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A SHORT STUDY OF THE PHILIPPINE REVISED PENAL CODE

By JOSE A. JAVIER *

INTRODUCTORY

I. THE OLD PENAL CODE: NECESSITY FOR ITS REVISION

The Old Penal Code in force in the Philippines prior to January 1, 1932, was substantially the same as the Penal Code of Spain of 1870, with some minor changes recommended by the Code Committee for the Overseas Provinces or "Provincias de Ultramar" in order to suit local conditions. By virtue of the Royal Decree of September 4, 1884, the Code thus presented was ordered promulgated in the Philippines. In a subsequent Royal Decree dated December 17, 1886, the Code was directed to be promulgated in the "Gaceta de Manila", and was accordingly published in the "Gaceta" of March 13, 1887, and took effect on July 14, 1887. After the American Occupation, by Proclamation dated August 14, 1898, of General Merritt, then Commander of the Army in Occupation, it was ordered that this Code should remain in force.[1] Subsequent enactments of the Philippine Commission and the Philippine Legislature amended several provisions of this Code. Many of its provisions have been found inadequate to changed conditions and quite a number of them contrary to the Organic Law of the Islands and the spirit of American institutions introduced by the United States into the Philippines.[2] The need of a new code to take the place of the Penal Code with its harsh penalties, its recognition of monarchical forms, and its unbending rules has long been recognized.[3]

II. EARLY COMMITTEES APPOINTED AND THEIR PROJECTS

Since the implantation of American sovereignty in the Islands, public opinion had been clamoring for an amendment of the old Penal Code. Heeding this clamor, the legislative branch

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* LL.B. (University of the Philippines).

[1] Guevara, Essentials of Criminal Law and Criminology, page 12.

[2] Sinco, The Revised Penal Code, Philippine Law Journal, Vol. X, No. 4, page 155.

[3] Malcolm, Government of the Philippine Islands, p. 691.

of the government about twenty-seven years ago created a Commission composed of imminent lawyers and magistrates headed by the famous jurist, Mr. Justice Florentino Torres, to prepare a new code. On May 20, 1909, by authority of Act 1941, a Code Committee was created composed of well-known authorities in law to prepare among other codes, a new Penal Code. But the projects prepared by so eminent jurists were not converted into law.[4] The most famous and important of these projects is the so-called "Del Pan's Correctional Code of 1916". This was prepared by the late Rafael del Pan. The purpose of the Code as shown by its name is to advance with the science of Criminology and Penology. The author investigated widely all leading penal system of the world. His great idea was to present a Code which would relegate into the past antiquated notions of revenge upon the criminal in order to provide a modern system of freedom. The Correctional Code of 1916 will stand as a monument to his erudition and progresssiveness altho the Code failed to pass the Legislature.[5]

III. THE NEW COMMITTEE AND ITS REPORT

A. Creation and Membership

On October 27, 1927, the then Acting Secretary of Justice, Hon. Luis F. Torres, by Administrative Order No. 94, of the Department of Justice, created a Committee composed of Judge Anacleto Diaz, Chairman, Attorney Mariano H. de Joya, Attorney Guillermo B. Guevara, Acting Secretary of Justice Alexander Reyes, and Rep. Quintin Paredes, members. Judge Diaz had a long and efficient career as a fiscal and is at present a Judge of the Court of First Instance and professorial lecturer of the College of Law, University of the Philippines. Attorney de Joya is a leading member of the Philippine bar, a writer on legal subjects, a professor of law, once a fiscal and ex Judge of the Court of First Instance. Attorney Guevara as a City Fiscal for many years, an author of legal textbooks, a professorial lecturer in different law schools and a leading member of the Philippine Bar. Hon. Alexander Reyes is a writer of legal text-books, ex Solicitor General of the Philippines and now Acting Secretary of Justice. Rep. Paredes, is the Chairman of the Judiciary Committee of the Philippine

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[4] Speech of Representative Paredes, October 31, 1930, Diario de Sesiones, Vol. 5, No. 80, p. 1609; Albert, The Revised Penal Code Annotated, p. 5.

[5] Malcolm, The Government of the Philippine Islands, p. 691.

House of Representatives, a former Attorney General for the Philippines, Ex Secretary of Justice and a leading member of the Philippine Bar. Thus the Committee was composed of men peculiarly fitted and qualified from the practical and the theoretical points of view to undertake the difficult task of revising the Old Penal Code.[6]

B. Powers, Well Defined and Limited

According to said Administrative Order No. 94 the powers of the Committee were well defined, being limited to the preparation of "a revised draft of the Penal Code taking into consideration the following: (1) The penal legislation found in our statute books amending or in some manner affecting, the provisions of the Penal Code, with a view to incorporating them in the draft; (2) the rulings laid down by the Supreme Court in its decisions, applying, interpreting, or otherwise discussing the provisions of the Penal Code; and (3) the present conditions of the Islands, social and otherwise".

C. The Work Completed

The new Committee completed its work in ten months and Rep. Paredes submitted to the House of Representatives as Bill No. 577 the work thus completed. This Bill after undergoing substantial changes, additions and suppressions agreed upon by the House Committee on Code Revision, was converted into Bill No. 3366, which the Committee through Representative Paredes introduced on October 31, 1930, with additional amendments agreed upon after studying, with the cooperation of the Senate Judicial Committee, the Diaz Committee, and after hearing the opinions of practicing attorneys, professors of law, Bar Associations, Judges, Justices of the Supreme Court, Officers of the Government and members of both Houses of the Legislature, who were interested in the Bill. Therefore, it can be said that the Revised Penal Code, as it was presented, is not the exclusive work of anybody in particular. It is the result of the enthusiastic cooperation of the different elements that compose the legal profession with the executive, legislative and executive branches of the government.[7]

IV. Its Passage and Date of Application

The Bill was passed by both Houses of the Philippine Legislature and was approved by Governor General Dwight F. Davis on December 8, 1930.

[6] Sinco's The Revised Penal Code, Philippine Law Journal, Vol. X, No. 4, pp. 196, 197.

[7] Speech of Rep. Paredes Diario de Sesiones, Vol. V, No. 80, p. 1608.

By its Article I it was provided that Act 3815 now known as the "Revised Penal Code" will take affect on January 1, 1932.

