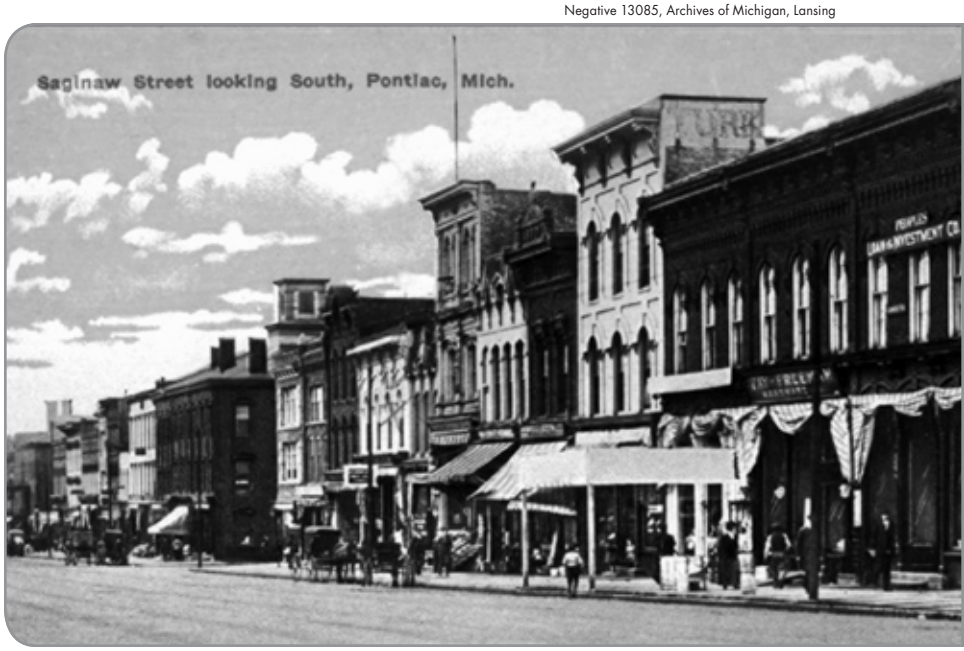
People v Beardsley

Law and Morals in the Industrial Age

150 Mich 206 (1907)

Negative 13085, Archives of Michigan, Lansing



Pontiac City Scene Postcard, Saginaw Street looking south.

As the Michigan Supreme Court entered the twentieth century, it began to deal with the problems of the urban and industrial transformation of America that were hinted at in *Sherwood*. The great cases of the first half of the new century concerned crime, compulsory sterilization, labor unrest, and civil rights.

The Supreme Court grew along with the state. Michigan's population doubled between the time of the Civil War and 1880 to 1.3 million people; it rose from the 16th to the 8th most populous state in the Union. In 1905, the legislature increased the size of the Court from five to eight justices, and lengthened their terms from seven to eight years. As an indication of the esteem in which the Court was held, a new state constitution in 1908 made almost no alterations to the Court. Indeed, the constitution's language regarding the common law seemed to strengthen the Court's power. While the 1850 constitution declared that the common law was to remain in force until "altered or repealed *by the Legislature,*" the 1908 constitution said that it was to remain in force until "altered or abolished."[1]

The first leading case of the twentieth century established a new standard in a difficult area of the law—crimes of omission. Carroll Beardsley spent a long weekend of intoxication with his paramour, Blanche Burns. When Burns took too much morphine, subsequently overdosing, Beardsley did not seek medical attention for her and was convicted of manslaughter when she died. The Supreme Court overturned the conviction and released Beardsley, holding that, whatever his *moral* obligation to Burns might have been, he had no *legal* duty to help her.

The case came out of Pontiac, a burgeoning Michigan industrial city, in 1905. The city, named after the Native American chief who led a great rebellion of northwestern tribes against the English in 1763, bestrode the Clinton River and was the site of grist mills and woolen factories in the early nineteenth century. The railroad arrived in 1844, and new manufacturers located there, particularly wagon and carriage makers, which turned into automobile makers around the turn of the century. By 1870, Pontiac was the fifth most populous city in the state. In 1909, only a few years after the events in *Beardsley,* General Motors would purchase several early automobile factories in Pontiac, and the city became a G.M. town. Michigan was taking the next step in its economic development, from timber and mineral extraction and processing to heavy manufacturing—especially autos—which would dominate the state economy for the century.

