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John C. Karjanis

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WANTED: A WYOMING STATUE ON ASSAULT WITH A DEADLY WEAPON

Do the assault and battery statutes of the State of Wyoming sufficiently cover the various degrees of this crime, in the light of the punishments presently prescribed?

A considerable gap exists between assault and battery with felonious intent,¹ on the one hand, and aggravated assault and battery² on the other. The former is a felony punishable by a maximum of fourteen years in the state penitentiary, while the latter is only a misdemeanor, punishable by confinement in the county jail for not more than one year, or a fine of not more than one thousand dollars, or both. It might well be noted at this point that aggravated assault, in order to sustain a conviction, requires the infliction of grievous bodily injury (either with or without a weapon), and malice; neither of which are required in felonious assault. It is provided as an alternative to grievous bodily harm, however, that the crime may be committed by a malicious cutting, stabbing or wounding.

Specifically, it seems incongruous that one who maliciously commits grievous bodily harm upon another with a weapon should be guilty of a mere misdemeanor, while one who commits a simple assault upon another with the intention of committing any felony should thereby be guilty of a felony, and be sent to the penitentiary for as long as fourteen years. Certainly this is not "to let the punishment fit the crime."³

The principal purposes of punishment are to prevent the commission of future crimes and to deter others from doing so.⁴ In the early criminal law the theory was rigorously applied by inflicting the death penalty for nearly every crime, but crime did not decrease. As humanitarian feelings grew, the idea became prevalent that a fixed term of years could be imposed to fit some crimes, and that the term could be varied according to the severity of each crime. From this came the attitude that the crime created a sort of debt which, in a sense, was to be paid to society. The old attitude regarded punishment principally as retribution, whereas the new theories emphasize rehabilitation, control and the protection of society against the criminal.⁵ It is still desirable to isolate those who have

1. Wyo. Comp. Stat. § 9-206 (1945). "Whoever perpetrates an assault, or assault and battery, upon any human being with intent to commit a felony, shall be imprisoned in the penitentiary not more than fourteen (14) years." It will be noted that the statute includes assault as well as assault and battery. For the sake of brevity the crime will be referred to herein simply as "assault and battery with intent to commit a felony," or "felonious assault."
2. Wyo. Comp. Stat. § 9-210 (1945). "If any person shall unlawfully and maliciously inflict upon another person, either with or without a weapon or instrument, any grievous bodily harm, or shall unlawfully and maliciously cut, stab or wound any other person, the person so offending shall be fined not more than one thousand dollars (\$1,000.00), or confined in the county jail not more than one year, or both." For the sake of brevity this crime will be referred to herein simply as "aggravated assault."
3. May, *Law of Crimes* (4th ed. by Sears and Weihofen 1938), pp. 1-6.
4. Wood, *Responsibility and Punishment* (1938), 28 *J.Crim.L.*, pp. 630-640.
5. *Ibid.*

demonstrated their criminality for periods which vary according to the culpability of the crime committed. We seem to be moving gradually toward the idea that the period of isolation should be measured by the length of time necessary to "reform" the criminal rather than by the seriousness of his crime.

It is a known fact that the penalty must be a multiple of the criminal gain, otherwise the criminal will readily pay the price. A criminal is instinctively a gambler, and if the penalty imposed is but a small fine or "light sentence," he will consider it as an operating expense of a more lucrative enterprise. This would indicate that there is a danger in letting the criminal off with a light sentence when more severe punishment should be given in the light of the crime committed.

Since crime and punishment are defined almost entirely by statute, the burden is on legislatures to make certain that all crimes are sufficiently evaluated. A close examination of the assault statutes throughout the various jurisdictions demonstrates that they are disorganized and in most cases conflicting as to their coverage. It is not uncommon for judges to remark that aggravated assault and battery is a serious offense. "Aggravated assault and battery, although classified a misdemeanor, is a serious offense, and a conviction thereof should not be allowed to stand unless evidence clearly warrants it."⁷ Some states have divided assault and battery into various degrees.⁸ Minnesota, for example, makes assault and battery a felony if grievous bodily injury has been inflicted.⁹ The elements of the crime under Minnesota law are essentially the same as those under the Wyoming statute,¹⁰ yet the punishment imposed in Minnesota is a maximum of five years in the state penitentiary while in Wyoming it is a year in jail.¹¹ An assault with a deadly weapon is also a felony in Minnesota, but there is no such coverage in Wyoming. California makes assault with a deadly weapon a felony, punishable by a maximum of ten years in the state penitentiary.¹² Arizona, on the other hand, makes assault and battery a felony punishable by a maximum of five years if grievous bodily injury has been inflicted and a maximum of fourteen years is imposed if caustic chemicals are used.¹³ In Connecticut a maximum of five years is imposed for assault and battery with acid and a maximum of ten years for indecent assault.¹⁴ In Idaho the punishment imposed for assault with a deadly weapon is two years, but fourteen years if with chemicals.¹⁵ Illinois makes the distinction that if an assault is made with a deadly weapon while

6. *Ibid.*

7. *Commonwealth v. Franklin*, 160 Pa.Super. 484, 52 A.2d 230 (1947)

8. *State v. Brinkmann*, 145 Minn. 18, 175 N.W. 1006 (1920); *People v. Santoro*, 229 N.Y. 277, 128 N.E. 254 (1920).

