in some degree. At common law they were regarded as misdemeanors, to be punished at the discretion of the judge. There seems to be no reason for limiting the punishment for larceny to three years, for murder in the second degree to twenty years, etc., etc., and leaving the judge to award any length of imprisonment he sees fit to the offenses of attempt, conspiracy and solicitation.

Hence in the proposed Code these three crimes of solicitation, attempt and conspiracy are provided for in three sections containing general provisions applicable to all offenses. They provide in effect that attempt and conspiracy to commit any offense which is punishable by death or imprisonment for life, shall be punished by imprisonment not exceeding twenty years or a fine not exceeding \$10,000, or both; that attempt and conspiracy to commit any crime which is punishable by a lesser period of imprisonment than imprisonment for life shall be punishable by imprisonment not exceeding one-half the maximum term of imprisonment, or a fine not exceeding one-half the maximum fine prescribed for the commission of the offense the defendant attempted or conspired to commit. The section on solicitation provides for imprisonment not exceeding one year or a fine not exceeding \$500.

COMPOUNDING.

The Code of 1860 punished the compounding of only eighteen enumerated offenses. The punishment provided for compounding these offenses was three years' imprisonment and a fine of \$1000. Since that time many new offenses have been added to our Code, offenses quite as serious as those enumerated;

but the statutes creating them do not provide for their compounding. Moreover, no particular principle seems to have been followed in selecting the crimes enumerated and omitting others. For example, larceny and receiving stolen goods are among the enumerated crimes. These offenses are punished by the Code with three years' imprisonment. Incest, certainly an equally heinous offense, and punishable by the same penalty, is omitted from the list of offenses the compounding of which is punished. Furthermore, since the Code provides a three year penalty for the compounding of any of the enumerated offenses, it results that it is as grave an offense to compound some of them, larceny, for example, as actually to commit them. Still more inconsistent is the inclusion of the compounding of the offense of bribery, for the penalty for bribery is only one year's imprisonment, while the penalty for compounding it is made three years. In the proposed Code these inconsistencies are remedied first by making the compounding of every offense punishable, and second, by grading the penalty of this offense of compounding according to the gravity of the crime compounded. The penalty, except for compounding offenses punishable by imprisonment for life, is made one-third of the penalty provided for the commission of the crime compounded.

SECOND OFFENDERS.

The penological principle that a second offender should be more severely punished than the first offender was recognized in the Code of 1860, but in the case only when the first offense was one punishable by separate or solitary confinement at labor, and the second offense was "a similar offense" to the first offense, or when the second offense was punishable by "separate or solitary confinement at labor."⁴⁰ In such cases the Code provided that the defendant was to be imprisoned "not exceeding double the time prescribed for the crime of which he is convicted." So far as the meaning of these two phrases a "similar offense" and an offense "punishable by separate or solitary confinement at labor"

⁴⁰ Sec. 182.

is concerned, the second is clear enough; the first, however, is far from clear. The person convicted a second time may be punished not exceeding double the time prescribed for his second offense if the second offense is "similar" to his first. Is manslaughter similar to murder? It is similar in some respects, but different in others. The two elements of which all crimes consist are the act and the state of mind. The act is the same in murder and manslaughter, but the states of mind of the actor are very different. It is the latter fact that led the codifiers to provide such greatly different penalties for the two offenses. Is larceny "similar" to embezzlement? It is similar in so far as the state of mind of the offender is concerned, but the act is very different from the legal point of view. To convict of larceny the act of taking must be a trespass; to convict of embezzlement it must not. As for the penalty for the two offenses larceny is punished by the Code by three years' imprisonment; embezzlement by a partner, by two,⁴¹ and embezzlement by a tax collector,⁴² by five years. Is bigamy in which one of the parties is innocent similar to seduction; assault and battery to mayhem; assault with intent to kill to assault with intent to rob, and so on through a long list of crimes?

The ambiguity of this provision as to second offenders is hardly worse than the inconsistencies resulting from the alternative provision, which prescribes that double punishment may be inflicted on a person who commits an offense the punishment for which is separate or solitary confinement at labor if he had previously been convicted of an offense carrying the same penalty. The inconsistencies resulting from this provision are due to the lack of any principle followed in the existing Code governing the infliction of "separate or solitary confinement at labor" as a punishment. This particular penalty is not prescribed for felonies as distinct from misdemeanors for there are some felonies not so punishable, *e. g.*, administering narcotics with intent to commit a

⁴¹ Act 1885, June 3, P. L. 60, Sec. 1.

⁴² Act 1885, June 3, P. L. 72, Sec. 1.

felony,⁴³ and many misdemeanors that are, *c. g.*, bigamy, aggravated assault and battery, and burning with intent to defraud insurers. Nor is this penalty of confinement at labor provided for crimes punished by long terms of imprisonment as distinguished from crimes punished by relatively short terms. Thus attempting to conceal the birth of a bastard child by its mother carries imprisonment by solitary confinement at labor, though the period of confinement is only three years, while train robbery is punished by fifteen years' imprisonment, but not at labor. Under this provision of the existing Code a person convicted for the second time of larceny by stealth is subject to double the penalty for the second offense, while one who is convicted for the second time of train robbery can be punished no more severely for the second than for the first offense. One convicted for the second time of assault and battery with firearms could be given double the punishment received for his first offense, while one convicted for the second time of assault and battery with explosives could be given no increased penalty; unless the latter offense were held to be "similar" to the former.