Carroll Beardsley lived in Pontiac and worked as a clerk and bartender at the Columbia Hotel. When his wife was out of town, he spent a weekend with Blanche Burns, who worked at another Pontiac hotel. They had been having an affair for some time. The couple drank steadily throughout the weekend, Beardsley using his fireplace-attendant boy to deliver beer and whiskey. As Beardsley began to prepare the house for his wife's return, Burns sent the boy to a drugstore for morphine and camphor.

Though Beardsley was as intoxicated as Burns, he perhaps suspected that she was attempting suicide, and knocked the morphine tablets out of her hand, crushing several of them. She managed to take three or four grains and lost consciousness. Beardsley had the fireplace boy take her into a downstairs room occupied by a Mr. Skoba, and put her to bed. Skoba helped the boy carry Burns, but eventually became alarmed at her condition. On Monday evening he called the city marshal and a doctor, who confirmed that she was dead. Beardsley was prosecuted for manslaughter in Oakland County Circuit Court; he was convicted and sentenced to one to five years in Jackson state prison.[2] Beardsley appealed his conviction to the Supreme Court, which heard the case in April 1907.

The great names of the mid-nineteenth century Court had passed away—Benjamin Graves, the last of the "Big Four," having died the previous year. The legislature had enlarged the Supreme Court, from four to five justices in 1888 and then to eight justices in 1905. The Court had returned to the completely Republican cast that it had in the 1860s. Of the five justices who heard Beardsley's appeal, all but one had been born in Michigan, and all but one had experience on the circuit court level before election or appointment to the high court. Chief Justice Aaron V. McAlvay rendered the decision in December 1907.

The prosecution's argument was that Beardsley had a legal duty to care for Burns, and that he had so grossly neglected that duty as to be responsible for her death. Of course, Beardsley was not guilty of murder, for the common-law definition of murder was a killing that included premeditation and malicious intent. This was not even "voluntary" manslaughter, a homicide resulting from a fit of passion (as in *Maher*) or the by-product of another crime such as robbery. It was "involuntary" manslaughter, or criminally negligent homicide, of a peculiar kind. Anglo-American law has had particular difficulty defining such crimes of "omission."[3] The expression "criminally negligent" shows that jurists find it difficult to distinguish private wrongs (torts) from public wrongs (crimes). Anglo-American criminal law depended on intent—the *mens rea*. But negligent actions assume a lack of intent. Certainly Beardsley's negligence could be the subject of a civil suit for damages brought by Burns' heirs. In such a suit, they would have to meet easier standards of proof (preponderance of evidence) than in a criminal case (guilt beyond a reasonable doubt); but Beardsley would only have to pay monetary damages, not face prison or execution.

Wikipedia contributors, "Opiate," *Wikipedia, The Free Encyclopedia*, http://en.wikipedia.org/w/index.php?title=Opiate$oldid=225852248 (accessed August 27, 2008)

Morphine advertisement from the January 1900 edition of the *Overland Monthly*.

Morphine was a readily available, over-the-counter opiate in nineteenth-century America. Perhaps tens of thousands of soldiers had become morphine addicts during the Civil War; the drug was even more popular among middle-class women. Cocaine was also legally available and becoming popular around the turn of the century—often to treat morphine addiction; just as morphine was used to treat alcohol addiction. One historian observes: "A 1903 report of the American Pharmaceutical Association conceded that in many drugstores customers could obtain cocaine and morphine as easily as Epsom salts." Addicts could also readily purchase syringes and needles. Few states acted against drug use until well into the twentieth century.[1]

1. Courtwright, *Drug Laws and Drug Use in Nineteenth-Century America*, in Nieman, ed, *The Constitution, Law, and American Life: Critical Aspects of the Nineteenth-Century Experience* (Athens: Univ of Georgia Press, 1992), p 124.

The Court acknowledged that there were several situations that did impose a positive duty to care, in which people would be held liable for failure to act. Parents had such obligations to their children, as did husbands to wives and ship masters to seamen. People who voluntarily took on responsibility for dependents also placed themselves in such a position. Contracts could also create these duties. Finally, the state, by statute, could impose such obligations.

