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## Criminal Law – Moral Turpitude

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tinguishable because those statutes defined various stages in the accomplishment of one specific crime. The various steps were not separate crimes, for as the crime progressed, the acts merged into one crime.<sup>12</sup> The opinion makes no mention of a holding by the superior court of a contiguous district in which two separate sentences were given for the violation of two of the sub-paragraphs of the same vagrancy statute.<sup>13</sup>

If the vagrancy statute were the only one in the penal code of California which dealt with the diverse acts enumerated, the court might well have some doubt as to legislative intent. Such is not the case, because separate statutes penalize individual acts of lewdness,<sup>14</sup> trespass to property,<sup>15</sup> living in or about a house of ill fame,<sup>16</sup> prostitution<sup>17</sup> and some instances of drunkenness,<sup>18</sup> and each act would be indictable separately. This is the real justification for the result reached in the instant case. The only logical conclusion is that the vagrancy statute merely attempts to encompass all those things which would characterize a vagabond or an incorrigible rogue to insure that these anti-social individuals could be prosecuted for their undesirable condition as such. The double penalty idea is incompatible with this view.

## CRIMINAL LAW — MORAL TURPITUDE

An alien was ordered to be deported under the Immigration Act of 1917<sup>1</sup> having twice been sentenced for terms of more than one year for conspiring to defraud the United States of taxes on distilled spirits. *Held*, that this crime involved moral turpitude. *Jordan v. De George*, 71 Sup. Ct. 703 (1951).

Apart from being a basis for the deportation of an alien, moral turpitude has been employed in widely divergent situations, for example: as a criterion in determining whether certain language is slanderous,<sup>2</sup> for impeachment of witnesses,<sup>3</sup> in disbarment proceedings,<sup>4</sup> for revocation of

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Southern California Edison Co., 22 Cal.2d 337, 139 P.2d 20 (1943) (theft of electricity by tapping wires).

12. *Bealmear v. Southern California Edison Co.*, *supra* note 11.

13. *People v. Ambrose*, Superior Court, Dept. One, Riverside County, No. 25249, May 19, 1934. (Memo decision) (cited by 23 CALIF. L. REV. at 514 for this proposition).

14. CAL. PEN. CODE §§ 273(g), 288, 311, 312, 313, 647(a), 968 (1949).

15. CAL. PEN. CODE § 602 (1) (1949).

16. CAL. PEN. CODE § 315 (1949).

17. *Ibid.*

18. CAL. PEN. CODE §§ 273(g), 367(d), 367(e) (1949).

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1. 39 STAT. 889 (1917) as amended, 8 U.S.C. § 155 (a) (1946) “. . . any alien . . . who is hereafter sentenced more than once . . . because of conviction in this country of any crime involving moral turpitude, committed at any time after entry . . . shall, upon the warrant of the Attorney General, be taken into custody and deported . . .”.

2. *Baxter v. Mohr*, 37 Misc. 833, 76 N.Y. Supp. 983 (N. Y. City Ct. 1902).

3. *Drazen v. New Haven Taxicab Co.*, 95 Conn. 500, 111 Atl. 861 (1920); 6 JONES, COMMENTARIES ON EVIDENCE § 2441 (2d ed. 1926).

4. *In re Koptic*, 406 Ill. 141, 92 N.E.2d 462 (1950).

physicians' licenses,<sup>5</sup> as the measurement of contribution between joint tort-feasors,<sup>6</sup> and in the application of an habitual offenders act.<sup>7</sup> Moral turpitude, not unlike the phrase "reasonable doubt," has failed to gain in clarity despite numerous judicial attempts to arrive at a satisfactory definition.<sup>8</sup> The law dictionaries provide several of the most widely used definitions.<sup>9</sup> Admittedly a vague term, immorality per se is implied in moral turpitude, regardless of the penalty established by law.<sup>10</sup> Thus unintentional wrong is excluded.<sup>11</sup> Some courts refuse to label as moral turpitude any but the gravest offenses such as felonies,<sup>12</sup> infamous crimes,<sup>13</sup> those that are malum in se<sup>14</sup> and those which disclose a depraved mind.<sup>15</sup> Other courts believe that the term is so loose as to be susceptible of more than one interpretation,<sup>16</sup> and have held violations of the Prohibition Act<sup>17</sup> and the Internal Revenue Laws<sup>18</sup> to be crimes involving moral turpitude. Yet the offenses of breaking from a county prison and escaping by force and arms,<sup>19</sup> and possession of a "jimmy" with intent to commit a crime<sup>20</sup> have been held not to involve moral turpitude.

