# The Philippine Penal Code in the Light of Progressive Penal Legislation *

DEAN Espiritu has kindly invited me to address you on the subject, The Penal Laws of the Land. It was with genuine pleasure that I accepted his invitation, first, because I have wanted to be with you even for a short while, and, secondly, because this occasion will afford me an opportunity to voice my impression of and reaction to certain provisions of that statute known as The Penal Code of 1932 or the Revised Penal Code.

Your Dean has given me a free hand in the choice of theme on the subject assigned, and I thought it would neither be amiss nor inopportune to engage your attention on the following question:

Is the present Penal Code responsive to the needs and exigencies of the present, or has it outgrown its usefulness as to need revision in order to keep it abreast of penal progress?

As you well know, the present Penal Code was enacted by the Legislature on December 8, 1930. However, it did not take effect immediately after its approval, because it was intended to give the following Legislature at least two years' time to study it and to introduce such amendments as it may deem necessary, or to polish the imperfections and fill up the gaps which it may find therein, and also to afford everyone sufficient time to be informed of its provisions.[1] The thought then was to have a modern and up-to-date Penal Code, complete within the limits theretofore fixed, consistent with the idiosyncracies of our people and in consonance with the conditions and circumstances then prevailing. The changes and amendments introduced therein to subserve the purpose of the Legislature from the very beginning, did not come about until some years after it went into effect and after experience and practice stamped the need for their adoption.

In organization, it can be said that the present Penal Code has not departed bodily from the Penal Code of 1884, having retained the same arrangement, division and distribution of subject matter, namely, by Books as in those of the Penal Code of 1884, and then by Titles, Chapters, Sections and Articles. Its Book I contains only provisions of a general character on the taking effect of the Code, the application and scope of its provisions, the offenses in general and the persons liable therefor, and the penalties imposable under said provisions; and its Book II contains the definitions of the various offenses enumerated therein, and the penalties prescribed for each of them.

You could not have failed to notice that, unlike the old one, it does not contain any Book III; the omission was deliberate and well thought out. The Legislature which approved the Code, desiring to see organized municipalities and cities make use of the power delegated to them by law to legislate on misdemeanors and light offenses in order to promote

* Address delivered before the student body of the College of Law, U. P., on November 16, 1939, by the Hon. Anacleto Diaz, Justice of the Supreme Court of the Philippines.

[1] Art. 1: 367.

and safeguard the general welfare of their inhabitants, was reluctant to exercise the said power, except in the cases mentioned in articles 151, par. 2, 153, par. 5, 155, 195, 196, par. 2, 197, 198, 199, 201, 266, 271, par. 2, 281, 285, 297, par. 2, 309, pars. 7 and 8, 323, 328, par. 3, 329, par. 3, 331, par. 2, 359, last sentence, 364, and Act No. 4002, and preferred that the said municipalities and cities exercise the power, as they are supposed, and with reason, to be more familiar with existing conditions in their respective jurisdictions. The Legislature also knew that many, if not all, of the said municipalities and cities had theretofore exercised the power by enacting ordinances calculated to suppress those acts or misdemeanors against public order which have come to be known in the municipal law and in the charters of organized cities as nuisances or disturbances, affrays, scandals, riots, disorderly assemblages, breaches of the peace, and kindred acts against or prejudicial to the general welfare. These acts which are only penalized with *arresto menor* or imprisonment from 1 to 30 days, or with a fine not exceeding ₱200.00, or with both such imprisonment and fine, are precisely the subject matter of Book III of the Code which was superseded by the present Penal Code. Moreover, it was intended to put an end to the practice theretofore followed of proceeding twice against those who committed an act prohibited and penalized at the same time by a general or special law and by a municipal ordinance, anticipating thereby the prohibition which, some years later, came to be established and sanctioned expressly and solemnly in Article III, section 1, paragraph 20, of the Constitution.

