THE THIRD DEGREE CONFESSION IN OUR JURISDICTION

By ALBERTO E. FILAMOR *

INTRODUCTION

The Problem.—Time and again we hear reports of flagrant abuses on the part of the police (insular and local) in the custody of prisoners suspected of the commission of crime. Most frequently brutal methods are employed to secure confessions and information. The third degree problem is as old as the courts that denounce it. "It is high time," warned Justice Butte, in his concurring opinion in the case of people v. Nishishima, 30 O. G. 3517, "to put a stop to these practices which are *a blot on our Philippine civilization.*"

We might ask: Does "third degree" really exist? What are the causes, if any, for the nation wide practice? Must we tolerate it? What remedies can be advanced to wipe the evil? What is the role of third degree confessions in the law of evidence? Such is the problem that the writer proposes to discuss in this paper.

Meaning of Terms.—There is no precise definition of the term "third degree". Leading police authorities find difficulty in defining the term. Captain Argonza of the Luneta Police Station furnishes the following graphic illustration: A man is arrested for an offense; he is confined in a cell and is not allowed to sit so that he remains standing for several hours. Naturally, his body weakens by the strain and his mind becomes susceptible to suggestions. If he is thereby asked questions concerning the crime charged, he will readily answer them to the extent of incriminating himself. Is this third degree? But, supposing the subject is confined in a room where he has all the comforts—a chair, a table, and a bed—and, the colors in the room are made pleasing to his tastes; then when he begins to doze off, he is fired with similar questions. He will be taken off his guard and, finally, makes admissions or confession. Is this also third degree?

The term is said to be adopted from Freemasonry where the third masonic degree can be conferred only after a considerable ceremony consisting of a rigid initiation and examination. (65 U. S. Law Rev. 584, Nov., 1931.) In Police proce-

* LL.B., University of the Philippines.

dure, the "first degree" refers to the arrest; the "second", when the prisoner is taken to the place of confinement; and the "third", when he is taken into private quarters and there interrogated as to his whereabouts and conduct at the time in question. (Larson, Lying and Detection, 1932, p. 98.) To this last stage because of its utmost secrecy, and the temptations to resort to violence being therefore great, is attributed some weird and fantastic though not improbable tales of physical and mental agony. The press exaggerates in the news reports. Perhaps it is safe to say that "third degree" signifies some form of violence—physical and mental strain.

Hence, third degree confession is that which is procured by physical violence and mental strain.

PART I. THE THIRD DEGREE

I. Historical Development

Torture.—The counterpart of third degree in past history is torture which had been considerably resorted to in the extortion of confession. The Partidas defines torture as "a species of proof which those who are lovers of justice invented for the purpose of investigating and learning by its means, truth of the unlawful acts which men secretly commit and which cannot be ascertained or established otherwise." (Part. 7, Tit. 30, Law 1). It was a necessary concomitant of justice, a legalized instrument indispensable to its promotion and preservation. It was the "best form of proof" according to Augustus. (Larson, op. cit. p. 81.)

Evidence of its use was first known during the period of the Republic in Rome when the prevailing doctrine was that the testimony of a slave freely and voluntarily made was inadmissible. Hence, a slave appearing as a witness or the accused in a criminal prosecution was generally subjected to torture. The rule was based on the theory that a slave spoke the truth only when under the influence of pain. (Lowell, Judicial Use of Torture, 11 Harv. Law Rev. 220, 224-1898; Esmein, History of Continental Criminal Procedure, 1913, p. 107.)

With the appearance of inquisitorial elements of procedure under the Empire, torture gradually increased in importance. The *magistratus* was the sole arbiter of questions of fact and law. (Lesser, The Historical Development of the Jury System, 1894 p. 45.) Endowed with the prerogative to investigate a crime at his own initiative and by any means of disposal (Jolowicz, Historical Introduction to the Study of Roman Law, 1932,

p. 409) he directed his efforts towards the procuring of a confession, (Esmein, op. cit. p. 28.) and for this purpose, he invariably resorted to torture. The Theodosian Code and the great Justinian Code contains elaborate rules concerning the employment of torture.

The singular recognition that the Roman law accorded this odious practice was a deciding factor in its career. With Italy as its center, the influence of torture spread towards all directions until it had reached the farthest nook and corner of Europe, except England, in the eighteenth century. (Tarde, Penal Philosophy, p. 345.) The renaissance of the Roman law in the twelfth century was responsible for its expansion. Numerous universities sprang up in Italy, the foremost of which was that of Bologna in 1158. Students from all countries attracted by this growing interest in the Roman law invaded Italy and brought home the teachings and institutions of the law. (Tarde, op. cit. 344.)

