

# PHILIPPINE LAW JOURNAL

Vol. XV

MARCH, 1936

No. 9

## DEGREES OF PHYSICAL INJURIES IN RELATION WITH CULPABILITY—COMPARATIVE STUDY

*By* CESAR S. GENUINO \*

### INTRODUCTION

Time and again it has been said that man's limbs are as valuable to him as life itself. Everyday occurrences place the truth of this statement far above disproof. For instance, what joy is there in life when one is hopelessly blind? Life cannot be the same to one who has lost his means of locomotion because his legs have become useless through some injuries. It is but a dreary wait for death to one whose spinal cord has been hurt by some malicious blow. And yet these disabilities fall short of murder or homicide—thus it becomes necessary for Law to mete out a different set of punishment for such wrongdoings.

The necessity for this branch of penology is explained by Groizard in that "the protection afforded by the law to human life includes the punishment not only of acts intended for the violent destruction of it, but also any act the object and result of which is to impair, lessen, or curtail the rights, pleasure and happiness derived from life and health. It goes without saying that one who willfully ends the life of another, deserves our just condemnation and a most severe penalty. But punishment is also rightfully due, the less severe and exemplary, to one who wounds or hurts another, even though this act does not result in the loss of his precious life. Acts of this nature are called "physical injuries" (lesiones) in our Penal Code, and it is so called because they cannot be consummated without some physical result or bodily damage.<sup>1</sup>

And in the natural order of things and in consonance with what has been said by Groizard there are several different de-

\* LL.B., University of the Philippines.

<sup>1</sup> Groizard, *Codigo Penal*, vol. 4, p. 518.

degrees of severity and destructiveness in the injuries caused. For a just punishment there must therefore a scale of the corresponding penalty to be imposed. Thus, it is invariably provided for by the penal statutes of the different countries the several punishment a corresponding to the different degrees of injuries classified. Others leave it to the deciding magistrate the discretion to impose the penalty he may deem appropriate to the severity of the injury as he gathers from the appreciation of the actual facts before him.

Our Revised Penal Code defines the different degrees of injuries and the corresponding penalties that must be imposed therefor. It is our purpose in this humble work to make a study of this classification and an analysis of the foundation upon which such a classification is based. We shall try to verify the claim that these new provisions embody all the suggested reforms for our Old Penal Code. We shall attempt to investigate if there is room for improvement in this revamped classification; and if there is, to find out what they are. To this end we shall make a comparative study of the provisions of the Revised Penal Code dealing on physical injuries.

## THE PROVISIONS OF LAW

### A. *The Old Penal Code*

Prior to January 1, 1932, the law governing crimes in the Philippines was contained in the Penal Code which was promulgated in the Archipelago on March 13, 1887, and took effect on July 14, 1887. This Code was substantially a reproduction of the Penal Code of Spain of 1870 with some minor changes. Its enforcement was continued during the American regime by a proclamation of General Merritt dated August 14, 1899. Chapter VII, Title VIII, Book II thereof is dedicated to *Physical Injuries*. The following are the provisions contained therein:

Art. 414.

Any person who shall intentionally castrate another shall suffer a penalty ranging from reclusion temporal to reclusion perpetua.

Art. 415.

Any other intentional mutilation shall be punished by reclusion temporal.

## Art. 416.

Any person who shall wound, beat, or assault another shall be guilty of the crime of inflicting serious physical injuries, and shall suffer:

1. The penalty of prision mayor, if in consequence of the physical injuries inflicted the injured person shall become an imbecile, impotent, or blind.

2. The penalty of prision correccional in its medium and maximum degrees, if in consequence of the physical injuries the person injured shall have lost an eye or any principal member or shall have lost the use of such member, or shall have become incapacitated for the work in which he shall have been habitually engaged before receiving the injury.

3. The penalty of prision correccional in its minimum and medium degrees, if in consequence of the physical injuries the person injured shall have become deformed, or shall have lost some member other than a principal member, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged, for a period of more than ninety days.

4. The penalty of arresto mayor in its maximum degree to prision correccional in its minimum degree if the injured party, by reason of the physical injuries inflicted, shall have been ill or incapacitated for labor more than thirty days.

## Art. 417.

The penalties established by the next preceding article shall be applicable in the respective cases to any person who, without intent to kill, shall inflict upon another any serious physical injury by knowingly administering to him any noxious substance or beverage, or by taking advantage of his credulity or weakness of mind.

## Art. 418.

Any physical injuries not falling within the preceding articles, and which shall incapacitate the offended party for labor for eight days or more or shall make medical assistance necessary for the same period shall be deemed to be less serious physical injuries and shall be punished by arresto mayor or by destierro and a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas, in the discretion of the court.

