THE PENAL CODE: SOME AREAS IN NEED OF REFORM

VICENTE V. MENDOZA *

The criminal law, observes Herbert Wechsler, is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. It is also the law that governs the strongest force that society permits its official agencies to bring to bear on individuals.[1] Its importance, therefore, in society is beyond question. The debate begins only when the philosophy that should underlie a particular penal code—whether it should be classical or positivist or a cross between the two—is considered. It is a measure of the importance of criminal law that the debate at times becomes bitter.

In what follows, I have tried to articulate the principles that govern the Revised Penal Code in order to test the consistency of some of its provisions. For this purpose, three areas of reform are explored. In *The Definition of Crime,* I consider the acts that should be made criminal and therefore, should be added to the Code and those which should not be made so and therefore should be excluded from penal liability. Next, I take up in *The Inept Classification of Crimes* logical arrangements as demanded by a code. And, finally, in *The Unequal Burden of Fines, the Conflict in the Code's Provisions and other Problems,* I train my searchlights on certain provisions of the Code which need amendments or changes.

I. THE DEFINITION OF CRIME

The determination of the behavior content of the criminal law ultimately rests on the answer to the question: What is crime? To the judge passing sentence on an accused in a criminal case, the question poses no difficulty. The Code defines for him a crime (which it calls a felony) as any act or omission punishable by law, *i.e.,* by the Penal Code.[2] Conduct must be measured by the various crimes defined in the law and, if found wanting, must be dismissed as innocent. *Nullum crimen sine lege. Nullum poene sine lege.* Thus the observation is made that the definition of criminal con-

---

* Research Attorney, Supreme Court of the Philippines. LL.B., U.P., 1957. Chairman, Student Editorial Board, PHILIPPINE LAW JOURNAL, 1956-57.

[1] Wechsler, *The Challenge of a Model Penal Code,* 67 HARV. L. REV. 1097, 1098 (1952).

[2] REV. PENAL CODE art. 3.

duct has largely come to be regarded as a legislative function, precluding the judiciary from devising new crimes.[3]

As a legislative issue, however, the Code's definition of crime apparently begs the question. Indeed, the question is an old one. Morris R. Cohen traces it to the old Greek controversy of the fifth century B.C. between those who saw everything determined by nature and those who advanced the claims of man-made laws and conventions. It is said that, as a compromise, the distinction was drawn between acts which by nature are criminal and are prohibited among all peoples *(mala in se)*, and those other acts which are prohibited only in certain places by special legislation (*mala prohibita*).[4]

However, the *mala in se-mala prohibita* dichotomy suffers from the lack of an adequate standard for appraising conduct. Success or luck has yet to attend many an attempt at a critical catalogue of acts which are deemed to be wrong by all people at all times.

Those who therefore speak of *mala in se* as acts which are "inherently immoral by themselves," [5] as if one can separate the influence of the law from his value-judgment, do not stand on solid grounds. They have only to be reminded of Fuller's hypothetical *The Case of the Speluncean Explorers* [6] to make them realize the difficulty of reaching moral decisions in some cases without resort to positive law.

---

[3] Kadish, *Legal Norm and Discretion in the Police and Sentencing Processes*, 75 HARV. L. REV. 904 (1962).

The judge can only recommend what acts should be made the subject of penal legislation and recommend Executive clemency when the imposition of any penalty in any case would be "clearly excessive." REV. PENAL CODE art. 5.

[4] Morris R. Cohen, *Moral Aspects of the Criminal Law*. 49 YALE L. J. 987, 990 (1940).

[5] *E.g.*, People v. Sunico (C.A.), 50 O.G. 5880 (1954).

[6] 62 HARV. L. REV. 611 (1949). How would they, for instance, decide that case on the basis of these facts: A group of five explorers were trapped inside a cave. The engineers in charge of digging estimated it would take at least ten days to rescue the explorers, but the physician's opinion was that survival was impossible without food for ten days. This was communicated to the five trapped men, where upon they agreed to draw lots to decide who should be killed in order to be eaten. It was Roger Whetmore and so they killed him.

Chief Justice Truepensy would apply the law and hold the four guilty of murder even as he would recommend Executive clemency. Justice Foster would acquit them on the ground that when they killed Whetmore, the four were not in a "state of nature." Justice Tatting, while disagreeing with the natural law theory of Foster (at what moment, he asks, did the four men pass from our jurisdiction to that of the law of nature?), at the same time could not reconcile himself with the thought that these men should be put to death when their lives had been saved at the cost of the lives of ten other men who made up the rescue team. His decision: To withdraw from the case. Still to Justice Handy, the decision should be made taking into account public opinion at the time.