In France, the ordinances from the twelfth century regulate the use of torture. The Ordinance of 1215 established the rule that involuntary confession made under torture should not be sufficient to convict the accused unless he persisted "in his confession for a sufficient time after the torture." (Esmein, op. cit. pp. 111, 114.) The Ordinance of 1670 in classifying torture as to its functions—*preliminary torture* which was employed to compel the accused to disclose his accomplices and *preparatory torture* which was used to extort a confession—provided that no recourse to such process could be allowed unless the "corpus delicti" was established. The accused must be interrogated before and after torture, and once subjected to torture he cannot again be permitted to suffer the process for the same fact whatever new proof may appear. But these laudable regulations were counterbalanced by the sanction of torture under "reservation of proofs", of which we shall speak later. The *Siete Partidas* of Spain recognizes the validity of a confession secured through force if it is thereafter acknowledged and adhered to by the accused of his own free will "without the further application of torture." (Part. 3, Title, 13, Law 5; 7, 29, 7; 7, 30, 4.) Torture was a regular procedure of the Spanish Inquisition. (Allen, The Evolution of Government and Laws, 1916, pp. 434, 436.) In Germany, confession procured by torture could not be the basis of conviction, but whatever he confessed after being removed from torture should be received as the declaration of a dying man. Scandinavia and Sweden

are not excepted from its influence. (Larson, op. cit. p. 90.) Even England cannot claim immunity for once upon a time it existed in the form of *peine forte et dure* as punishment for refusing to be tried by the jury. (Esmein op. cit. p. 332.) The notorious persecutions in the Star Chamber, the most notable of which was the case of the conspirators in the Gunpowder Plot, is an eloquent illustration of our assertion.

We have previously alluded to torture under "reservation of proofs". This refers to the theory of legal proofs recognized by the Ordinance of 1670 and which continued in vogue until 1789. Briefly, the theory established four methods of proof, namely—witnesses, confession, written documents, and presumptions. To establish the guilt of the accused, the methods of proof were divided into *complete proof, proximate presumptions,* and *remote presumptions.* An extra-judicial confession did not furnish complete proof against the accused. A few of the proximate presumptions were the testimony of one witness, written documents imperfectly authenticated, and the extra-judicial confession when denied by the accused but proved by two competent witnesses. These were not sufficient to warrant capital sentence unless coupled with a voluntary confession. In the absence of the latter, a confession had to be secured by force. Thus, torture became the "indispensable corollary of this system of proof." (Esmein, op. cit. pp. 258, 264, 265.)

The French Revolution of 1789 dealt a deathblow on torture. A feeling of distrust and contempt towards torture developed during the eighteenth century. Public sentiment clamour for more humane treatment of prisoners. The inquisitorial procedure was everywhere renounced. In France, the Code of Criminal Examination of 1808 obviated the odious methods of procedure and legal proof. The Law of Criminal Procedure of 1882 in Spain furnished effective guarantees to the prisoner more particularly during the preliminary examination. (Esmein, op. cit. p. 884.)

Thus ended one of the dark chapters of legal history. To summarize, we find that torture received the greatest impetus from the inquisitory procedure because of the extensive powers of the judge in the detection and prosecution of offenders, the utmost secrecy of the investigation or inquiry, and the application of a system of legal proofs.

However, the prominent importance of the police system in the science of criminal detection gives rise to a milder but equally abominable practice called the THIRD DEGREE.

Third Degree.—In the Philippine Islands, the genesis of the third degree is well-defined. The Spanish procedure was purely inquisitorial. The *Guardia Civil,* as the local police was then called, could make arbitrary arrests and detain persons on slight pretext. Extra-judicial punishments or torture were invariably employed to extract confession on suspects. The implantation of American sovereignty is a blessing, for it repealed the old and substituted a new and more rational procedure patterned after that of the common law. (Abreu, The Blending of the Anglo-American Common Law, 3 Philippine Law Rev. 301, May, 1913.) The maltreatment of the accused, however, remained and had been extensively resorted to by the Constabulary police during the early days of the American rule as a matter of expediency. The Philippine Commission would not tolerate the current abuse so destructive of human rights and liberties. So in 1903, an act was passed and approved penalizing the members of the Constabulary police who should subject any person to physical violence or torture for the purpose of "extorting from any confession or inducing him to give any information." The prohibition also includes Constabulary officers and non-commissioned officers. (Act No. 619, secs. 2 and 3.) The Revised Penal Code also contains express provisions on the matter. These legislations shall be discussed in the succeeding topics.

For the last thirty years or more, many cases have been brought not only to the courts but also to the press for the information of the public. There is the Nishishima case which prompted the writer to study the present problem. An old man was believed to have died of violence and torture received while in the custody of the police in Batangas, and many others.

II. General Survey

Does Third Degree Really Exist?—Chief Columbus Piatt, the head of the city department of police, in a press statement, (Manila Daily Bulletin, Nov. 17, 1932) said, "I say once more that the members of the Manila police department have never resorted to harming prisoners physically to obtain confessions. If physical harm is third degree, then third degree is unknown with us."

The Earnshaw committee that investigated the alleged third degree employed on Nishishima reported:

"If the term (third degree) is made to apply to the employment or use of physical violence on the persons of the suspect, or to intimidation or threat, or to promise of immunity; or to any physical act exerted upon the person of the accused in an effort to compel him to say a thing in-

criminating to himself, * * * your committee submits that * * * after carefully weighing all the facts and circumstances elicited during its investigation of this phase of the question, no evidence has been found that Guendo Nishishima had at any time been subjected to any 'third degree' process to obtain from him the written confession in English which he afterwards repudiated."

On the other hand, we quote Major Emmanuel Baja of the Philippine Constabulary as follows: "The government unofficially but knowingly sanction it (third degree), while the people unwillingly but helplessly tolerated it. It would appear that this was entirely of the past; *but as a matter of fact, that old spirit of police procedure still persists even to this day;* the only difference being found in the attitude of the present government to punish and prosecute its own erring agents." (Italics mine) (Baja, Philippine Police System and Its Problems, (1933), chap. XXV, pp. 392-414.)