Whenever any less serious physical injuries shall have been inflicted with the manifest intent to insult or offend the injured person, under circumstances adding ignominy to the offense a fine of not less than three hundred and twenty-five and not more than three thousand two hundred and fifty pesetas shall be imposed in addition to the penalty of arresto mayor.

## Art. 419.

Any less serious physical injury inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or upon persons of rank or public authority, shall be punished in all cases by prision correccional in its minimum and medium degrees.

## Art. 420.

Whenever any serious physical injuries shall be inflicted in any tumultuous affray, such as defined in article four hundred and five, and there be no evidence to show by whom the same were inflicted, the penalty next lower than that corresponding to the offense committed shall be imposed upon any persons shown to have done any violence to the person injured.

B. *The Correctional Code of 1916.*

Since the implantation of American sovereignty in the Philippines public opinion has been clamoring for an amendment of the old Penal Code. The provisions cited above had been the target of criticisms. Accordingly Act No. 1941 was passed by the legislative branch of the government creating a commission with authority to prepare codes, including a new Penal Code. Thus was prepared the famous "Del Pan's Correctional Code of 1916." This proposed Code, which by the way never came into legal existence for it was never passed by the Legislature, was prepared by the eminent jurist Rafael del Pan. The author investigated widely all penal system of the world. His great idea was to present a Code which would relegate into the past the antiquated notions of revenge upon the criminal in order to provide a modern system of freedom.

The Correctional Code of 1916 contained the following provisions dealing with physical injuries (lesiones):

## Art. 209.

Lesiones Graves:—El que hiriere, maltratase de obra o de cualquier modo causare lesiones a otra, sera corregido:

1. Con prision mayor, si por las lesiones quedare el ofendido embicil, impotente a ciego;

2. Con prision, si por dichos lesiones el ofendido hubiere perdido un ojo o algun miembro o quedado inutilizado de el, deforme, incapacitado para su trabajo habitual, o enfermo durante noventa dias o mas.

3. Con prision menor, si las lesiones hubieran producido al ofendido en enfermedad o incapacidad para el trabajo durante mas de treinta dias sin llegar a noventa.

## Art. 200.

Lesiones Leves:—El causante de lesiones no comprendida en el articulo precedente, que hubiesen producido al ofendido enfermedad o inutilidad para el trabajo por diez dias o mas, sin pasar a treinta, sea corregido con prision menor si hubiere obrado con intencion manifesta de inperiar o en circunstancias ignominosas; y con arresto mayor en otro caso.

## Art. 211.

Lesiones Levisimas:—El que causare lesiones no comprendidas en los articulos anteriores sera corregido con arresto medio cuando dichas lesiones

produjeren al ofendido con prision o arresto en el grado inmediatamente inferior al que correspondiente a las autores comprobados de dichas lesiones.

*C. The Revised Penal Code.*

The much-needed revision of the Philippine penal laws came about with the passage of Act No. 3815 which embodied the labors of the Diaz Committee, appointed by virtue of Administrative Order No. 94 of the Department of Justice issued by the then Acting Secretary of Justice Hon. Luis F. Torres. The Diaz Committee was directed to prepare a "revised draft of the Penal Code". We find the provisions dealing with "Physical Injuries" in Chapter I, Title Eight, of Book Two:

PHYSICAL INJURIES

Art. 262.

Mutilation.—The penalty of reclusion temporal to reclusion perpetua shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ or reproduction.

Any other intentional mutilation shall be punished by prision mayor in its medium and maximum periods.

Art. 263.

Serious Physical Injuries.—Any person who shall wound, beat or assault another shall be guilty of the crime of serious physical injuries inflicted and shall suffer:

1. The penalty of prision mayor if in consequence of the physical injuries inflicted, the injured person shall become insane, imbecile, impotent or blind;

2. The penalty of prision correccional in its medium and maximum periods, if in consequence of the physical injuries inflicted, the person injured shall have lost the power to hear or smell, or shall have lost an eye, a hand, a foot, an arm, or a leg or shall have lost the use of any such member, or shall have become incapacitated for the work in which he was heretofore habitually engaged.

3. The penalty of prision correccional in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was heretofore habitually engaged for a period of more than ninety days.

4. The penalty of arresto in its maximum period to prision correccional in its minimum period, if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days.

If the offense shall have been committed against any of the person enumerated in article 246, or with the attendance of the circumstances

mentioned in article 248, the case covered by subdivision number 1 of this article shall be punished by reclusion temporal in its medium and maximum periods; the case covered by subdivision number 2 by prision correccional in its maximum period to prision mayor in its minimum period; the case covered by subdivision number 3 by prision correccional in its medium and maximum periods; and the case covered by subdivision number 4 by prision correccional in its minimum and medium periods.

The provisions of the preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.

Art. 264.