PART I—GENERAL VIEW

I. GENERAL FEATURES

A. The Plan Adopted

The powers of the Committee being defined and limited according to the Administrative Order No. 94, it did not consider itself empowered to present a draft of a Penal Code which should be in harmony with the trend of the positivist school or of modern criminology. The New Penal Code is based on the principles of the Old or classical school altho many provisions of eminently positivistic tendencies were incorporated.[1] In general the provisions of the Penal Code that were not obsolete were conserved. The Committee suppressed those provisions that, responding to the peculiar political constitution of Spanish sovereignty and to certain principles and theories dominant at the time of the passage of the Old Penal Code, of necessity have to fall into disuse with the change of sovereignty. The Committee tried to adopt the Old Penal Code to the new order of things brought about by the democratic doctrines and the progress which have exercised a great influence in our mode of living and our customs.

B. Penal Provisions Not Included

Those provisions altho of a penal nature which are contained in complete and extensive laws of a civil and administrative character as the penal provisions of the Revised Administrative Code of 1917, were not incorporated in order that the respective laws in which they are a part may not be prejudiced. But those provisions of special laws that altered or substituted some parts of the Old Penal Code and also those laws of a penal nature contained in laws that are wholly and exclusively penal, were included.

C. Book Three of Old Penal Code Suppressed

Book Three of the Old Penal Code dealing with misdemeanors was suppressed. This is in conformity with the opinion generally accepted that legislation in matters treated by Book Three is within the competence of local governments to which the State delegate part of its police powers by the so-called "general welfare clause". Those misdemeanors of some

[1] Guevara, Commentaries on the Revised Penal Code, p. 2.

importance are considered in the Revised Penal Code as light felonies according to their form and concrete denomination with the corresponding penalties prescribed by Book Three of the Old Penal Code.

D. Miscellaneous Changes

Amendments, substitutions, and additions by words or phrases were made in order to clarify the text better in some, the necessity in others of inserting provision or provisions of special laws that amended the Code and, still, in others, in order to make the article or articles conform to judicial interpretations. Also, in order to attain clarification, simplification and coordination, the Committee whenever it was possible, grouped into one article matters related, connected or analogous or transferred an article or articles into its proper place.

In incorporating to the New Code the special laws that penalizes certain crimes, uniformity requires that the provisions be condensed by detailed enumeration and the imprisonment provided in such special laws are amended, adjusting them to the definition given in the New Code and to the system of penalties therein established by substituting for the periods of imprisonment generally fixed by the years the penalties of reclusion, prisión or arresto in its various degrees, according to each case. But in such substitutions, the length of penalties provided in such special laws were followed as much as possible, adjusting them however, to the general system of penalties.[2]

II. SOURCES OF DIFFERENT ARTICLES

There are five principal sources of the provisions of our Revised Penal Code, viz: (1) those contributed by the Committee; (2) The Old Penal Code (Spanish Penal Code of 1870; (3) The Proposed Correctional Code of 1916; (4) Enactments of the Philippine Commission and the Philippine Legislature; and (5) The New Spanish Penal Code of 1928.

A. Articles Contributed by the Committee

The following articles are those contributed by the Committee and hence are new provisions: Paragraph 4 of Article 2; Paragraph 2 of Article 4; Articles 59; 158; 169; 289; paragraph 6 of Article 316; paragraph 3 of Article 333; Article 345, and Article 357.

B. Proposed Correctional Code of 1916

The following articles are those taken in whole or in part from the Proposed Correctional Code of 1916; Articles 3; 72;

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[2] Speech of Rep. Paredes, Oct. 30, 1930, supra.

94-96; 98; 99; 113; 117; 118; 120-128; 130-135; 137; 138; 143-147; 149; 151; 153-155; 159; 161; 162; 167; 168; 170; 173; 178-185; 207-212; 223-225; 229; 235; 239; 258; 260-262; 267; 268; 271-278; 280; 314; par. 5, 316; 324; 329; 330; 341; 348-350; 352-355; 358; 363; and 364.

C. The Old Penal Code

Those rewritten in whole or in part from the Old Penal Code are the following articles: Paragraph 1, Article 4; 5-28; 30-46; 48-58; 60-79; 85; 87-93; 100-112; 118; 120-126; 128; 130-133; 135; 137-139; 145-149; 151-157; 160-162; 167; 171-188; 200; 201; 203-217; 220-223; 225-234; 236-271; 275-287; 290-305; 308-310; 312-318; 320-340; 342-353; 359; 363 and 365.

D. Special Laws

The following Articles were taken in whole or in part from the various special laws passed by the Philippine Commission and the Philippine Legislature: Articles 15; 23; 29; 39; 47; 62; 64; 80; 81; 82-86; 90; 94; 97; 114-116; 129; 134; 136; 139; 140-142; 144; 150; 159; 163-166; 168; 170-172; 176; 183; 186-199; 201-203; 213; 216-219; 234; 235; 247; 272; 274; 288; 302; 306; 307; 309-311; 315; 318; 319; 328; 334; 337-339; 343; 344; 353-356; 360-362.

E. The New Spanish Penal Code of 1928

Article 10; par. 6 of Article 11 and par. 9 of Article 13 were taken from Article 4, paragraph 2 of Art. 61 and No. 2 of Article 65, respectively, of the New Spanish Penal Code of 1928.[3]

III. ARRANGEMENTS

A. Book One

The Code is divided into two Books. Book One has a preliminary Title and five others. The preliminary title provides for the date of effectiveness and application of the provision of the Code. The other five Titles are as follows: Title One (Articles 1-15)—Felonies and circumstances which affect criminal liability; Title Two (Articles 16-20)—Persons Criminally Liable for Felonies; Title Three (Articles 21-88)—Penalties; Title Four (Articles 89-99)—Extinction of Criminal Liability and of Civil Liability and of Civil Liability Resulting from Crime and Title Five (Articles 100-113)—Civil Liability.

[3] Guevara, Commentaries on the Revised Penal Code; Revilla's Suplement to his Penal Code and Penal Acts.

B. Book Two

Book Two which deals with Crimes and Penalties is divided into fifteen Titles as follows: Title One (Articles 114-123)—Crimes against National Security and the Law of Nations; Title Two (Articles 124-133)—Crimes Against the Fundamental Laws of the State; Title Three (Articles 134-160)—Crimes Against Public Order; Title Four (Articles 161-186)—Crimes Against Public Interest; Title Five (Articles 187-194)—Crimes Relative to Opium and other Prohibited Drugs; Title Six (Articles 195-202)—Crimes Against Public Morals; Title Seven (Articles 203-245)—Crimes Committed by Public Officers; Title Eight (Articles 246-266)—Crimes Against Persons; Title Nine (Articles 267-292)—Crimes Against Personal Liberty and Security; Title Ten (Articles 294-332)—Crimes Against Property; Title Eleven (Articles 333-346)—Crimes Against Chastity; Title Twelve (Articles 347-352)—Crimes Against Civil Status of Persons; Title Thirteen (Articles 353-364)—Quasi Offenses; and Title Fifteen (Articles 366-367)—Final Provisions.