We might venture to say, with due respect to the integrity of Chief Piatt, that his statement could not well be taken as authoritative. It might contain some grains of truth in it, yet the stubborn fact remains that he is defending his own "son" to whom he is attached by "flesh and blood". Besides, it would be aggravating the public antipathy towards the police should the chief clamly admit the accusation. And, perhaps it would not only cost his position but also, to some extent, a wholesale reorganization of the department to the detriment of the efficiency of the service, for then the chance is open for political moguls to recommend their faithful "generals" or "blind" followers to the posts thus temporarily left vacant.

As regards the report of the Earnshaw committee, little weight, if at all, could be given to its conclusions. In the words of a local daily editorial (*The Tribune,* Nov. 17, 1932), "It has been a case of the city administration investigating the city administration, or, in effect, the police investigating the police * * *." For, why not, if the composition of the committee speaks for itself. The committee as appointed consisted of Assistant Fiscal Gregorio Narvasa, as chairman; Assistant Chief of Police Gregorio Alcid and Vicente Diaz, secretary to the Major, as members. After all, we are all human!

Furthermore, from the conclusions of the committee, we might infer that it is conscious of the fact that such methods are not inexistent although perhaps their use is occasional. The remedy proposed by the committee could not have been thought of, if there is no evil upon which it should effectively apply. Otherwise, the remedy will be unwarranted, inopportune, and

unnecessary; and the recommendations therein would amount to nothing but mere conjectures. Certainly, the committee did not intend it to be so. It is an insult to the integrity of its members to call its report a useless "scrap of paper." The conclusion reads as follows:

"Your committee, however, is cognizant of the fact that because of the scope of its investigation, its foregoing remarks apply to Guendo Nishishima case only, and, therefore, it does not feel itself justified in making general recommendations on the method the police department should follow in all cases involving investigation of criminal suspects."

and in the last part thereof, it states,

"* * * if the Manila police department and its secret service are to be made to profit by the outcome of the Nishishima case, the *remedy* lies not so much in the promulgation of further regulations or circulars regarding the treatment that should be given persons confined in the secret service headquarters on suspicion of having committed a crime as in weeding out from the city police force uniformed or plainclothes members thereof found to be inefficient or prone to abuse the powers entrusted to them. Again, since harrassing and browbeating suspects is an unpleasant task even to a detective or police investigator, your committee would emphasize the need of the city police force relying more and more on the use of objective evidence and less and less on circumstantial evidence in the presentation of criminal cases for prosecution."

The point of controversy centers upon the true concept of "third degree". The term is flexible. What is "third degree" to the press and public may not be so to the police, and vice versa. And added to this the wide discretion of the courts in the determination of the existence of a state of facts as were sufficient to render a confession inadmissible as evidence, and the idiosyncracies of the judges that preside over them, the problem becomes hopelessly complicated.

While there is force in the assertion that third degree is not employed, the writer believes, on good authority, that it exists not only in our city police but also in the insular and municipal police.

What are the Causes for Its Existence?—The public is none the less responsible for the third degree. When a crime is committed, the public demands the vindication of its dignity. If the police, by chance or thru skill in the art of questioning, secures the confession of the accused, and the latter when brought to court, repudiates his confession on the ground that he has been subjected to physical violence and torture, the public condemns the police and clamours for the acquittal of the accused. Not infrequently, by such ingenuity, the accused who is the real cul-

prit escapes punishment. If, on the other hand, an offender is apprehended, and notwithstanding clever questioning and other lawful means, he maintains stubborn silence and persists in his innocence, and consequently, therefore, he is dismissed for lack of evidence, the police becomes the target of public criticism as being inefficient.

Where shall the police stand? Naturally the police must find a way by which to please the public. Under those circumstances, the police is prone to exercise some pressure in the methods of investigation which may be done by a mild use of third degree. In the first case, it takes the risk of acquittal if the violence is successfully proved, and in the second, it insures the conviction of the accused and solves many crimes which have been divulged thereby. In both cases, if the experiment is successful, the police satisfies the public temperament.

Is the public justified for its inconsistency? The only justification is: "It is better to let a crime unpunished rather than to convict an innocent person." This is more ideal than practical. In the first hypothetical case, it would be contrary to normal psychology to believe in the tales of the accused, for the psychological moment for a voluntary confession is *immediately* after arrest, at which time he is likely to confess the truth. To better understand this statement, let us quote Dean Wigmore:

> "The process is one of a suddenly relaxed inhibition. Upon doing a heinous act, the person is conscious of an emotional shock at violating common morality and at finding himself in danger of punishment and ruin upon discovery. He therefore now inhibits every form of conduct that would reveal his guilt. The nervous strain of these multiple inhibitions cumulates hourly and daily. It dominates his complete consciousness. If, finally (and, as usual, suddenly) the words are heard "I arrest you for the murder of X" he realizes that efforts at concealment are now futile, —especially if facts are stated to him which show that ample proof has been obtained. So all the inhibitions are promptly released. A flood of normal consciousness returns. A full nervous relief is felt. There is no longer any strain of inhibition. And the reaction is such that now it would be a relief to tell all. The inability to speak freely is now succeeded by a plus desire to speak freely.
>
> "In this emotional condition, the guilty person wants to confess his deed.
>
> "This condition, however, lasts only a short time. The normal coolness of nerves soon returns. Thoughts of escape from the formal consequences by disputing guilt at the trial are suggested by friends and lawyers. No longer is the confessional impulse felt. The psychic moment has passed." (Wigmore, Principles of Judicial Proof, 1931, 2nd ed., sec. 225.)