Administering Injurious Substances or Beverages.—The penalties established by the next preceding article shall be applicable in the respective cases to any person, who without intent to kill, shall inflict upon another any serious physical injury by knowingly administering to him any injurious substances or beverages or by taking advantages of his weakness of mind or credulity.

Art. 265.

Less Serious Physical Injuries.—Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.

Whenever the less serious physical injuries shall have been inflicted with the manifest intent to insult or to offend the injured person, or under circumstances adding ignominy to the offense, in addition to the penalty of *arresto mayor*, a fine not exceeding 500 pesos shall be imposed.

Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by prision correccional in its minimum and medium periods, provided that in case of persons in authority, the deed does not constitute the crime of assault upon such persons.

Art. 266.

Slight Physical Injuries and Maltreatment.—The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days or shall require medical attendance during the same period.

2. By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance.

3. By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall illtreat another by deed without causing any injury.

Even a hasty comparison of the above provisions with those of the Old Penal Code will reveal a marked improvement of the

former over the latter. The provisions of the Revised Penal Code define the different degrees with greater clearness and its classification is more comprehensive.

## DEFINITION OF TERMS

### A. *Culpability*

Before we go further with our dissertation it is necessary that we give a brief definition of the important terms in our theme. The first of these is "culpability." According to Bouvier's Law Dictionary culpability is the *state or quality of being culpable*. Further, it is stated that culpability is *blameworthiness of any sort*. It is synonymous with guilt which in turn means the state which results from willful violation of moral or statute laws.

### B. *Physical Injuries*

A clear and concrete definition of the term *physical injuries* is not to be found in any statute of the Philippines nor in any of the many decisions of the local Supreme Court. "As used in legal practice, however, considers as such all bodily conditions where the health is impaired or the solution of the continuity of the tissues of the body takes place due to violence. It is usually confounded with the term "wound" since the working definition of this for medico-legal purposes embraces all the injuries to the body, external or internal, with or without solution of the continuity of the skin, produced suddenly by mechanical violence. Although the confusion is of little practical value it must be remembered that the Penal Code of the Philippines uses the words "physical injuries" in a wider sense than that given to the word "wound" in its medico-legal meaning; that is "a person charged with mutilating, beating, assaulting another, or administering to him any injurious substances or beverages, shall also be indicted for inflicting physical injuries", even though the lesions resulting therefrom cannot be accepted in all cases as wounds, either in law or surgery".<sup>2</sup>

Groizard has the following to say on the topic:

"A los actos de esta especie el epigrafe los llama lesiones, moneclatura a que comprende lo mismo las heridas que producen soluciones de continuidad en el cuerpo humano caracterizadas

---

<sup>2</sup> "Legal Medicine", by Dr. Sixto de los Angeles, p. 168.

por la efusion de sangre, que los golpes violentos, que ocasionan dolores y alteraciones fisicas en el mismo, sin que la solucion de continuidad llegue a existir.”<sup>3</sup>

## CLASSIFICATION OF PHYSICAL INJURIES

### A. *The Legal Classification.*

Physical Injuries are classified by the Revised Penal Code into:

1. MORTAL, or those resulting from parricide, murder, homicide and infanticide. (Arts. 246, 247, 248 and 249.)

2. MUTILATION, or those physical injuries inflicted upon another person with the intention to castrate or cause any other mutilation (Art. 263).

3. SERIOUS PHYSICAL INJURIES, or those producing as consequences:

a. Insanity, imbecility, impotency, or blindness.

b. The loss of the power of speech, or the sense of smell, the loss of an eye, a hand, a foot, an arm, or a leg, the inability to use any such member, or the incapacity to do the work in which the injured was heretofore habitually engaged before receiving the injury.

c. Deformities or the loss of any other part of the body, or the loss of the use thereof, or the illness of incapacity for the performance or the work in which the injured was habitually engaged for a period of more than ninety days.

d. Illness or incapacity for labor of the injured person for more than thirty days.

e. Any serious physical injury, inflicted without intent to kill, by knowingly administering any noxious substance or beverage or by taking advantage of the credulity or weakness of the mind of the injured. (Art. 264)

4. LESS SERIOUS PHYSICAL INJURIES, or those which shall incapacitate the offended party for labor for eight days or more, or shall require medical attendance for the same period. (Art. 265)

<sup>3</sup> Groizard, *Codigo Penal*, vol. 4, p. 516.

