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Theft - The Effect of Inflation Upon the Value-Penalty Ratio

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remarks. However, the remarks were apparently considered as reversible error per se:

(1) "I did lose control of myself; every drop of my white man's blood did boil in me and the white man's blood of other men in this court rose up in righteous indignation, when this negro woman on trial, in a crowded court-room in the parish of Grant, and in the town of Colfax, with its past history, used slanderous. . . language against the officers of Grant parish and against white men."⁵⁷

(2) "Gentlemen of the jury, it is high time to put a stop to these murders by negro women, by hanging some of them The only way to put a stop to it is to bring a verdict of guilty as charged and have a hanging."⁵⁸

(3) "Notwithstanding the fact that the prosecuting witness was a prostitute, she was a white woman and belonged to the same race to which their mothers belonged."⁵⁹

(4) "The defendant should not be tried by the same law as a white man. . . . You can't try a negro by negro evidence the same as you can try a white man by white evidence."⁶⁰

While it is not possible to draw a clear line between permissible and prejudicial racial comments, one fact stands out in bold relief—the prosecution should be extremely cautious to avoid the possibility of clouding the issue of guilt or innocence by allusions to the defendant's race.

LAWRENCE E. DONOHUE

THEFT—THE EFFECT OF INFLATION UPON THE VALUE-PENALTY RATIO

The difficulty of making the punishment fit the crime has long been a serious problem. This question has weighed heavily on the minds of laymen and lawyers alike. Public consciousness of the problem is clearly demonstrated by the laws and literature that have come down through the centuries.

Retribution was stressed by the Code of Hammurabi, 2250 B.C., which provided that, "If a man destroy the eye of another man, they shall destroy his eye."¹ Cicero evidenced a more hu-

57. *State v. Jones*, 127 La. 694, 697, 53 So. 959, 960 (1911).

58. *State v. Brown*, 148 La. 357, 358, 86 So. 912, 913 (1921).

59. *State v. Perry*, 124 La. 931, 942, 50 So. 799, 803 (1909).

60. *State v. Brice*, 163 La. 392, 393, 111 So. 798 (1927).

1. Cook, *The Laws of Moses and the Code of Hammurabi* (London, 1903) 249.

mane approach to the problem when in 78 B.C. he wrote, "We must take care that crimes are not more severely punished than they deserve, and that one be not punished for an act for which another is not called to account."² The Bill of Rights of England³ and the Constitution of the United States⁴ both contain provisions that neither excessive fines should be imposed, nor cruel and unusual punishments inflicted. A famous formulation of the problem is to be found in William S. Gilbert's *Mikado*:

"My object all sublime
I shall achieve in time—
To let the punishment fit the crime—
The punishment fit the crime."⁵

Louisiana law has reacted strangely when faced with this problem. The results have often been unreasonable and sometimes even humorous. At one time in Louisiana the punishment was more severe for shooting at a man and missing him⁶ than for shooting at and hitting him.⁷ Assault with intent to rob called for greater punishment⁸ than actual robbery.⁹ Punishment for the stealing crimes has been characterized by the same inconsistency. Under the Louisiana Criminal Statutes prior to the 1942 Criminal Code, theft of automobile parts, regardless of their value, was a mere misdemeanor.¹⁰ On the other hand, the theft of a gas bracket, no matter how trifling its value, was a felony which could be punished by a five year term in the state penitentiary.¹¹

The problem of the stealing crimes resolves itself into a determination of the proper basis for fixing the penalty. Is this basis to be the value of the object stolen, the nature of the object, or the social status of the thief or the owner?

The evolution of a democratic society has ruled out the status of thief and owner as basis, though at one time the personalities involved had a great deal of bearing on the nature and

2. Cicero, *De Officiis*, Bk. I, Ch. 25, § 89.

3. Thompson, *An Historical Essay on the Magna Charta of King John* (London, 1829) 110.

4. U.S. Const., Art. VIII.

5. Gilbert, *The Mikado* (London, 1928) 68 (Act II).

6. La. Act 59 of 1896, as last amended by La. Act 9 of 1912, § 1 [Dart's *Crim. Stats.* (1932) § 766].

7. La. Act 44 of 1890, § 1 [Dart's *Crim. Stats.* (1932) § 765].

8. La. Act 59 of 1896, as last amended by La. Act 9 of 1912, § 1 [Dart's *Crim. Stats.* (1932) § 766].

9. La. Rev. Stats. of 1870, § 809 [Dart's *Crim. Stats.* (1932) § 1123].

10. La. Act 33 of 1926 [Dart's *Crim. Stats.* (1932) § 1062].

11. La. Act 154 of 1918, § 1 [Dart's *Crim. Stats.* (1932) § 1063].

severity of the penalty imposed. A theft from a noble once demanded greater punishment than a similar theft from one of lesser rank. Likewise, theft by a peasant resulted in more severe punishment than did a similar theft committed by a lord.