9. Minn. Stat. §§ 619.37-619.39 (1939).

10. Wyo. Comp. Stat. § 9-210 (1945).

11. *Ibid.*

12. Cal. Penal Code § 2415 (Deering 1939).

13. A.C.A. §§ 43.603, 43.604 (1939).

14. Conn. Gen. Stat. §§ 8358, 8359.

15. Idaho Code §§ 18.905, 18.906.

hooded the penalty is ten years, otherwise it is only one year.¹⁶ These are examples demonstrating the haphazard approach which legislatures make to the assault and battery problem.

Another result of insufficient coverage is that to a certain extent the jury is permitted to fix the punishment through finding the defendant guilty of a lesser related offense.¹⁷ In Wyoming where the difference in punishment between felonious assault and aggravated assault is so great, a finding of the lesser offense is especially significant.

A consideration of various decisions also points to the inadequacy of the assault statutes in Wyoming. In a Minnesota case a person was convicted of second degree assault and sentenced to a term of five years in the penitentiary, although the injury inflicted was only slight. The court sustained the conviction on the grounds that what is grievous or serious bodily injury is a question within the province of the jury.¹⁸ It is interesting to compare a Wyoming case in which the defendant was found guilty of the misdemeanor of aggravated assault. He shot at the complainant and killed the horse from under him. Thereafter he attacked him with the barrel of the gun, since he had expended his ammunition. He inflicted bodily injury upon the complainant which was far from slight.¹⁹ Certainly a crime of this nature would warrant a sentence greater than six months in the county jail; yet that is what the defendant received. But the Wyoming case is not unique. In a Texas case the defendant followed his victim for half a day, attacking him with a knife and inflicting wounds so serious that the victim could be heard breathing through them, yet the jury found the defendant guilty of the lesser related offense which was but a misdemeanor, because the state failed to prove the intent to kill.²⁰

A person who attacks another with a dangerous weapon or inflicts grievous bodily injury upon him, by all reasonable principles has injured an important human interest. This is well illustrated in the opinion of many judges in cases where the defendant has been found guilty of the lesser related offense of aggravated assault, and such crime has been made a misdemeanor by the legislature. Courts have consistently held the maximum penalty as reasonable in these cases.²¹ In cases where grievous bodily injury has been inflicted, or where the defendant has used a dangerous weapon, he is generally charged with assault with intent to kill or with assault with intent to commit a felony. The necessary intent is, in most cases, difficult to prove. This makes it easy for the jury to find the lesser related offense, which is a misdemeanor in Wyoming. The intent to inflict grievous bodily injury requires less proof if grievous bodily

16. Ill. Rev. Stat. §§ 60, 60a.

17. Note, Should The Jury Fix The Punishment For Crimes, 24 Va. L. Rev. 462.

18. State v. Gaularpp, 144 Minn. 86, 174 N.W. 445 (1919).

19. State v. Schloredt, 57 Wyo. 1, 111 P.2d 128 (1941).

20. Carter v. State, 151 Tex.Cr.R. 258, 207 S.W.2d 92 (1947).

21. State v. Albertson, 237 Iowa 1148, 24 N.W.2d 395 (1946); Nicholas v. State, 32 Ala. 574, 28 So.2d 422 (1946); People v. Cimino, 330 Ill.App. 461, 71 N.E.2d 541 (1947).

injury has in fact been inflicted, since the necessary intent may be presumed from the surrounding circumstances.²²

Some states take the view that assault with a deadly weapon, or by other means likely to produce death or great bodily injury, with intent to kill, constitutes a crime more serious than assault with intent to kill; and the statutes relating to such a crime prescribe greater punishment.²³

Since the necessary intent for aggravated assault can be presumed from the natural consequences of the actor's unlawful act, as above mentioned, a conviction for a felony could often be obtained if the statutes made the crime a felony. At present, the only remedy to unjust findings is for the legislature to pass a law making aggravated assault and battery a felony, and provide a justifiable punishment, or to create a new felony of assault with a deadly weapon.

The American Law Institute is presently in the process of setting down a thoughtful code of substantive criminal law, but nothing has yet appeared as to the crime of assault and battery.

Louisiana and Wisconsin are the only states which have enacted penal codes that constitute major changes in the criminal law. It is interesting to note that Louisiana has made assault with a dangerous weapon a felony, punishable by a maximum of two years in the penitentiary, but if aggravated battery accompanies the assault, then the punishment is a maximum of ten years with or without hard labor.²⁴

JOHN C. KARJANIS

22. *People v. Pilgrim*, 73 C.A.2d 391, 166 P.2d 636 (1946).

23. *State v. Null*, 355 Mo. 1034, 199 S.W.2d 639 (1947).

24. La. Rev. Stat. §§ 14.34, 14.37 (1950).