PART II—SALIENT FEATURES °

I. BOOK ONE

A. In General

Book One deals with the general provisions regarding the duties of enforcement and application of the provisions of the Code and regarding the defences and the persons liable for the penalties.

A noteworthy innovation along scientific lines is the division of the exempting circumstances originally provided for in Article 8 of the old Penal Code into two classes, viz: circumstances of justification (Article 11) and exempting circumstances (Article 12).[1]

The penalties applicable were simplified. The penalties of cadena, presidio, relegación, confinamiento, and extrañamiento, and the accessory penalties of degradación, and sujección a la vigilancia de la autoridad, that apply principally to crimes depending upon the constitution, practice, and predominant conditions of a former epoch, were suppressed. Only those of death, reclusion, prisión, arresto, destierro and fine as principal penalties and their accessories, were conserved. As a consequence all the provisions relating to the duration, effects and application of the penalties suppresed were eliminated. The

[1] Guevara, Commentaries on the Revised Penal Code, p. 20.

provisions of the Old Penal Code for the execution of the penalty of death were substituted by the provisions of Act 3104 of the Philippine Legislature.

Except the reduction in the number of penalties demanded by the circumstances, no innovation of importance was made in the general part or Book One of the Code.[2]

It will be noticed that the Revised Penal Code embodied with the exception of those eliminated as before mentioned, all the other penalties contained in the Old Penal Code. This is so complicated that only very few lawyers and Judges can ascertain the duration of the penalty in a given case without the help of Viada's syncromatic scale. Considering the fact that the classification of penalties as contained in the Old Penal Code had lost its significance it had during the Spanish Regime, and considering further the inconveniences which such a system of graduation of penalties, involves, it is more practical and advisable to do away with the mention and inclusion of penalties of reclusion perpetua, reclusion temporal, prisión mayor, prisión correccional, and arresto mayor and to provide flat penalties of specific number of years instead of the present terms and classifications which is complicated and inconvenient in ascertaining penalties for particular cases.[3]

B. Scope of Application of its Provisions

Article 2, which is based on Article 2 of the Proposed Correctional Code of 1916, provides as follows:

> "Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:
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> 1. Should commit an offense while on a Philippine ship or airship.
> 2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands.
> 3. Should be liable for acts connected with the introduction into these Islands of the obligations and securities mentioned in the preceding number.
> 4. While being a public officers or employees, should commit an offense in the exercise of their functions; or
> 5. Should commit any of the crimes against national security and the law of nations, defined in Title one of Book Two of this code."

Thus, by the foregoing article the provisions of the Code extends outside the territorial jurisdiction of the Philippines

[2] Rep. Paredes, Speech on October 30, 1930, supra.

[3] Camus, Some Objectionable Provisions of our Revised Penal Code, P.L.J. Vol. XI, No. 3, p. 90.

against those persons enumerated therein. The general rule is that the force and effect of penal laws must be co-extensive only with the national territory, but, this rule admits of some exceptions. The most important of these exceptions are: (1) Those crimes against national security; (2) Those crimes that threaten the credit of the State and (3) Piracy. As to whether this exterritoriality applies both to its citizens and foreigners for crimes committed by them in foreign countries, there is a conflict of opinion. Our Code makes no distinction so that it applies to both citizens and foreigners who shall commit abroad any of the acts mentioned in Article 2. This may give rise to international complications.[4]

I. EXTENT OF TERRITORY

By territory according to said Article 2 is understood the area comprised within its frontiers and the following:

(1) The maritime zone or territorial sea within a three mile limit of its shores. Along a stretch of open coast line the dominium of the territorial power extends seaward to a distance of three miles from the low water mark. This rule was introduced at the beginning of the last century as a practical application of the principle laid down by Bynkerhock and others to the effect that a state's dominion over the sea should be limited to that portion of it which she can control from the land by means of her artillery and since at that time the longest range of cannon shot was about three miles, the following maxim: *Terrae dominium finitur armorium vis* seemed to dictate the marine league as the appropriate distance.[5]

(2) The atmosphere or air space. Concerning the question whether states can possess the air there are three theories. According to the first the air space above state territory is as completely subject to state sovereignty as is the territory itself. The second theory holds the air, like the open sea, open to free navigation by all aircrafts subject to the right of states to provide for the security of their territory. According to the third theory which is the most rational, the sovereignty of the subjacent state and therefore of its penal laws extends to the air space which covers its territory subject to a servitude in favor of foreign aircrafts.[6]

(3) Philippine vessels or aircrafts altho in the high seas are considered part of the national territory and therefore all

[3] Lawrence, Principles of International Law, 7th ed. p. 143-144.

[4] Albert, Revised Penal Code Annotated, p. 12.

[5] Lawrence, Principles of International Law, 7th ed. p. 138.

crimes committed thereon must be tried by the Philippine Courts in accordance with the provisions of Act 400 of the Philippine Commission. In case that vessels are in the territorial jurisdiction or waters of a foreign country, a distinction must be made between a merchant ship and a war ship, the former are more or less subject to the territorial laws while the latter are considered to be the territory of the country to which they belong and can not be subjected to the laws of another state.

In the case of U. S. vs. Fowler,[7] it was held that the Courts of First Instance of the Philippines have no jurisdiction over crimes committed on the high seas on board a transport or other vessels not registered or licensed in the Philippines.

There are two fundamental rules in International Law regarding jurisdiction to punish crimes aboard foreign merchant vessels: The French rule, according to which crimes should not be prosecuted in the courts of the territory within which they are committed unless their commission affects the peace and security of the territory; and the English rule based on the territorial principle followed by the United States according to which crimes are in general triable in the courts of the country within whose territory they are committed. The last rule contains in this jurisdiction.[8]

In the case of U. S. v. Bull,[9] the Supreme Court held that the offense of failing to provide suitable means for securing animals while transporting them on a ship from a foreign port to a port in the Philippine Islands is within the jurisdiction of the Courts of the Philippines when the forbidden conditions existed during the time the ship was within territorial waters regardless of the fact that the same conditions existed when the ship sailed from the foreign port and while it was on the high seas.