The present Penal Code, however, is not a carbon copy of the old Code, in the strict sense of the word, for in truth only some of the general contours and outlines characteristic of the latter have been retained. This was due to the fact that many of its provisions have fallen into disuse, have turned out to be impossible of application, and have been found to be inadequate in the light of modern conditions and the thousand and one new circumstances which the change of sovereignty could not but bring about. The said provisions have neither been included nor adopted in one or another form, but, on the contrary, have been entirely swept away from the new Code. In their stead have been incorporated other provisions dictated and prompted by experience and by the paramount purpose, entertained from the very start, to have a Code that will operate to punish and repress at the same time that it prevents and forestalls the commission of crimes. This was to be done by imposing a penalty upon the criminal with an eye to his reformation, if it is not too late to do so, either by depriving him of or restricting his personal freedom, or by divesting him of his property and the honors that go with the position or public office which he may hold, or by preventing the exercise of his profession and the enjoyment of other rights,[2] or even by cutting short his temporal existence in extreme cases. These cases, however, are so rare and isolated that the latter penalty is becoming, of late, almost impossible of application and even more impossible of execution, because the Code itself provides that to carry out one and

---

Art. 25.

[2] Arts. 114, 120, 123, 246, 248, 253, 294.

the other act, it is necessary to observe and comply to the letter with prescribed rules and conditions which almost invariably do not concur at the same time, namely, (1) that there be aggravating circumstances, which, certainly, are easily nullified and neutralized by a single mitigating circumstance if the latter happens to be that of the act having been committed in the proximate vindication of a grave offense, or lack of instruction when this circumstance can be taken into consideration or voluntary confession;[4] (2) the elevation of the case to the Supreme Court and its review of the entire record, an indispensable step or proceeding in all cases in which no appeal is taken, and (3) the unanimous vote of the seven members composing the Supreme Court, as the Justices of the Court of Appeals invariably take the place of those of the Supreme Court who, for one reason or another provided by law, cannot take part in the consideration, deliberation and decision of the cause.[5] This is especially so if there is added to said conditions the power of commutation which, let it be said for the sake of truth, has been exercised by the first Magistrate of the Nation indiscriminately and with unfailing generosity since 1933.[6] And the indispensable publicity of the trial and that of the penalty that later is to be imposed upon the criminal, have undoubtedly the salutary effect of impressing upon other members of society—the law-abiding as well as those not irremediably depraved—that crime does not pay, thereby serving as a notice and a warning upon them to deviate from and avoid its commission.

Not many are the changes introduced in the present Penal Code since it went into effect, some of which are substantial, express and implied, and others mere corrections of clerical error. The said changes have come about to answer a felt need or to subserve a fixed purpose, or to remedy an unpredicted and unexpected situation which, however, came to pass, and it has become desirable to forestall or at least discourage its repetition and to smooth over some errors which were subsequently found to have crept into the phraseology of some of its titles, chapters, and sections.[7] Some of the said changes are intended to liberalize the provisions of the Code; others to punish more effectively, if not more severely, some offenses for the purpose of exterminating them, and still others to curb their commission. Of the first category are Acts Nos. 3999, 3940, 4000, 4117, 99, and 217.

By Act No. 3999, the Legislature amended the third paragraph of article 329 which now penalizes the crime of malicious mischief wherein the damages caused do not exceed ₱200 or cannot be estimated, with a more lenient penalty than that heretofore prescribed, that is, *arresto menor* or a fine not less than the value of said damages nor more than ₱200.

Under article 125, a public officer or employee who detained a person for legal grounds, was under a duty to deliver such person to the proper judicial authorities within the period of one hour. Having seen the impracticability in practice of the brief period granted by this provision, as the public officer or employee has other duties to perform in these cases.

[4] Arts. 13, (5), (7); 15; 63, (4); 64, (4), (5).
[5] Art. 133 Adm. Code; Act No. 3, Sec. 2, Comm.
[6] Art. VII, Sec. 11, par. 6, Constitution.
[7] Act No. 4116.

namely, to deliver the person detained to his immediate superior for purposes of identification, to record the detention in the corresponding office book, and to attend to other details not now worthy of mention, by Act No. 3940 the period of one hour was extended to six hours. Permit me to state, however, what you are already presumed to know, that the delay prohibited in the delivery to a judicial authority of a person detained or arrested, is that which is unjustified and not that which could not have been realized by reason of lawful or insuperable causes.

Under article 48 which was amended by Act No. 4000, the maximum degree of the more severe penalty could and should be imposed when a single act constituted two or more offenses, whether some of said offenses were light and the others less grave or grave. By virtue of the present amendment, however, cases of complex crimes contemplated in the aforesaid legal provision can no longer take place, with the exception of less grave or grave offenses arising from a single act, or when one is a necessary means to commit the other.

