

## THE LAW OF TREASON IN THE PHILIPPINES \*

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### HISTORY OF THE LAW

To say that the first paragraph of article 114 of the Revised Penal Code is an almost exact reproduction of section 1 of Act No. 292<sup>1</sup> and that the second paragraph is evidently taken from section 9 of the Act of the United States Congress of March 9, 1902<sup>2</sup> is to say the least about the history of the Philippine law on treason. As stated in the case of *People v. Adriano*,<sup>3</sup> the Philippine law on treason is of Anglo-American origin and so we have to look for guidance from American sources on its meaning and scope, and so also its history.

Throughout most of the world's history the crime of high treason was broadly defined and savagely punished,<sup>4</sup> and from the Roman Empire to the triumph of democracy treason was considered the most heinous of all crimes.<sup>5</sup> The state protected itself by snuffing out conspiracies and, actuated by the powerful drive toward survival, governments were seldom squeamish about putting men to death on mere conjecture.<sup>6</sup>

Tracing the history of our treason law as far back as we can in point of time, we have to start around the middle of the 14th century in England. Up to that time, the crime of treason was vague and indeterminate and men were convicted or acquitted in accordance with the whims of the king's justices. But in 1351, the English Parliament pressed for a law defining treason and King Edward III yielded because he was broke, having squandered his income

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<sup>1</sup> Act No. 292 of the Philippine Commission, dated November 4, 1901, provided in its section 1 as follows: "Every person, resident of the Philippine Islands, owing allegiance to the United States or the Government of the Philippine Islands, who levies war against them or adheres to their enemies, giving them aid and comfort within the Philippine Islands or elsewhere, is guilty of treason, and upon conviction shall suffer death or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years and fined not less than ten thousand dollars."

<sup>2</sup> "No person in the Philippine Islands shall, under the authority of the United States, be convicted of treason by any tribunal, civil or military, unless on the testimony of two witnesses to the same overt act, or on confession in open court."

<sup>3</sup> 44 O. G. No. 11, 4300, 4303 (1947).

<sup>4</sup> WEYL, TREASON, 4 (1950).

<sup>5</sup> *Ibid.*, p. 5.

<sup>6</sup> *Ibid.*

on harlots, foreign wars and an attempt to re-establish the pageantry of the Round Table.<sup>7</sup>

The statute that was enacted the following year defined several kinds of treasonous acts.<sup>8</sup> Treason as defined by article 114 of the Revised Penal Code is but a portion of the great Treason Act of 1852, which portion reads as follows: ". . . if a man do levy war against our lord the king in his realm, or be adherent to his enemies in his realm, giving them aid and comfort in the realm or elsewhere, and thereof be provably attainted of open deed . . ." It is to be noted that while treason is more restrictively defined in our law, its principal ideas and quaint phrases are of the Edward III Statute origin.

But the benefits sought to be attained by the peers of England proved illusory, for within a few decades Parliament again complained that "no man knew how he ought to behave himself, to do, speak or say, for doubt of such pains of treason."<sup>9</sup> New laws were passed or the basic statute reinterpreted, sometimes stretched to ridiculous lengths.<sup>10</sup> Even in the golden age of Elizabethan England,

<sup>7</sup> *Ibid.*, p. 14.

<sup>8</sup> "*Declaration what offenses shall be adjudged treason.* Item, whereas diverse opinions have been before this time in what case treason shall be said, and in what not; the King, at the request of the lords and of the commons, hath made a declaration in the manner as hereafter followeth, that is to say, when a man doth compass or imagine the death of our lord the King, or of our lady his queen or of their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir; or if a man do levy war against our lord the King in his realm, or be adherent to the King's enemies in his realm, giving them aid and comfort in the realm or elsewhere, and thereof be probably attainted of open deed by the people of their condition; and if a man counterfeit the King's great or privy seal, or his money; and if a man bring false money into this realm, counterfeit to the money of England, as the money called hushburgh, or other, like to the said money of England, knowing the money to be false, to merchandise or make payment in deceit of our said lord the King and of his people and if a man slea the chancellor, treasurer, or the King's justices of the one bench or the other, justices in eyre, or justices of assise, and all other justices assigned to hear and determine, bring in their places, doing their offices; and it is to be understood, that in the cases above rehearsed, that ought to be judged treason which extends to our lord the king, and his royal majesty: And of such treason the forfeiture of the escheats pertaineth to our sovereign lord, as well as of the lands and tenements holder of other, as of himself: and moreover there is another manner of treason, that is to say, when a servant slayeth his master, or a wife her husband, or when a man secular or religious his prelate to whom he oweth faith and obedience, and of such treason, the escheats ought to pertain to every lord of his own fee. . ." 25 Ed. III, Sta. 5, Ch. 2, quoted in note 22, *Cramer v. United States*, 65 Sup. Ct. 918, 926 (1945).

<sup>9</sup> WEYL, *supra*, note 4, p. 15.

<sup>10</sup> Under Edward IV, an obscure Londoner boasted he would make his son heir to the Crown—which happened to be the name of the house he owned. For this, he

treason prosecutions were actually more sweeping and virulent than during the Middle ages. Henry Hallam, in his *Constitutional History of England*, describes the British courts of justice at that time as "little better than caverns of murderers."<sup>11</sup> Prosecutions for treason were the royal weapons in the battle to establish the paramount power of the Crown in a nation that was emerging from the long night of tyranny toward a more democratic outlook. The situation was such that the alternative to treason was often acquiescence in injustice. The ranks of England's traitors included such great names as Saint Thomas More, Sir Philip Sydney and Sir Walter Raleigh. So much so that Thomas Jefferson said, "The unsuccessful strugglers against tyranny have been the chief martyrs of treason laws in all countries."<sup>12</sup>

In the recent case of *Cramer v. United States*<sup>13</sup> the United States Supreme Court, referring to the Edward III treason law said, "That monumental piece of legislation . . . after 600 years is still the living law of treason of England. Roger Casement in 1917, forfeited his life for violating it."<sup>14</sup>

We now turn from England to the United States in our study of the development of the treason law.

The bulk of colonial legislation on treason points to the fact that the several colonies drew on the general concepts of English law for the definition and the incidents of its prosecution,<sup>15</sup> and taking the colonial period as a whole, in most of the colonies, the definition of the offense was clearly thought of in terms of the English legislation stemming from the Statute of 25 Edward III.<sup>16</sup> Some of the

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was put to death as a traitor. In the same reign, when a party of hunters killed the favorite buck of a nobleman, the latter expressed the wish that the buck's horn be lodged in the belly of the man who had killed it. Since the king had shot the buck himself, the nobleman was put to death under the law of treason. WEYL, *supra* note 4, p. 15.

Under the lusty Henry VIII, a master "whose commands were crimes," the treason laws blossomed forth. It was treason to clip money, to burn houses for purposes of extortion, to poison people, to execrate the king, to refuse to abjure the Pope, to deflower any of the king's sisters, aunts or nieces, to have sexual intercourse with his children or with those "commonly reputed to be his children." If a queen failed to disclose her pre-nuptial relations with other men, she became a traitor. At one time, Henry made it treason to believe that his daughters Mary and Elizabeth were legitimate. Later it became treason to assert that they were bastards. WEYL, *supra* note 4, p. 17.

<sup>11</sup> *Ibid.*, p. 4.

<sup>12</sup> *Ibid.*, p. 5.

<sup>13</sup> 65 Sup. Ct. 918 (1945).

<sup>14</sup> *Rex v. Casement*, I K B. 98 (1917).

<sup>15</sup> Hurst, *Treason in the United States*, 58 HARVARD LAW REVIEW, 235 (1944).

<sup>16</sup> *Ibid.*, p. 226.

acts adopted the phraseology of the statute with additions inspired by local problems<sup>17</sup> and others contained provisions which, in varying terms, declared that the offenses of treason should be defined, proceeded against and punished as under the laws of England.<sup>18</sup> The striking characteristic of all the pre-Revolutionary legislation was the evident emphasis on the safety of the state or government, and the subordinate role of any concern for the liberties of the individual.<sup>19</sup>

As a matter of law, the Revolution called for new legislation on treason, for new political entities had arisen to claim allegiance, betrayal of which was treason.<sup>20</sup> And yet the Revolution did not break the thread of continuity with the traditional English materials defining the scope of treason.<sup>21</sup> The Continental Congress which at that time was, technically speaking, composed of traitors against the King of England, described treason against the colonies as adherence to the King of Great Britain.<sup>22</sup>

When the Federal Convention met in Philadelphia to frame the American Constitution, there was a vast area of agreement on the subject of treason. Most of the delegates had risked death as traitors when they took up arms against the English Crown. All of them feared tyrannical laws and had a common love of individual liberty and a confidence in government by law. All concurred that treason

<sup>17</sup> *Ibid.*, p. 229.

<sup>18</sup> *Ibid.*, p. 232.

<sup>19</sup> *Ibid.*, p. 235.

<sup>20</sup> *Ibid.*, p. 246.

<sup>21</sup> "When the Continental Congress, on June 24, 1776, adopting the recommendation of its 'Committee of Spies' recommended to the colonies that they pass treason legislation, it used the familiar terms of the statute of Edward III, with a suggestion of the evidentiary requirement of the Statute of 7 William III:

"Resolved, That all persons abiding within any of the United Colonies and deriving protection from the laws of the same, owe allegiance to the said laws, and are members of such colony; and that all persons passing through, visiting, or make (sic) a temporary stay in any of the said colonies, being entitled to the protection of the laws during the time of such passage, visitation, or temporary stay, owe, during the same time, allegiance thereto:

"That all persons, members of, or owing allegiance to any of the United Colonies, as before described, who shall levy war against any of the said colonies within the same, or be adherent to the King of Great Britain, or others the enemies of the said colonies, or any of them, within the same, giving to him or them aid and comfort, are guilty of treason against such colony:

"That it be recommended to the legislatures of the several United Colonies to pass laws for punishing, in such manner as to them shall seem fit, such persons before described, as shall be proveably attainted of open deed, by people of their condition, of any of the treasons before described." *Ibid.*, p. 247.

<sup>22</sup> See note 21 *supra*.

—alone among the myriad crimes which man can commit—should be defined once and for all in the Constitution, and they defined it a crime against constitutional democracy.<sup>23</sup> Madison summed up the accomplishment of the Convention as follows: "But as new-fangled and artificial treason have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other, the convention have, with great judgment, approved a barrier to this peculiar danger by inserting a constitutional definition of the crime,<sup>24</sup> fixing the proof necessary for conviction of it<sup>25</sup> and restricting Congress, even in punishing it, from extending the consequences of guilt beyond the person of its authors."<sup>26</sup>

Under the United States Constitution, Congress can only prescribe the punishment for the crime subject to the limitation imposed by said Constitution.<sup>27</sup> And in several acts, the United States Congress did prescribe the punishment.<sup>28</sup>

And when the United States occupied the Philippines, it was but natural that she defined treason in the Philippines, in the manner that it was then known—and that is in the manner of the United States Constitution and the different statutes passed by the United States Congress in pursuance of said Constitution.

The two-witness rule has an even more ancient history. It seems that the fundamental sense of justice of mankind recognizes the danger of convictions of the innocent as a result of perjury and passions. In fact, the two-witness requirement was a familiar precept of the Mosaic Law<sup>29</sup> and of the New Testament.<sup>30</sup>

But in connection with the treason law, we may say that the development of this procedural protection started in 1547, the year Statute I Edward VI was enacted in England. Section 22 of Chap-

<sup>23</sup> WEYL, note 4 *supra*, pp. 26-28.