2. REASONS FOR ITS EXTERRITORIAL APPLICATION

The reason for the exterritorial application of the penal laws to persons described in paragraph 2 and 3 is that bonds and obligations issued by the State deserved the greatest protection since their alteration or falsification would endanger the public treasury to the grave prejudice of the community.

Paragraph 4 of Article 2 is a new provision and the reason behind it is the fact that public officers who are the depository

[7] 1 Phil. 614.

[8] People vs. Wong Cheng, 46 Phil. 729.

[9] 15 Phil. 7.

of public trust, may easily commit crimes to the detriment of the public interest once they are in a foreign land. This provision removes the bar to their prosecution before the Philippine Courts.

The reason behind par. 5 of Art. 2 is that national safety requires the enforcement of the penal laws upon those who threaten the national existence. It is based on the primary right of states of self-preservation. In connection with the last part, piracy being a crime against all mankind, it may be punished by any civilized government.[10]

C. Impossible Crimes

Article 4, paragraph 2, a contribution of the Committee, is a new provision enacted in connection with Article 59, also a new provision. Said par. 2 of Article 4 follows: "Criminal liability shall be incurred: (2) By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means." Article 59 provides as follows: "When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of arresto mayor or a fine ranging from 200 to 500 pesos." These provisions penalize the so-called "impossible crimes" that is, those acts which although with evil intent do not produce the injury which the culprit desired due to the ineffectiveness of the means employed to the absence of a real objective or to the impossibility of the end. Thus, a person will be guilty of this offense when he attempts to poison another with common salt believing it to be arsenic or when a person tries to murder a corpse. The acts performed altho not dangerous reveals a criminal intent and manifests the danger which may come from the actor who has shown himself to be a dangerous person to society.[11] This is a concession to the positivist school of criminology. According to this school, criminal responsibility is based upon the

[10] Guevara, Commentaries on the Revised Penal Code, pp. 4-5.

[11] Capistrano, The Revised Penal Code, P.L.J. Vol. XI, No. 8, p. 246; Guevara, Commentaries on the Revised Penal Code, p. 12.

criminal's dreadfulness or dangerous state. Its foundation is that man is liable for external acts done by him, only because he lives in society and so long as he lives therein. It is the right and mission of society to provide for its own defense from the moment the condition of physical imputability appears. Society has the right to defend its existence against all those who menace it, but the only guiding criterion for the investigation of defensive means is the personal dangerous condition or dreadfulness. Garofalo defines dreadfulness as "the constant and active perversity of the delinquent and the amount of foreseen evil which is to be feared from the delinquent himself."[12] The classical school of criminology on the other hand does not punish these acts as attempted nor as frustrated offense for they claim that an impossible attempt is not really an attempted crime because there could be no commencement in the execution of that which is impossible to be executed and the acts are merely an evidence of criminal intent but these alone are not sufficient to subject the actor to penalty.[13]

The Spanish Supreme Court, and the commentators Silvela, Groizard and Viada sustain the view that the so-called "impossible crimes" were not punishable. They fail to perceive the danger that lurks in the criminal intent of the individual—his dreadfulness. It is true that the act of the offender in itself is harmless, but it reveals the criminal's dreadfulness or dangerous state and it is only just that society defend itself from such a criminal personality.

It is interesting to note that Art. 41 of the new Spanish Penal Code of 1928, penalize the act as frustrated or attempted crime according to the circumstances of the case.[14]

D. State of Necessity as a Justifying Circumstance

Article 11, par. 4 provides as follows: The following do not incur any criminal liability: 4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:

1. That the evil sought to be avoided actually exist;
2. That the injury feared be greater than that done to avoid it;
3. That there be no other practical and less harmful means of preventing it.

[12] Guevara, Essentials of Criminal Law and Criminology, p .6.

[13] Cuello Calon, Derecho Penal, p. 375, Dec. of the Supreme Court of Spain, Nov. 26, 1879; Capistrano, The Revised Penal Code, supra.

[14] Albert, Revised Penal Code Annotated, pp. 34-35, 202-203.

The provisions of Article 7 par. 8 of the old Penal Code provides: "Any person who, in order to avoid an evil or injury does an act which causes damage *to the property* of another, etc." The New Code omitted the words "the property of" and merely says "damage to another." According to Attorney Guevara, a member of the Committee in his Commentaries on the Revised Penal Code, p. 33, this omission of the words "the property of" is an improvement on Art. 7 par. 8 of the Old Penal Code. He claims that this Article does not only apply to conflicts between property or rights which demanded the destruction of one or of some for the benefit of others but also to a conflict between two lives which would demand the destruction of one in order that the other be saved.

The state of necessity is a case of conflict between property or rights which demand the destruction or diminution of one or some of them for the benefit or safety of other or others, "The state of necessity," says Liszt, "is a state of actual danger for interests juridically protected in that there is no other salvation than the violation of the interest also protected by law belonging to another individual."

The classic writers especially the latins, as a general rule, do not employ this designation, state of necessity, which is of germanic origin, nor is it studied as one specific cause of exemption from liability but they considered it as one case of *force majeure,* and, therefore, as a cause of exemption from liability for the absence of free will. "The proper essence of moral violence," says Pessina, "is in that free will has disappeared because the will has no longer before it an infinite variety of possible acts from which to elect, but it is confronted with only two ways, one of which it must follow forcibly." For Carrara, who employs incidentally the designation of state of necessity, in this case there is free will, for it includes one who forces one's self to do a thing, an act which could be imputed to him as his own (absolute imputability) but not an unlawful act (relative imputability); so that we can say that the act is imputable but not incriminating. The foundation of the exemption, according to Carrara, is in fact the fear, by law the cessation of the right to punish which correspond to society. These penalists almost identify the state of necessity with lawful defense, for they consider them as two different cases of only one cause, which is moral violence.[15]

[15] Cuello Calon, p. 308.

The cases of state of necessity may be divided into two groups. The first group are those in which property or rights in conflict are of different value, for example, property and human lives are in conflict as when the captain of a steamer throws overboard the cargo in order to save the lives of the passenger; a starving individual takes possession of food materials; or certain property comes into conflict with other property of much higher value. In these cases the unanimous opinion declares the impunity of the necessary act because it is a conflict of property which can not coexist so that the more important must be saved, even at the sacrifice of the less important but the person for whose benefit such act was realized ought to be obliged to repair the injury caused. The state of necessity which we have examined has the true character of a cause for justification, for altho the person whose property or rights were sacrificed can not be blamed, altho such person has not by this conduct brought about such a state of necessity, the act realized is just and the injured person can not oppose the act of sacrificing his property. Could it be conceived that the law protects the owner of the goods who, with a revolver in his hand, threatened to prevent the throwing of the goods overboard in order to save the lives of the passengers? In this case the disproportion between the value of the property in conflict is such that publicists speak of it as a true right of necessity.