Moral turpitude is adaptive, determinable by the state of public morals and the common sense of the community as viewed by the individual judge in applying a set of facts.<sup>21</sup> There are various shades and degrees of moral

5. *Brainard v. Board of Medical Examiners*, 68 Cal. App.2d 591, 157 P.2d 7 (1945).

6. *Fidelity & Cas. Co. v. Christenson*, 183 Minn. 182, 236 N.W. 618 (1931).

7. N.D. LAWS 1927, C. 126 § 4, *State v. Malusky*, 59 N.D. 501, 230 N.W. 735 (1930).

8. See the discussion of moral turpitude in *In re Jacoby*, 74 Ohio App. 147, 154, 57 N.E.2d 932, 936 (1943). In 27 WORDS AND PHRASES 544 (perm. ed. 1940) more than twelve pages are devoted to the crimes that do and do not involve moral turpitude.

9. BL. DICT., 1765 (3rd ed. 1933): "Everything done contrary to justice, honesty, modesty, or good morals"; BOUVIER, LAW DICT., 2247 (Rawles 3d Rev. 1914): "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man"; WEBSTER, DICT., 1593 (2d ed. unab. 1947): "the quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita."

10. See *Bartos v. United States Dist. Court of Neb.*, 19 F.2d 722, 724 (8th Cir. 1927); *Pippin v. State*, 197 Ala. 613, 616, 73 So. 340, 342 (1916).

11. See *Drazen v. New Haven Taxicab Co.*, *supra* note 3 at 507, 111 Atl. at 863.

12. *Fong Haw Tan v. Phelan*, 162 F.2d 633 (9th Cir. 1947) (murder), *rev'd on other grounds*, 333 U.S. 6 (1948).

13. *Ng Sui-Wing v. United States*, 46 F.2d 755 (7th Cir. 1931) (rape); *Grievance Committee v. Broder*, 112 Conn. 263, 152 Atl. 292 (1930) (adultery).

14. See *In re Dampier*, 46 Idaho 195, 202, 267 Pac. 452, 454 (1928).

15. See *Bartos v. United States Dist. Court of Neb.*, *supra* note 10 at 724.

16. See *Du Vall v. Board of Medical Examiners*, 49 Ariz. 329, 339, 66 P.2d 1026, 1031 (1937); *In re Dampier*, *supra* note 14 at 202, 267 Pac. at 454.

17. *Rousseau v. Weedon*, 284 Fed. 565 (9th Cir. 1922).

18. *Maita v. Haff*, 116 F.2d 337 (9th Cir. 1940); *Riley v. Howes*, 17 F.2d 647 (S.D. Me. 1927), *rev'd on other grounds*, 24 F.2d 686 (2nd Cir. 1928). *But cf. United States ex rel. Iorio v. Day*, 34 F.2d 920 (2nd Cir. 1929); *Skmetta v. Coyhendall*, 16 F.2d 783 (N.D. Ga. 1926), *aff'd*, 22 F.2d 120 (5th Cir. 1927).

19. *United States ex rel. Manzella v. Zimmerman*, 71 F. Supp. 534 (E. D. Pa. 1947) (rationale: the necessarily inherent element of baseness, vileness, or depravity was absent).

20. *United States ex rel. Guarino v. Uhl*, 107 F.2d 399 (2nd Cir. 1939).