Formerly, the penalty of *reclusión perpetua* did not have any fixed period [5] except that which the Chief Executive may determine in the exercise of his power of pardon or commutation which, under former organic laws and the present Constitution of the Commonwealth, he alone could grant without any restriction than the dictates of his own conscience.[6] By virtue of the amendment brought by Act No. 217, the said penalty cannot now be more than 30 years, and if the one sentenced to the said penalty is, moreover, to suffer other deprivations of liberty, the aggregate of said deprivations cannot exceed 40 years. In this connection, I may state in passing that the law may be further liberalized, without any sacrifice of justice, by adding at the close of article 70, which is one of those amended by said Act No. 217, a provision to the effect that when a prisoner reaches the age of 70, the Director of Prisons, with the approval of the Secretary of Justice, should release him notwithstanding any unserved sentence, whether long or short, unless he is otherwise unworthy of the grace. Such a provision would be in harmony with the spirit underlying the Code, namely, to prevent, correct, and forestall the repetition or reiteration of crimes. A man of seventy in our country, with rare exceptions, is disabled by his own senility from jeopardizing or even attempting to jeopardize anyone, still less the community. Instead of continuing to deprive him of his liberty, for no other purpose than to give a lesson or a warning that others may not follow his example, or to further embitter his few and tottering years—and inasmuch as under these conditions and at this age he would neither be tempted to repeat or embark anew upon a career of crime, nor be of any use to the Government as he is too old and decrepit to work—he should be sent home there to wait for his not far distant end, thereby giving him at least the consolation of pondering upon his colossal failure in life outside of prison bars. If this unquestionably humanitarian amendment is eventually adopted, then it would also be high time to introduce a like amendment to article 160, well-

[5] Art. 27.

[6] Art. VII, Sec. 11, par. 6, Constitution.

known to law students as the provision regarding quasi-recidivism. The second paragraph of the said article may be entirely eliminated so as to add at the end of the first paragraph thereof some such provisions as the following: "unless the penalty to be thus imposed upon him is such that he will have to remain in prison after attaining the age of 70, in which case, he should only be sentenced to suffer imprisonment for a period until he reaches seventy years of age."

The original text of article 80, which was successively amended by Acts Nos. 4117 and 99, provided that any minor who, acting with discernment, commits a light, or less grave, or grave offense, should be sent to the Training School for minors of his sex, or to any of the institutions mentioned therein, there to remain for a period to be determined by the corresponding judicial authority, or until he reaches the age of majority, should there be no competent and responsible person who offers to take charge of his custody, support, correction and education. After the amendment of said article by the aforesaid laws, a minor may only be sent to said institutions if the crime committed, when he acted with discernment, is less grave or grave.

Other laws which have been subsequently promulgated to liberalize the provisions of the Code, and which may be considered as amendatory thereof, are Acts Nos. 4103, 4225, 4221, and 81 amending Act No. 2489. The first two are the ones commonly known by the Bar as the Indeterminate Sentence Law, the former being the original and the latter its amendment, which grant to those found guilty of a crime—except those convicted of treason, rebellion, sedition, espionage and piracy, those who are habitual delinquents, those who have escaped from prison or who have violated the terms of a conditional pardon, and those who have been sentenced to one year or less—the benefit of a sentence the maximum of which cannot be more than the period fixed by law, taking into consideration the circumstances modifying liability attendant to the commission of the crime and established at the trial, and whose minimum has to be within the penalty immediately lower. Thus, one convicted of homicide, without any aggravating or mitigating circumstances, instead of only getting the minimum of the medium period of *reclusión temporal*, the penalty prescribed for homicide, namely 14 years, 8 months and 1 day would be entitled to a minimum penalty which shall be within the range of *prisión mayor*, this being the penalty immediately lower than *reclusión temporal*.[10] In other words, the penalty of the person convicted in the given case may be 6 years and 1 day to 14 years, 8 months and 1 day of *reclusión temporal;* and if while serving the 6 years and 1 day, he should have observed good conduct and shown signs of reformation or of being reformed, and he has ceased to be a menace to society and to his fellowmen, he may be released without the necessity of serving his entire penalty of 14 years, 8 months and 1 day of *reclusión*, subject to the conditions which the Board created by said laws may impose.