The second case is an abnormal condition of mind. Lombroso finds that 42 per 100 of great criminals are obstinate in denial; 21 per 100 of lesser criminals persist in denial." (Larson, op. cit. p. 38.) He may be a habitual liar in which case no amount of gruelling could change his mind. (Wigmore, op. cit. sec. 226.) for according to Brill, quoted by Larson, "they never become embarrassed when brought to bay because the mental processes are partially paralyzed and because they believe their own stories." (Larson, op. cit. p. 48.)

In all third degree cases, it is remarkable to note that the confessions were taken from "men of humble station in life and of a comparatively low degree of intelligence, and most of them apparently too poor to employ counsel and too friendless to have any one advise them of their rights." (Butte, concurring opinion, People v. Nishishima, 30 O. G. 3517.) Undoubtedly, it is a tempting situation. The ordinary policeman generally follows the line of least resistance—the third degree—for it taxes neither mind or patience, and because there is less danger of public disclosure from such persons.

Article 125 as amended of the Revised Penal Code is a mere formality which tends to encourage the use of unlawful police methods. The law requires any "public officer or employee who shall detain any person for some legal ground" to deliver "such person to the proper judicial authorities within the period of six hours." Indeed, the police follows the law strictly, but if the evidence against the suspect is not clear and convincing, the prosecuting official or the justice of the peace simply authorizes the police to "hold him". What comes next? Nobody knows. There is nothing that can stop the police to use any method procurable to maintain its reputation and to gain the confidence of the public.

Politics is everywhere.—If the Constabulary agents or municipal police have been guilty of "displaying exceptional interest to discover who stole the chickens of Governor Importante or the cows of Citizen Rico" simply because they are influential personages, it needs not be said that he will resort to third degree if it is the only means to solve a case in which his political ally or "padrino" is the offended party. The reason is simple. The alternative open to the police is either to find the offender by means, lawful or unlawful, under their disposal or to endanger their posts and the patronage that they hope for in the future. "Town policemen have also been known to do

the same procedures to earn the good graces and good will of a municipal president or municipal councilor." (Baja, op. cit.)

Common Methods Applied.—In the United States the most common third degree method is persistent questioning. In Wan v. U. S. 266 U. S. 1, the defendant Chinaman was interrogated for a period of seven days, during which time he was so ill that he "would do anything to have the torture stopped." In Illinois, an accused was questioned continuously for four nights and three days. (People v. Vinci, 295 Ill. 419, 129 N. E. 193). A more horrible experience is that of a suspect in Montana, who was subjected to a continuous questioning for eighteen hours without food. (State v. Ellis, 294 Mo. 269, 242 S. W. 952.) There has been no case in Philippine jurisprudence that directly or indirectly considers continuous interrogation as deserving condemnation because it partakes of physical violence or mental suffering.

Must persistent questioning always be considered a third degree method under any circumstance? Certainly not. The preservation of peace and order would be hampered and the administration of justice retarded were we to prohibit the police officers from subjecting suspects to a series of questions for information leading to the discovery of the real perpetrator, or to the ultimate prevention of serious depredations that the lawless might contemplate. But that right is not without limit. If the questioning is "so repeated and persistent and applied under such attending circumstances of intimidation and of inequality between the interrogator and the accused as to impair the freedom of will of the latter and thereby amount to compulsion," it clearly falls without the lawful bounds of that right and stands on the level of third degree methods. (Nickels v. State, 90 Fla. 659, 106 So. 479.)

As regards the infliction of physical violence, various methods may be mentioned. "Water cure" is perhaps the oldest method. It consists in placing the victim on his back and slowly pouring water into his nostrils until he is nearly strangled. An old man from Naic, Cavite in 1901, while under arrest on the charge of cattle theft, was "made to drink plenty of water and to leak as fast as he could. To excite the latter, a fine rice straw was inserted into the urine canal." (Baja, op. cit.)

In 1905, several persons accused of robbery were tied by a Constabulary corporal to the pillars of the station, struck with his fist and the butt of his revolver, and, not satisfied with these, he struck them in the stomach with a stone and threatened to

kill them if they plead not guilty before the justice of the peace. (U. S. v. Lozada, 4 Phil. 226.)

Another defendant was made to sit on air, i.e. placed in a sitting posture without support, "a position which would undoubtedly become quite uncomfortable if protracted." (People v. Lauas, 31 O. G. 1363.)

It is not indeed healthful for a person to drink stale urine, but the unfortunate defendant in People v. Francisco, 31 O. G. 926, was forced to do so by a Constabulary lieutenant to extort his confession.

Electrocuting the suspect with a low voltage, pressing the hand with bullets placed between fingers, placing a spotlight direct to the face, waking up the subject while dozing off, depriving him of food and bed—these are the most usual methods since they do not leave visible marks.

III. Remedies

In the discussion of remedies, actual and proposed, to the third degree, the following considerations must be borne in mind: (1) Is the remedy sound in principle and practice? (2) Is the deterring effect of the remedy immediate in point of time to the act sought to be repressed?