5. SLIGHT PHYSICAL INJURIES, which include the following:

a. Those injuries against persons which incapacitate the offended party for labor from one to seven days, or require medical attendance for the same period.

b. Those injuries which neither prevent the offended party from engaging in his habitual work nor require medical attendance.<sup>4</sup>

*B. Basis of Legal Classification.*

Like the classification contained in the Old Penal Code, the one we find embodied in the Revised Penal Code still adheres to the ancient empiricism that inspired the original Spanish Code of 1870 and bases the degrees of injuries on the number of days required in healing, or medical attendance, or to the presence or absence of subsequent mutilation, deformity, impotency or incapacity to do habitual work. This tendency of our penal laws has been criticized as being illogical and not exactly just.

It has been said that "our present laws ignore practically the fact that a great variety of complications, which are given much weight in the legal determination of the degree of severity of the plaintiff's injuries and of the corresponding liability of the accused or the defendant, are not always in direct proportion or relation either to the nature or degree of severity of the actual injuries sustained or inflicted, or to the intention of the offender. Moreover, from the standpoint of our present law no due regard is given to the considerable progress of medicine which materially permits the shortening of the process of healing of wounds and the prevention of their untoward dangerous effects on human health and life. In this sense the original foundation of the imputability in crimes against life and health is found no longer consistent with the principles of justice and equity which have been built on the bases of biological facts and their actual relations to human existence. Law overlooks that asepsis and antisepsis from which modern surgery owes its greatest efficiency, convert a mortal wound into a slight physical injury; and, vice versa, a simple scratch, when septic or infected, becomes a dangerous injury or even a necessarily mortal one, irrespective of the intention of which has led to its infection."<sup>5</sup>

<sup>4</sup> "Legal Medicine", by Dr. Sixto de los Angeles, p. 169.

<sup>5</sup> "Legal Medicine", by Dr. Sixto de los Angeles, pp. 172-173.

Our Supreme Court took occasion in the case of *U. S. vs. Gloria*, 3 Phil. 333, to lay down the general doctrine that with respect to crimes against person, the penal laws look particularly to the material result which follows the unlawful acts of the aggressor responsible for all the consequences thereto. This ruling found basis in what an eminent commentator of our Penal Code said in the following extract:—

“El delito de que tratamos exige por su indole ser sometido a prudenciales reglas de aprobacion. Reconociendo para poder medir la intencion de los agresores la deficiencia de los medios humanos, es preferible a la justicia aceptar como base para la calificacion y graduacion de las lesiones, la realidad de los daños materiales que producen. El elemento moral del delito puede y debe influir la atenuacion o en la agravacion de las responsabilidades, que el resultado material de las lesiones indique, de una manera secundaria é indirecta, por medio del sistema de las circunstancias atenuantes y agravantes, de la teoria de la tentativa y del delito frustrado, y sobre todo, dejando muchas latitud a los jueces en la imposicion de las penas, segun las circunstancias que en cada caso concurren.”<sup>6</sup>

#### C. *The Medico-Legal Classification.*

From their medico-legal aspect, physical injuries may be considered, we are told, under the following heads:—(a) Wounds, (b) Thermal and electrical injuries, and starvation, (c) Injuries producing interference with the process of respiration, and (d) Poisoning.

But the relative severity of physical injuries may be classified as follows:

(1) **MORTAL OR NECESSARILY MORTAL**,—those which, in spite of expert medical assistance, may cause death at once or very shortly after their infliction, with no other cause internally in the body or externally from the environment.

(2) **DANGEROUS TO LIFE, OR SECONDARILY OR INDIRECTLY FATAL**,—those which, though not necessarily fatal, may cause death through their direct consequences, or dangerous complications; or as the result of either a dangerous surgical operations necessary in the treatment of the case, or of the lack of proper medical assistance.

<sup>6</sup> Groizard, *Codigo Penal*, vol. 4, p. 520.

(3) SERIOUS PHYSICAL INJURIES,—relate either to those extensive or dangerous lesions, with relation to the organ or part wounded, which present real difficulty in their treatment but are not attended commonly by fatal consequences or to those which produce as consequences more or less permanent defects, illness, deformities, or incapacities.

(4) LESS SERIOUS PHYSICAL INJURIES,—those which heal gradually, within a period of more than nine days, leaving neither deformity nor incapacity behind them.

(5) SLIGHT PHYSICAL INJURIES,—ought to mean those lesions which are relatively small and superficial in character, which heal rapidly, leaving no deformity behind them, and which do not prevent the person injured from performing his habitual work for more than nine days.<sup>7</sup>

#### *D. Basis of the Medico-Legal Classification*

We are told that from the medico-legal standpoint it is necessary that in the determination of the extent of the injury done, account must be taken of the injury to the functions of the various organs, and also the danger to life. Moreover we are informed that medicine bases its modes of appreciating the degree of severity of wounds on the importance of the organs affected and on the clinical, physiological and pathological significance of each particular lesion. It is said that Medicine considers the number of days of healing and of the incapacity or deformity as purely secondary, accidental, uncertain and entirely independent of the intention of the person responsible for the injury. For from the medical standpoint it is of essential importance to take into account the nature, character and location of the injuries and the individual resistance of the injured, together with the opportunities which may exist for the administering the proper surgical aid and assistance of every kind.