Act No. 4221, otherwise known as the Probation Law, was approved to give to persons not convicted of an offense punishable by death or *reclusión perpetua*, those not

[10] P. v. Hon. José O Vera et al. 37 O. G. No. 8, page 164.

convicted of homicide, treason, conspiracy, or proposal to commit treason, misprision of treason, sedition, espionage, piracy, brigandage, arson, robbery in band, robbery with violence and thru the use of firearms, or corruption of minors, those who are not habitual delinquents or have ever been placed under probation—an opportunity not to enter prison by observing good conduct and complying with the conditions required by section 3 of the said law for a period to be determined by the corresponding authorities. But because of a capital defect found in its section 11 shortly after the law went into effect, which was violative of the Constitution for being discriminatory, for having established unjust classifications, and for not affording the same protection to one and all, it had to be declared void and illegal.[11] It does not seem, however, that the defect is of such a nature as to be beyond correction. It would be desirable to drop out the defect by eliminating section 11 in its entirety and appropriating annually the amount necessary to carry out the provisions of the said law.

By Act No. 2489 and Act No. 81 amending it, intended to encourage the prisoners to reform and to be actively engaged in some kind of trade or industry, the duration of their imprisonment by reason of their offenses, may be considerably cut down by simply making themselves worthy of the allowance therein granted, observing good conduct and showing willingness and diligence to work. The allowance consists in crediting them 5 days each month while they are in prison, apart from other allowances to which they may be entiled under the provisions of articles 29 and 97 of the Code. The said law also pays them, should they show evidence of industry and conscientiousness, a remuneration to be taken from the proceeds of the sales of articles prepared by them.

To punish some offenses more severely and others more effectively, articles 302 and 310 of the Code have been amended by Acts Nos. 273 and 417; article 195 by Act No. 235; articles 139, 142, and 154 by Act No. 202; 143, 144, 145 by Acts Nos. 264 and 351; article 315, subsection (2), paragraph (e), by Act No. 157; and article 150 by Act No. 52. By these amendments, robbery and theft of mail matter and large cattle are now penalized with the maximum of the penalty prescribed by law; the bankers, maintainers or conductors of *jueteng* and those who knowingly and without any legal ground have in their possession lottery lists, paper or other matter containing letters, figures, signs or symbols which pertain to or are in any manner used in the game of *jueteng*, if found guilty, are now penalized, the former with *prisión correccional* in the maximum degree, and the latter with *prisión correccional* in the medium degree under the said Act No. 235. Those who resort to intimidation or any other illegal method to commit sedition, are also at present penalized with the same penalty prescribed for those who commit the same offense through violence, under Act No. 202, which also establishes an additional specification of the offense of inciting to sedition and of the crime known as "unlawful use of means of publication."

Other forms of violation of articles 143 and 144 punishing as an offense the machinations employ-

[11] Art. 249; Art. 64. (1).

ed to prevent the meeting of the National Assembly, of its committees and sub-committees, of the Commission established by the Constitution and the disturbance of the sessions of said bodies, have been prohibited and penalized by the aforesaid Acts Nos. 264 and 357.

Act No. 157 has also prohibited a new form of *estafa* known in the language of the street as "living and eating at another's expense" thru deceit and other dishonest means; and Act No. 52 has extended the scope of the offense of disobedience to summons issued by the political bodies mentioned in the original of article 150 to acts of disobedience to summons issued by the National Assembly, by any of the Commissions created by the Constitution, by their committees, sub-committees, or their officers authorized to issue said summons.

And among the laws which have been enacted to prevent the commission of offenses, and which may be considered as complementing, if not amending, the Code, we have Act No. 417 aforesaid, Act No. 4002 which, in the same manner that the Code punishes those parents who abandon their children or who do not give the education which their resources and standing permit,[12] punishes those children or minors who fail to respect and obey their parents or guardians, thereby, sanctioning in the particular case of the children with respect to their parents, the principle that for every right there is a corresponding obligation: Act No. 4081 which, by way of supplement to articles 256, 257, 258 and 259, defining and punishing the crime of intentional or voluntary abortion and that of involuntary abortion, prohibits and punishes, in turn, by a fine not exceeding ₱200 or by imprisonment not exceeding 90 days, the exercise or practice of midwifery or obstetricts by midwives without the immediate supervision and inspection of a duly licenced physician; and Commonwealth Act No. 46, which, by way of supplement also to articles 187, 188 and 189 which prohibit frauds in commerce and industry, such as that of falsely marking articles or merchandise made of gold, silver or their alloys, that of substituting and altering trade marks and trade names, and that of unfair competition and fraudulent registration of trade mark or trade name, prohibits and punishes the fraudulent advertising, mislabeling or misbranding of any product, stock, bonds, etc.