Criminal and Tort Liability.—Sections 2 and 3 of Act No. 619 as embodied in section 2685 of the Administrative Code (Act 2711) provides:

> Sec. 2685. *Maltreatment and abuse of authority*—Any member of the Constabulary who whips, maltreats, abuses, subjects to physical violence, or tortures by the so-called "water cure" or otherwise, any native of the P. I. or other person, or who causes such whipping, maltreatment, abuse or torture of any native of the P. I. or other person for the purpose of extorting from any confession or inducing him to give any information whatsoever, shall be punished by imprisonment at hard labor for a term not exceeding five years or by a fine not exceeding ₱10,000 or both. Final conviction of any such offense shall by and of itself constitute a dismissal of the offender from the Constabulary service and shall make him ineligible to any position of trust or confidence in the Government of the P. I.
>
> Any Constabulary officer or noncommissioned officer of the Constabulary who countenances, allows, or permits the whipping, maltreatment, abuse, or torture of any native of the P. I. or of any other person for the purpose of extorting or obtaining any confession, information, or declaration whatsoever shall be punished by imprisonment for a period not exceeding 5 years or by a fine not exceeding ₱10,000 or both.

The first paragraph punishes the actual infliction of physical torture by *any member* of the Constabulary. A detective employed in the information division of the Philippine Consta-

bulary who maltreats prisoners under his charge is liable under this section. (U. S. v. Franks, 6 Phil. 433.) Is a Constabulary officer or non-commissioned officer who actually executes the acts of violence mentioned above, liable under this provision? Apparently not, for the second paragraph specifically deals with the acts of those officers. Nevertheless, a close examination of both paragraphs reveals that although they have a common end —that of preventing the extortion of confession through violence—yet the act of causing such violence punished by both is different. The first purports to penalize the actual infliction of physical violence while the second punishes only the mere act of countenancing, allowing, or permitting the maltreatment of the prisoner.

Another law that subjects the offender to criminal liability is article 235 of the Revised Penal Code, thus: * * * "any public officer or employee who shall overdo himself in the correction or handling of a prisoner or detention prisoner under his charge, by the imposition of punishments not authorized by the regulations, or by inflicting such punishments in a cruel and humiliating manner" and "if the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender shall be punished by prisión correccional in its minimum period, temporary special disqualification and a fine not exceeding 500 pesos, in addition to his liability for the physical injuries or damage caused."

Obviously, this provision refers to members of the prison administration who inflicts arbitrary punishments upon persons detained or imprisoned for the purpose of extorting a confession or information. Is a member of the city police included in this prohibition? The Code does not contain any provision with regards to the maltreatment of prisoners by the municipal or city police. Article 125 of the Code treats of illegal detention only. However, it seems that the city police who inflicts the punishments prohibited by this article is liable thereof. Is a policeman a *public officer* within the meaning of the law? Art. 203 of the Penal Code defines a public officer as "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class." The test is the duty to be performed not the name of the office. If the officer exercises sovereign func-

tions, he is a public officer. The preservation of peace and order is one of the primary functions of the police power of a municipal corporation. (Bifer v. Chicago, 278 Ill. 562, 116 N. E. 182.) And the duty to preserve peace, good order, and security of the municipality or city devolves upon the police department. (Sullivan v. Martin, 81 Conn. 585, 57 A. 784.) Hence, the policeman exercises a public duty; and therefore, he is a public officer. The conclusion is obvious that a policeman performing the acts of violence enumerated in the article commented is liable therefor.

Notwithstanding these laws, it seems that "maltreatment has not yet been uprooted or unknown, either in the insular or municipal police service." The reasons are evident. The prosecution of police officers is difficult to pursue. To prove his case, the complainant must secure the testimony of witnesses present at the time of the alleged acts of violence. Since investigations are held behind closed doors, the only witnesses available are the other officers present, or who might have seen the criminal acts performed. Such fellow-officers may be impelled by the spirit of comradeship. Then they naturally give perjured testimony. The difficulty is augmented by the fact that the prosecuting officer is guilty of encouraging the use of third degree by his tacit consent. Time is economized and the pressure of work is lessened if a confession is procured and presented at the trial. No wonder the prosecuting officer maintains an indifferent attitude towards the criminal action for maltreatment. Besides, the deterring effect of the criminal liability is too remote in point of time from the acts to be repressed. The police officer pressed by the necessity of solving a particular crime either to please his superiors or the public, will not speculate as to the possibility of his being prosecuted if he presently resorts to unlawful means. Such laws may temper but not adequately abolish third degree.

Declaring Confession Inadmissible.—Act No. 619, section 4 would render confessions procured under certain conditions inadmissible. Thus,

> Sec. 4. No confession of any person charged with crime shall be received as evidence against him by any court of justice unless it be first shown to the satisfaction of the court that it was freely and voluntarily made and not the result of violence, intimidation, threat, menace, or of promises or offers of reward or leniency.

The law requires proof of voluntariness before it is admitted as evidence. But this is contrary to the theory that all

acts are presumed to be voluntary unless the contrary is proved, or in other words, the confession must be deemed voluntary unless it is proved otherwise. It further disregards the possibility of a voluntary confession, for as we have previously learned, but in normal cases, an offender confesses freely immediately after arrest. The law was repealed impliedly by the Administrative Code thus, shifting the burden of proof to the defendant. (U. S. v. Zara, 42 Phil. 308.)

Delivery of prisoner to judicial authorities.—The Revised Penal Code classifies as illegal detention the wilful failure of a public officer or employee, who has detained a person for some legal ground, to deliver the said persons to the proper judicial authorities within a period of six hours.) Art. 125, as amended by Act 3940.)

This is a combination of a penal and procedural law. Penal because the offender incurs criminal liability for illegal detention; procedural because it requires the presentation of the accused to the proper judicial authorities within a fixed period of time.