McAlvay found no such relationship in Beardsley's case. "We must," he said, "eliminate from the case all consideration of mere moral obligation." Beardsley and Burns knew what they were doing, McAlvay pointed out. Burns "was a woman past 30 years of age. She had been twice married. She was accustomed to visiting saloons and to the use of intoxicants." She had had previous "assignations" with Beardsley, the Pontiac bartender. These drinkers and adulterers "knew each other's character." The Court noted that Beardsley imposed no force or fraud on his partner. "On the contrary, it appears that she went upon this carouse with [him] voluntarily…. Her entire conduct indicates that she had ample experience in such affairs."

In short, their relationship was not the kind that imposed legal obligations. "Had this been a case where two men under like circumstances had voluntarily gone on a debauch together, and one had attempted suicide, no one would claim that this doctrine of legal duty could be involved to hold the other criminally responsible for omitting to make effort to rescue his companion." McAlvay asked, "How can the fact that in this case one of the parties was a woman change the principle of law applicable to it?" Quoting a similar federal case,[4] McAlvay concluded that Beardsley deserved "the just censure and reproach of good men; but this is the only punishment" that society imposed.[5]

Beardsley's principle sustained Michigan's tradition of liberal standards in criminal law. Stricter rules applied in other states. In Massachusetts, for example, an *au pair* was charged with second-degree murder in 1997 for causing the death of an infant by shaking. The trial judge told the jury that neither intent to kill nor even harm was needed for a murder charge. The judge eventually relented and entered an involuntary manslaughter verdict.[6] In Michigan, the Court of Appeals affirmed a second-degree murder conviction in a similar case, since the prosecution had proved malicious intent by "circumstantial evidence and reasonable inferences drawn therefrom."[7]

The *Beardsley* decision was strikingly modern and conservative at the same time. Its reduction of legal obligation to contractual relation sounded very much like the "will theory" at work in *Sherwood*. Even more remarkable was the premise of sexual equality—that the sex of the victim was of no significance in determining a man's guilt. This indicated the great strides toward legal equality that women had made in the nineteenth century. American courts had extended legal standing to married women to own property, for example, overriding the old common-law principle that "in law, husband and wife are one person, and that person is the husband"—i.e., that married women had no legal existence.[8] Michigan's 1908 constitution gave female property owners the right to vote on tax questions; women had gained complete

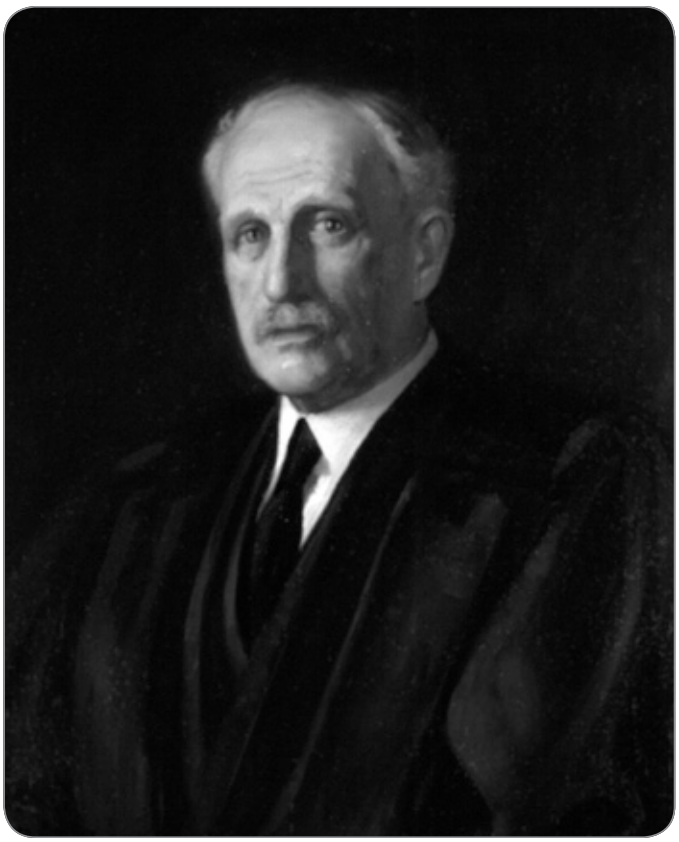


Image courtesy of the Michigan Supreme Court Historical Society

Official Court portrait of Justice Aaron V. McAlvay.