These are only a few examples of the many inconsistencies of the existing penal law in this respect. The proposed Code retains the principle of permitting the imposing of a severer sentence on the second than on the first offender when in the judgment of the judge it is wise so to do. But the penological principle is that the person who, after having been convicted of one crime, persists in his criminal career may thereby show that he needs more punishment or discipline than the first offender. This may be shown whether the second offense is "similar" to the first offense, or whether the second crime is one punishable by a particular kind of imprisonment, such as "separate or solitary confinement at labor," or not. Hence the proposed Code provides that the trial judge may for a second offense subject the offender in all cases—except of course where the penalty is death or life imprisonment—to double the penalty prescribed by the Code for the second offense committed.

⁴³ Act 1901, Apr. 24, P. L. 102.

SEPARATE OR SOLITARY CONFINEMENT.

The existing law in Pennsylvania provides for separate and solitary confinement as a punishment for many offenses. The object underlying the infliction of this punishment is said to be that the prisoner may have opportunity, undisturbed, to think on the heinousness of his offense. Ferri, the great criminologist, has called this one of the "greatest aberrations of the nineteenth century,"⁴⁴ and Ives⁴⁵ speaks of it as "that disastrous fad which wrecked so many lives and long created untold misery." It is now almost universally agreed that this character of punishment belongs to a past age. The proposed Code contains no provision for its infliction.

Perhaps the class of offenses most frequently committed in this age is the class comprising fraudulent dealings with property. Due to historical reasons, mainly, the severity of the penalty—death—attached by the early common law to larceny, the judges in their humane desire to mitigate the severity of the law threw a barrage of legal technicalities around a person charged with this offense, with the result that a large number of persons morally guilty of this offense escaped annihilation. This led the legislature to invent new crimes or new names for the old crime, hence we now have in our law the crimes of larceny, larceny by servant, larceny by bailee, and embezzlement by various classes of persons; with their first cousins, cheats and obtaining property by false pretense. Later, when the penalty for larceny was ameliorated, the judges were not so "astute" in the application of the protective technicalities of "trespass," "possession," and "intent," and invented other technicalities such as "torious taking" and "continuing trespass," and distinguished "custody" from "possession," to prevent those they had formerly protected, from taking advantage of the technicalities the judges had used to protect them. The result of these three processes has been to cloud with uncertainty and under several names a transaction that no intelligent person would fail to recognize as

⁴⁴ *de Quiris, Modern Theories of Criminality*, 181.

⁴⁵ *A History of Penal Methods*.

"stealing." Our existing laws have stereotyped these uncertainties, and added inconsistencies thereto. By the Code of 1860 embezzlement by a servant is a *felony*, punishable by three years' imprisonment, while embezzlement by a factor, while a misdemeanor only, is punishable by imprisonment for five years, embezzlement by a partner by only two years; embezzlement by officers of trades unions, or of the national guard, by one year, by tax collectors, five years. Altogether there are at least eighteen acts or parts of acts dealing with the offense of embezzlement, eight dealing with larceny, nine dealing with false pretense.

The proposed Code would simplify and unify these various offenses, which, morally, differ in name only, by a single section providing that any person who commits larceny of any property; or who, with intent to defraud, obtains any property from another by any false pretense; or who having in his possession, custody or control any property of another, shall fraudulently convert or secrete such property, is guilty of stealing.

One of the gravest faults in the existing penal law is its uncertainty. This uncertainty is due partly to the doubtful meaning of many individual acts of the legislature, and partly to the fact that acts have been passed at different sessions of the legislature, dealing with the same crime or different phases of the same crime and imposing different penalties, making it doubtful whether the later act repealed the former, or only supplemented it, or which of the several acts is applicable to a specific offense committed. For example, Section 169 of the Code of 1860 deals with forgery in general. The language in this section is broad enough to include forgery of a conveyance. The penalty imposed by this section is \$1000 fine and ten years' imprisonment. Section 107 of the Code deals with embezzlement, the language covering embezzlement of a conveyance, the penalty is \$500 fine, and three years' imprisonment; yet Section 171 of the Code provides that "any person who shall *forge*, *deface*, *embezzle*, *alter*, *corrupt*, *withdraw*, *falsify* or *unlawfully avoid any record*, charter, gift, grant, *conveyance*, or contract

. . . " shall be fined not exceeding \$2000, and imprisoned not exceeding seven years. Section 15 of the Code provides a penalty of only *two* years for one who *alters* any public record—the same offense that Section 171 punishes by seven years. The existing law contains scores of cases of such inconsistencies and uncertainties. There are no less than eight acts or parts of acts dealing with perjury not all containing the same penalty.

An illustration of another kind of defect found in our existing law is furnished by the Act of 1921.⁴⁶ This act, after defining a private game preserve as "a tract of land . . . stocked with *wild game* or fish . . ." provides that it shall be an offense for any one to enter such preserve with intent to *steal* any animal therein. This evidently refers to the wild animals for which the preserve was made. Wild animals, however, *cannot* be stolen, they are not the subject of larceny, hence no one can "enter with intent to steal" them, hence this portion of the statute means nothing and does not create the offense it was intended to create.

It has been possible to point out in this article only a very few of the many uncertainties and inconsistencies of the existing penal law of this Commonwealth with the remedies provided therefor in the proposed Code. The main work of the Commission was the collecting, studying and collating the existing law embodied in the one hundred and eighty-four sections of the Code of 1860, and some four hundred and fifty other penal acts or parts of acts, and reducing the whole into one clear, certain and consistent body of law of 331 sections. This necessitated the rewriting of the whole penal law of the State, section by section. Not more than a dozen sections of the proposed Code are verbatim copies of existing statutes.

William E. Mikell.

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Law School.

⁴⁶ May 10, P. L. 430.