The purpose of the law is to prevent the undue exercise of lawful interrogation, or the imposition of acts of torture upon the accused, for in the latter case, the period is too short for the marks of violence to disappear. A similar rule is adopted in the American Law Institute Code of Criminal Procedure, Official Draft, 1930, section 35, which commands that the accused be taken before a magistrate "without unnecessary delay", for purpose of preliminary examinations. The rule, however, is a mere formality. The evils of third degree are not stamped. If the arrest is made at midnight and the municipal judge is nowhere to be found, the police would perforce detain the suspect till the next morning. The intervening time is a dangerous period.

IV. Observations

From the above discussions we have found:

(1) That there is no definite concept of the term "third degree." Much depends upon the degree of abuse and the psychic effect produced upon the subject.

(2) That third degree is still rampant in our police system although it is divested of its former severity.

(3) That no adequate remedy so far has been made to suppress lawless methods.

(4) That remedy lies not so much in the weeding out police officers who are prone to abuse his powers as in the complete reliance to objective evidence.

(5) That the adoption of scientific methods for the detection of lie may be an adequate remedy or, at least, an improved method over the present unlawful and painful methods.

PART II. THIRD DEGREE CONFESSION AS EVIDENCE

I. Rule of Admissibility

Principle of Exclusion.—It is a well known fact that courts are openly jealous to receive in evidence confessions procured by means of the third degree. To better understand the justice of such attitude, it is essential to discriminate between two conflicting views of admissibility.

One view asserts that confessions are excluded upon the constitutional guarantee that the accused should not be compelled to testify against himself (*Némo temetur seipsum accusare*). The Supreme Court of the United States, speaking through Mr. Justice White, held: "In criminal trials, in the courts of the United States, wherever a question arises whether a confession is incompetent because not voluntary, the issue is controlled by that portion of the Fifth Amendment of the Constitution of the United States commanding that 'no person shall be compelled in any criminal case to be a witness against himself.'" Somewhere in the decision is found this sweeping statement, to wit: "the generic language of the amendment was but a crystallization of the doctrine as to confessions, well settled when the amendment was adopted." Thus, the ruling operates to include within the principle, extra-judicial confessions if procured by violence or flattery of hope. Bram v. U. S., 168 U. S. 532, 42 L. ed. 568. This doctrine is cited and adopted in Wan v. U. S. 266 U. S. 1, 45 Sup. Ct. Rep. 1. Similar principle is enunciated in Perrygo v. U. S., 2 F. (2d) 181; Hix v. State, 29 Okla. Cr. App. 20, 232 P. 123; Berry v. State, 4 Okla. Cr. 202, 111 P. 676; 31 L. R. A. (N. S.) 849.

Evidently, the Supreme Court of the United States, in its zeal to be fair with the accused, overlooked the true scope of the doctrine of self-crimination. The history of the privilege manifestly reveal that it is applicable mainly and only to statements made in a judicial inquiry; hence, extra-judicial confessions are not covered by the rule. "It is entirely plain that the constitutional provision does not include statements or confessions by one suspected of or charged with, the crime, when the

confession is not made in the course of a judicial procedure." People v. Owen, 15 N. Y. 348 as cited in People v. Wentz, 37 N. Y. 346. Of Similar import is a *dictum* laid down by our own Supreme Court in the case of U. S. v. Agatea, 40 Phil. 596; "An extra-judicial confession is not like a deposition in a judicial proceeding, hence the constitutional provision that the defendant in a criminal case shall not be compelled to be a witness against himself has no application."

The contrary view purports to exclude a confession which, by reason of the circumstances under which it is obtained, is rendered *unreliable*. In other words, when the conditions existing at the time the confession is made are such that, to the mind of the prisoner, the acknowledgment of guilt, notwithstanding its falsity, is preferable to silence and the unsavory situation he is presently in, the confession thus obtained is untrustworthy. Berry v. U. S., 2 Col. 186, 211, the dissenting opinion of Mr. Justice Wells; State v. Sherman, 35 Mont. 512, 90 P. 981; State v. Doyle, 146 La. 973, 84 So. 315. The modern trend of judicial opinion follows the latter view.

Test of Admissibility.—The general rule is that extra-judicial confessions in order to be admissible in evidence must be voluntary. Edwards v. State, 288 P. 359; State. v. Rush, 150 S. E. 740; Tyler v. State, 131 So. 417; U. S. v. Ruperto, 9 Phil. 394.

When is such a confession said to be voluntary?

It is interesting to note that the word voluntary standing by itself alone tends to mislead the issue, for "it suggests the idea that the rejection of what are termed involuntary confessions flows from that principle of the common law which is supposed mercifully to exempt persons from all obligations to criminate themselves, and which is expressed by the maxim 'nemo tenetur prodere seipsum.'" Hendrickson v. People, 10 N. Y. 33, which we understand is not at all concerned in the doctrine of confessions. When an accused chooses a confession as against an impending harm or in favor of a future benefit, he does so out of his own free will, or, in other words, it is his voluntary act. Hence, it is not a safe test to follow.

Some courts, however, diminishes the possibility of mistake by ruling that a confession is considered voluntary when "not extorted by any threats or violence, or obtained by any direct or implied promises or inducements." State v. Hoskins, 36 S. W. (2d) 909. Also, People v. Kennedy, 159 N. Y. 346, 54 N. E. 51, 70 A. S. R. 557; Bullock v. State, 65 N. J. L. 557, 68 A. S. R.