For as it has been said with convincing certainty that “a division into mortal and nonmortal wounds, if it could be made, would be very desirable; but the unexpected complications and the various extraneous causes which give gravity in the simplest cases, and on the other hand the favorable termination of some injuries apparently the most dangerous, render any such classification impossible. The general classification into slight, severe, dangerous and mortal wounds may be used but the pos-

---

<sup>7</sup>“Legal Medicine”, by Dr. Sixto de los Angeles, pp. 171-172.

sibility of a slight wound terminating with loss of the person's life and the apparently mortal wound ending with only a slight impairment of some function must always be kept in mind.<sup>8</sup>

Verily, the danger to life of any wound is dependent upon a number of factors; the extent of the injury, the form of the wound, the region of the body infected, the blood nerves, organ involved.

*E. Intervening Conditions—Important Factors to be Considered.*

The Supreme Court of the Philippine Islands, interpreting a provision of the Old Penal Code, similar to Sub-section 1 of Article 4 of the Revised Penal Code held "that persons who are responsible for an act constituting a crime are also liable for all the consequences therefrom and inherent therein, other than those due to incidents entirely foreign to the act executed, or which originate through the fault or carelessness of the injured person."<sup>9</sup> Likewise our highest tribunal laid down the ruling that "if one inflicts upon another slight physical injuries which later degenerate into serious physical injuries without fault or negligence on the part of the injured person, the former will be liable for the latter crime, that is for serious physical injuries."<sup>10</sup> Clearly the question resolves into whether the later crime is the direct and immediate result of the felonious act of the offender?; whether the offended has himself been guilty of negligence and carelessness which in turn caused the aggravation of the injury? For as has been said by our local Supreme Court "if A and B, engage in a fight and B, because he is suffering from heart disease, dies during the fight, A cannot be held guilty of homicide for the death of B, for the reason that the death of the latter was not directly caused by the act of A. Or if slight physical injuries be inflicted upon B, and the latter deliberately immerses his body in a contaminated cesspool, and as a consequence of his act his injuries become infected and became serious, A cannot be held liable for the crime of serious physical injuries."<sup>11</sup>

But the problem is to determine whether the resulting crime is the direct effect of the act of the criminal or the consequence of some intervening cause. It becomes necessary therefore for

<sup>8</sup> "Medical Jurisprudence", by Wharton and Stilles, p. 188.

<sup>9</sup> U. S. vs. Monasterial, 14 Phil. 391.

<sup>10</sup> U. S. vs. Mallari also in U. S. vs. Mendieta, 34 Phil. 242.

<sup>11</sup> U. S. vs. De los Santos, R. G. No. 13309.

us to make at least a passing note of some of the intervening conditions that may aggravate or mitigate the effects of the offense.

From the writings of some of the leading medico-legal authors we gather that the sources of danger in wounds may be divided into direct and indirect.

The Direct Sources or Factors are:—

(a) Mechanical injury to, or destruction of organs, such as the heart, lungs, brain, which when interfered with, lead to immediate death;

(b) Injury to blood vessels which brings on death by loss of blood;

(c) Injury to nervous system, which produces death by shock.

The Indirect Sources or Factors on the other hand are:—

(a) Infection with disease—producing germs—one of equal rank if not greater importance than any of the direct sources of danger.

(b) Fat embolism and the surgical process necessary for the proper treatment of the injury.

(c) Further removed but still a distinct sequelae of the injury, must be considered traumatic neuroses, diabetes, floating kidney, sarcoma, etc.

The above, of course, are but samples of the intervening conditions that one has to guard against and consider in the determination of the question we start to resolve, namely, whether the resulting injury is the direct and immediate effect of the act of the offender, and for which therefore he ought to be held liable. There are great deal more of these factors but more or less they are of kindred nature.

In connection with this question a problem is advanced, "if A inflicts slight physical injury to B, who a week later dies due to the inadequate and improper treatment by the physician. Is A only liable for slight physical injury or may he be held responsible for the crime of homicide? Apparently if we are to follow strictly the ruling of our Supreme Court in the case of *U. S. vs. Sabas Baoit*,<sup>12</sup> wherein it has been laid down that "he who executes an act must respond for all the consequences arising therefrom *which cannot be imputed to the fault of the*

---

<sup>12</sup> 15 Phil. 338.