Elimination of privileged class considerations leaves only the nature of the object stolen and the value thereof as possible bases for determining the penalty to be imposed. Fundamentally, both of these are an evaluation of the object stolen; the former an evaluation placed there by the folkways and mores of the people and the latter an evaluation in terms of dollars and cents.

During frontier days of our country, and even comparatively recently, horse stealing, regardless of the value of the horse, was much more severely punished¹² than the stealing of some other object of the same economic value. Other theft and larceny statutes provided special punishments for the theft of certain kinds of articles.¹³

The growing accessibility of objects to all who possess the necessary capital has emphasized the monetary valuation of the object, while *de-emphasizing* the special social values. In line with this general modern trend, the Louisiana Criminal Code, adopted in 1942, combined all forms of stealing in a single "theft" crime¹⁴ and graded the penalty entirely according to the economic value of the object stolen.

The penalty gradations of the Criminal Code of 1942 were based on the general theft and larceny statutes in effect at the time.¹⁵ These statutes had been enacted and the valuation-penalty relationship established as *long ago as 1874*¹⁶ and 1902,¹⁷ with a *minor amendment in 1936*.¹⁸

The three grades of the crime of theft are as follows:¹⁹

12. La. Rev. Stats. of 1870, § 814 [Dart's Crim. Stats. (1932) § 1061].

13. La. Act 64 of 1910 [Dart's Crim. Stats. (1932) § 1057] (stealing cattle); La. Act 45 of 1918 [Dart's Crim. Stats. (1932) § 1059] (stealing hogs, sheep); La. Act 154 of 1918, § 1 [Dart's Crim. Stats. (1932) § 1063] (stealing plumbing fixtures); La. Act 33 of 1926 [Dart's Crim. Stats. (1932) § 1062] (stealing automobile parts).

14. Art. 67, La. Crim. Code of 1942.

15. See Comment, Art. 67, La. Crim. Code of 1942.

16. La. Act 124 of 1874, § 8 [Dart's Crim. Stats. (1932) § 1053].

17. La. Act 107 of 1902, § 5 [Dart's Crim. Stats. (1932) § 1054].

18. La. Act 150 of 1936, §§ 1-3 [Dart's Crim. Stats. (Supp. 1942) §§ 1054.1-1054.3].

19. Art. 67, La. Crim. Code of 1942.

<i>Value of object stolen</i>	<i>Penalty</i>
\$100.00 or more.....	Imprisonment for not over ten years.
\$20.00 to \$100.00.....	Imprisonment for not over two years, or fine not over \$300.00 or both.
Less than \$20.00.....	Imprisonment for not over six months, or fine not over \$100.00 or both.

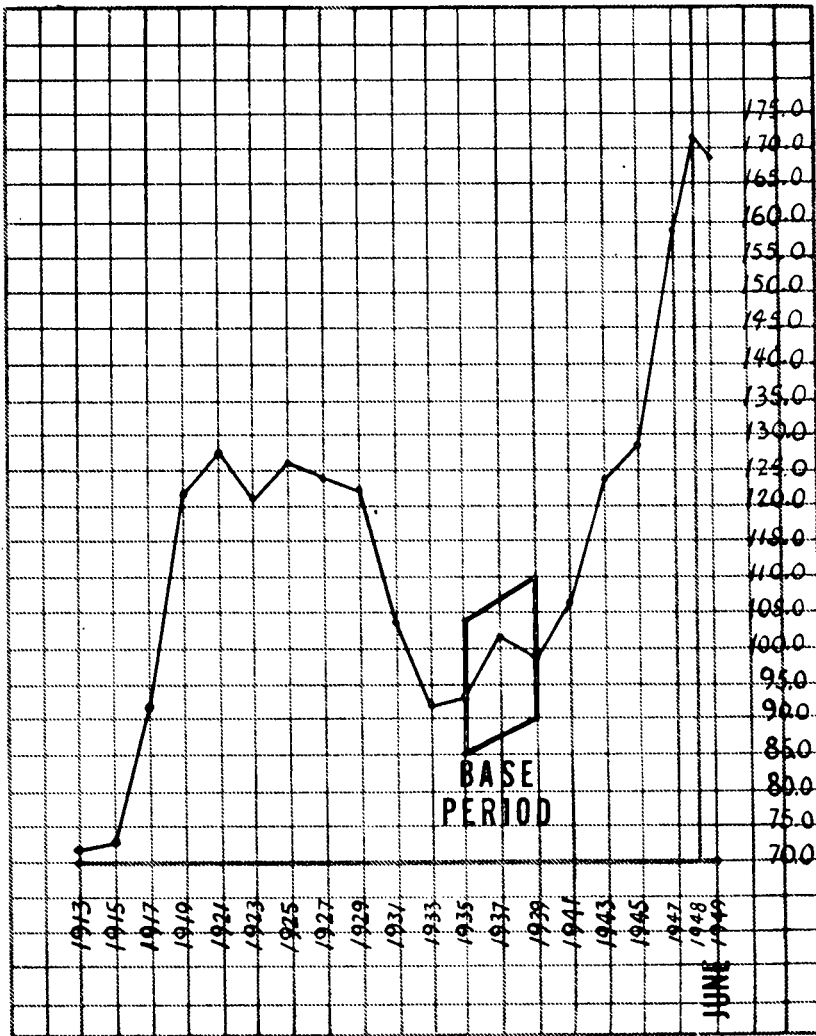
At the time this relationship was established the purchasing power of the dollar was far greater than at the present time. The question quite naturally arises as to whether or not, in view of the decrease in dollar value, this relationship is presently desirable.