668; Roesel v. State, 62 N. J. L. 216, 41 A. 408. A concise definition of "voluntary" is given in Wharton's Criminal Evidence, vol. 2, p. 1311, to wit, that the "accused speaks of his free will and accord, without inducement of any kind, and with a full and complete knowledge of the nature and consequences of the confession, and when the speaking is so free from influences affecting the will of the accused, at the time the confession was made, that it renders it admissible in evidence against him."

The rule is, therefore, evolved that "the true test of admissibility is that the confession is made freely, voluntarily, and without compulsion." Wilson v. U. S. 162 U. S. 613, 40 L. Ed. 1091. The same rule is adopted in this jurisdiction. (People v. Cabrera, 43 Phil. 64.) (Also U. S. v. Baluyut, 1 Phil. 451; U. S. v. Zara, 42 Phil. 309; Act No. 619, sec. 4.) The Philippine Supreme Court in United States v. Agatea, expressly rules:

"For a confession to be admissible in evidence, it is a general rule that it must have been made without hope of benefit, without fear or duress, and without the use of threats, torture, violence, artifice, or deception." (40 Phil. 596.)

II. Inducements Calculated To Be Third Degree

Principles.—The foregoing discussion brings to light the criterion that must be followed in the proper consideration of the circumstances that are generally considered third degree inquisitions. First, What is the nature of the inducement? Is it likely to produce a false confession? Secondly, What is the causal connection between the inducement and the confession?

It must be remembered that the psychology of the third degree is that "it puts the individual in an abnormal and unduly suggestible condition" (Harold E. Burtt, Legal Psychology, ch. 8, pp. 169-176.), and that with the pressure of his surroundings he is apt to confess, however guilty or innocent he may be.

(1) *Continuous interrogation.*—The question whether continuous interrogation would invalidate a confession has not been squarely raised in this jurisdiction with the exception of a single case which slightly touched upon it. In People v. Mones, 31 O. G. 3611, the court among other things said, "We conclude that the confessions of all four of the accused were voluntarily made and the circumstance that they may have been subjected to questioning by Lt. Pelotan with respect to their participation in the crime does not render these confessions incompetent." We must, therefore, look to American jurisprudence for guidance should a case arise on the point.

It is an admitted rule that confessions obtained by interrogating the prisoner will not alone exclude it, if the confession in fact emanates from the free will of the accused in the absence of other inducements. However, if the prisoner's resistance breaks under the pressure of the existing conditions until he finally seeks refuge to a false confession as the only alternative to end the inquisition, such confession is certainly unreliable as involuntary, and therefore, must be excluded. To illustrate:

In Commonwealth v. Cuffee, 108 Mass. 285, the counsel for the accused objected to the admission of statements procured by continuous questioning of the defendant from 10 o'clock at night, till midnight without warning him of his right not to answer unless he desired to do so, and was not granted the opportunity to consult counsel or friends. In overruling the objection, the court said, "In the absence of any evidence of threats or promises other than might be inferred from the above (facts), such statements were admissible."

But in People v. Vinci, 295 Ill. 419, 129 N. E. 193, where the defendant was questioned for three days and four nights which was persisted in by turns, and no physical violence was found to have employed upon him, the statements made thereafter was held inadmissible. The court said in part: "While we do not believe any physical force was used nor that direct threats or pains were made, there can be no doubt that the repeated questioning by these officers, like the constant dropping of water upon a rock, finally wore thru defendant's mental resolution of silence."

In both cases, our second criterion is undoubtedly satisfied since the statements in questions were made while being subjected to interrogation. As to the first element, i.e. whether the inducement is likely to produce a false confession, they are in direct contrast. They can however be reconciled by establishing the distinction between "the repeated and persistent questioning which may render the resulting confession inadmissible and a series of questions, calmly and fairly propounded and readily answered. The former is a persistent repetition of questions directed to substantially the same matter, which, especially when addressed by a strong and vigorous man to a weaker one in adverse circumstances, may impair the mental freedom of the latter so as to constitute compulsion. The latter merely elicits the connected recital of a sequence of events." Nickels v. State, 90 Fla. 659, 106 So. 479, 482, reaffirmed in

Row v. State, 123 So. 523. Clearly, the Vinci case falls under the former and the Cuffee case the latter.

(2) *Force and Violence.*—A confession extorted by force, torture or violence is clearly involuntary. The psychological aspect is simple. A man is apprehended for the commission of an offense. Once at the police station, he is tied to a post and the investigators take turns in whipping, hitting him with rubber hose, and twisting his arms on his back. Between these ceremonies, questions were fired at him. This is repeated several times a day. Under the circumstances, the offender is in a dilemma. If he does not confess the tortures will not stop and if he does, his admission may be used against him. But the latter is more appealing, for two reasons: (1) he will be released from the painful process, and (2) despite his confession, he has still a chance to defend himself before the courts. In his present situation he is totally helpless. Thus, enters the role of false confession.

It is not necessary that violence is actually inflicted upon the confessor, if, while he is confined in a room in the guardhouse together with his coaccused, a sergeant of the constabulary subjected the latter to a severe beating and buffeting to secure a confession, the former sometime thereafter made a spontaneous confession. Such confession, according to the court, is involuntary, for the infliction of the violence within his hearing and almost in his immediate presence is as much intimidation "as a warning to him of what he might expect under like circumstances, as if he had been openly threatened with similar ill treatment should he further persist in his denials of guilt." U. S. v. Baluyut, 1 Phil. 451.