21. See *United States ex rel. Manzella v. Zimmerman*, *supra* note 19 at 537; *In*

turpitude varying from the vile and base acts referred to above<sup>22</sup> to acts like petty larceny,<sup>23</sup> receiving stolen goods,<sup>24</sup> and assault while intoxicated,<sup>25</sup> all involving a lesser degree of moral turpitude. Neither the severity of the punishment imposed<sup>26</sup> nor the categorical classification of crimes into mala prohibita and mala in se,<sup>27</sup> nor into felony and misdemeanor,<sup>28</sup> shed light upon the determinative standard. Lacking definiteness<sup>29</sup> there is no hard and fast rule as to what constitutes moral turpitude in other than the most heinous crimes so that resort is often made to the attendant circumstances of the offense to furnish a guide.<sup>30</sup> Thus the presence of moral turpitude is sometimes a question of fact and sometimes a question of law.<sup>31</sup> Wholly lacking in legal precision for want of an acceptable legal standard, its meaning is left to the process of judicial inclusion and exclusion and will vary much as the standards of society change.<sup>32</sup>

*re* Pearce, 103 Utah 522, 136 P.2d 969, 971 (1943). See note, 17 IOWA L. REV. 76, 80 (1931) (moral turpitude in effect "amounts to each court setting up its own standard of morality, and deciding what the public should think, rather than what it does think").

22. See notes 12-15 *supra*.

23. See *Wilson v. Carr*, 41 F.2d 704, 706 (9th Cir. 1930); *Tillinghast v. Edmead*, 31 F.2d 81, 83 (1st Cir. 1929); *United States ex rel. Amato v. Comm'r*, 18 F. Supp. 480, 481 (S.D. N.Y. 1937).

24. See *United States ex rel. Rydberg v. Reimer*, 17 F. Supp. 414, 415 (S.D. N.Y. 1936).

25. See *United States ex rel. Mazzillo v. Day*, 15 F.2d 391, 392, (S.D. N.Y. 1926).

26. See *United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757, 758 (2d Cir. 1933); *In re Jacoby*, 74 Ohio App. 147, 155, 57 N.E.2d 932, 936 (1943).

27. See *Jordan v. De George*, 71 Sup. Ct. 703, 710 and 711 n. 10 (1951) (dissenting opinion); *United States v. Carrollo*, 30 F. Supp. 3, 6 (W.D. Mo. 1939) ("moral turpitude must exist entirely apart from the fact that some statute has been violated").

28. See *United States v. Carrollo*, *supra* note 27 (A person may have been found guilty of a felony without having been found guilty of a crime involving moral turpitude).

29. See *United States ex rel. Ciarello v. Reimer*, 32 F. Supp. 797, 798 (S.D. N.Y. 1940); *United States ex rel. Berlandi v. Reimer*, 30 F. Supp. 767, 768 (S.D. N.Y. 1939); *United States ex rel. Shladzien v. Warden*, 45 F.2d 204, 205 (E. D. Pa. 1930); see *Bradway, Moral Turpitude as the Criterion of Offenses that Justify Disbarment*, 24 CALIF. L. REV. 9, 26 (1935) ("the term does not have a definite meaning in spite of judicial efforts to clarify it"); comment, 3 So. CALIF. L. REV. 46, 52 (1929) ("... to rely solely upon the phrase, moral turpitude, as giving an exact basis for decision is, apparently futile, as the term would seem to have no meaning more definite than 'very bad' . . ."). *But see* *Bartos v. United States Dist. Court of Neb.*, *supra* note 10 (the civil law says the commission of crimes "malum in se, infamous offenses and those classed as felonies involve moral turpitude—none others"); *Fort v. Brinkley*, 87 Ark. 400, 404, 112 S.W. 1084, 1085 (1908) (that moral turpitude had a positive and fixed meaning at common law).

30. See *Rudolph v. United States ex rel. Rock*, 6 F.2d 487, 488 (D.C. Cir. 1925); *In re Hatch*, 10 Cal.2d 147, 151, 73 P.2d 885, 887 (1937).

31. See *ex parte Edmead*, 27 F.2d 438, 439 (D. Mass. 1928); *In re Jacoby*, *supra* note 26 at 156, 57 N.E.2d at 936.

32. See *United States ex rel. Manzella v. Zimmerman*, *supra* note 19 at 537; *Kurtz v. Farrington*, 104 Conn. 257, 262, 132 Atl. 540, 541 (1926). See the discussion of moral turpitude in *Bradway*, *supra* note 29; Note, 43 HARV. L. REV. 117 (1929); comment, 4 DAK. L. REV. 29 (1932), 3 So. CALIF. L. REV. 46 (1929) ("it serves merely as a weird legal ghost, vague in its outlines and contour, to rock the complacency of the legal scholar who seeks for an understanding of the law").