*injured party.*" But the true and safer test in such a determination is found in a later ruling of the same Court when it held that "it is the duty of the person injured by another to exercise every precaution possible to avoid any result from such injuries which does not necessarily and directly flow from the original cause."<sup>13</sup>

To make the solution of the question before us harder we are reminded that it is always difficult if not impossible to determine whether a physician is negligent or not for the uncertainty of the outcome is present in any plan or method of treatment, whether the injury involves a serious operation or not. The question may always arise, whether the surgical method employed was the best that could be devised, or whether a favorable result might have been obtained, had it been that some other course had been pursued.

#### COORDINATING THE TWO VIEWS

##### A. *A Contrast Between the Legal and Medical Classification.*

After having examined the classification of physical injuries as established by the Revised Penal Code and the one outlined by the medico-legal experts, we glean a contrast between the two. While the Penal Code's classification establishes as principal basis for the determination of the degree of severity of physical injuries the consequences resulting therefrom, or the number of days of healing or incapacity to habitual work, or the required medical attendance, yet Medicine bases its modes of appreciating the degree of severity of wounds on the importance of the organs affected and on the clinical, physiological and pathological significance of each particular lesion. Medicine, too considers the number of days of healing and of the incapacity or deformity as purely secondary, accidental, uncertain and entirely independent of the intention of the person responsible for the injury. We have also found that since Lister have established antiseptic method, wounds are healed quickly, which method was unknown at the time of the adoption of the Spanish Penal Code of 1870, upon which our Old Penal Code was founded and which Code in turn is more or less reproduced in the present Revised Penal Code of ours.

---

<sup>13</sup> U. S. vs. Manuel Zabala, 23 Phil. 117.

B. *There Is Not and There Ought Not to be a Conflict  
Between the Two.*

The next question that naturally and logically arises is "is there a genuine and direct conflict between the two given classification namely that of the Penal Code and the one advanced by medico-legal writers? We are prone to believe that there is none. Before the eyes of the law the two cannot exist separately much more in opposition to each other. In this particular instance namely in the case of physical injuries these two branches of science Law and Medicine must complement each other. Neither will be of much importance to Justice without the other. For the law on physical injuries is one of the parts the law wherein Medicine, that branch of human science, which consoles suffering humanity, steps in and perform its mission to human kind in the person of the medical expert, side by side with Law, the embodiment of Justice, that brings peace and prosperity to all. The Supreme Court of the Philippines has more than once subscribed to this fact as evidenced by its decision in the case of *U. S. vs. Capa and Cariño*<sup>14</sup> wherein it held:—

"It is a fundamental principle in physical injuries that the best evidence of the gravity of the wound is that of the attending physician whose pertinent testimony should be obtained during the trial whenever possible."

"Expert medico-legal testimony by a competent physician is often of paramount importance to enable the judge or court to determine with a reasonable degree of accuracy the number of days of healing, the necessary results and some other incidents connected with the pathological conditions of the wounds. In such cases the real medico-legal expert states only the actual conditions as they are impartially and without bias whatever disregarding sentimentalities and personal responsibilities, bearing always in mind that the legal weight of such testimony are always to be determined by the court in the exercise of sound judicial discretion."

"It is just as essential for the Government to prove that the offended by reason of the blow inflicted by the appellant, lost the use of his arm or was hindered in the use thereof as it is to show that the appellant inflicted the blow".

---

<sup>14</sup> 19 Phil. 125.

C. *Such a Harmony is a Prerequisite to the Administration of Justice.*

It does not require much argumentation to demonstrate that such a harmony is prerequisite to the administration of justice. For if the purpose of penalty is to reestablish the disturbed order and for the state to protect itself from the harmful acts of these transgressors of the law, and furthermore that no penalty should be greater than the crime warrants, we believe that justice demands that it be imputed to the offender only the aggression and all its direct consequences and not those produced by some extraneous causes independent of the lesion and of the will of the aggressor. Oftentimes we can prove that the healing of the lesion has been delayed by infection produced by treatment wrongfully applied, or thru neglect of the injured party or thru means voluntarily executed by the offended party to delay the healing guided by vengeance and gain. How are we then to be guided and apply the law correctly if we are not to seek the aid of the apostle of Medicine?

D. *Something Should be Done.*

Having seen that to rely merely on the rigid classification set down by the Revised Penal Code is dangerous and impractical and knowing full well that to adhere solely and completely on the enumeration of the degrees of physical injuries recognized by legal medicine would be departing from law, we cannot help but conclude with D. Pedro Mata that:—

“It is necessary that such an antique, and forced classification of lesions (physical injures) in mortal, serious and less serious, must be founded on fixed, decisive and clear criterion, of easy application and genuine interpretation and the same in all courts of justice, in order that the same criminal act be punished anywhere with the same respective penalties. It is necessary to do nay once and for all with such provoking aids and deplorable anarchy which is now prevailing now with respect to the punishment of aggressions, due to the lack of fixed basis, in law and in medicine to determine the seriousness of the lesion. Such being the cases, lesions of the same kind are classified by someone in one way while they are classified by others in another, thus happening sometimes that an offender guilty of one crime is punished by death or cadena, perpetua or temporal in one place: while in another, the same is punished with imprisonment or perhaps with a less penalty.”