<sup>24</sup> "Treason against the United States shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort." Constitution of the United States, Article III, section 3, paragraph 1, first sentence.

<sup>25</sup> "No person shall be convicted of Treason unless on the testimony of two Witnesses to the same overt Act, or on Confession in Open Court." *Ibid.*, second sentence.

<sup>26</sup> "The Congress shall have the power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained." *Ibid.*, second paragraph.

<sup>27</sup> *The Federalist*, No. 43.

<sup>28</sup> See *United States v. Lagnason*, 2 Phil. 492 (1904).

<sup>29</sup> "One witness shall not rise up against any man whatsoever the sin or wickedness be. But in the mouth of two or three witnesses every word shall stand." Deut. xix. 15.

<sup>30</sup> "... take with thee one or two more, that in the mouth of two or three witnesses every word may stand." Matt. xviii. 16.

ter 12 of said statute provided that no person was to be indicted or arraigned for treason, petty treason or misprision "unless the same offender or offenders be accused by two sufficient and lawful witnesses, or shall willingly without violence confess the same." The several statutes<sup>31</sup> that were enacted were of the same tenor until the year 1696, when Statute 7 William III was enacted, section 2 of chapter 3 of which provided that no person should be indicted or tried of high treason working corruption of blood or misprision, "but by and upon the oaths and testimony of two lawful witnesses, either both of them to the *same overt act*, or one of them to the one and the other of them to *another act of the same treason*" unless the accused "shall willingly without violence, in open court confess the same, or stand mute or refuse to plead." But although the statute spoke of two witnesses to the same overt act, it nevertheless allowed one witness to testify to an overt act, provided that said overt act refers to the same species of treason.<sup>32</sup>

In the United States, certain early statutes required at least two witnesses to prove any capital offense.<sup>33</sup> And in connection with the treason law, from the latter part of the 17th century on, in most of the colonies the two-witness requirement laid down by the Statute of 7 William III in treason trials was enacted by reference to that statute.<sup>34</sup>

And during the Revolutionary period, almost all the basic treason acts either required "the testimony of two lawful and credible witnesses," without linking this to the proof of overt acts, or in substance adopted the language of the Act of 7 William III. There was no innovation and no hint of the type of two-witness requirement later inserted in the United States Constitution.<sup>35</sup> The two-witnesses-to-the-same-overt-act rule seems to have been an original contribution of the framers of the United States Constitution to the procedural protection of persons accused of treason.

<sup>31</sup> 1552, St. 5 & 6 Edw. c. 11, sec. 12. No person was to be indicted or arraigned for treason "unless the same offender or offenders be thereof accused by two lawful accusers, which said accusers at the time of the arraignment of the party so accused, if they be then living, shall be brought in person before the party so accused and avow and maintain what they have to say against said party . . . unless the said party arraigned shall willingly without violence confess the same."

<sup>32</sup> Hurst, *Treason in the United States*, 58 HARVARD LAW REVIEW, 245 (1944). See also 3 WHARTON'S CRIMINAL EVIDENCE, sec. 1396, p. 2282.

<sup>33</sup> "The earliest act requiring two or more witnesses for capital offenses in general seems to be laws of New Haven Colony (1656; Hartford ed., 1858) 17: "That no man shall be put to death, for any offence, or misdemeanor in any case, without, the testimony of two witnesses at least. . . ." Note No. 28, Hurst, *supra*, p. 244.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*, p. 272.

During the making of the Constitution of the United States there arose the discussion as to the meaning of the "testimony of two witnesses." Mr. Dickinson "wished to know \* \* \* whether they were to be witnesses to the same overt act or to different acts."<sup>36</sup> When it was moved to insert the phrase "to the same overt act" after the two-witness requirement, the Committee of the Whole voted 8-3 in favor of it. The final exchange of comment on it emphasized solely the strengthening of the evidentiary guaranty against perjury.<sup>37</sup> Madison noted that "Doctr. Franklin wished this amendment to take place—prosecutions for treason were generally virulent; and perjury too easily made use of against innocence."<sup>38</sup>

After the United States Constitution we finally come to section 9 of the Act of the United States Congress of March 8, 1902, from which paragraph 2 of article 114 of the Revised Penal Code was taken.

As finally evolved, the two-witness rule requires that "each witness must testify to the whole overt act; or if it is separable, there must be two witnesses to each part of the overt act."<sup>39</sup> Or, in the words of the United States Supreme Court in the case of *Cramer v. United States*,<sup>40</sup> "Every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses." And our own Supreme Court in the case of *People v. Adriano*<sup>41</sup> said, "Such is the clear meaning of the two-witness provision of the American Constitution. By extension, the lawmakers who introduced that provision into the Philippine statute books must be understood to have intended that the law should operate with the same inflexibility and rigidity as the American forefathers meant."

The reason for the rule or the purpose for which it has been intended has been expressed differently by different persons and such reason seems to rest on justifiable grounds of policy. Blackstone said that it is designed to "secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages."<sup>42</sup> Mr. Best says: "The reason for requiring two witnesses in high treason or misprision of treason—unquestionably that which influenced the framers of the

<sup>36</sup> *Ibid.*, note 89, p. 403.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> 7 WIGMORE ON EVIDENCE, 271, § 2038 (3rd ed.).

<sup>40</sup> 65 Sup. Ct., 918, 935 (1945).

<sup>41</sup> 44 O. G. No. 11, 4300, 4305 (1947).

<sup>42</sup> 3 COMMENTARIES, p. 358, quoted in 7 WIGMORE ON EVIDENCE, 269, § 2037 (3rd ed.).

modern statutes on the subject, whatever may have been the motive of those of the earlier ones—is the peculiar nature of these offenses, and the facility with which prosecutions for them may be converted into engines of abuse and oppression.”<sup>43</sup> And to Justice Jackson<sup>44</sup> it is to guard against “conviction of the innocent as a result of perjury, passion, or inadequate evidence.” And finally, Wigmore says: “The opportunity of detecting the falsity of the testimony, by sequestering the two witnesses and exposing their variance in details is wholly destroyed by permitting them to speak of different acts.”<sup>45</sup>

The two-witness requirement places a special burden on the prosecution, purposely to make conviction hard but not impossible. Because of the nature of the crime of treason and the stigma that attached not only to the criminal but his family, it is considered the better policy to allow many to go free than to convict an innocent one.

#### ELEMENTS AND NATURE OF THE CRIME OF TREASON

The first element of this crime is allegiance, permanent or temporary. The original provisions of article 114 required citizenship or permanent allegiance. This explains the numerous decisions on cases committed during the Japanese occupation which resolved as a preliminary question the issue of citizenship. Upon this observation is based the distinction drawn by the Supreme Court between our law of treason and that of the United States under whose law resident aliens may be held responsible.<sup>46</sup>

A third paragraph was, however, added to the article we are commenting on by Executive Order No. 44, dated May 31, 1945, extending the coverage of the law to resident aliens or to those owing temporary allegiance and, consequently, enjoying temporary protection of our laws. This is followed by most nations, including the United States<sup>47</sup> and England.<sup>48</sup> This was also the rule embodied in the Spanish Penal Code made applicable to the Philippine Islands.<sup>49</sup> By this amendment our law on this point has become identified with

<sup>43</sup> See 7 WIGMORE ON EVIDENCE, *supra*.

<sup>44</sup> In *Cramer vs. United States*, *supra*, p. 931.

<sup>45</sup> 7 WIGMORE ON EVIDENCE, *supra*, 270, §2038.

<sup>46</sup> *People v. Marcaida*, 45 O. G. No. 3, 1294, 1299 (1947).

<sup>47</sup> *Catlisle v. United States*, 16 Wall. 147 (U.S. 1873); see 35 Stat. 1088 (1909), 18 U. S. C. L. (1940). See also 59 HARVARD LAW REVIEW, 612 (1946).

<sup>48</sup> *Joyce v. Director of Public Prosecution*, 1 All Eng. 186 (H. L. 1946).

<sup>49</sup> Art. 138.

that of the United States and the distinction mentioned above is now obsolete.<sup>50</sup>

The second element is the existence of a public enemy, to which adherence is avowed, which presupposed the nation at war. This element is a quality of mind—the deliberate intent required by article 3 of the Code. Mr. Justice Perfecto, concurring in *Laurel v. Misa*,<sup>51</sup> stated the law as follows: "Treason is a war crime. It is not an all time offense. It can not be committed in peace time. While there is peace there are no traitors. Treason may be incubated when peace reigns. Treasonable acts may actually be perpetrated during peace, but there are no traitors until war has started." This is a settled rule with respect to treason committed by adherence to the enemies, giving them aid or comfort." And this is so because the law itself expressly requires the presence of an enemy or enemies. Opinion, however, is divided when treason is committed by levying war. We reserve discussion of this point later in this comment. We wish, however, to point out that this distinction was laid down in the opinion of Mr. Justice Willard, interpreting Act No. 292 in the early case of *U. S. v. Lagnason*, as follows:

"No distinction was anywhere made between a foreign enemy and a rebel or insurgent so far as the act of 'levying war' is concerned. All of the cases tried before the United States courts have grown out of insurrection. The case of Mitchell grew out of the 'whiskey rebellion' in western Pennsylvania; the case of Fries, out of the Northampton Rebellion; the case of Bellman out of Burr's attempts; the case of Hanway out of the resistance to the fugitive slave law; and the case of Greathouse out of the civil war. Such a distinction has, however, been made under the second clause of the Constitutional provision, namely, giving aid or comfort to an enemy. It has been said that the word 'enemy' means there a foreign enemy and does not include a rebel."<sup>52</sup>

The third element is the overt act by which treason is manifested. Treason may be committed in one of two ways, namely, by levying war or by giving aid and comfort to the enemy.

All three elements are necessary for conviction. Neither adherence<sup>53</sup> nor the overt act alone<sup>54</sup> will suffice. Nor would these

<sup>50</sup> On whether this temporary allegiance is divested by the alien leaving the jurisdiction, see 59 HARVARD LAW REVIEW, *supra* note 47.

<sup>51</sup> 44 O. G. No. 4, 1176, 1183-84 (1947).

<sup>52</sup> 3 Phil. 472, 478 (1904). See also the still earlier case of *U. S. v. Magtibay*, 2 Phil. 703 (1903), also by Mr. Justice Willard, where the *Lagnason* decision seemed already implied.

<sup>53</sup> "Adherence alone is not indictable." *People v. Alvero*, 47 O. G. No. 11, 5619, 5651 (1950). See also *People v. Prieto*, 45 O. G. No. 8, 3329, 3332 (1948).