In view of what I have stated in general outline, and without losing sight of the fact that it was never the intention of the Legislature, in enacting the present Code, to relegate to the background or to brush aside completely all the provisions of the old one, some of which have effectively served the purpose for which they have been enacted, and to create an entirely new one embodying new ideas, because some of said provisions have been incorporated in the present Code, no one would unqualifiedly venture to assert that the said Code has not responded satisfactorily to the exigencies of the times and the system of penalties suitable to our country. Alive to the fact, however, that the penal law, in order to serve its purposes, should not only be just but clear, adequate and productive of positive results, I would like to engage your attention on certain facts which I deem important, so that thereafter you may judge with me whether it is in order to make a

[12] Art. 277.

new revision of the Code or to introduce therein other amendments to clarify some of its ideas, the better to mete out justice in specific cases and to prevent more effectively and rigidly some of the offenses prohibited and penalized thereunder which seem to be more deeply rooted and more frequently repeated than the others.

The Director of Prisons, Major Eriberto B. Misa, told me, based upon data supplied by the records of his Office, that during the last five years, the most popular offenses committed in this country were theft, robbery and *estafa*. During the said period, the crime of theft invariably occupied the first place being greater in number than any other crime, and robbery following a close second in 1935 and 1938. This latter crime occupied the third place in 1936 and 1937, and the fourth place in 1934. The crime of *estafa* occupied the fourth place in 1936, the fifth place in 1934 and 1935, and the sixth place in 1937 and 1938. There were not a few recidivists in these three crimes for the said period; and the habitual delinquents continued as they continue up to the present time to constitute a group which, while insignificant, should not for that reason cease to be a source of concern on the part of our legislators and educators. The Director of Prisons believes and so tells me in a letter that the causes of the frequent recidivisms in the aforesaid offenses are the lack of adequate preparation to follow and perform an honorable calling, the lack of employment, idleness and laziness. I believe he is justified, but I venture to add another cause or reason, to wit, that the penalties prescribed for said offenses, particularly those for theft and *estafa*, are relatively lenient; they are not sufficiently severe to discourage those who see the examples of other offenders, or to intimidate those who neither practice nor have any notion of the rudiments of good conduct or the Code of citizenship, still less to uproot or curb the evil; nor are they sufficiently severe to bring home the conviction that it pays infinitely more to work amidst an atmosphere of freedom than to labor under compulsion, by way of punishment, within prison walls, with the indelible stigma of crime stamped upon one's brow. I believe that the raising of existing penalties, at least to the degree immediately higher, would in no inconsiderable measure contribute to stamp out the evil or to diminish its prevalence, and compel those convicted, during their imprisonment, to work in a shop in adequate preparation for an honorable calling when they step out of prison so as to earn their daily living and support their families. And another thing, inasmuch as it is but natural that an ex-convict, whether he had committed robbery, theft or *estafa*, be looked down upon with suspicion, as he is not believed to have reformed or amended his ways and it is only to be expected that he would ply his trade again, it would not be easy for him to land a job immediately after serving his sentence. This is the time, more than ever, when he needs a helping hand which can be done either by giving him work in some other locality—which can well be done by the government who has its agencies in all parts in demand of farmhands—or by recommending him to a factory or establishment where he could apply what he learned in prison both for his benefit and that of the industry or factory wherein he is to be employed.

In Japan, according to Justice Masataro Miyake of the Japanese Supreme Court, this humanitarian measure has not been neglected. The Department of Justice, according to him, created a Bureau to take charge of the protection of ex-convicts, and in 1932 there were already in existence 517 societies for the purpose of giving work to ex-convicts.[13] Is there by any chance anything in this country to prevent us from doing the same thing? Let the work be started, and I am sure that it will receive favorable response on all sides; and all will rally to it with enthusiasm; for after all the ex-convicts who will be favorably affected, are not many, and they will be able to offer a skill not possessed by all, namely, that which by force of work they learned in prison.