"The penal code does not express in a clear and decisive way the kinds of mortal lesions, neither does it express properly the characteristics of the serious or slight physical injury, nor does it determine the difference between them with respect to the criminal responsibility and damages to the offended party."

"Under this point of view, all the articles of Chapter I and IV of Title I, Book XI of the Penal Code (corresponding to Chapter II, Title Eight of Book Two, of the Revised Penal Code) need reform, substituting the actual classification for more exact one, and giving to each kind each distinctive characteristics, founded on solid bases and of easy application by the judges and experts."

"The reform must consist in determining the kinds of the lesions and its degrees of responsibility according as it directly or immediately caused the death, fixing explicitly and decisively the characteristics of each lesion according to its kind and apply to the offender the corresponding penalty."<sup>15</sup>

#### E. *The Revised Penal Code of Spain.*

Before we propose concretely any reform in the present state of the law on physical injuries in the Philippine Islands, it is interesting to see what the Spanish legislators have done in this direction. The New Penal Code of Spain of January 1, 1929, as finally reformed by a law of October 27, 1932 in conformity with the Ley de Bases of September 8, 1932 has the following provisions governing "lesiones" (physical injuries):—

Art. 421.

El que de proposito castrare a otro sera castigado con la pena de reclusion menor.

Art. 422.

Cualquiera otra mutilacion ejecutada igualmente de proposito, se castigara con la pena de reclusion menor en sus grados minimo y medio.

Art. 423.

El que hiriere, golpeare o maltratare de obra a otro, sera castigado como sea de lesiones graves.

1. Con la pena de prision mayor, si de resultas de las lesiones quedare el ofendido imbecil, impotente o ciego.

2. Con la de prision menor en sus grados medio y maximo, si de resultas de las lesiones el ofendido hubiere perdido un ojo o algun miembro principal o hubiere quedado impedido de el o inutilizado para el trabajo a que hasta entonces se hubiere habitualmente dedicado.

<sup>15</sup> Medicina Legal, Tomo III, pp. 129-130.

3. Con la pena de prision menor en sus grados minimo y medio, si de resultas de las lesiones el ofendido hubiere quedado deforme o perdido un miembro no principal o quedado inutilizado el, o hubiere estado incapacitado para su trabajo habitual o enfermo por mas de noventa dias.

4. Con la de aresto mayor en su grado maximo a prision menor en su grado minimo si las lesiones hubieren producido al ofendido enfermedad o incapacidad para el trabajo por mas de 30 dias.

Si el hecho se ejecutare contra alguno de las personas que menciona el articulo 411 con alguno de la circunstancias señalados en el articulo 412, las penas seran la de reclusion menor en sus grados medio y maximo en el caso del numero 1 de este articulo, lo de prision menor en su grado maximo a prision mayor en su grado minimo, en el caso de numero 2; la de prision menor en sus grados medio y maximo, en el caso del numero 3; y la de prision menor en sus grados minimo y medio en el caso de la numero 4, de misma.

No estan comprendidas en el parrafo anterior las lesiones que al hijo causare el padre excediendose en su correccion.

Art. 424.

Las penas del articulo anterior son aplicables respectivamente al que sin animo de matar, causare a otro algunas de las lesiones graves administrandoles a sabiendas substancias a debidos nocivos, o abusado de su credulidad o flaqueza de espiritu.

Art. 425.

Las lesiones no comprendidas en los articulos precedentes, que produzcan al ofendido inutilidad al trabajo por mas de quince dias o necesidad de asistencia facultativa por igual tiempo se reputaran menos grave y se penados con arresto mayor o destierro y multa de 250 a 2,500 pesetas, segun al presidentes arbitrio de los tribunales.

Art. 426.

Las lesiones menos graves inferidas a padres, ascendentes, tutores, maestros o personas constituidas en dignidad o autoridad publica, seran castigados siempre con prision menor en sus grados minimo medio.

Art. 427.

Cuando en la riña tumultuario, definida en el articulo 414, resultara lesiones graves y no constare quienes hubieren causado, se impondra la pena inmediatamente inferior a la correspondiente a los lesiones causados a los que aparezcan haber ejercido cualquier violencia en la persona del ofendido.

Art. 428.

El que se mutilare a el que prestare su consentimiento para ser mutilado con el fin de eximirse del servicio militar y fuere declarado exento de este servicio por efecto de la mutilacion, incurrira en la pena de presidio menor sus grados medio y maximo.

Art. 429.