<sup>54</sup> *People v. Perez*, 46 O. G. No. 10, 4886 (1949); *People v. Caña*, 48 O. G. No. 3, 989, 991 (1950); *People v. Dumapit*, 47 O. G. No. 4, 1747, 1748 (1949);

two elements combined, without citizenship as required by the original provision of article 114, support a conviction.<sup>55</sup>

#### TREASON BY LEVYING WAR

There is no levying of war unless, at the very least, there is an actual assemblage of men for the purpose of effecting by force a treasonable design. The mere enlisting of men, without assembling them, is not levying war. But the meeting of particular bodies of men, and their marching from places of partial to a place of general rendezvous, would be such an assembly as amount to a levying of war.<sup>56</sup> From the Swartout case<sup>57</sup> and those which followed it,<sup>58</sup> treason by levying war would seem to be composed of three elements, namely, an actual assemblage of men, treasonable design, and the use or exhibition of force. It does not matter whether or not actual violence has flared.<sup>59</sup>

May treason by levying war be committed during peace or is this, like the giving of aid and comfort and adhering to the enemy, essentially a war crime? The sweeping statement of Mr. Justice Perfecto, concurring in *Laurel v. Mesa*,<sup>60</sup> would seem to indicate that this kind of treason is also exclusively a war crime. On the other hand, the Supreme Court, in the early case of *U.S. v. Lagnason*,<sup>61</sup> held that it may be committed during the existence of peace. In this second case, the defendant, in October, 1902, levied war upon the forces of the government apparently to overthrow the authority of the United States and to establish an independent government. The prosecution was based upon section 1 of Act No. 292, the pertinent provisions of which were as follows:

"SECTION 1. Every person, resident of the Philippine Islands, owing allegiance to the United States, or the Government of the Philippine Islands, who levies war against them or adheres to their enemies, giving them aid and comfort within the Philippine Islands or elsewhere, is guilty

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*People v. De Castro*, 47 O. G. No. 1, 105, 106 (1949); *People v. Godinez*, 45 O. G. No. 6, 2524 (1947); *People v. Agoncillo*, 45 O. G. No. 7, 2874, 2875-2876 (1948).

<sup>55</sup> The accused was charged with treason, but citizenship was not proved. The accused was convicted of arson, not treason. *People v. Kapalaran*, (C.A.) 46 O. G. No. 4, 1684, 1685 (1948).

<sup>56</sup> *Ex Parte Hallman and Ex Parte Swartout*, 2 L. ed. 554 (1807).

<sup>57</sup> *Id.*

<sup>58</sup> *Burr's Trial*, 2 L. ed. 684 (1908); *Kegeerreis v. Van Zile*, 167 NYS 874 (1917).

See also *U. S. v. Lagnason*, 3 Phil. 472 (1904).

See also prior cases: *U. S. v. Vigal*, 1 L. ed. 409 (1795); *U. S. v. Mitchel*, 1 L. ed. 410 (1795).

<sup>59</sup> *Burr's Trial*, *supra*, note 58.

<sup>60</sup> See note 51, *supra*.

<sup>61</sup> See note 52, *supra*.

of treason, and upon conviction, shall suffer death or, at the discretion of the court, shall be imprisoned at hard labor for not less than five years and fined not less than ten thousand dollars.

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"SEC. 3. Every person who incites, sets foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or of the Government of the Philippine Islands, or the laws thereof, or who gives aid or comfort to anyone so engaging in such rebellion or insurrection, shall, upon conviction, be imprisoned for not more than ten years and be fined not more than ten thousand dollars."

Above legal provisions were similar to or identical with the statute law of the United States of July 17, 1862, and the Revised Statutes of the United States of a later date. It would seem, therefore, that the act of rebellion punished under section 3 was treason likewise punished differently under section 1 of Act No. 292. Since the law as construed by American courts placed no distinction between a foreign enemy and a rebel or insurgent so far as the act of levying war to overthrow the government was concerned, Mr. Justice Willard proceeded to convict Lagnason, not of rebellion under section 3, but of treason under section 1. He, however, continued to hold that when treason consisted in engaging in an insurrection or rebellion, the penalty for the latter crime should be imposed. Consequently, in the opinion of Mr. Justice Willard, Lagnason was convicted of treason but the penalty imposed was that corresponding to rebellion—that is, the crime was classed under section 1 and the penalty, under section 3. The rule was laid down that "acts of violence committed by an armed body of men with the purpose of overthrowing the Government was 'levying war against the United States,' and was therefore treason, whether it was done by ten men or ten thousand."<sup>62</sup>

Consequently, Mr. Justice Willard considered Lagnason's crime treason only in name, but rebellion in effect. Mr. Justice McDonough wrote a separate opinion, saying that an insurrection could exist not amounting to war; and that Lagnason's act was merely rebellion and not treason in view of its magnitude. He, therefore, thought that rebellion under section 3 was a crime separate from treason under section 1. But he, obviously, agreed with Mr. Justice Willard that acts of violence as amount to a levying of war, though committed during peace, would be treason.<sup>63</sup> Mr. Justice Johnson dissented in a separate opinion, holding that Lagnason committed treason and should be penalized under section 1 of Act No. 292. He agreed with

<sup>62</sup> At p. 478. Did Mr. Justice Willard abandon this opinion? See *United States v. Ayala*, 6 Phil. 150 (1906).

<sup>63</sup> At pp. 483-487.

Mr. Justice McDonough that treason was a crime separate from rebellion but disagreed with his finding that treason was not here committed. Mr. Justice Johnson was, apparently, also of the opinion that treason by levying war could be committed during peace.<sup>64</sup> Mr. Justice Cooper also wrote in dissenting opinion holding the distinction between treason and rebellion not to reside in the magnitude of the movement but in the intention of the accused. He, however, also believed that treason by levying war could be committed during peace.<sup>65</sup> Mr. Justice Torres dissented, holding that Lagnason was guilty of treason and should be punished under section 1 of Act No. 292. He obviously agreed with Mr. Justice Willard that an act of rebellion to overthrow the government was treason and with Mr. Justice Johnson that Lagnason should be punished under section 1 of Act No. 292. He was impliedly also of the opinion that treason by levying war could be committed during peace.<sup>66</sup>

Chief Justice Arellano and Justice Mapa, however, concurred in the result but obviously classifying the crime committed as rebellion under section 3 of Act No. 292.<sup>67</sup> No explanation was given for this opinion. Indeed, they could have thought with Mr. Justice McDonough that Lagnason's acts were not of such magnitude as to amount to treason. It may, therefore, be concluded from the Lagnason case that the Supreme Court unanimously believed that treason by levying war, under Act No. 292, could be committed during peace when, therefore, there could be no public enemy.

It is further argued that to require the existence of war in treason by levying war would convert this form of treason to a mere overt act of giving aid and comfort to the enemy.<sup>68</sup>

Does the enactment of article 134 of the Revised Penal Code, replacing section 3 of Act No. 292, render obsolete the Lagnason case? There seems little in the two provisions to indicate any difference, except in phrasing. But there is more than passing interest in the following statement of Mr. Justice Torres' dissent in the Lagnason case:

"In Act No. 292, . . . the crimes of treason and rebellion or insurrection are not defined with proper separation, as they appear in the Penal Code, as offenses of a different character, each with a separate classification under the penal law."<sup>69</sup>

<sup>64</sup> At pp. 487-499.

<sup>65</sup> At pp. 499-505.

<sup>66</sup> At pp. 505-508. See also his separate opinion in *United States v. Ayala*, *supra*, note 62, at p. 152.

<sup>67</sup> At p. 483. See also *U. S. v. Ayala*, *supra*, note 62.

<sup>68</sup> 1 KAPUNAN, REVISED PENAL CODE ANNOTATED, 468-469 (1951).

<sup>69</sup> At p. 505.

The "proper separation" observed by Mr. Justice Torres in the Spanish Penal Code, but not pointed out by him, might be classified into two. The first was that it required expressly for treason by levying war the existence of a foreign enemy<sup>70</sup> while rebellion was defined in terms similar to article 134 of the Revised Penal Code.<sup>71</sup> The two crimes were, indeed different. The second was that treason was classified as an offense against the external security of the state and rebellion, as a crime against the form of government. The first mode of separation is notoriously wanting in the Revised Penal Code. The second, however, is followed and retained. Thus, treason is found under crimes against public order. Was this the "proper separation" Mr. Justice Torres had in mind? It seems obvious that he was referring to the first mode of separation and not to the second, for he used the phrase "*defined with proper separation.*" If he intended to refer to the second, he would have used "classified" instead of "defined." At any rate, exalting the second mode of separation is to place form and analysis above substance and history. Indeed, as observed by the Supreme Court, our law of treason is of American origin<sup>72</sup> and articles 114 and 134 of the Revised Penal Code seem to have been adapted from Act No. 292, also of the same ancestry. The history of the treason law both in the United States and in England indicates that treason may be committed both in war and in peace. This discussion leads to the conclusion that the Lagnason case may contain the correct statement of our law and that Mr. Justice Perfecto's dictum may be too sweeping to be accurate.

But if treason by levying war may be committed during peace, how may it be distinguished from the crime of rebellion? This raises the difficulty encountered in the Lagnason case. And the justices that participated in that case had divergent solutions. It would, therefore, seem far more reasonable to return to the clear-cut distinction established by the Spanish Penal Code and, thus, obliterate all confusion. At any rate, practice, as revealed in the prosecutions growing out of the Huk uprising, does seem to be tending in this direction, although the legal foundations do appear shaky.

When a levying of war is committed in war time, especially when there is adherence to the enemy, no question may arise that

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<sup>70</sup> See articles 134-139.

<sup>71</sup> See articles 171 and 174.

<sup>72</sup> "The Philippine law on treason is of Anglo-American origin and so we have to look for guidance from American sources on its meaning and scope." *People v. Adriano*, 44 O. G. No. 11, 4300, 4303 (1947). See also *People v. Prieto*, 45 O. G. No. 8, 3329, 3332 (1948).

treason is committed.<sup>73</sup> Here the magnitude of the armed resistance is obviously immaterial since the crime may be considered as giving aid and comfort.

#### TREASON BY AID AND COMFORT

As already mentioned above, this form of treason is exclusively a war crime. Enemies do not exist during peace.

The Supreme Court, approving English and American authorities, defined what may be considered aid and comfort as follows:

“. . . As rightly stated by Lord Reading in the Casement trial ‘an act which strengthens or tends to strengthen the enemies of the King in the conduct of war against the King, that is, in law giving of aid and comfort,’ and ‘an act which weakens or tends to weaken the power of the King and the country to resist or to attack \* \* \* is \* \* \* giving aid and comfort.’ It is not essential that the effort to aid be successful, provided overt acts are done which if successful would advance the interest of the enemy.”<sup>74</sup>

This form of treason is enriched by a wealth of cases growing out of the Japanese occupation. The cases may be conveniently classified as exemplifying military, economic and political collaboration with or giving aid and comfort to the enemy.<sup>75</sup>

On military collaboration, the Supreme Court held that mere membership in the Makapili organization was treasonable.<sup>76</sup> This

<sup>73</sup> *People v. Almodovar*, 46 O. G. No. 12, 6074, 6078 (1949). See also *People v. Gutierrez*, 48 O. G. No. 8, 3387 (1952).

<sup>74</sup> *People v. Alarcon*, 44 O. G. No. 12, 4876, 4881 (1947). The Court also cited *Cramer v. United States*, 65 Sup. Ct. 918 (1944). See also *People v. Alitagtag*, 45 O. G. No. 21, 715, 719 (1947).

<sup>75</sup> The classification is suggested by the case of *People v. Alvero*, 47 O. G. No. 11, 5619 (1950).

<sup>76</sup> “Such membership by its very nature gave the enemy aid and comfort. The enemy derived psychological comfort in the knowledge that he had on his side nationals of the country with which his was at war. It furnished the enemy aid in that his cause was advanced, his forces augmented, and his courage was enhanced by the knowledge that he could count on men such as the accused and his kind who were ready to strike at their own people. The practical effect of it was no different from that of enlisting in the invader’s army.” *People v. Adriano*, 44 O. G. No. 11, 4300, 4303 (1947). See also *People v. Espiritu*, 46 O. G. No. 1 (Supp.) 17, 19-20 (1948); *People v. Alitagtag*, 45 O.G. No. 2, 715, 720-721 (1947); *People v. del Rosario*, G. R. No. L-2229, April 19, 1950; *People v. Alvero*, 47 O. G. No. 11, 5619 (1950).