Certainly, positive law does in fact shape one's judgment as to what is moral or immoral in a given situation. Bigamy, for instance, is repugnant to our sense of morality today. But what is it that makes it morally acceptable for a man to marry two women, even sisters, provided some event, like death, intervenes between the first and second marriages, if it is not positive law? As Hall points out, those who urge a separation of law and moral principles ignore the facts (1) that criminal law is at least as old as ethics; (2) that our ethical principles are in a large measure the product of positive law; and (3) that positive law itself provides major principles of ethics and that in a great many cases, no extra legal principle exists.[7]

The recognition then of the rightness of an action, as thus determined by law, may be a motive which, alone or in conjunction with other motives, can move a person to a desired action.[8] As aptly stated, the criminal law retains its greatest social utility when it represents a series of fundamental moral judgments, communicated in precise language.[9] In this manner, the criminal law secures its own compliance because it has behind it both physical and moral force.

A. Objectives

What then should a wise legislative choice consider in defining criminal behavior? To a large extent, the choice hinges on what are conceived to be the aims of the penal law. H. L. Hart lucidly described these aims as follows:

> [T]he sentence must if possible deter the criminal and others from repeating the crime; it must be appropriate to the degree of the criminal's "culpability" or wickedness; it must aid in his reform; and according to such high judicial authority as Lord Denning it must express the moral horror of the community for the crime.[10]

---

[7] HALL, GENERAL PRINCIPLES OF CRIMINAL LAW, 297 (1947). The same point is stressed by Hughes, *Criminal Omissions*, 67 YALE L. J. 590, 616 (1958): "The difficulty of distinguishing between conduct which is inherently wrong and conduct which is only wrong relative to a given time, place and culture may be accepted, yet Mayer's point that certain crimes by their immemorial prohibition in a community have seeped into the communal awareness with the stamp of wrongfulness still holds. Lundstedt and other Scandinavian jurists contend that morality is more the product of law enforcement than the law is the product of morality. This position is also compatible with Mayer's contentions that the antiquity of the prohibition and its immemorial connection with severe punishment of the offender can produce a communal reaction to the act which becomes a part of the general sentiment and awareness."

[8] See Fried, *Moral Causation*, 77 HARV. L. REV. 1258, 1259 (1964): "[A]n important, indeed a crucial, technique for moving another to act is to make the desired performance the right thing for him to do, that is, to put him under a moral obligation to act in the desired way."

[9] Recent Cases, 78 HARV. L. REV. 1257, 1259 (1965).

[10] H. L. A. Hart, Book Review, 74 YALE L.J. 1326 (1965).

For a canvass of the different theories underlying punishment, see Morris R. Cohen, *op. cit. supra* note 4 at 1009-17.

Thus, murder is made a crime and is punished with death on grounds of retribution, protection and deterrence.[11] The use of opium is punished [12] primarily as a means of rehabilitating the offender.

And from the point of view of prevention, Wechsler, in speaking of the criminal law as the "ultimate weapon for diminishing the incidence of injuries to individuals and institutions," would consider as criminal (1) conduct that is so harmful that the social force should make an effort to deter it by its condemnation under threat of penal sanctions; and (2) conduct that shows the individual sufficiently more likely than the rest of men to be a menace in the future to justify official intervention to measure and to meet the special danger he presents.[13]

It is plain enough to see that any conduct that injures persons, property or other intangible values and interests should be proscribed. But the harmfulness of conduct may also rest upon its tendency to cause the injuries to be prevented far more than on its actual results. That is why the failure of a public officer to issue receipt for any sum officially collected by him is punished as illegal exaction [14] regardless of whether loss actually results from the act.

There is also much behavior which reveals the actor as a dangerous person though the conduct in itself, might not be worth the effort at deterrence. Thus, the Code creates a presumption of malversation in case of failure of an accountable public officer to produce on demand the funds in his custody.[15] Criminal attempts and conspiracies are justified on the same principle. As Wechsler points out, it is often idle to suppose that threats addressed to the preparatory action can significantly add to the deterrent efficiency of the sanction—which the actor, by hypothesis, is planning to ignore—threatened for the crime that is the object of the preparation. But when both preparation and firm criminal purpose can be proved, there is basis and a need for legal intervention—to meet the special danger that the individual presents and to frustrate if possible the commission of the crime that he intends.[16]

---

[11] See People v. Carillo, 85 Phil. 611 (1950) "Carillo has proved himself to be a dangerous enemy of society. The latter must protect itself from such enemy by taking his life in retribution for his offense and as an example and warning to others. In these days of rampant criminality it should have a salutary effect upon the criminally minded to know that courts do not shirk their disagreeable duty to impose the death penalty in case where the law requires."