suffrage in several other states. At the same time, the decision seemed to be colored by traditional Victorian sexual moralism. Burns was little more than a prostitute; Beardsley did not have the same duty toward such a woman that he would have had toward a wife. In the opinion there was a hint, as one commentator later noted, of a "proclamation that the wages of sin is death."[9] This was in keeping with nineteenth-century state legislation and law that liberated contractual relations in the economic sphere but kept a tight rein on drinking, gambling, sexual vice, prostitution, and brutal sports. Even Congress intervened in this moral-cultural sphere, prohibiting the use of the mails to send "obscene" materials—including contraceptive information—in the 1873 Comstock Act.[10]

But the most remarkable legal aspect of the case, and one that marks it as profoundly modern, was the Court's rigid separation of law and morality—McAlvay's assertion that "We must eliminate from the case all consideration of mere moral obligation." Nineteenth-century American law, especially after the Civil War, saw the rise of "legal positivism." Positivists defined law as the will of the sovereign, a positive enactment, made by men. They rejected the traditional, natural-law view of law as a body of eternal, transcendent principles that legislators and judges "discovered." Oliver Wendell Holmes, Jr., the Massachusetts jurist who wrote *The Common Law* in 1880, was the leading exponent of this view. "I often doubt whether it would not be a gain if every word of moral significance could be banished from the law altogether," he wrote, "and other words adopted which should convey legal ideas uncolored by anything outside the law." He continued, "Manifestly… nothing but confusion of thought can result from assuming that the rights of man in a moral sense are equally rights in the sense of the Constitution and the law."[11] A New Hampshire decision about a decade before *Beardsley* made a similar point. "Suppose A, standing close by a railroad, sees a two-year-old babe on the track and a car approaching. He can easily rescue the child with entire safety to himself, and the instincts of humanity require him to do so. If he does not, he may, perhaps, justly be styled a ruthless savage and a moral monster; but he is not liable in damages for the child's injury, or indictable…for its death."[12] Whereas *Sherwood* gave expression to the classical natural-law view, *Beardsley* sounded the twentieth-century tocsin. The decision has been condemned, in the words of one commentator, for ignoring "any impulse of charity or compassion. It proclaims a morality which is smug, ignorant, and vindictive."[13]

But almost simultaneous with *Beardsley* was the emergence of a host of laws, state and federal, to protect people from the situation that Blanche Burns found herself in. The Pure Food and Drug Act of 1906, for example, required accurate labeling for drugs like morphine. The Mann "White Slave" Act of 1910 made it a federal offense to transport women across state lines for immoral purposes. The Harrison Narcotics Act of 1916 prohibited the use of cocaine and morphine without a physician's prescription. Many states had anticipated these federal acts, as governments began to restrict the often chaotic liberty unleashed in the nineteenth century. The United States Supreme Court accepted these acts of Congress over the objection that they usurped the police powers reserved to the states.[14] The "progressive" era began to eclipse the old, classical liberalism of the earlier period. ■

FOOTNOTES

1. *Sherwood v Walker,* 66 Mich 568; 33 NW 919 (1887).
2. Const 1850, sched 1 (emphasis added); Const 1908, sched 1. The 1963 Constitution used the phrase "changed, amended, or repealed."
3. *People v Beardsley,* 150 Mich 206, 206–209; 113 NW 1128 (1907).
4. Hughes, *Criminal omissions,* 67 Yale L J 590 (1958); Garner, *Unintentional homicide,* 36 Loyola of Los Angeles L R 1425 (2003).
5. *United States v Knowles,* 26 F Cas 800 (ND Cal, 1864).
6. *People v Beardsley, supra* at 206, 213–215.
7. *Massachusetts v Woodward,* 694 NE2d 1277 (Mass, 1997).
8. *People v Bulmer,* 256 Mich App 33; 662 NW2d 117 (2003).
9. "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage"—Ehrlich, ed, *Ehrlich's Blackstone* (New York: Capricorn, 1959), vol I, p 83.
10. Hughes, *supra* at 624.
11. Benedict, *Victorian Moralism and Civil Liberty in the Nineteenth Century United States,* in Niemen, ed, *The Constitution, Law, and American Life: Critical Aspects of the Nineteenth Century Experience* (Athens, GA, 1992).
12. Holmes, Jr., *The Path of the Law, in Collected Legal Papers* (New York: Harcourt, 1920), pp 179, 172.
13. *Buch v Amory Mfg Co,* 44 A 809, 810 (NH, 1897).
14. Hughes, *supra* at 624.
15. See, e.g., *Hoke v United States,* 227 US 308; 33 S Ct 281 (1913), upholding the Mann Act.