See also the following cases where other overt acts were present together with membership in the Makapili organization: *People v. Endrenal*, G. R. No. L-776, August 29, 1947; *People v. Manayao*, 44 O. G. No. 12, 4867 (1947); *People v. Anulat*, 45 O. G. No. 6, 2502, 2503-2504 (1947); *People v. Ubaldo*, 46 O. G. No. 1 (Supp.) 15, 17 (1948); *People v. Lansanas*, 46 O. G. No. 4, 1531, 1532-1533 (1948);

was because this organization was conceived and established as a military arm of the Japanese forces, although not part of it.<sup>77</sup> This was an established fact of which the Court took judicial notice.<sup>78</sup> Consequently, not only was membership proof of giving aid and comfort but also of adherence to the enemy.<sup>79</sup> The same could be said of similar organizations that existed during the forlorn days of the Japanese occupation.<sup>80</sup>

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People v. Jose, 46 O. G. No. 4, 1606, 1610 (1948); People v. Almodovar, 46 O. G. No. 12, 6074, 6079 (1949); People v. Aquivido, 47 O. G. No. 1, 172 (1949); People v. De la Cruz, C. A., 47 O. G. No. 8, 4286 (1949); People v. Osi, 47 O. G. No. 8, 4144, 4151 (1950); People v. Barrameda, 47 O. G. No. 10, 5082, 5086 (1950); People v. Almazora, 48 O. G. No. 3, 1003 (1950); People v. Bautro, G. R. No. L-4260, January 21, 1952.

<sup>77</sup> See cases, *supra*, note 76.

<sup>78</sup> People v. Alitagtag, *supra*, note 76.

<sup>79</sup> Being a Makapili is "evidence of both adherence to the enemy and giving him aid and comfort." People v. Adriano, *supra*, note 76, at p. 4302.

<sup>80</sup> On membership in the *Japanese Military Police*, the Supreme Court said: "Se pregunta, y estimamos que con razon: ¿que mejor adhesion, ayuda y facilidades para el enemigo se puede pedir que el prestar servicios en sus cuerpo tan indispensable y tan vital para al mismo y para sus fuerzas combatientes como su policia militar? (Vea-se Republica vs. McCarty, 2 Dall., 36; 1 Law ed., 300, 301.) En esta cause se ha declarado lo siguiente: 'The crime imputed to the defendant by the indictment, is that of levying war, by joining the armies of the King of Great Britain. Enlisting, procuring any person to be enlisted in the service of the enemy, is clearly an act of treason. By the defendant's own confession it appears that he actually enlisted in a corps belonging to the enemy . . .'" People v. Bagalawis, 44 O.G. No. 8, 2655, 2661 (1947). See also People v. Solon, 45 O.G. No. 3, 1244 (1947); People v. Muñoz, 45 O.G. No. 6, 2471, 2482 (1947); People v. Fernando, 45 O.G. No. 6, 2482, 2502 (1947); People v. Prieto, 45 O.G. No. 8, 3329 (1948); People v. Abarintos, 46 O.G. No. 1 (Supp.) 21 (1948); People v. Labra, 46 O.G. No. 1 (Supp.) 159 (1948); People v. Deduyo, 47 O.G. No. 7, 3507 (1950); People v. Marasigan, 47 O.G. No. 7, 3529 (1950); People v. Barrameda, 47 O.G. No. 10, 5082 (1950); People v. Paar, 47 O.G. No. 10, 5127 (1950).

On membership in the *NACOCO garrison* which hired only members of the Ganap party and whose members were armed by the Japanese and used as guards for the premises of said organization, see People v. Abuela, 45 O.G. No. 6, 2469 (1947).

On membership in the *Coastal Defense Corps*, a military organization whose members were armed and wore Japanese uniforms, see People v. Irisuillo, 46 O.G. No. 2, 509 (1948); People v. Deslate, 47 O.G. No. 2, 709 (1949).

On membership in the *Scout Battalion*, see People v. Escosura, 46 O.G. No. 3, 918 (1948).

On membership in the *Bisig Bakal ng Tagala*, see People v. Alvero, 47 O.G. No. 11, 5619 (1950).

On membership in the *Kono Butai*, a semi-Japanese police organization established to check the activities of guerillas, see People v. Magbanua, G.R. No. L-2058, July 31, 1952.

On membership in the *Tetuen Volunteer Guards*, an organization designed to help the Japanese, see People v. de los Reyes, G.R. No. L-4356, May 19, 1952.

But quite properly, the Supreme Court also held that mere membership in organization dedicated to the maintenance of peace and order was not treasonable,<sup>81</sup> nor would mere service as an official in the puppet government.<sup>82</sup> Obviously, these services were dedicated to the protection of life and property of the inhabitants and only incidentally, if at all, to the advancement of the enemy's cause. Convictions for treason of people who thus rendered such services were, consequently, based on overt acts quite apart from the offices they held.<sup>83</sup> As the Supreme Court said in *People v. Godinez*: "Those who refused to cooperate, in the face of danger, were patriotic citizens; but it does not follow that the faint heart, who gave in, were traitors."<sup>84</sup>

The prosecution, arrest, torture and liquidation of guerrillas or suspected guerrillas or those supplying them or suspected of doing so, the "zoning" of communities to ferret them out, the burning of houses and the liquidation or torture and confinement of even innocent persons for these purposes, or the spying or doing sentry duty for the enemy during the Japanese occupation were considered overt acts of treason.<sup>85</sup> So also were considered the delivery of members

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On membership in the YOIN, a Japanese military organization, see *People v. Capistrano*, G.R. No. L-4549, October 22, 1952.

<sup>81</sup> So mere membership in the *Bureau of Constabulary*, an organization for the maintenance of peace and order, was not of itself treasonous. *People v. Butawan*, 46 O.G. No. 11, 5452 (1949); *People v. Tumandao*, 46 O.G. No. 7, 3090 (1949); *People v. Reside, C. A.*, 47 O.G. No. 6, 2943 (1949); *People v. Cardenas*, G.R. No. L-1570, December 29, 1950; *People v. de Castro*, 47 O.G. No. 1, 105, 106 (1949); *People v. Familiar*, G.R. No. L-431, April 27, 1949.

The same was true of mere membership in the municipal police force. See *People v. Galo*, 46 O.G. No. 12, 6062 (1949); *People v. Albano*, 46 O.G. No. 8, 3649 (1949).

<sup>82</sup> "It is now indisputable that mere governmental work during the Japanese regime—and pilotage service may be considered in the same light (§ 1138, Administrative Code)—does not constitute per se indictable disloyalty." *People v. Godinez*, 45 O.G. No. 6, 2524 (1947). See also *People v. Caña*, 48 O.G. No. 3, 989,991 (1950), concerning a municipal mayor, where this principle was implied; *People v. Bartiquin*, 46 O.G. No. 12, 6068, 6071 (1949), concerning a barrio lieutenant.

<sup>83</sup> See cases cited in note 81 *supra*; and *People v. Bartiquin*, *supra*, note 82. In *People v. Albano*, *supra* note 81, the Supreme Court said: "Possibly, under certain circumstances, members of the police force during the occupation who merely urged guerrillas to keep the peace and to stop their activities did not commit treason; but when it is shown by positive evidence that said officers were not content to render lip service to the enemy in making pleas for public order, but went further and tortured their own countrymen who were guerrillas or guerrilla sympathizers, a verdict of guilt must immediately be returned." at p. 3651.

<sup>84</sup> *Supra* note 82, at p. 2525.

<sup>85</sup> The cases on this point are numerous. *People v. Endrenal*, G.R. No. L-766, August 29, 1947; *People v. Manayao*, 44 O.G. No. 12, 4867 (1947), massacre of entire village composed mostly of women; *People v. Abad*, 44 O.G. No. 12, 4901

of the armed forces of the United States to the enemy,<sup>86</sup> the suppression of American or anti-Japanese propaganda,<sup>87</sup> and the confis-

(1947), arrest and liquidation of guerrillas; *People v. Alitagtag*, 45 O.G. No. 2, 715 (1947), execution of guerrilla sympathizers; *People v. Solon*, 45 O.G. No. 3, 1244 (1947), persecution, arrest and liquidation of guerrillas; *People v. Garcia*, 45 O.G. No. 4, 1748 (1947), arrest of guerrilla suspects or sympathizers; *People v. Abuela*, 45 O.G. No. 6, 2469 (1947); *People v. Muñoz*, 45 O.G. No. 6, 2471 (1947); *People v. Fernando*, 45 O.G. No. 6, 2482 (1947); *People v. Anulat*, 45 O.G. No. 6, 2502 (1947); *People v. Alejo*, 45 O.G. No. 7, 2871 (1948); *People v. Prieto*, 45 O.G. No. 8, 3329 (1948); *People v. Mateo*, 45 O.G. No. 8, 3383 (1948); *People v. Vindua*, 45 O.G. No. 9 (Supp.) 196 (1948); *People v. Ubaldo*, 46 O.G. No. 1 (Supp.) 15 (1948); *People v. Abarintos*, 46 O.G. No. 1 (Supp.) 21 (1948); *People v. Alarcon*, 44 O.G. No. 12, 4876 (1947); *People v. Labra*, 46 O.G. No. 1 (Supp.) 159 (1948); *People v. Irisuillo*, 46 O.G. No. 2, 509 (1948); *People v. Escosura*, 46 O.G. No. 3, 918 (1948); *People v. Campos*, 46 O.G. No. 3 922 (1948); *People v. Aguilar*, 46 O.G. No. 3, 975 (1948); *People v. Apostol*, 46 O.G. No. 3, 993 (1948); *People v. Alibotod*, 46 O.G. No. 3, 1005 (1948); *People v. Aribas*, 46 O.G. No. 5, 2050 (1948); *People v. Lansanas*, 46 O.G. No. 4, 1531 (1948); *People v. Jose*, 46 O.G. No. 4, 1606 (1948); *People v. Garcia*, 46 O.G. No. 6, 2497 (1949); *People v. de los Reyes*, 46 O.G. No. 5, 2099 (1948); *People v. Vilo*, 46 O.G. No. 6, 2517 (1949); *People v. Lacanlale*, 46 O.G. No. 6, 2526 (1949); *People v. Racaza*, 46 O.G. No. 6, 2590 (1949); *People v. Pineda*, 46 O.G. No. 7, 3050 (1949); *People v. Roble*, 46 O.G. No. 9, 4207 (1949); *People v. Alcover*, 46 O.G. No. 7, 3060 (1949); *People v. Castro*, 46 O.G. No. 7, 3078 (1949); *People v. Bato*, 46 O.G. No. 7, 3085 (1949); *People v. Humarang*, 46 O.G. No. 8, 3627 (1947); *People v. Albano*, 46 O.G. No. 8, 3649 (1949); *People v. Pacatang*, 46 O.G. No. 9, 4226 (1949); *People v. Adlawan*, 46 O.G. No. 9, 4299 (1949); *People v. Bascon*, 46 O.G. No. 9, 4308 (1949); *People v. Delgado*, 46 O.G. No. 9, 4213 (1949); *People v. Ingalla*, 46 O.G. No. 10, 4831 (1949); *People v. Moreno*, 46 O.G. No. 10, 4866 (1949); *People v. Butawan*, 46 O.G. No. 11, 5452 (1949); *People v. Bustillos*, 46 O.G. No. 11, 5454 (1949); *People v. Galo*, 46 O.G. No. 12, 6062 (1949); *People v. Dizon*, 46 O.G. No. 12, 6059 (1949); *People v. Bartiquin*, 46 O.G. No. 12, 6068 (1949); *People v. Almodovar*, 46 O.G. No. 12, 6074 (1949), *People v. Familiar*, G.R. No. L-431, April 27, 1949; *People v. Labra*, G.R. No. L-1240, May 12, 1949; *People v. Capacete*, G.R. No. L-943, November 22, 1949; *People v. Aquivido*, 47 O.G. No. 1, 172 (1949); *People v. Deslate*, 47 O.G. No. 2, 709 (1949); *People v. Mercado*, 47 O.G. No. 12 (Supp.) 355 (1950), "zoning" and detention of guerrillas; *People v. Tuason*, 47 O.G. No. 3, 1204 (1949); *People v. Concepcion*, 47 O.G. No. 4, 1812 (1949); *People v. Hontañosas*, 47 O.G. No. 7, 3429 (1950); *People v. Panganiban*, 47 O.G. No. 7, 3454 (1950); *People v. Menor*, 47 O.G. No. 7, 3532 (1950), "zoning and apprehension of guerrillas; *People v. Deduyo*, 47 O.G. No. 7, 3507 (1950); *People v. Jardinico*, 47 O.G. No. 7, 3508 (1950); *People v. Marasigan*, 47 O.G. No. 7, 3529 (1950); *People v. Nuñez*, 47 O.G. No. 7, 3536 (1950), "zoning" and arrest of guerrillas; *People v. Bautista*, 47 O.G. No. 7, 3498 (1950); *People v. Antonio*, 47 O.G. No. 7, 3514 (1950); *People v. Canibas*, 47 O.G. No. 8, 4073 (1950); *People v. Cerazo*, 47 O.G. No. 8, 4075 (1950); *People v. De la Cruz*, C. A., 47 O.G. No. 8, 4286 (1950); *People v. Villanueva*, 47 O.G. No. 8, 4107 (1950); *People v. Osi*, 47 O.G. No. 8, 4144 (1950); *People v. Suralta*, 47 O.G. No. 9, 4594 (1950); *People v. Barrameda*, 47 O.G. No. 10, 5082 (1950); *People v. Santiago*, 47 O.G. No. 10, 5100 (1950); *People v. Paar*, 47 O.G. No. 10, 5127 (1950); *People v. Arambulo*, G.R. No. L-2053, April 29, 1950; *People v. Logo*, G.R. No.