[12] REV. PENAL CODE art. 190, par. 1.

[13] Wechsler, *op. cit. supra* note 1, at 1105.

[14] REV. PENAL CODE art. 213, par. 2(b).

[15] *Id.*, art. 217.

[16] Wechsler, *op. cit. supra* note 1, at 1110.

But the penal law is also used for purposes other than crime prevention. It is used, for instance, to perform essentially social service functions, such as to enforce the duties of parents toward their children according to their means.[17] It is then that we encounter dead letters in the law,[18] whose enforcement is subject to the discretion of the police and the prosecutor. With such provisions in the Code, however, the danger of arbitrary and abusive law enforcement cannot be dismissed lightly. On the other hand, their non-enforcement exposes the police to charges of toleration of crime, a form of misfeasance which the Code likewise punishes.[19]

This is not to inveigh against police discretion in all cases. No one can seriously deny the police the judgment whether or not to make arrests in those cases where, for instance, a customer is swindled by a defaulting prostitute or a wife is beaten up by her husband following a quarrel over a marital problem, when the wife refuses to sign a complaint. Indeed, the discretionary judgment to arrest or not to arrest is made on a variety of circumstances for a variety of reasons, raising considerations which are not the same in all cases.[20] The point rather is that in the area pointed out—where the penal law is used to enforce civil obligations—police discretion is too high a price we pay for so small a value we seek in using the criminal law for non-criminal purposes.

B. Culpability

Thus far, the discussion has assumed that the act or omission proscribed is voluntary. But what of negligent behavior? The Code provides that felonies are committed not only by means of deceit (*dolo*) but also by means of fault (*culpa*). It provides that fault exists "when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill." [21] And the Code abounds in examples: a judge rendering an unjust judgment or order by reason of inexcusable negligence or ignorance; [22] an attorney guilty of prejudicing his client's cause or of revealing his secrets because of negligence or ignorance; [23] a public officer's negligence making it pos-

---

[17] REV. PENAL CODE art. 277, par. 2.

[18] For example, Groizard, commenting on article 277, par. 2, which punishes parents for neglecting the education of their children according to their means, states that although nothing is lost in that such provision be written in the Code, for the precepts of morality and obligation imposed by the civil law do not need the tutorship of the penal law, nevertheless few will be the cases in which such precepts could be applied. 7 EL CODIGO PENAL DE 1870 at 645 (3rd ed.), quoted in People v. Francisco (C.A.), 51 O.G. 1941 (1954).

[19] REV. PENAL CODE art. 208.

[20] Kadish, *op. cit. supra* note 3, at 907-908, 913.

[21] REV. PENAL CODE art. 3.

[22] *Id.*, arts. 205-206.

[23] *Id.*, art. 209.

sible for another to take public funds or property in malversation;[24] and countless other instances of neligence.

Simple negligence implies inadvertence. But a misreading of *United States v. Barnes*[25] appears to have created the general impression that all negligent acts are voluntary. *Barnes* did not say that; what it did say is that acts done with reckless imprudence are voluntary. Hence *Barnes* must be understood to refer to reckless imprudence only and not to simple negligence as well. This is clear from the following quotation:

> If, according to article 1 of the said code crimes or misdemeanors are voluntary acts and omissions punished by law, once having fully demonstrated in this case that the third shot fired from the gun which the accused Barnes had in his hands on the morning of the occurrence and which caused the death of the said individual, was an entirely involuntary act . . . it follows that such act being an involuntary one, should not be considered as constituting reckless negligence, inasmuch as in order to apply thereto the provisions of article 568 of the code, apart from the circumstance that no malice was present, it is above all indispensable that the act in question should be a voluntary one.[26]

In fact the Code's definition of reckless imprudence is that of *"voluntarily* but without malice, doing or failing to do an act . . . by reason of inexcusable lack of precaution."[27] In contrast, simple negligence is defined as merely "the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest." Negligent conduct is not therefore voluntary, much less intentional, not even when it is harmful.