Representative Soliven did well in calling attention, in a bill which he has recently presented to the of liberty and confinement in prisicial session (Bill No. 1172), to the fact that habitual delinquency is not clearly defined in article 62, rule 5, last paragraph of the Code, as it contains obscurities which should be clarified. The period of ten years required to be counted from the conviction of an accused of his last crime to his conviction or release for his immediately preceding crime, may refer to two periods or to only one according to the mood of the interpreter; it may be from the immediately prior conviction to the last one, or from the date of release after serving sentence until the last conviction, but the fact is that the law does not speak with clearness. It is likewise silent with respect to the case of a convicted person who has not served any portion of his penalty immediately preceding because of his pardon. The clarification may be effected in the form of an amendment couched in this or similar language:

"For the purposes of this article, a person shall be deemed to be a habitual delinquent if, within the period of ten years from the date of his last conviction of *robo hurto, estafa,* or falsification, he commits and is found guilty of any of said felonies, a third time or oftener, without having served his penalty by reason of pardon; or from the date of his relaese in case he should have served his penalty totally or partially." [14]

Representative Soliven, in another bill presented on the occasion already mentioned, proposed, and I think opportunely and with reason, as it is better late than never, that a penalty be prescribed for those who evade the penalty of *destierro.* Article 157 as now enforced punishes only evasion of sentences consisting of deprivation of liberty and confinement in prison; and this seems clear to me as the said article speaks of evasion or escape by means of unlawful entry, by breaking doors, windows, grates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution. It does not include the evasion of the sentence of *destierro* which, as all of you know, is a penalty consisting in a relative restriction or limitation upon one's freedom. In lieu of the amendment which Representative Soliven seeks to introduce in article 159, which speaks exclusively of the violations of conditional pardons, I believe it would be better to add to article 157 a paragraph in some such terms as the following: "A person sentenced to *destierro* who evades his sentence shall be pe-

[13] An Outline of Japanese Judiciary, page 74, 2nd Rev. Ed.

[14] Art. 62, rule 5 last par. Refer Soliven's proposed bill.

nalized with *arresto mayor*, and once this last penalty is served, he shall extinguish that of *destierro*." A similar provision is found in the Penal Code of 1884.

In the study of the subject before us, it could not have escaped your attention that, while the penalty of "censure" is prescribed for some offenses like those mentioned in articles 200 and 211 and perhaps other articles, there is no certainty as to whether the said "censure" should be public or private, due to the fact that articles 25, 200 and 211 of the Spanish text—which should prevail because the Code was approved in Spanish and its English translation came only a year later, and because it is so provided by Act No. 2717—refer to it as merely "censure" and in Act No. 217 amending articles 70 and 71, it is referred to as "public censure"; however, it is not stated in what it consist or how it should be executed. Do not have the idea that this is of little importance, because the old Penal Code of 1884 makes a distinction between private censure and public censure and how the two penalties should be executed. I think this should be clarified by adding to article 88—after amending its heading as follows: "*Arresto Menor;* Censure"—the following or similar paragraph: "Censure shall consist in reading to the person convicted his full sentence in open court and in the warning given to him by the judge disapproving of his conduct and giving him such proper advice as may be necessary."

Article 117 defining and penalizing espionage contains provisions which should be clarified and corrected to avoid reaching a clearly illogical result. From the language of said article, it is clear that the crime is sought to be punished more severely if committed by a public officer. The penalty prescribed for such officer, if found guilty, is *prisión mayor;* and the penalty prescribed if the one guilty is a private person is *prisión correccional*. The article, however, contains a paragraph, the second, wherein one of the integral elements of the crime is precisely that the accused, being a public officer and being in charge, by reason of his office, of the possession and custody of the data or information which paragraph 1 prohibits to be revealed to strangers, nevertheless reveals or discloses the same to a representative of a foreign power. Inasmuch as the circumstance that the accused is a public officer, qualifies the crime in this case, the said circumstance could not and should not be taken into account as an aggravating circumstance to impose the penalty of *prisión mayor*, because that would be against the rule of *non bis in idem*, it being contrary to law to make a single act produce two distinct consequences. The only penalty imposable under the said article is *prisión correccional*, and this is not just, because it is illogical and absurd to treat with relative leniency a person who, by his conduct, has shown greater perversity and disloyalty. I believe that the effect may be corrected by amending the said article so as to read as follows:

"Art. 117. *Espionage.* The penalty of *prisión correccional* shall be inflicted upon any private person who, without authority therefor, enter a warship, fort, or naval or military establishment, or reservation, to obtain any information, plans, protographs, or other data of a confidential nature relative to the defense of the Philippines.

"The penalty next higher in degree shall be imposed if the offender be a public officer or employee; and

"The penalty of *prisión mayor* in its maximum period to *reclusión temporal* in

its medium period shall be inflicted upon any person who, being in possession by reason of the public office he holds, of the articles, data, or information referred to in the first paragraph hereof, discloses their contents to a representative of a foreign nation."