The second group is when the things in conflict are of equal value, especially when they are human lives, the problem becomes complicated in an extraordinary manner. The examples of these cases of state of necessity which could be cited are numerous: the classic example is when in a shipwreck a person in the point of drowning forces his companion to abandon a floating wood thereby causing the latter to be drowned and the analogous cases of shipwrecked individuals who lacking any food are forced to eat their companions and the cases where a person knocks down, injures or even causes the death of another in order to save his life in cases of fires, shipwrecks, earthquakes etc.

The act of one who in order to save his life caused the death of another is not a justifiable act, nor in this case of state of necessity could we consider such an act as a cause of justification, because the right of the person sacrificed is just as legitimate as that of the sacrificer. The act realized is not just nevertheless it is not punishable. All the publicists are in ac-

cord concerning the impunity of such acts. What is the reason for this impunity? Numerous theories have been formulated to justify the impunity of these acts. Sermet sumarizes them as follows: 1. Back to state of nature; 2. The Violence; 3. Theory of Mix actions, semi-voluntary-semi forcible; 4. Human Frailty; (Instinct of preservation); 5. Inutility of penal laws; 6. Lack of dreadfulness; 7. Theory of simple civil offense; 8. Extra-juridical question; 9. Life is an absolute right superior to all others; 10. Conflict of rights; 11. Conflict of property.

The true reason according to Cuello Calon rest in the fact that such acts are neither just nor unjust, neither illicit nor permitted, they are outside the domain of the penal law, "it must be accepted as an act caused by fate, an unavoidable misfortune.[16]

The canon law excuses the sacrifice of the life of one person, when actually necessary for the preservation of the life of another, and when the two are reduced to such extremities that one or the other must die for the reason that *quoniam necessitas legem non habet* (necessity has no law) and *quod non est licitum in lege necessitas facit licitum* (That which is not licit under the law, necessity makes licit). This view is also sustained under the common law.[17]

With all due respect for the opinion of the member of the Committee, it is submitted that the word "damage to another" as used in Art. 11, par. 4, does not include homicide through necessity, because it does not satisfy the second requisite, viz: "That the injury feared be greater than that done to avoid it", inasmuch as one life is just as precious as another and has just as much right to live as another. But, as already pointed out, homicide through necessity is not punishable because it is beyond the pale of penal laws, as being an "unavoidable misfortune." Homicide through necessity may come under Article 12, paragraph 6 of the Revised Penal Code, which provides that "Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury", is exempt from criminal responsibility.

E. Relation of Certain Articles to the Pardoning Power of the Governor General

Section 21 of the Jones Law grants to the Governor General exclusive pardoning power. It provides: "He is hereby

[16] Cuello Calon, Derecho Penal, pp. 308-311.
[17] Wharton, Criminal Law, sec. 126, 641-642.

vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures." There are some articles of the Revised Penal Code which touch upon the pardoning power. Among them are Articles 27, 40, 41, 42, 43 and 160. Article 27 provides as follows:

> "Any person sentenced to any of the perpetual penalties *shall be pardoned* after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon."

Article 160 is as follows:

> "Besides the provisions of rule 5 of Article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.
>
> Any convict of the class referred to in this article, who is not a habitual criminal, *shall be pardoned* at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching such age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency."

By the use of the word "shall be pardoned" the prisoner is entitled as a matter of right to be pardoned. The question arises whether this is not an encroachment upon the exclusive pardoning power of the Governor General and hence unconstitutional under the Jones Law. In the leading case of Ex parte Garland,[18] Mr. Justice Fields speaking of the power of the President to grant pardon, said "The power thus conferred is unlimited with the exception stated. It extends to every offense known to the law. It may be exercised at any time after the commission, either before legal proceedings are taken, or during their pendency or after conviction and judgment. *This power of the President is not subject to legislative control.* Congress can neither limit the effect of his pardon nor excludes from its exercise any class of offenses. The benign prerogative of mercy reposed in him can not be fettered by any legislative restrictions." Our Supreme Court in the case of U.S. vs. Guariña,[19] stated that "The power to pardon when exercised by the Chief Executive in favor of certain persons convicted of public crime is unlimited, the exercise of that power lying in his absolute and uncontrolled discretion. The reason for its exercise not open to judicial inquiry or review, and, indeed, it would appear that he may act without any reason, or at least

[18] 4 Wallace, 333.

[19] 30 Phil. 85.

without any express reason in support of his action * * *." Speaking of the scope of the pardoning power, Mr. Chief Justice Taft of the United States Supreme Court in the case of Ex parte Grossman [20] said: "Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the court power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive for special cases. To exercise it to the extent of destroying the deterrent effect of judicial punishment would be to prevent it; but whoever is to make it useful must have full direction to exercise it." Thus it would seem reasonable to conclude that the legislature cannot limit the effect of the pardoning power of the Governor General nor exclude from its exercise any class of offenders.[21] In the exercise of this power the Governor General must use his own discretion, understanding and judgment "unfettered by legislative restrictions." Now, according to Article 27 of the Revised Penal Code any person sentenced to perpetual penalty after undergoing the penalty for thirty years, *shall be pardoned* unless by reason of his conduct or other serious cause he is considered by the Chief Executive as unworthy of pardon. Par. 2 of Article 160 contains a similar provision as regards certain convicts reaching the age of seventy. Altho both articles contain provisions which vest in the Chief Executive the right to determine whether they are worthy of pardon, yet, it is patent that if the Chief Executive consider them as worthy of pardon, the Governor-General has no other recourse than to pardon them inasmuch as both Articles provide that such prisoners *"shall be pardoned."* It is submitted, therefore, that to the extent that said articles control or restrict the discretion of the Governor-General to pardon a criminal under the conditions specified in said articles if in his discretion said prisoners are worthy of pardon, such articles encroach on the exclusive pardoning power of the Governor-General and are therefore unconstitutional. For, in the ultimate analysis, the legislature provided for the conditions the happening of which would compel the

[20] 267 U. S. 87.

[21] Sinco, Philippine Government and Political Law, p. 178.

Chief Executive to pardon the criminal whether the Governor-General likes it or not.