cation of foodstuffs and the commandeering of houses for the enemy or <sup>88</sup> building them air-raid shelters.<sup>89</sup>

The Supreme Court, however, found nothing indictable in a municipal mayor, acting under orders of a Japanese commander, recruiting laborers for the construction of trenches, foxholes, air-raid shelters and stables for horses of the enemy or commandeering private houses. Said the Court: "It is a matter of public knowledge,

L-2158, April 29, 1950; *People v. Basilio*, G.R. No. L-2238, May 11, 1950, "zoning" and the people detained and not heard from; *People v. Vitriolo*, G.R. No. L-2278, April 29, 1950; *People v. Balingit*, G.R. No. L-1298, May 31, 1950; *People v. Cardenas*, G.R. No. L-1570, December 29, 1950; *People v. Laurel*, 47 O.G. No. 12 (Supp.) 205 (1950); *People v. Navea*, 47 O.G. No. 12 (Supp.) 252 (1950); *People v. Almazora*, 48 O.G. No. 3, 1003 (1950); *People v. Taruma*, 48 O.G. No. 4, 1305 (1950), "zoning" and arrest of guerrillas; *People v. Sortijas*, G.R. No. L-3216, September 18, 1951, "zoning" and arrest of suspects; *People v. Magbanua*, G.R. No. L-2058, July 31, 1952; *People v. Caña*, 48 O.G. No. 3, 989 (1950); *People v. Atilares*, G.R. No. L-2290, January 14, 1952; *People v. Bautro*, G.R. No. L-4260, January 21, 1952; *People v. Cataluña*, G.R. No. L-4071, March 12, 1952; *People v. Erna*, G.R. No. L-3918, April 28, 1952; *People v. Golez*, G.R. No. L-4618, March 28, 1952; *People v. Predilla*, G.R. No. L-4407, March 31, 1952; *People v. Germiniano*, G.R. No. L-4449, May 26, 1952; *People v. Lagmay*, G.R. No. L-2270, April 18, 1952; *People v. Taborada*, G.R. No. L-4230, May 31, 1952; *People v. Morales*, G.R. No. L-4533, May 28, 1952; *People v. de los Reyes*, G.R. No. L-4356, May 19, 1952; *People v. Gutierrez*, 48 O.G. No. 8, 3387 (1952); *People v. Capistrano*, G.R. No. L-4549, October 22, 1952; *People v. Dubouzet*, G.R. No. L-4739, October 29, 1952; *People v. Ortega*, G.R. No. L-5194, November 20, 1952; *People v. Zaide*, G.R. No. L-5362, December 12, 1952; *People v. Alvar*, G.R. No. L-4585, October 24, 1952; *People v. Dimapilis*, G.R. No. L-5360, January 30, 1953; *People s. Ilustre*, G.R. No. L-4082, January 30, 1953; *People v. Peralta*, G.R. No. L-4497, February 18, 1953; *People v. Rasay*, G.R. No. L-5361, February 24, 1953; *People v. Pacheco*, G.R. No. L-4570, July 31, 1953; *People v. Sabido*, G.R. No. L-5170, March 16, 1953; *People v. Cadiz*, G.R. No. L-5039, March 19, 1953; *People v. Perez*, G.R. No. L-5870, May 8, 1953; *People v. Tolentino*, G.R. No. L-5840, May 22, 1953; *People v. Mangahas*, G.R. No. L-5367 & 5368, June 9, 1953; *People v. de los Amantes*, G.R. No. L-5878, June 29, 1953; *People v. Corpuz*, G.R. No. L-4446, June 30, 1953; *People v. Nituda*, G.R. No. L-4595, August 28, 1953; *People v. Victoria*, 44 O.G. No. 7, 2230 (1947); *People v. del Rosario*, G.R. No. L-2229, April 19, 1950.

<sup>88</sup> *People v. Beato*, 44 O.G. No. 12, 4838 (1947); *People v. Almodovar*, 46 O.G. No. 12, 6074 (1949); *People v. Barrameda*, 47 O.G. No. 10, 5082 (1950). See also *People v. Bustillos*, 46 O.G. No. 11, 5454 (1949), where the accused caused the arrest of municipal officials and others to inquire about the hiding places of the two officers of the American Army.

<sup>87</sup> The defendant caused the arrest of a person who said the Americans were coming nearer and that American planes would soon fly over the Philippines. *People v. Abad*, 44 O.G. No. 12, 4901 (1947). See also *People v. Panganiban*, 47 O.G. No. 7, 3454 (1950), where the accused delivered a speech saying the Americans would not return.

<sup>86</sup> *People v. Abuela*, 45 O.G. No. 6, 2469 (1947); *People v. Anulat*, 45 O.G. No. 6, 2502 (1947). When done by a municipal mayor, under orders of the Japanese these acts were considered political. *People v. Caña*, 48 O.G. No. 3, 989 (1950).

<sup>85</sup> *People v. Adlawan*, 46 O.G. No. 9, 4299 (1949).

of which we may take judicial notice, that during the occupation, not infrequently, the enemy forces resorted to forced labor to fill in their military needs and also commandeered indiscriminately private houses not only for their accommodation but even for that of their civilian agencies, and that in such cases the services or intervention of the executive of the town were availed of, voluntarily or otherwise."<sup>90</sup> Neither treasonous was the arrest of guerrillas or guerrilla suspects not for these activities but because they were suspected of having committed arson for which they were accordingly investigated.<sup>91</sup> And as held in an early case growing out of the resistance against American domination in its initial stages, the mere possession of an appointment as an officer in the insurgent army without proof of service pursuant to it was not indictable.<sup>92</sup>

In *People v. Perez*,<sup>93</sup> the defendant recruited women to satisfy, as they did, the carnal lust of the enemy soldiers. The Solicitor General contended the act to be treasonous as calculated to preserve the morale of the soldiers. The Supreme Court absolved the defendant, holding as follows:

" . . . His 'commandeering' of women to satisfy the lust of Japanese officers or men or to enliven the entertainments held in their honor was not treason even though the women and the entertainments helped to make life more pleasant for the enemies and boost their spirit; he was not guilty any more than the women themselves would have been if they voluntarily and willingly had surrendered their bodies or organized the entertainments. Sexual and social relations with the Japanese did not directly and materially tend to improve their war efforts or to weaken the power of the United States. The acts herein charged were not, by fair implication, calculated to strengthen the Japanese Empire or its army or to cripple the defense and resistance of the other side. Whatever favorable effect the defendant's collaboration with the Japanese might have in their prosecution of the war was trivial, imperceptible and unintentional. Intent of disloyalty is a vital ingredient in the crime of treason, which, in the absence of admission, may be gathered from the nature and circumstances of each particular case."<sup>94</sup>

<sup>90</sup> *People v. Caña*, *supra* note 88, at p. 991.

<sup>91</sup> *People v. Dumapit*, 47 O.G. No. 4, 1747, 1748 (1949). The fact that those arrested were confined in the provincial jail, instead of in the Japanese garrison, was considered important. The Court said further: "If the Japanese in some way intervened, it was undoubtedly because they had their own eyes and ears even in civil offices and they merely wanted to be sure that any disorder was not directed against their authority and safety."

<sup>92</sup> *United States v. Nuñez*, 4 Phil. 441, 442-443 (1905). See also *United States v. Manalo*, 6 Phil. 364, 365 (1906). But see contrary assumption in an *obiter dictum* in *People v. Adriano*, *supra* note 76.

<sup>93</sup> 46 O.G. No. 10, 4886 (1949).

<sup>94</sup> At p. 4891. Mr. Justice Pablo dissented. At pp. 4893-4894. See also *People v. De Castro*, 47 O.G. No. 1, 105, 106 (1949), adhering to the case of *Perez*. But conviction for rape followed.

The holding would seem to consider the act entirely innocent, in spite of the Court's mention of the absence of intent or the element of adherence.<sup>95</sup> To be treasonous, said the Court, "the extent of the aid and comfort given to the enemies must be to render assistance to them as enemies and not merely as individuals and, in addition, be directly in furtherance of the enemies' hostile designs."<sup>96</sup> What was done—the holding would seem to be—was not in furtherance of the enemies' war efforts, in spite of the treasonous intent motivating it. Accordingly, the Court pointed out: "What aid and comfort constitute treason must depend upon their nature, degree and purpose. To draw a line between treasonable and untreasonably assistance is not always easy. The scope of adherence to the enemy is comprehensive, its requirement indeterminate . . ."<sup>97</sup> But the Court did not hesitate to warn that "to lend or give (the enemy) money to enable him to buy arms or ammunition to use in waging war against the giver's country enhances his strength and by the same count injures the interest of the government of the giver."<sup>98</sup>

And more explicit and lacking in the equivocation of the *Perez* case was the decision of the Supreme Court of the United States in *Haupt v. United States*.<sup>99</sup> The defendant helped his son, a German agent engaged in sabotage in the United States, secure an employment in a lens plant and buy an automobile. He also furnished him harbor and shelter for a period of six days. In the light of the spy's mission and instructions the defendant's acts were held more than casually useful; they were aid and steps essential to his design for treason. Coupled with treasonable intent, the defendant's acts would support a conviction. But in another case where the defendant gave German spies no counsel, shelter, supplies, food or drinks—all the evidence being that he met and drunk with them and engaged long and earnestly in conversation with them in public, there being no evidence of what they said nor what language they conversed—the Supreme Court of the United States acquitted the defendant. But it hinted that a different result would have been arrived at had not the prosecution withdrawn the charge that the defendant made available to the German saboteurs the use of his safe deposit box for keeping their funds.<sup>100</sup>

<sup>95</sup> This is not altogether correct because there was proof from the trial court's finding of the defendant's adherence to the enemy. The defendant was reported as saying: "These girls talked bad against the Japs, and that is why we arrested them." At p. 4888. It must be admitted that the decision is ambiguous.