Recidivism, as may be inferred from the language of article 14 of the Code, is a circumstance which, if not offset by a mitigating circumstance which, if not offset by a mitigating circumstance, does not lose the effect of aggravating the criminal liability of the accused, notwithstanding the lapse of many years from the commission of his first crime to that of his last. It does not prescribe and it has no fixed period within which it may cease to have such effect. Although a recidivist has behaved like a good citizen for five, ten, fifteen or more years after having served his prison term, he may be sentenced to the maximum penalty prescribed for his last offense if the aggravating circumstance of recidivism is not offset by any mitigating circumstance. The reasons why the law punishes recidivists with severity are, as you know, their inclination to transgress, and the law seeks to cut short that tendency; that the penalty imposed upon them for their first crime did not turn out to be effective, and the law seeks to strike fear into their hearts by imposing a greater penalty; and that the repetition of a crime shows greater perversity, and the law seeks to reform them more effectively. I do not believe that the said reasons hold true if many years have elapsed between the commission of one crime and that of another. This was the case in Spain when on November 14, 1925 there was introduced in its Penal Code the following amendment or addition to paragraph 18 of article 10:

"The effects of recidivism as an aggravating circumstance shall cease upon the lapse of the period necessary for the prescription of the crime wherein it was taken into account."

The Penal Code of Canton de Zurich contains a like provision. Article 70 thereof reads:

"Recidivism does not operate to increase the penalty if from the date of service of the last penalty ten years have elapsed where the accused were sentenced to correction, and five years in other cases."

A similar provision, from which it is inferred that the aggravating circumstance of recidivism does not have any effect if more than ten or five years have elapsed, according to the nature of the crimes, from service of the former sentence until the commission of the last offense, is found in the Penal Code of Italy.

The tendency of our Code being to deliberalize its provisions within reasonable bounds, without any sacrifice of justice, I do not see any reason why our Legislature may not fix the period within which circumstances 9 and 10 of article 14 of our Revised Penal Code, commonly known as the aggravating circumstances of recidivism and reiteration, may produce their natural effect of aggravating the criminal liability of an accused, the said period to be the same as that fixed in the amendment aforesaid to the Spanish Penal Code.

Aside from the suggestions already pointed out, which are clearly deducible from the comments I just made, and which, if adopted, would undoubtedly put in bolder relief the purposes underlying our Code, I have this other to make. Its importance, as you yourself will not fail to see, consists in that

its adoption would do away with omissions which may ultimately redound to the prejudice of a person sentenced to imprisonment and not included among the exceptions mentioned in article 29. This article provides that a person convicted of an offense and thereafter sentenced to imprisonment is entitled to an allowance equivalent to one-half of his preventive imprisonment, except when there are present in his case the circumstances of recidivism or reiteration, or when required to serve his sentence he should refuse to appear voluntarily, or when he is convicted of robbery, theft, *estafa*, malversation, falsification, vagrancy and prostitution. However, neither the said article nor any other article of the Code specifies who is to grant the said allowance, should it be proper to do so; and while it is to be presumed that the Court taking cognizance of the case may grant the same because it is so provided in the last paragraph of article 93 of the Provisional Law for the application of the provisions of the Penal Code of 1884 which, being procedural, should be considered as supplementary to the Code of Criminal Procedure, General Orders No. 58, under article 1 of the said Code inasmuch as it is not contrary to any of its provisions; the fact, however, is that in many cases this duty is neglected, because the accused, except when he pleads guilty, is not concerned with the said allowance for fear that, in asking for it, he may be actually believed to be guilty; and even in cases where he confesses his guilt, through inadvertence or lack of the exact data to insist that he be credited with the said allowance, he does not ask for it. We cannot say that under the authority granted to him by article 99, the Director of Prisons, who has all the necessary data furnished him not only by provincial wardens but by clerks of courts in their letters of commitments, is the one called upon to grant the said allowance, because the said article is entirely inapplicable to the case; the authority so granted is only to credit a prisoner with the allowances for loyalty and good conduct to which he is entitled under articles 97 and 98. To avoid omissions and to protect a prisoner who is entitled, by express provision of law, to an allowance for preventive imprisonment, article 99 should be amended in this or similar language.

"Whenever lawfully justified the Director of Prisons shall grant allowances for good conduct. Such allowances once granted shall not be revoked.