The provisions of Articles 40, 41, 42, and 43 limit the effect of pardon and prescribe the method by which certain punishment of accessories to certain punishments may be pardoned, and the question arises whether the Legislature may legislate in detail on this field in view of the above quoted provision of the Jones Law.

Article 40 provides as follows:

"The death penalty, when it is not executed by reason of commutation or pardon, shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date of sentence, *unless such accessory penalties have been expressly remitted in the pardon.*"

Article 41 is as follows:

"The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be; and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon."

Articles 42 and 43 refers to the accessory penalties of prisión mayor and prisión correccional, respectively. They both contain similar provisions as article 41, viz: "although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon."

Mr. Justice Fields enunciated the now classic statement of the sweeping and far-reaching effect of pardon in the leading case of Ex parte Garland.[22]

He said:

"A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out the existence of the guilt, so that in the eyes of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

"There is only this limitation to its operation; it does not restore offices forfeited or, property or interests vested in others in consequence of the conviction and judgment."

In the light of the above quoted doctrine the effect of a full pardon is to remove the penalties and disabilities and re-

[22] 4 Wallace, 380.

stores to the prisoner all his civil rights but in the Articles of the Revised Penal Code under consideration, the legislature provided for the limitations to a full pardon, namely, that the offender should continue to suffer the accessory penalties specified therein although pardoned as to the principal penalties, unless the same have been expressly remitted in the pardon. Thus, the rule that a pardon remove the penalties and disabilities is reversed to the effect that a pardon does not include the accessory penalties unless expressly remitted. Bearing in mind the fact that the legislature can not limit the effect of the Governor General's pardon for it is without limitation and the doctrine enunciated in the above quoted statement of Mr. Justice Fields that " a pardon reaches both punishment prescribed for the offense and the guilt of the offender", it is submitted that the prcvsions relative to the effect of pardon on the accessory penalties of perpetual absolute disqualification and civil interdiction, perpetual absolute disqualification, perpetual special disqualification from the right of suffrage and perpetual special disqualification from the right of suffrage if duration of imprisonment exceeds 18 months provided in Articles 40, 41, 42 and 43 respectively, of the Revised Penal Code are limitations of the unlimited and exclusive pardoning power of the Governor-General provided in the Jones Law and hence to that extent said Articles are unconstitutional.

F. Civil Liability of the Offenders

Article 100 provides that "Every person criminally liable for a felony is also civilly liable." Article 104 provides that the civil liability includes (1) restitution, (2) reparation of damage caused; (3) indemnification for consequential damages. Articles 100 to 11 providing for the persons civilly liable for felonies and the extent of civil liability are substantially the same as articles 18 to 20, and 119 to 126 of the Penal Code. These provisions are antiquated for no recovery is provided for the so-called "moral damages" and the settled jurisprudence of this country generally allows ₱1,000.00 as damages to the heirs of the deceased in cases of murder and homicide, which unquestionably is grossly inadequate.[23] The provision of section 11 of Act 277 (Libel Law) which was repealed providing not only for actual pecuniary damages sustained but "also damages for injury to feelings and reputation" was not included in Art. 360, par. 3, and the inference is that only actual or pecuniary

[23] Capistrano, The Revised Penal Code, P.L.J. Vol. XI, No. 8, p. 253.

damage may be recovered in a civil action on a written defamation.[31]

Moral damages may be divided into two classes. The first are those "moral damages" such as the discredit that diminishes one's business, the vexations and annoyances that reduces personal activity, and lessens capacity to obtain wealth, in other words, "moral damages" that causes perturbation of an economic character whose valuation it is possible more or less to approximate. In this case it is opined that there is no doubt as to the responsibility. The reparation in this case has its foundation not in the "moral damage," but in the consequential prejudice to property.

There are other "moral damages" which are produced as a consequence of a crime which are limited to pain, anguish, sorrow, and others, but which moral afflictions do not have any repercussion of an economic character. In these cases a real difficulty is presented. Opinions are divided and while some deny responsibility for this kind of wrong others defend the existence of such responsibility. The former allege the impossibility of establishing a relation between the moral damage and its economic equivalent which admits of reparation—it being more of a penal character than a reparation or indemnity. The latter allege that the law which orders the reparation of actual pecuniary damages caused by crime ought not to except from it those caused to rights which are more sacred—"moral damage". As for the allegation of impossibility of establishing a relation between moral damage and its economic equivalent because of the different nature of corporate things, they answer that the determination of a damage is no other thing than a determination of the changes or modification produced in our enjoyments. The crime has produced pain, anguish, sorrow, etc., and if with money we can not return our lost happiness and moral well-being enjoyed before the crime, such money, nevertheless, can secure those means in other to attain new joys which can compensate those which were taken away by the crime.

The reparation of moral damages are now expressly admitted in the new penal codes of Argentina (Art. 29, par. 1) and Peru, (Art. 65, par. 3 and Art. 67) and incorporated in the civil legislation of Germany (sections 347, 847, 1300); of Austria—(Sections 1293-1341) in the law of obligations of

[31] Guevara, Commentaries on the Revised Penal Code, p. 689.

Switzerland (Art. 54) and it is a common knowledge that it is recognized in common law countries.[25]

It appears therefore that the Code Committee did not keep pace with the times as regards the civil liability of offenders.

II. BOOK TWO

A. *In General*

Those articles which on account of the change of sovereignty became obsolete were suppressed. These are the crimes of "Lesé Majesté", against the Council of Ministers, and also the forgery of the Royal signature or stamp and the signature of ministers. In the case of People vs. Perfecto,[1] the Supreme Court held that the crime of *lesé majesté* disappeared in the Philippines with the ratification of the Treaty of Paris. Ministers of the Crown have no place under the American flag.

B. *Delay in the Delivery of Persons Arrested to Judicial Authorities*

Articles 125 provides as follows: "The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of *one* hour."

This provision has been the subject of numerous comments, emanating from the constabulary and police. They contend that the period of one hour is altogether too short and would hamper them in the performance of their duties. On the other hand the old provision of 24 hours was the subject of complaints and criticisms. The Code Committee apparently headed these criticisms and so they reduced the period to one hour. Obviously, the time limit one hour is not only arbitrary but also unreasonable. If a peace officer apprehends a criminal in a place remote and distant from the poblacion in which there is no accessible means of transportation, such officer can not comply faithfully with his duty and the law. He can not reach and deliver the prisoner to the judicial authority within one hour and it is absurd that he will just take the prisoner's name and address and tell him to report to the poblacion. The old provision is also arbitrary because the arrest may be made in the town itself and the discretion of the officer to detain him for 24 hours would give rise to abuses on the part of unscrupulous and "zealous" ones. They

[25] Cuello Calon, Derecho Penal, pp. 475-476, note 14.