<sup>96</sup> At p. 4891.

<sup>97</sup> At p. 4891.

<sup>98</sup> At p. 4891, citing *United States v. Fricke*, 259 F. 673 and 63 C. J. 816, 817.

<sup>99</sup> 67 Sup. Ct. 874 (1947).

<sup>100</sup> *Cramer v. United States*, 65 Sup. Ct. 918 (1945).

On economic and political collaboration, the leading case is *People v. Alvero*.<sup>101</sup> The defendant, Aurelio Alvero, founded that ASA Trading engaged in buying automobile spare parts and other war supplies and selling the same to the Japanese at enormous profits with which he subsidized the New Leader's Association. This was considered economic collaboration of a treasonous character, adherence having been shown. Again, when the puppet government declared war on the United States and Great Britain, Alvero wrote Laurel a letter congratulating him and enclosing a check for ₱10,000 for the prosecution of the war efforts. He joined the *Kalibapi* and later resigned because he was not allowed to be more useful. He later founded the New Leader's Association which cooperated more closely with the Japanese. These acts were considered indictable political collaboration, proof of adherence being abundant.

The Supreme Court, however, held that selling water pipes and alum cystals to the Japanese was not indictable in the absence of adherence. This was because these articles were not "exclusively for war purposes" and proof of sale did not necessarily prove adherence.<sup>102</sup> The implication is clear that conviction for economic collaboration would have been decreed had there been proof of adherence quite apart from the mere act of selling. But the Court has clearly intimated that this adherence would have been supplied by proving a donation, instead of a sale, or that the price of the sale was so low as to amount to the same thing.

#### TREASON AS A COMPLEX CRIME

When treason is committed by killing, arson or some other overt act, the question is presented whether or not a complex crime arises under article 48 of the Revised Penal Code. The defunct People's Court invariably gave an affirmative answer to this question. The Supreme Court, however, has answered the question both ways until a negative answer has become the settled rule.

In unanimous decision in *People v. Alejo*, the Supreme Court said: "All members agree, however, that the penalty meted out to the prisoner is in accordance with law. (Arts. 114 and 248, Revised Penal Code.)"<sup>103</sup> The citation of the two articles of the Code was an implied holding that article 48 was applicable.<sup>104</sup>

But even before the above case of *Alejo* was decided, the Supreme Court had already convicted of the simple crime of treason

<sup>101</sup> 47 O.G. No. 11, 5619 (1950).

<sup>102</sup> *People v. Agoncillo*, 45 O.G. No. 7, 2874, 2875-76 (1948).

<sup>103</sup> 45 O.G. No. 7, 2871, 2873 (1948).

<sup>104</sup> This becomes more apparent from *People v. Labra*, G.R. No. L-1240, May

offenders who committed murder in pursuance of their treasonable activities. It was true that the question was not raised squarely, but it is settled that the appellate court will decide errors of law or fact, if any, although not assigned as errors. Indeed, as early as 1946, in *Guinto v. Veluz*,<sup>105</sup> the Supreme Court decided that treason is a continuous offense and that the enumeration of overt acts are but specifications. Here was a principle that could and should have prevented the holding in the Alejo case. Accordingly, the Supreme Court, soon after the decision in the Alejo case, abandoned the doctrine and held in a long line of decisions that Article 48 of the Code is not applicable.<sup>106</sup> The rationale of this doctrine is simple. The different acts committed by the accused are simply treated as so many overt acts manifesting the criminal intention and are, therefore, considered as so many counts against the accused without changing the nature of the offense.<sup>107</sup>

But for reasons unavowed, the Supreme Court again changed the rule already entrenched by a long line of decisions and reverted to the doctrine of the Alejo case. In *People v. Labra*,<sup>108</sup> another unanimous decision, the Court said: "Article 48, 114 and 248 of the Revised Penal Code are applicable to the offence of treason with murder." Here, application of article 48 of the Code was explicit. And, then, the Supreme Court again shifted and has now established the doctrine that article 48 of the Code is not applicable to treason cases.<sup>109</sup> Surprisingly, these changes were accomplished without any reference to the Alejo and Labra cases.

The new principle in its actual operation may prejudice the public justice and be of great advantage to the traitor. For in a treason case where murders were committed, the defendant would be convicted of a simple offense instead of meriting the maximum penalty of the graver offense if article 48 had been made applicable. Accordingly, two remedies have been advanced, one depending upon the pro-

12, 1949, hereafter to be cited.

<sup>105</sup> 44 O.G. No. 3, 909, 911-912 (1946).

<sup>106</sup> *People v. Prieto*, 45 O.G. No. 8, 3329, 3332-3333 (1948); *People v. Labra*, 46 O.G. No. 1 (Supp.) 159, 175-176 (1948); *People v. Vilo*, 46 O.G. No. 6, 2517, 2518-2519 (1949); *People v. Roble*, 46 O.G. No. 9, 4213, 4218 (1949); *People v. Adlawan*, 46 O.G. No. 9, 4299, 4306 (1949); *People v. Ingalla*, 46 O.G. No. 10, 4831, 4832 (1949); *People v. Butawan*, 46 O.G. No. 11, 5452, 5454 (1949).

<sup>107</sup> See *Guinto v. Veluz*, *supra* note 105; *People v. Prieto*, *supra* note 106.

<sup>108</sup> *Supra* note 104.

<sup>109</sup> *People v. Navea*, 47 O.G. No. 12 (Supp.) 252, 255 (1950); *People v. Jardinico*, 47 O.G. No. 7, 3508, 3513 (1950); *People v. Suralta*, 47 O.G. No. 9, 4594, 4597 (1950); *People v. Logo*, G.R. No. L-2158, April 29, 1950; *People v. Atilares*, G.R. No. L-2290, January 14, 1952; *Crisologo v. People*, 50 O.G. No. 3, 1021, 1024 (1954).

secution to adopt and the other, upon the court itself to apply. On the one hand, the Supreme Court suggested that the public prosecutor may choose to prosecute independently the different crimes committed, instead of prosecuting the lone crime of treason in which the crimes would be treated merely as counts or as particulars.<sup>110</sup> On the other hand, the prosecutor having elected to prosecute the single crime of treason, the court will consider the seriousness of the acts committed and impose the penalty accordingly, disregarding the application of article 64 of the Code on the graduation of penalties.<sup>111</sup> Unfortunately, however, even in this last expedient, the Supreme Court leaves much to be desired by way of consistency.<sup>112</sup> The suggestion is compelling that a stolid consistency may at times be preferable to even an enlightened vacillation.

#### ADHERENCE TO THE ENEMY

In view of the special attention given to this phase of the law by accused persons and, consequently, by the courts also, we give the same an equal treatment here.

Adherence is a quality of mind—the deliberate intent required by article 3 of the Code. It acquires, therefore, no distinctive character simply because associated with treason. It is, consequently, manifested and proved as in offenses of lesser magnitude. As the Supreme Court said: "Criminal intent and knowledge may be gathered from the testimony of one witness, or from the nature of the act itself, or from the circumstances surrounding the act."<sup>113</sup>

<sup>110</sup> "This rule would not, of course, preclude the punishment of murder or physical injuries as such if the government should elect to prosecute the culprit specifically for those crimes instead of relying on them as an element of treason." *People v. Prieto*, *supra* note 106, at p. 3333.

<sup>111</sup> See *People v. Racaza*, 46 O.G. No. 6, 2590, 2601 (1949); *People v. Caña*, 48 O.G. No. 3, 989, 996-997 (1950). Justice Tuason, joined by Chief Justice Moran and Justice Feria, dissenting in *People v. Solon*, 45 O.G. No. 3, 1244 (1947), said: "The fact that two murders were committed is of itself an aggravating circumstance." At p. 1248.

In *people v. Morales*, G.R. No. L-4533, May 28, 1952, the Court said: "We have punished the commission of treason on the basis of the seriousness of the treasonable acts, and of the presence or absence of aggravating or mitigating circumstances." See also *People v. Ortega*, G.R. No. L-5194, November 20, 1952; *People v. Zaide*, G.R. No. L-5362, December 12, 1952.

<sup>112</sup> See, for instance, *People v. Arambulo*, G.R. No. L-2053, April 29, 1950, where article 64 was applied. The same was done in the earlier case of *People v. Abad*, 44 O.G. No. 12, 4901 (1947).

<sup>113</sup> *People v. Adriano*, 44 O.G. No. 11, 4300, 4302 (1947). See also *Cramer v. United States*, 65 S. Ct. 918, 933 (1944); *People v. Alitagtag*, 45 O.G. No. 2, 715, 720 (1947); *People v. Canibas*, 47 O.G. No. 8, 4073, 4074 (1950); *People v. Alvero*, 47 O.G. No. 11, 5619, 5650 (1950).

That the overt act itself proves adherence is well settled.<sup>114</sup> The Supreme Court of the United States states the rule and its reason as follows:

"Since intent must be inferred from conduct of some sort, we think it is permissible to draw usual reasonable inferences as to intent from the overt act. The law of treason, like the law of lesser crimes, assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts. Proof that a citizen did give aid and comfort to an enemy may well be in the circumstances sufficient evidence that he adhered to that enemy and intended and purposed to strike at his own country."<sup>115</sup>

Thus, membership in the Makapili organization<sup>116</sup> or any other organization of the same or similar nature<sup>117</sup> was considered also proof of adherence. Adherence was also inferred from the circumstance that all those apprehended, tortured and killed were members of or suspected of having connection with the guerrilla movement,<sup>118</sup> especially when these acts are done in the company of Japanese soldiers.<sup>119</sup> So also was it inferred from the very act of giving information to the enemy.<sup>120</sup>

Conversations and occurrences long prior to the act charged are admissible to prove adherence. The Supreme Court of the United States said on this point: "They consisted of statements showing sympathy with Germany and with Hitler and hostility to the United

<sup>114</sup> "The elements of adherence to the enemy has been clearly established from the very overt acts committed by appellant, acts which in themselves constitute treason." *People v. Abarintos*, 46 O.G. No. 1 (Supp.) 21, 26 (1948). See also *People v. Vilo*, 46 O.G. No. 6, 2517, 2518 (1949); *People v. Alvero*, 47 O.G. No. 11, 5619, 5642-5651 (1950); *People v. Sortijas*, G.R. No. L-3216, September 18, 1951.

<sup>115</sup> *Cramer v. United States*, *supra* note 113, at p. 933.

<sup>116</sup> See note 79 *supra*. See also *People v. Alitagtag*, *supra* note 113, *People v. Espiritu*, 46 O.G. No. 1 (Supp.) 17, 19-20 (1948).

<sup>117</sup> See note 80 *supra*.

<sup>118</sup> *People v. Vilo*, *supra* note 114. See also *People v. Albano*, 46 O.G. No. 8, 3649, 3651 (1949); *People v. Dayrit*, 46 O.G. No. 9, 4209, 4212 (1949); *People v. Martin*, G.R. No. L-2232, April 29, 1950.