A confession made after the infliction of violence is inadmissible if it is not shown that the mind of the confessors is completely free from the fear that is naturally produced by the violence suffered. It must be proved beyond doubt that the fear of violence is released when the accused commits himself. For this reason the confessions of the defendants in U. S. v. Mercado, 6 Phil. 148 made before the justice of the peace were excluded since they were found to have been maltreated and tortured sometime before their appearance.

III. Preliminary Investigation of Voluntariness

Circumstances to be Taken.—The age, character, mental condition and situation of the accused at the time the confession is made are factors essential to the determination of the volun-

tary character of the confession. U. S. v. De los Santos, 24 Phil. 329. But the fact that the defendants are illiterate, ignorant and men of "humble station in life" who might not have known or heard of fundamental rights guaranteed to them by the constitution shall not vitiate the confessions made by them in the face of the stubborn fact that they placed their marks thereon. People v. Flores, 31 O. G. 3163.

Burden of Proof.—Under section 4 of Act 619, the prosecution is bound to establish the voluntariness of the confession by satisfactory proof that it is "not the result of violence, intimidation, threat, menace, or of promises or offers of rewards or leniency." The subsequent repeal of the law by the Administrative Code shifted the burden of proof to the defendant. U. S. v. Zara, 42 Phil. 309.

In consequence thereof, it is sufficient at present for the prosecution to establish a prima facie case of the voluntary character of the confession by fully developing the proof at his disposal. The defendant, in turn, submits proof which tends to show that the confession has been procured by unlawful means. It is error for the court to disregard the defendant's explanation of the circumstances under which the confession was made simply because it repudiates the confession. U. S. v. De los Santos, 24 Phil. 329. Upon the conclusion of the defendant's proofs, the court may allow the prosecution to rehabilitate the confession by additional testimony. U. S. v. Zara, 42 Phil. 309.

IV. Waiver of Objection

As a general rule, a confession offered in evidence may be objected to, but in the absence of such objection, it is prima facie voluntary. U. S. v. de Leon, 27 Phil. 506; U. S. v. Agatea, 40 Phil. 596.

What constitutes waiver of objection?

In a recent case, the defendant reserved his right to object to the admission of his confession, whereupon, the court reserved its ruling. After attempting to prove the character of the confession, he rested his case without obtaining the ruling of the court. Upon appeal to the Supreme Court, it was ruled that the failure of the defendant to take advantage of his reserved right to object is a waiver of his objection for he had an ample opportunity to rebut the confession. People v. Ramos, 32 O. G. 893.

V. Confirmation

Here again we are confronted with two conflicting doctrines. The prevailing rule excludes the confession admitting only the

fact of information. It admits merely the fact of discovery made as a consequence of the information offered by the confession, and nothing more. Thus: "If one accused of larceny, being put to torture, confess the crime and produce goods from his own possession or disclose the place of their concealment, and they are afterward found in the place indicated, you may, it is agreed, give in evidence the fact of the finding of the goods conformably to information given by the prisoner; but may not in the same case, according to the received doctrine, give in evidence the prisoner's statement that he deposited the goods in the place where they were found or that he stole them." Beery v. U. S. 2 Col. 186, dissenting opinion of Justice Wells. But the absurdity of the doctrine as pointed out in the same opinion is that while "in passing upon the primary question whether the evidence shall be received, the Court notwithstanding, the corroborating circumstances shall find the confession probably untrue and therefore exclude it, the jury, considering the same evidence, may find the very fact confessed to be absolutely true."

The Contrary rule would render the confession admissible as a whole if confirmed on material points by the subsequent discovery of facts. The reason is obviously logical. Quoting Justice Wells again, he says: "The finding of the stolen goods at the place indicated not only *tends to corroborate the declaration of the prisoner that they will be found there, but also his declaration that he stole them and concealed them at the place.*" (Italics mine.) Furthermore, the rule is in consonance with the psychological aspect of false confession. If the confessor has been compelled only by the unlawful inducements to admit a false acknowledgment of guilt, the confession would not be corroborated on its material points. And since by material points is meant those that are relevant to the guilt of the accused, considering the fact that confession, as has been previously defined, is the direct acknowledgment of guilt, the writer believes, that this is the more logical and practical doctrine.

VI. Observations

In resume, we have found that—

(1) The principle upon which third degree confessions are excluded is its unreliability.

(2) The untrustworthiness of such confessions is based upon the psychic pressure brought about by the so-called third degree methods.

(3) A distinction must be made to determine the effect of continuous interrogation upon the confession produced as a consequence thereof. Only those calculated to impair the mental freedom of the accused under the existing conditions, shall void the confession.

(4) In practice, the burden of proof is on the prosecution, technical burden of proof being shifted to the defendant.

(5) In case of confirmation of a third degree confession by subsequent facts, the most logical and practical theory is that which admits the entire confession provided it is corroborated on material points.

Conclusion

From the foregoing discussions, the writer concludes:

(1) That despite the remedies that the government has attempted to adopt, the third degree still thrives in our midst.

(2) That the only remedy is to improve the efficiency of the police by requiring higher educational qualifications and by the adoption of the scientific methods of criminal investigation.

(3) That as far as third degree confession is concerned in the law of evidence, the notorious fact that defendants fabricate tales of violence to invalidate their confession is an effective reason for courts to apply strict discretion in determining their credibility.

(4) That, the present doctrine of the burden of proof, therefore, must be maintained.