Since the value of money depends upon the amount of goods and services that can be purchased with it, the cost of living index will here be used as the basis for determining the value of the dollar. This increase in the cost of living (and consequently the decrease in the value of the dollar) can readily be seen from the graph below.²⁰

As a result of this inflation, many objects now have a dollar value far in excess of their dollar value at the time the relationship was formulated. For example, the theft of an article worth \$71.00 in 1913 would amount to theft of property valued at \$170.00 in 1948, and would subject the offender to a *possible ten year prison sentence*. The penalty for stealing the same object has automatically increased. Similarly, an object that was valued at \$15.00 in 1913 would in 1948 be valued at approximately \$37.50. The penalty for stealing this object in 1913 could not have exceeded six months imprisonment while the same theft, if committed in 1948, could have been punished by imprisonment for as much as *two years at hard labor*.

It is appropriate that the Louisiana legislature should examine its penalties for theft in order that they may be adjusted to conform with present day dollar values. Present day inflationary standards will probably not continue, but it is believed that it can be safely said that price levels will never return to the 1913 level. The desire for stability in the law would probably rule out a sliding scale of penalties, depending upon the cost of

20. The statistics used in the graph and examples are those of consumer's Price Index for moderate-income families in large cities of the United States as a whole. Statistics compiled by state are not available and those for the cities of Louisiana are available only for the past few years. Because of this and since statistics of the cities of the United States as a whole represent approximately the change in the cities of Louisiana, the latter were used to more completely cover the period under discussion.



living index at certain stated periods. A conservative approach to the problem might suggest a doubling of the value lines of gradation of theft. Thus, theft, carrying a possible penalty of ten years imprisonment, would require taking of property valued at \$200.00.

It may be argued that the present penalty clause does not work a hardship or result in injustice because of mitigating factors. The desire of prosecutors to dispose quickly of cases has often led them to set a small value on the object so that the case

may be heard by a five man jury, or even by the judge without a jury. Also, the difficulty of proving actual value has often led the prosecutor to set a comparatively small value on the object stolen. This same difficulty of proof often causes juries to return verdicts of guilty of theft of a smaller amount than that charged in the indictment. Undoubtedly there are numerous cases where the prosecutor realized that the penalty was inappropriate to the seriousness of the theft, and reduced the charge accordingly. Frequently the judge, in sentencing, considers the *actual value* and the nature of the object stolen as well as its present day dollar value.

Penalty clauses, however, should not be predicated upon anticipated administrative or judicial leniency, and should be adjusted from time to time so as to provide a penalty as nearly as possible in keeping with the gravity of the offense. An important circumstance to be considered in establishing gradations of punishment for crimes against property is the existing dollar-commodity relationship.

GILLIS W. LONG

A CHARTER GUIDE FOR THE INCORPORATION OF NONPROFIT CORPORATIONS UNDER THE 1948 ACT*

By enacting "The Nonprofit Corporation Act"¹ the 1948 session of the legislature of Louisiana corrected a deficiency in our law, providing a method of incorporation for non-business corporations. The broad definition of a "nonprofit corporation" contained in the act² will bring under regulation many types of organizations and groups which hitherto have not clearly come under any applicable laws. The act abandoned the "nontrading corporation" test of the old statute³ and substituted a more simple and inclusive test. If the corporation falls outside the class of corporations organized for pecuniary profit or gain to their

* La. Act 455 of 1948 [La. R.S. (1950) § 12:101 et seq.]. For a short but excellent discussion of the outstanding features of the act and comparison with the business and the old "nontrading corporation act," the reader is referred to Louisiana Legislation of 1948 (1948) 9 LOUISIANA LAW REVIEW 18, 68.

1. Short title of La. Act 455 of 1948.

2. La. Act 455 of 1948, § 1, H [La. R.S.(1950) § 12:101, 8]: "Nonprofit Corporation" means a corporation organized for a purpose not involving pecuniary profit or gain to its shareholders or members, and not paying dividends or other pecuniary remuneration to its shareholders or members; provided that the corporation may pay reasonable compensation or salaries for services rendered."

3. La. Act 254 of 1914, as amended by La. Act 190 of 1924 and 146 of 1936.