"The adherence of the accused to the enemy is more than amply proven by the very nature of the overt acts themselves. Seen always armed and always in the company of Japanese soldiers displaying unusual vigor in leading the arrest and the tying of the people arrested, and zeal in the investigation of those arrested for their guerrilla activities, all these show not only mere adherence but the complete and full transformation of the accused into a loyal and active disciple of Nippon, especially if we take into consideration his waning years and the great physical handicaps and infirmities of his deformed and warted limbs." *People v. Lupera*, 46 O.G. No. 9, 4245, 4247 (1949).

<sup>119</sup> *People v. Butawan*, 46 O.G. No. 11, 5452, 5453 (1949).

<sup>120</sup> *People v. Paar*, 47 O.G. No. 10, 5127, 5128 (1950).

States. Such testimony is to be scrutinized with care to be certain the statements are not expressions of mere lawful and permissible differences of opinion with our own government or quite proper appreciation of the land of birth. But these statements were explicit and clearly were admissible on the question of intent and adherence to the enemy. Their weight was for the jury."<sup>121</sup> Similar acts evincing sympathy are admissible. But such statements and acts are, of course, subject to explanation by the accused to show compatibility with loyalty.<sup>122</sup> But those occurring after the acts charged are not important as it is not unlikely that the intent at the time the acts were committed was not treasonable.<sup>123</sup>

The Supreme Court drew unfavorable inferences from a former conviction for rebellion,<sup>124</sup> marriage to a Japanese wife<sup>125</sup> or a stay for seven years in Japan and knowledge of its language.<sup>126</sup>

#### PROOF REQUIRED FOR CONVICTION

Like the Constitution of the United States, article 114 of the Revised Penal Code requires for conviction the testimony of two witnesses at least to the same overt act or the confession of the accused in open court. Indeed, our law is patterned after the Constitution of the United States and should, as a consequence, be interpreted in the same way.<sup>127</sup>

<sup>121</sup> *Haupt v. United States*, 67 S. Ct., 874, 879 (1947).

<sup>122</sup> See *People v. Godinez*, 45 O.G. No. 6, 2524, 2526-2527 (1947), where the Solicitor General pointed out in his brief five acts and statements of the accused showing adherence but which were, in the opinion of the Supreme Court, successfully explained.

<sup>123</sup> *People v. Agoncillo*, 45 O.G. No. 7, 2874, 2876 (1948), sale of alum crystals. The Supreme Court said: "It appears, however, that the alleged acts of adherence performed by the appellant took place after the overt act in question. It is not unlikely that at the time the appellant made the sale, his motive was purely personal gain, uninfluenced by any benefit inuring to the enemy."

<sup>124</sup> ". . . this conviction of rebellion surely cannot strengthen his present profession of loyalty to the Philippine Government because this previous act had already conclusively demonstrated his disloyalty by having, even without the aid and cooperation of a foreign enemy, risen publicly and taken arms against that same Government." *People v. Almodovar*, 46 O.G. No. 12, 6074, 6078 (1949).

<sup>125</sup> "This fact, of course, does not and cannot affect the innocence or guilt of Bascon. Neither does it influence this Court in passing upon the merits of the appeal, although, it may perhaps serve as an indication or reason why the appellant had such sympathy for the Japanese to the extent of going against his own people." *People v. Bascon*, 46 O.G. No. 9, 4308, 4310 (1949).

<sup>126</sup> *People v. Gutierrez*, 48 O.G. No. 8, 3387, 3391 (1952).

<sup>127</sup> *People v. Adriano*, 44 O.G. No. 11, 4300, 4303 (1947). See also *People v. Flores*, *People v. Gutierrez* and *People v. Reyes*, 47 O.G. No. 7, 3503, 3505-3506 (1950).

We begin by discussing the two-witness rule. Its history and reason have already been discussed and need not detain us here.<sup>128</sup>

From the discussion on adherence to the enemy, it is fairly clear that the overt acts and adherence may be proved together by a single piece of evidence, but not necessarily so. They may be one and indivisible and still separable. They are the former when proof of the overt acts also proves adherence; and here to which element the two-witness rule should apply is obviously impertinent. But an overt act may have been proved by less than two witnesses or even by documentary evidence and the question obviously arises whether the proof will suffice to support adherence. Again, the overt act and adherence are separable as when adherence is proved by words or actions of the accused showing sympathy to the enemy but they are not indictable by themselves because not *per se* treasonable. Here again the question arises whether or not the fact from which adherence is inferred must be supported by the testimony of two witnesses. The rule is, however, now settled that the requirement of two witnesses applies only to proof of the overt acts and not also to proof of adherence.<sup>129</sup> It follows that proof of overt acts which fails to meet the two-witness rule may be considered proof of adherence.<sup>130</sup>

The reason is said to be because what is in the mind of the accused is not susceptible of proof by direct testimony; and, therefore, to require the direct testimony of two witnesses is to hold that it is never provable. It is, consequently, concluded "that adherence to the enemy, in the sense of a disloyal state of mind, can not be, and is not required to be, proved by deposition of two witnesses."<sup>131</sup> This conclusion is in turn based upon the premise that the constitutional requirement is one of direct rather than circumstantial evidence.<sup>132</sup> Indeed, to require two witnesses to prove every circumstance, which may be multifarious and complex, from which adher-

<sup>128</sup> See first portion of this comment.

<sup>129</sup> *Cramer v. United States*, 65 S. Ct. 918, 934 (1945); *People v. Adriano*, 44 O.G. No. 11, 4300, 4302 (1947); *People v. Alitagtag*, 45 O.G. No. 2, 715, 720 (1947); *People v. Mateo*, 45 O.G. No. 8, 3383, 3385 (1948); *People v. Escosura*, 46 O.G. No. 3, 918, 921 (1948); *People v. Lansanas*, 46 O.G. No. 4, 1531, 1532 (1948); *People v. Bote*, 46 O.G. No. 7, 3090 (1949); *People v. Canibas*, 47 O.G. No. 8, 4073, 4074 (1950); *People v. Arambulo*, G.R. No. L-2053, April 29, 1950; *People v. Paar*, 47 O.G. No. 10, 5127, 5129-5130 (1950); *People v. Sortijas*, G.R. No. L-3216, September 18, 1951.

<sup>130</sup> *Id.*

<sup>131</sup> *Cramer v. United States*, *supra* note 129, at p. 933.

<sup>132</sup> "Bearing in mind that the constitutional requirement is one of direct rather than circumstantial evidence, we must give it a reasonable effect in the light of its purpose both to preserve the offense and to protect citizens from its abuse." *Id.*, at p. 933.

ence is inferred would be imposing a burden too ponderous to discharge. It follows that adherence may be proved by circumstantial evidence as well as by the testimony of a single witness<sup>133</sup> and even by documentary evidence.<sup>134</sup> And when the case is made out by two witnesses to the same overt act, the law does not prevent presentation of corroborative or cumulative evidence of any admissible character either to strengthen a direct case or to rebut the testimony or inferences on behalf of the defendant. "The government is not prevented from making a strong case, it is denied of a conviction on a weak one."<sup>135</sup>

On the two-witness rule to the same overt act the Supreme Court of the United States said:

"The Constitution requires testimony to the alleged overt act that is not satisfied by testimony to some separate act from which it can be inferred that the charged act took place. And while two witnesses must testify to the same act, it is not required that their testimony be identical. Most overt acts are not single, separable acts, but a combination of acts or courses of conduct made up of elements. It is not easy to set by metes and bounds the permissible latitude between the testimony of the two required witnesses. It is perhaps easier to say on which side of the line a given case belongs than to draw a line that will separate all permissible disparities from forbidden ones. Concrete even if hypothetical cases may illustrate this.

"One witness might hear a report, see a smoking gun in the hands of defendant and see the victim fall. Another might be deaf, but see the defendant raise and point the gun, and see a puff of smoke from it. The testimony of both would certainly be put to the same overt act, although two different aspects. And each would be to the overt act of shooting, although neither saw the movement of a bullet from the gun to the victim. It would still be a remote possibility that the gun contained only blank cartridge and the victim fell of heart failure. But it is not required that the testimony be so minute as to exclude every fantastic hypothesis that can be suggested."<sup>136</sup>

<sup>133</sup> *Cramer v. United States*, *supra* note 129, at p. 934.

<sup>134</sup> *People v. Almodovar*, 46 O.G. No. 12, 6074, 6079 (1949); *People v. Alvero*, 47 O.G. No. 11, 5619 (1950), as by diary entries.

<sup>135</sup> *Cramer v. United States*, *supra* note 129, at p. 935. But see *People v. Alarcon*, 44 O.G. No. 12, 4876 (1947), where a contrary holding seems to have been reached by our Supreme Court. Said the Court in this case: "An extrajudicial confession or admission made by a defendant of having committed an overt act charged is a proof of the said act or fact, and as such it must be proved by two witnesses to be admissible by way of corroboration only." At p. 4879. But see also *People v. Almodovar*, 46 O.G. No. 12, 6074, 6079 (1949); *People v. Castro*, 46 O.G. No. 7, 3078, 3080 (1949); and *People v. Alvero*, 47 O.G. No. 11, 5619, 5646-5647 (1950), where the same confession or admissions were admitted for purposes of impeachment, corroboration or as proof of adherence.

<sup>136</sup> *Haupt v. United States*, 67 Sup. Ct. 874, 898 (1947).

Pursuant to the above principle, the defendant was convicted of harboring and sheltering a German agent on the following evidence: The defendant lived in a third floor apartment which had but one bedroom. The Federal Bureau of Investigation agents testified in minute detail to each of the arrivals and departures of the saboteur, on some occasions accompanied by the defendant, and others by the defendant's wife, and on some by both. He entered at night and left by day. On some occasions he came out he wore different clothes from those he wore when he went in. When he went in at night the lights in the defendant's apartment were turned on and after a time extinguished. The front entrance where all this testimony showed the saboteur had entered connected with two other apartments. The occupants of each of the other apartments, two witnesses as to each, testified that the saboteur did not at any time occupy their respective apartments. It was held not necessary to show that the saboteur entered the defendant's apartment or slept in his bed. It was clear that the saboteur was neither a loiterer nor trespasser, he being the son of the defendant and must have had the license of his father.<sup>137</sup>

In *People v. Concepcion*,<sup>138</sup> it was held immaterial that the two witnesses did not corroborate each other as to what the victim did or said at the time he was arrested. It was sufficient that they both testified to the arrest of the victim on a certain day, which was the overt act.

The two-witness rule is not satisfied by each witness testifying to an altogether different transaction. Thus, it was held insufficient that a witness saw the defendant one day in Makapili uniform and another witness saw him another day.<sup>139</sup> The same is true where a woman testified that the defendant came to her house looking for her husband's gun and the husband related what happened to him when the defendant brought him to the Japanese garrison.<sup>140</sup> It was also held insufficient that the two witnesses testified having seen the accused doing guard duty in a Japanese garrison "many times" or more than "ten times," neither of them mentioning any specific time, day and hour. "To meet the test under the two-witness rule," said the

<sup>137</sup> *Id.*

<sup>138</sup> 47 O.G. No. 4, 1812, 1813 (1949). See also *People v. Canibas*, 47 O.G. No. 8, 4073, 4074 (1950), where the following was held sufficient: ". . . but there were three eye-witnesses to the fact that the accused was present at the mass killings, taking active part therein in collaboration with the Japanese, by personally tying the hands of some of the victims and directing the same operation with regard to others." To the same effect, *People v. Germiniano*, G.R. No. L-4449, May 26, 1952; *People v. de los Reyes*, G.R. No. L-4356, May 19, 1952; *People v. Golez*, G.R. No. L-4618, March 28, 1952.