The inclusion of negligent conduct within the scope of penal liability is criticized by Hall on grounds of ethics, science and history. From the point of view of ethics, which is also the most persuasive, the point is stressed that voluntary harm doing has always been considered the essence of fault. There is a great difference between consciousness and unawareness, between action or conduct and mere behavior. From the standpoint of science, the claim is that negligence bars the discovery of a scientific theory of penal law. And from the historical viewpoint, the trend is said to be toward the restriction of the range of negligence in the penal law of modern legal systems.[28]

---

[24] *Id.*, art. 217.

[25] 12 Phil. 93 (1908).

[26] 12 Phil. at 95 (1908). Cf. Guintao v. Victorias Milling Co. (C.A.), 61 O.G. 5386, 5388 (1964): "In Art. 2176 of the Civil Code, 'fault' is not synonymous to 'negligence.' 'Fault' covers any voluntary wrongful act as distinguished from an involuntary or negligent act."

[27] REV. PENAL CODE art. 365.

[28] Hall, *Negligent Behavior Should be Excluded from Penal Liability, 63*

Indeed, the negligent or ignorant lawyer needs more schooling than imprisonment to improve his ways. The negligent judge needs more training than punishment to correct his clumsy ways. Instead of penal sanctions for the negligent, the system of licensing and appointment should be made more strict and until this is done, harm due to simple negligence should be made the subject either of civil liability or administrative action, as in the case of the unprepared judge.[29] *Actus non facit reum nisi mens sit rea.*

There is one other area of conduct where punishment is imposed regardless of the criminal intent of the offender. This comprises the so-called "public welfare offenses" or, as they are called in the Philippines, "statutory crimes."

For example, the Industrial Peace Act,[30] the Eight-Hour Labor Law,[31] the Woman and Child Labor Law,[32] the Workmen's Compensation Act,[33] the Social Security Act of 1954,[34] the Agricultural Land Reform Code [35] and host of other labor laws all contain penal sanctions without regard to the culpability of the offender.

In this area, the criminal law is employed to reach conduct that does not carry its own warning of illegality. As Packer observes, absent that kind of warning, a first offender may lack the only kind of culpability with which he may justly be charged. Nonetheless, he has no defense under the law.[36]

Hall indicts strict liability for such "crimes" as resting wholly on assumptions "that have never been established in the slightest

---

COLUM. L. REV. 632, 635-643 (1963).

Cf. Robinson v. California, 370 U.S. 660 (1962) wherein the court, in annulling a California statute which made it a criminal offense for a person to be "addicted to the use of narcotics," said:

> It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease. A state might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment involving quarantine, confinement, or sequestration. But, in the light of contemporary human knowledge, a law which made a criminal offense of such a disease would doubtless be universally thought to be an affliction of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. See Louisiana ex rel. Francis v. Resweber, 329 U.S. 459, 91 L. ed. 422, 67 S. Ct. 374.

[29] See Tuason v. Zaldivar, G.R. No. L-23476, Aug. 31, 1965.

[30] Rep. Act No. 875 § 25.

[31] Com. Act No. 444 § 7.

[32] Rep. Act No. 679 § 12.

[33] Act No. 3428, as amended, § 40.

[34] Rep. Act No. 1161, as amended, § 28.

[35] Rep. Act No. 3844 § 100.

[36] Packer, *The Model Penal Code and Beyond*, 63 COLUM. L. REV. 594, 597 (1963).

degree." [37] For instance, one argument in support of strict liability is that it serves to stimulate increased care and efficiency. But studies disclosed that unscrupulous persons regard the fines as mere license fees for doing an illegitimate business.[38] Our own experience in the Philippines with respect to violations of permits for doing work overtime or on Sundays or holidays bears out the conclusion of these foreign studies. The fines imposed are regarded as license fees from employers for conducting an illegitimate business and an excuse for extortion by grafting government inspectors. Nor do unscrupulous businessmen and employers feel any qualms about giving bribe money whenever they are caught within the toils of the law. Indeed, it is not unusual to read in the papers announcements made just before the beginning of the Christmas season that the Secretary of Labor is grounding labor inspectors—quite a revelation indeed of the public attitude toward strict liability.

One other argument adduced in support of strict liability is that it is difficult to prove *mens rea* and that to permit a defense based on lack of criminal intent would be to enable violators to escape liability and thus set the law at naught. This does not seem to be the case. On the contrary, there seems to be very little prosecutions for "statutory crimes" precisely because of the feeling that they are not really crimes and that they are better treated administratively rather than dealt with through the criminal law. And then, of course, it is not true that proof of criminal intent is difficult to establish in such cases. If an employer can be shown to have knowledge of a regulation, say with respect to the requirement for overtime permit, why cannot intent be inferred from this circumstance?