Al que inutilizare a otro con su consentimiento para el objeto mencionado en el articulo anterior incurrira en la pena del presidio menor en sus grados minimo y medio.

## Art. 430.

Si la conducta penada en el articulo anterior hubiere sido mediante precio, la pena sera la inmediatamente superior a la señalada en el parafo anterior.

Si el reo de este delito fuere padre, madre, conyuge, hermano, o cuñado del mutilado, la pena sera la de arresto mayor en su grado medio a prision menor en su grado minimo.

*F. A Recourse Suggested.*

We shall not be as sweeping in our suggestions as to recommend the complete discarding of the present classification to be found in our present Revised Penal Code and substitute for it one embodying both the legal and the medical views. Rather we shall advocate that we retain the present classification and urge that in the appreciation of the degree of severity of a physical injury regards be had of the intervening causes and conditions through the aid of a medical expert. We believe this to be the most practical recourse in view of the rapid progress of the science of medicine. For at present it is hard if not impossible to make one single and rigid classification, which will be thoroughly complete. No one single classification can cover all the details that may aggravate or mitigate, as the case may be, a physical injury. What with the everyday discoveries that are blessing our medical circles and what with the greater atrocities and evil subtleness that our criminals nowadays formulate almost every other day?

With present speed with which our civilization is progressing our laws must more than ever be more flexible. To have one rigid classification would be to thwart laws' being flexible. Thus the application of the law will be hedged in with threatening injustice. To attain this flexibility we think it would be safer to hold on to the present classification of physical injuries and decree that the same must be complemented by medical testimony. In short courts should have recourse in determining the culpability of an offender not only to the ready classification outlined in the Revised Penal Code but also in the evidence showing the intervening conditions as appreciated by an impartial physician.

*G. Present Tendency.*

It is consoling to know that little we find that the present tendency both among the medico-legal writers as well as in the recent decisions of our highest tribunal is towards the advocacy

of the recourse we are suggesting. We are glad to note that in the latest book of Dr. Sixto de los Angeles, foremost Filipino medico-legal expert, he has this much to say regarding the subject we are advocating:

“In view of the conditions existing at present, the necessity of harmonizing these conflicting principles is surely imperative so that a more reasonable, humanitarian and scientific administration of law and justice may be established. The decisions of modern court show plainly the actual tendency to recognize this necessity by giving a relatively more careful consideration of the intent involved in each individual case to the circumstance which exempt, mitigate or aggravate the personal responsibilities arising from the physical injuries, and to the modern scientific views applicable to each particular case. The legal principle which holds that each and every person inflicting violence on another is responsible for all the consequences thereof, indirect as well as direct, is according to modern justice and reason not un rebuttable, but is still modifiable by proofs showing the contrary.”<sup>16</sup>

The Supreme Court of the Philippines has not overlooked the reasonableness of such modern tendency. For in the case of *U. S. vs. Santos*<sup>17</sup> it held that “for the classification of the crime of lesions in accordance with provisions of the Penal Code, it is not sufficient to take into account the number of days of treatment of the wounds of the offended party or the number of days he has been incapacitated for work but the injury caused and the consequences of the wound received must also be considered.”

And to end we quote the conclusion of Dr. Angeles in his treatise on the subject:—“As a means to aid the law in determining the degree of severity of physical injuries inflicted upon person and their actual, not merely probable consequences, the commonest lesions may be grouped in such a way as to coordinate the legal and medical classifications, based upon modern scientific principles and observations and regardless of their untoward consequences. Any possible aggravating complication that may arise in connection with physical injuries so classified, should be therefore regarded as a question of fact which may be proved and interpreted as a circumstance modifying the application of the rules of law to each given case.”

---

<sup>16</sup> “Legal Medicine”, by Dr. Sixto de los Angeles, p. 175.

<sup>17</sup> 17 Phil. 87.

## RECAPITULATION

We have seen that the protection afforded by law to man's life includes that of safeguarding the complete enjoyment of the same. Physical injuries, we have said, which is the result of an attack on life, necessarily must be of different degrees in severity and therefore must be punished with different corresponding penalties. The provisions regarding physical injuries in the Revised Penal Code, we have found, though a reformation of the old classification of that contained in the Old Penal Code, is not free from any defect for the classification therein did not take into consideration the modern medical principles. We have come in contact with the seeming clash between the Penal Code's classification of physical injuries and that outlined by medico-legal writers. We have said that such a conflict is more of a fiction than real. We have demonstrated the necessity of the harmony between the two views. And we have shown that in the realm of physical injuries it is of utmost necessity that law and Medicine go hand in hand to administer justice properly. We have finally suggested that we keep the present classification of the Revised Penal Code but reform it to the extent of making it not exclusive of other proofs based on medical appreciation of the intervening conditions.