<sup>139</sup> *People v. Adriano*, 44 O.G. No. 11, 4300 (1947). See also *People v. Ali-tagtag*, 45 O.G. No. 2, 715, 720 (1947).

Court, "it is necessary that, at least, two witnesses should testify as to the perpetration of the same treasonous overt act, and the sameness must include not only identity of kind and nature of the act, but as to the precise one which has actually been perpetrated."<sup>141</sup> The rule is unmitigated although the transactions testified to take place on the same day. In one case the Supreme Court held:

" . . . The Solicitor General contends, in effect, that the zoning of Tipas the whole day of December 1, 1944, constitutes but one treasonous act and since at least two witnesses saw each of the appellants on that occasion, the legal requirement as to the concurrence of two witnesses on the same overt act has been satisfied. To this we can not agree. The rule is that 'every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses' (Cramer v. U. S., 65 S. Ct., 918), and in accord with that rule, we have ourselves held that 'the two-witness rule must be adhered to as to the overt act in issue.' (People v. Abad, 44 Off. Gaz., 4901.) We have also adopted the rule that 'each of the two witnesses must testify to the whole of the overt act; or if it is separable, there must be two witnesses to each of the overt act in issue,' . . ."<sup>142</sup>

Indeed, it was held that it may be possible to piece bits together of the same overt act; but, if so, each bit must have the support of two oaths.<sup>143</sup> "Natural inferences," it is said, "however strong or conclusive, flowing from the testimony of a most trustworthy witness or from other sources are unavailing as a substitute for the needed corroboration in the form of direct testimony of another eyewitness to the same overt act."<sup>144</sup> This restrictive interpretation, however, appears to have been relaxed in a later similar case. In *People v. Santiago*,<sup>145</sup> the Supreme Court held as follows:

<sup>140</sup> "Appellant's going to the Ibarra house, in search of the revolver, is a single overt act, distinct and independent from appellant's overt act in requiring Magno Ibarra, when the latter went to the garrison, to produce his revolver." *People v. Abad*, 44 O.G. No. 12, 4901 (1947).

<sup>141</sup> *People v. Agpangan*, 45 O.G. No. 4, 1706, 1710 (1947). See also to the same point, *People v. Prieto*, 45 O.G. No. 8, 3329, 3331 (1948); *People v. Mateo*, 45 O.G. No. 8, 3383, 3385 (1948); *People v. Gonzales*, 45 O.G. No. 3 (Supp.) 45, 48 (1948); *People v. Humarang*, 46 O.G. No. 8, 3627, 3629 (1949); *People v. Bartiquin*, 46 O.G. No. 12, 6068, 6070 (1949); *People v. Escleto*, 47 O.G. No. 1, 107, 110 (1949); *People v. Tuason*, 47 O.G. No. 3, 1204, 1206 (1949); *People v. Flores*, *People v. Gutierrez* and *People v. Reyes*, 47 O.G. No. 7, 3503, 3505-3506 (1950); *People v. Canibas*, 47 O.G. No. 8, 4073, 4074 (1950); *People v. Taborada*, G.R. No. L-4230, May 31, 1952.

<sup>142</sup> *People v. Flores*, *People v. Gutierrez* and *People v. Reyes*, *supra* note 141.

<sup>143</sup> *People v. Gonzales*, *supra* note 141. See also *People v. Adriano*, *supra* note 139.

<sup>144</sup> *People v. Adriano*, *supra* note 139, at p. 4304.

<sup>145</sup> 47 O.G. No. 10, 5100, 5104 (1950).

"True it is to be noted, . . . that Justa Santos and Ceferina Raymundo saw Jose Cruz in the hands of the accused and some of his codefendants at the different places and consequently at different moments. But considering the short distance between the fact that Jose Cruz was arrested only once, at least on December 10, 1944, and the fact that the accused and his companions were, when they were seen by Justa Santos, leading the prisoner in the direction of the house where his wife saw him and from which he was whisked on a banca, there can be no question that both witnesses referred to the same act . . ."

The failure of evidence is even more so where there actually was a lone witness to the overt act charged.<sup>146</sup>

It has, however, been held that the two-witness rule is not applicable to a conspiracy to commit treason.<sup>147</sup>

In default of two witnesses to the same overt act, conviction for treason may only be secured on the basis of a confession in open court. The confession contemplated is one of guilt and not merely an admission of facts.<sup>148</sup> Nor may an extrajudicial confession suffice although supported by the oaths of two witnesses, because the law requires that it be given in open court.<sup>149</sup> But such admission or extrajudicial confession may be admitted as proof of adherence or for rebuttal, corroboration or impeachment.<sup>150</sup>

#### IMPROPER DEFENSES

In criminal prosecutions growing out of the Japanese occupation, before the promulgation of Executive Order No. 44, dated May 31, 1945, the theory of suspended sovereignty has often been invoked. Raised, however, before the People's Court in *People v. Sison*,<sup>151</sup> Judge Diaz said: "It is a theory that not only negatives and repudiates the fundamental right of ownership and seeks to impart a semblance of legality to the possession of the bandit and the intruder but it constitutes the most specious argument and excuse for the op-

<sup>146</sup> *People v. Alibotod*, 46 O.G. No. 3, 1005, 1007 (1948); *People v. Apostol*, 46 O.G. No. 3, 993, 1002 (1948); *People v. Racaza*, 46 O.G. No. 6, 2590, 2597 (1949); *People v. Vilo*, 46 O.G. No. 6, 2517, 2518 (1949); *People v. Alcover*, 46 O.G. No. 7, 3060, 3067 (1949); *People v. Bartiquin*, 46 O.G. No. 12, 6068, 6070 (1949); *People v. Santos*, 46 O.G. No. 11, 5456, 5459 (1949); *People v. Dizon*, 46 O.G. No. 12, 6059, 6062 (1949).

<sup>147</sup> *United States v. Bautista*, 6 Phil. 581, 587-588 (1906).

<sup>148</sup> "The confession there mentioned means a confession of guilt. The section can not be extended so as to include admission of facts made by him in giving his testimony after a plea of not guilty, from which admissions his guilt can be inferred." *United States v. Magtibay*, 2 Phil. 703, 705 (1903).

<sup>149</sup> *People v. Alarcon*, 44 O.G. No. 12, 4876, 4879-4880 (1947).

<sup>150</sup> *Haupt v. United States*, 67 S. Ct. 874, 879 (1947). See also discussion in note 135 *supra*.

<sup>151</sup> 42 O.G. No. 4, 748 (1946).

portunist and the ambitious the faint heart and the craven." And beginning with *Laurel v. Misa*,<sup>152</sup> followed thereafter by an unbroken line of decisions,<sup>153</sup> the Supreme Court has consistently overruled this defense. Among the reasons advanced in the case of Laurel are that a citizen owes permanent allegiance to the legitimate sovereign as opposed to the temporary allegiance of a resident alien, in exchange for the protection he receives; and that sovereignty is not suspended by the enemy occupant, but only its exercise.<sup>154</sup>

In line with the foregoing defense was the claim that Japan had not declared war against the Philippines nor had the latter declared war upon the former pursuant to Article VI, section 25 of the Philippine Constitution. This was overruled on the ground that the said provision of the Constitution was intended for the Republic not the Commonwealth of the Philippines.<sup>155</sup> Again, the contention was denied that by becoming a Makapili the defendant became a member of the armed forces of Japan and thereby lost his Filipino citizenship. This contention, said the Supreme Court, "is repugnant to the most fundamental and elementary principles governing the duties of a citizen toward his country under our Constitution."<sup>156</sup> Nor may it be contented that the defendant arrested guerrillas in obedience to the orders of the *de facto* government established by Japan. "The enemy had no right to require the citizen of the occupied territory, and the latter were not bound, to betray their own countrymen who resisted and fought the invader."<sup>157</sup>

The Supreme Court has likewise consistently refused to consider justifying, exempting or even mitigating the performance by the accused of righteous or meritorious actions.<sup>158</sup> As the Supreme

<sup>152</sup> 44 O.G. No. 4, 1176 (1947).

<sup>153</sup> *Peopls v. Carlos*, 44 O.G. No. 11, 4281, 4284 (1947); *People v. Victoria*, 44 O.G. No. 7, 2230, 2234 (1947); *People v. Bagalawis*, 44 O.G. No. 8, 2655, 2670-2671 (1947); *People v. Alejo*, 45 O.G. No. 7, 2871, 2873 (1947); *People v. Agoncillo*, 45 O.G. No. 7, 2874, 2875 (1948); *People v. Castro*, 46 O.G. No. 7, 3078, 3080-3081 (1949); *People v. Alvero*, 47 O.G. No. 11, 5619, 5643 (1950); *People v. Tuason*, 47 O.G. No. 3, 1204, 1206 (1949).

<sup>154</sup> Would suspended sovereignty, therefore, be available to resident aliens when the territory is occupied by an enemy power? It is clear that here the resident aliens can expect no protection from the displaced legitimate sovereign. May, therefore, resident aliens commit treason only when there has been no enemy occupation of our territory?

<sup>155</sup> *People v. Bagalawis*, *supra* note 153, at pp. 2669-2670.

<sup>156</sup> *People v. Manayao*, 44 O.G. No.12, 4867, 4871 (1947). This has now been fortified by statute. See R.A. No. 106.

<sup>157</sup> *People v. Sigue*, G.R. No. L-2255, April 18, 1950.

<sup>158</sup> *People v. Victoria*, *supra* note 153, at p. 2234; *People v. Garcia*, 46 O.G. No. 6. 2497, 2499-2500 (1949); *People v. Albano*, 46 O.G. No. 8, 3649, 3652 (1949); *People v. Adlawan*, 46 O.G. No. 9, 4299, 4306 (1949); *People v. Barquin*,

Court said, quoting the Bible: "For whosoever shall keep the whole law and yet offend in one point, he is guilty of all . . ." <sup>159</sup> Indeed, such actions, revealing attachment and close association with the enemy, were used to discredit the defendant.<sup>160</sup> But when the evidence is evenly balanced and credibility is in question, such services may tip the scale in favor of acquittal.<sup>161</sup>

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46 O.G. No. 12, 6068, 6071 (1949); *People v. Concepcion*, 47 O.G. No. 4, 1812, 1812 (1949); *People v. Alvero*, 47 O.G. No. 11, 5619, 5648-5649 (1950); *People v. Atilares*, G.R. No. L-2290, January 14, 1952; *People v. Cataluña*, G.R. No. L-4071, March 12, 1952; *People v. Germiniano*, G.R. No. L-4449, May 26, 1952; *People v. Dubouzet*, G.R. No. L-4739, October 29, 1952; *People v. Pacheco*, G.R. No. L-4570, July 31, 1953; *People v. Tolentino*, G.R. No. L-5840, May 22, 1953; *People v. Bernardino*, G.R. No. L-3607, August 27, 1953; *People v. Nituda*, G.A. No. L-4595, August 28, 1953.

See also *People v. Lacanlale*, 46 O.G. No. 6, 2526, 2529 (1949), where defendant's claim as a guerrilla was not believed.

<sup>159</sup> *People v. Victoria*, *supra* note 153.

<sup>160</sup> *People v. Garcia* *supra* note 158.

<sup>161</sup> *People v. Tumandao*, 46 O.G. No. 7, 3090, 3093 (1949); *People v. Abendan*, 46 O.G. No. 7, 3081, 3083 (1949).