[1] 42 Phil. 887.

would be given chance to subject the prisoner to "third degree" a practice as reprehensible as it is unchristian. Judge Albert is of the opinion that it should not be given a literal interpretation and that the one-hour period should be applied to those cases where it is conclusively proven that within such period the officer could have turned over the prisoner to the judicial authority. To interpret it thus would make possible abuses on the part of peace officers who would not be able to surrender their prisoners within one hour because of the distance from the place of arrest and that of the judicial authority, for, then, there would be no time limit within which the peace officer shall surrender the prisoner. A bill was introduced by Rep. Medina to increase the time from one hour to six, but this too would be arbitrary for any fixed time limit would necessarily be arbitrary. It is submitted that the better means would be to punish only those cases of "wrongful delays" as used in Art. 93 of the Proposed Correctional Code of 1916 and in Section 1844 of the new Penal Law of New York.[2]

C. Violation of Parliamentary Immunity

A provision which has elicited numerous comments is the last part of Article 145 which has been dubbed as "Legislative immunity from arrest and search." Said portion of Art. 145 reads as follows:

> "* * * The penalty of prisión correccional shall be imposed upon any public officer or employee who shall, while the legislature is in session, knowingly arrest or search any member thereof, except in case such member has committed a crime punishable under this Code by a penalty higher than prisión mayor."

A scrutiny of this provision will disclose that the following are the elements of the crime punishable under said last part of the article: (1) That the person arresting is a public officer or employee, (2) That such a person knowingly arrest or search a member of the Legislature, (3) That the Legislature is in session and (4) exception is established in case such member has committed a crime punishable under the Code by a penalty higher than prision mayor.

It is therefore clear that provided the Legislature is in session, a member thereof is privileged from arrest or search for all crimes committed by them where the punishment is below prisión mayor which ranges from six years and one day to twelve years. There is no gainsaying the fact that the legis-

[2] Albert's Revised Penal Code Annotated, p. 311; Capistrano, The Revised Penal Code, P.L.J., supra.

lature is placed in a specially privileged condition. The question, therefore, is whether such immunity is valid when tested by the principles of constitutional law.

The constitutional system which *ipso facto* supersedes that of Spain upon the ratification of the Treaty of Paris is that of the United States. It is a system based on Anglo-Saxon principles which have for their basis the Common Law. It is opposed to prerogative rights and special privilege and places every man upon the same and equal plane in the eyes of the law. These rules were embodied in the Philippine Bill of 1902, in the Instruction of President McKinley to the Second Philippine Commission and also in Section 3, par. 1 of the Jones Law. Said section provides: "No law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the laws." These rules are embodied and explained in the famous statement of Mr. Justice Matthews in the case of Yick Wo vs. Hopkins.[3] He said:

> "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

And Mr. Justice Malcolm, in the case of People vs. Perfecto,[4] said "Our official class is not, as in monarchies, an agent and servant of the people themselves. These officials are only entitled to respect and obedience when they are acting within the scope of their authority and jurisdiction."

Presumably, the purpose of this law is not to shield the members of the legislature because of any sacredness in his person or to give him special treatment for his personal use or benefit, but, to prevent any interruption in the business of the legislature, to preserve it as a working unit and to keep unhampered in its exercise an agency of the state.

The question, therefore, in the last analysis is whether the means adopted by the legislature as a means of self-preservation is legally justifiable under our present form of government.

It is elementary that the criminal laws of a country are passed in order to protect itself—it is an attribute of sover-

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[3] 118 U.S. 356, 30 Law Ed. 220.

[4] 43 Phil. 887.

eignty arising out of its undoubted right of self-preservation. To let go a crime unpunished for a considerable length of time is to expose the State to serious danger. To say that a criminal legislator should not be arrested or searched during the period of the session after the commission of a crime endangering the existence of the state because such imprisonment would impair the regularity of the working of the legislature, is, like saying that the preservation of the legislature is more important than the preservation of the State; that the legislature can devise measures to protect itself and to destroy the state. To state these assertions is to show their absurdity.[5]

The Jones Law gives protection to legislative members to a certain extent and this is provided for in Section 18. Said section provides:

"The Senators and Representatives shall, in all cases except *treason, felony,* and *breach of the peace,* be privileged from arrest their attendance at the session of their respective houses and in going to and returning from the same."

The terms "treason, felony, or breach of peace" as used in the Organic Law has a well-defined and settled meaning. The phrase is taken from the United States Constitution and this in turn was taken from the Common Law. The United States Supreme Court in the case of Williamson vs. United States,[6] traced the history of the phrase and concluded that the terms "treason, felony and breach of peace," as used in the constitutional provision relied upon, excepts from the operation of the privilege all criminal offenses and refers simply to immunity from civil arrests.

The Philippine Legislature in providing in Article 145 of the Revised Penal Code immunity from arrest and search in criminal cases provided the crime is not punishable by a penalty not higher than prisión mayor has extended the express limitation of the privilege as stated in express terms in section 18 of our Organic Law. Inasmuch as it is a rule of interpretation that specific grants in the constitution may neither be extended nor limited by statutes, it is submitted that the last portion of article 145 of the Revised Penal Code quoted above is unconstitutional and void.

[5] Sinco, The Constitutionality of the Statutory Immunity of Legislators from Arrest and Search, P.L.J., vol. XI, No. 6, p. 182.

[6] 207 U. S. 425, 25 L. Ed. 278.

D. Killing of Spouse in the Act of Sexual Intercourse With Another Person

Article 247 provides as follows:

"Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill either of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro * * *."

This Article was based on Article 423 of the old Penal Code as amended by Act 3195, but its application was extended to a wife who surprised her husband in the act of committing sexual intercourse with another woman.

The provision of the Old Penal Code on which Article 247 was based was unanimously criticized in Spain as one indirectly authorizing the offended spouse to take away the life of the offender. They attacked what they called "the right to kill of the husband."

Another reason advanced for the suppression of the old provision is that the reason for its enactment in 1870, no longer exist. They contend that the authority of man has been waning by custom and his attributes in intimate and social life and his conception of honor are no longer in their former form. The offended husband does not need to kill the offender in order to avenge his honor because no one thinks that the infidelity of the wife dishonors the husband.