"The Director of Prisons, although not so ordered in the decision, provided the records of his office show that a prisoner has suffered preventive imprisonment and does not fall within the exceptions provided by article 29, shall credit said prisoner with the special allowance provided in the said article."

A comparison of our Code with those of other countries—notwithstanding the limitations that it contains, as it does not take in many other prohibited acts punishable under other laws of a special character in the sense that this phrase is used in Act No. 3226, so as not to destroy the entirety of said laws—will disclose that from the standpoint of foresight, objectives, and justice, it does not lag behind any of them. We may state with all fidelity to truth that, without overlooking existing conditions in our country, our Code is abreast of the progress made in penal law. Like those of other countries—and I limit myself to that of Spain in order to avoid extending myself beyond the time allotted to me—which is the counterpart of our old Code, the pres-

ent Code has established, among others which I do not need to enumerate one by one for the sake of brevity, the various circumstances of lack of criminal imputability and liability, distinguishing those which are justifying from those which are merely exempting; in response to conditions not theretofore in the mind of the legislator, and which have arisen with the passing of time, the progress in the various branches of human endeavour, and the change of sovereignty, it has created new mitigating circumstances, like voluntary confession before a competent Court, voluntary surrender to the authorities or their agents, and old age; [15] it has likewise created new aggravating circumstances, like the use of minors, motor vehicles, airships, or other similar methods in the commission of crimes; [16] it has established rules for the suspension of the execution of judgments in proceedings against offending minors 18 years of age; [17] it has likewise established the graduation of penalties, the order of their execution if more than one is imposed and both cannot be simultaneously served, the duration thereof; [18] and the diminution of the said penalties for good conduct, loyalty, and diligence; [19] it has provided for the applicability of the Code to those who violate the same while outside of Philippine territory if their acts are those mentioned in paragraphs 1, 2, 3, 4, and 5 of article 2; it has prohibited new forms of *estafa*, like the act of issuing a post-dated check against a bank without having any funds therein and without informing of this fact the person to whom the said check is delivered in payment of a thing received from said person; [20] the act of a surety in a bond given in a criminal or civil action of alienating or encumbering without express authority of the court property liable for said bond while the latter is in full force and effect; [21] the act of a debtor of alienating, otherwise encumbering, or transferring and taking away to another province or city personal property mortgaged by him in favor of his creditor under the Chattel Mortgage Law (Act No. 1508), without the written consent of the latter; [22] and the act of one who, in the common Spanish expression "come o vive de gorra"; has placed the husband and the wife on a par when either commits the crime of adultery, in the sense that if one is caught by the other *in flagrante delicto* and then and there killed, the penalty imposable upon the parricide would be the same: destierro; has extended to accomplices and accessories the extinction of the criminal action or of the penalty in cases of seduction, abduction, rape, or abuse of chastity when the offender marries the offended party; [23] has established severe penalties for vagrancy and prostitution; [24] and, to avoid greater injury resulting from the publicity to which a complaint may give rise, it has provided that, as in the cases of adultery, concubinage and seduction, the person or persons guilty of abduction, rape or abuse of chastity may not be proceeded against without formal complaint of the offended party herself, of her parents, grandparents, or guardians.[25]

[15] Art. 13, (7), (2).
[16] Art. 14 (20).
[17] Art. 80, Act No. 99, Comm.
[18] Arts. 70, 71; Act No. 217.
[19] Arts. 97, 98, 158.
[20] Art. 315, 2, (d).
[21] Art. 316, (6).
[22] Art. 319.
[23] Art. 344 last par.; Art. 23.
[24] Art. 202.
[25] Art. 344.

To subserve the purpose of giving to those who have violated the provisions of the Code the most liberal punishment, and at the same time an opportunity to reform and behave better in the future, we have our Indeterminate Sentence Law. Now all that we need is a Probation Law purged of any defect offensive to the Constitution, and the adoption of the other measures suggested in this lecture. If we can have all this, then we can say, without the least exaggeration, that our Code is in keeping with the times, on a par with the progress made in penal law, and does not require further revision, unless we want to reduce in a single Code all the penal laws which we now have spread over various volumes of our public laws, each of which constitutes a complete piece of legislation.

PERSISTENCE

"THE most essential factor is persistence—the determination never to allow your energy or enthusiasm to be dampened by the discouragements that must inevitably come. I believe that he is richer for the battle with the world, in any vocation, who has great determination and little talent, rather than his seemingly fortunate brother with great talent but little determination."—JAMES WHITCOMB RILEY.