All crimes involving the element of fraud<sup>33</sup> have been held to involve moral turpitude within the meaning of the deportation statute.<sup>34</sup> Fraud has been used as the test in determining whether lesser crimes involve moral turpitude.<sup>35</sup> State court decisions also show a unanimity of opinion that crimes tinged with fraud involve moral turpitude.<sup>36</sup> Since fraud against persons denotes moral turpitude,<sup>37</sup> *a fortiori* fraud against the government involves moral turpitude, "for such is malum in se, contrary to justice, honesty, principle and good morals."<sup>38</sup> Inasmuch as defrauding the government is found to be immoral, it is self-evident that conspiring to violate the revenue laws of the country involves moral turpitude.<sup>39</sup>

In a carefully written, analytical opinion, the Court judged the instant case upon the firmly imbedded touchstone of fraud. Accordingly, the alien was deported. The dissent presented many forceful and logical arguments against this result based chiefly upon the proposition that the phrase "crime involving moral turpitude" has no sufficiently definite meaning to be a constitutional<sup>40</sup> standard for deportation. Because of the penal nature<sup>41</sup> of deportation and the uncertainty of the phrase it is submitted that in the interest of uniformity and equal treatment before the law<sup>42</sup> Congress should set a more definite standard.

## EVIDENCE—BLOOD GROUPING TESTS IN PATERNITY SUITS

Plaintiff, in a suit for support of herself and child, objected to defendant's motion for an order compelling a blood grouping test. By

33. *Maita v. Haff*, *supra* note 18 (engaging in business of distiller of alcohol with intent to defraud the United States of tax); *Guarneri v. Kessler*, 98 F.2d 580 (5th Cir. 1938), *cert. denied*, 305 U.S. 648 (1939) (conspiring to smuggle alcohol into the United States with intent to defraud the government in violation of the Tariff Act of 1930); *Mercer v. Lence*, 96 F.2d 122 (10th Cir. 1938) (conspiring to defraud a person by deceit and falsehood); *United States ex rel. Popoff v. Reimer*, 79 F.2d 513 (12th Cir. 1935) (fraudulently aiding an alien not entitled to naturalization to obtain citizenship); *United States ex rel. Robinson v. Day*, 51 F.2d 1022 (2d Cir. 1931) (forgery, since it involves an intent to defraud); *United States ex rel. Medich v. Burmaster*, 24 F.2d 57 (8th Cir. 1928) (concealing assets from trustee in bankruptcy); *Ponzi v. Ward*, 7 F. Supp. 736 (D. Mass. 1934) (using mails to defraud); *United States ex rel. Millard v. Tuttle*, 46 F.2d 342 (E.D. La. 1930) (incumbering mortgaged property with intent to defraud); *United States ex rel. Portada v. Day*, 16 F.2d 328 (S.D. N.Y. 1926) (willful intent to defraud by issuance of check without funds under California law).

34. See note 1 *supra*.

35. See *United States ex rel. Berlandi v. Reimer*, 113 F.2d 429, 431 (2d Cir. 1940).

36. See *Jordau v. De George*, 71 Sup. Ct. 703, 706 n. 13 (1951).

37. *United States ex rel. Medich v. Burmaster*, *supra* note 33; *United States ex rel. Millard v. Tuttle*, *supra* note 33.

38. See *United States ex rel. Berlandi v. Reimer*, *supra* note 19 at 769.

39. *United States ex rel. Berlandi v. Reimer*, *supra* note 19.

40. The argument is that the statute is penal, and since it does not provide a definitely ascertainable standard, it is "void for vagueness" under the "due process clause," U. S. CONST. AMEND. V.

41. See *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948), *reversing* 162 F.2d 633 (9th Cir. 1947) (deportation is equivalent to banishment or exile).

42. As against citizens the alien suffers the additional penalty of deportation.