The campaign in Spain against said provision became successful and in the new Spanish Penal Code of 1928, the act was considered as having been executed under passion or obfuscation and merely as a special extenuating circumstance such that the offended spouse will have to suffer the penalty for the offense committed but lower by one degree. The first paragraph of Art. 523 of the new Spanish Penal Code of 1928 is follows:

"A quien sin estar separado legalmente ni de hecho de su conyuge sorprendiere a este en actos de adulterio, salvo el caso de que aunque fuera tacitamente lo hubiera consentido, y en el acto matare o hiriere a cualquiera de los adulteros o ambos, se le impondrán por el Tribunal una pena inferior a la señalada por la ley que estime adecuada, a su prudente arbitrio, al cual quedará tambien decidir si la condena ha de dejar de ser inscrita en los Registros de antecedentes penales."

The "Exposicion" which precedes the text of the law stated as the basis of the reform: (1) the recognition of the obfuscation which a person may suffer when he suddenly surprises the offending spouse in an act of adultery; (2) the equality of the spouses without distinction as to sex, and (3) the unright-

eousness of indirectly authorizing in any case the offended spouse to kill the offenders.

There is no foundation in fact for the objection that the old provision "gives the right to kill to the husband", because when the Code threatens with a punishment, even though how light such punishment may be, certain human acts, it can not be understood as consenting to the execution of such acts. What the code gives to the husband is an "absolute exemption" in case of light and less grave physical injuries and a special extenuating circumstance in case of death and grave physical injuries.

Another reason as stated above is to secure equality of the sexes, to place the woman on the same level as the man. At first glance it appears that the benefit inures as much to the husband that kills or wounds the wife as to the wife who wounds or kills the unfaithful husband. But it is a fact that the text of the New Spanish Code is "acts of adultery" and the unfaithful husband can not commit acts of adultery but concubinage. As a consequence the wife who surprises the husband in such acts, said husband is not found committing acts of adultery but concubinage and according to said Article 523, the extenuating circumstance can not be given. By a strange and pradoxical play of words the wife can only invoke the article when the husband has a mistress who is married and not separated from her husband, for in that case the husband commits acts of adultery, but the benign provision of Art. 523 is not applicable to the offended wife aggressor but to the husband of the married mistress. In which case the offended wife can not take advantage of the provision and hence the intended equality of the sexes is not attained altho the avowed purpose as contained in the "Exposicion" was to secure such equality.[7]

On the other hand, in Article 247 of our Revised Penal Code, both spouses may take advantage of such a benign provision. In the Philippines it is still considered a great dishonor against the husband if the wife becomes unfaithful and as to the objection that it in effect "gives the right to kill to the husband" such is not tenable as already adverted to because when the Code threatens with a punishment even how light such punishment may be, certain human acts, it can not be understood as consenting to the executing of such acts, much less does it give the actor a "right". What the Code concedes

[7] Luis Jimenez Asua and Jose Anton Oneca, Derecho Penal, conforme al Codigo de 1928, pp. 141-145.

to the offended spouse is "absolute exemption" in case of light and less grave physical injuries and special extenuating circumstance in case of death or grave physical injuries.

It is therefore submitted that the wording of Art. 247 is an improvement over article 423 of the old Penal Code.

E. Miscellaneous Provisions

The rigor which the courts have observed in the penalties for crimes against public authority has been mitigated, reducing by one degree the penalties of assault (Article 148); the lack of uniformity in the punishment of cases of perjury by our courts have urged the systematization of the penalties of false testimony according to the importance of their effect (Articles 180-184); and the disproportion between the penalty and the damage caused which have been frequently observed in the cases of malversation, theft and swindling, it was necessary, after hearing the Insular Auditor, to adopt the graduated penalties according to the value of the subject of the crime (Articles 217, 309, 315). The desire to secure honor and integrity in the discharge of public functions has made it advisable to impose the penalties of imprisonment to certain acts of abuse or infidelity of public officers which in the Old Penal Code were only punished by disqualification, suspension or fine. Bribery, (Articles 310-212), the violation of constitutional rights of citizens (Book II, Title 2, Chapter I), dereliction of duty (Articles 204-209); the revelation of secrets (Articles 229-230); disobedience and refusal of assistance (Articles 231-234); illegal exactions (art. 213); usurpation of powers and illegal appointments (Articles 239-244); abuses against chastity (Art. 245); prohibited transactions to public officers (Art. 215); carry with them respectively penalties heavier than in the old penal code.[8]

In order to make the code conform to the civil law which permits the declaration of presumption of death after a number of years of absence, the judicial declaration of death is included as an excuse in bigamy (Art. 349) making such declaration equal to a nullity and dissolution of the marriage. In the desire to place the woman in the same level with man in her right to expect fidelity from the husband another made of committing concubinage was added, viz: "shall cohabit with her in

[8] Speech of Rep. Paredes, supra.

any other place", and as already pointed out the benefit of Art. 247 was extended to women.[9]

The penalties of the old penal code respecting the crimes of adultery, rape, seduction and abduction were conserved in their entirety. The consent of the spouse in cases of adultery and concubinage as a cause for exemption from criminal prosecution was revived, also the marriage of the offended to the offender and the pardon by the offended.

In order to prevent reprehensible tendencies duel was conserved as a crime and it is punished altho there was no damage produced and if there is damage, the penalty corresponding to the damage done (Art. 260). White slave trade is made punishable and also the act of incriminating innocent persons and intriguing against honor (Articles 363-364) and the publication of facts connected with private life of another (Article 357).[10] The last one is what is called the Press "Gag" Law which has been the subject of extensive newspaper comments.

Another innovation is the special punishment for violations of the Automobile Law provided for in Article 365.

CONCLUSION

The Revised Penal Code occupies a position midway between the rabid conservation of the classical school and the extremely modern conception of the positivist school of Criminology. It attempts to reconcile conflicting theories and divergent tendencies. Just how far it has succeeded in this effort, only time can show when the law shall have been lived with the experience of the people and subjected to the acid test of wisdom and expediency by our courts of justice.

While it is not free from criticisms, imperfections, and objectionable features, some of which have been pointed out in this study, as all human work are, yet, such criticisms, imperfections and objectionable features can be easily remedied by the Legislature.

The Revised Penal Code is a decided advance along scientific lines in the matter of Criminal Law and is an improvement over the Old Penal Code.

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[9] Speech of Rep. Paredes, supra.

[10] Id. Id.