In the American Law Institute's Model Penal Code, the solution to the problem is not the abolition of strict liability but the restriction of the designation of a violation as a crime and the prohibition of the imposition of an absolute or conditional imprisonment. But when it is proven that the offender was culpable, then the Code provides for the integration of the crime. The crime is then treated just like any other defined in the Code. It is for this solution, among other provisions, that the Model Penal Code has been praised for what has been termed its "principled pragmatism." [39]

A like treatment may be accorded statutory crimes in the Philippines. Basis for their integration into the Revised Penal Code is

---

[37] HALL, *op. cit. supra* note 7, at 301.

[38] REPORT OF THE CHIEF OF THE U.S. FOOD AND DRUG ADMINISTRATION 4 (1931), quoted in HALL, *op. cit. supra* note 7, at 301.

[39] MODEL PENAL CODE [Off. Draft 1962, hereinafter referred to as MPC] § 2.05 (2) (b). See Packer, *op. cit. supra* note 36, at 594-595.

not lacking. For example, the Minimum Wage Law provision [40] making it a crime for an employer to compel the employee to buy merchandise from a particular store or to pay employees by means of tokens or chits other than the legal tender has its counterpart in Article 288 of the Penal Code. The provisions of the Industrial Peace Act [41] safeguarding employees' right to self-organization is similar to Article 289 of the Code. And a majority of the provisions of the Anti-Graft and Corrupt Practices Act [42] have counterparts in Title VII, "Crimes Committed by Public Officers," of the Code.

In addition, the Minimum Wage Law, the Emergency Medical and Dental Care Law,[43] and the Agricultural Land Reform Code [44] all speak of "wilful" violations of their provisions as basis for prosecution. The integration, then, of these laws into the Code would present no special difficulty because of their requirement of *mens rea*.

The inclusion of "statutory crimes" into the Code and the synchronization of their penalties with those provided in the Code can stimulate a wider appreciation of their gravity. As stated in the beginning, positive law influences our moral judgment.

II. The Inept Classification of Crimes

A large number of "Crimes against the Fundamental Laws of the State" [45] are similar to an equal number of "Crimes against Personal Liberty and Security." [46] making one wonder whether they could not have been treated together under one appropriate title. For instance, although arbitrary detention and illegal detention are alike in that both constitute a deprivation of personal liberty,[47] they are nevertheless treated separately by the Code on the ground that the former is committed by a public officer while the latter is committed by a private person. The Code, however, has a separate title, Title VII, for "Crimes Committed by Public Officers," and no good reason exists why "Crimes against the Fundamental Laws of the State" be justified by the traditional view which conceives of the Bill of Rights (the subject of this title) as fixing the boundaries past which the sovereign—the King, the Parliament, the Congress, the Voters—were forbidden to go.[48] For now there is an increasing

[40] Rep. Act No. 602 § 10(a) and (e).
[41] Rep. Act No. 875 § 3 and 25.
[42] Rep. Act No. 3019 § 3.
[43] Rep. Act No. 1054 § 6.
[44] Rep. Act No. 3844 § 167(4).
[45] Rev. Penal Code Bk. Two, Tit. II.
[46] *Id.*, Bk. Two, Tit. IX.
[47] See, *e.g.*, United States v. Hachaw, 21 Phil. 514 (1912); People v. Suarez, 82 Phil. 484 (1948).
[48] Lippmann, The Public Philosophy 76 (1954).

awareness that the threats and perils to man's rights come not from the government alone but from private persons and institutions as well. There is then an affirmative duty cast on the government to make meaningful the guaranties of the Bill of Rights. It is in this sense that President Magsaysay spoke of the Bill of Rights as a "bill of duties" [49] for his administration. Current legislative efforts in the United States to hold police officers criminally liable for failing, through inaction, to protect individuals against mob violence,[50] as well as the adoption in Great Britain of a program of compensation to aid victims of crimes, derive, in a large measure, from a recognition of the State's responsibility to provide the public security.[51]

Thus, the prohibition against unlawful arrest, which is the substance of arbitrary detention and illegal detention referred to before, may be said to be as much addressed to private parties as it is to the government, and to classify its violation into "Crimes against the Fundamental Laws of the States" and Crimes against Personal Liberty and Security," depending on whether the offender is a public officer or a private person, is to lose the essence of the crime and betray a lack of system. This is no carping criticism of the Code. "A body of penal law," according to Hall, "which consists only of a collection of rules lacks system. Progress towards systematization results from discovering that certain ideas are common to two or more offenses." [52] Indeed the American Law Institute's Model Penal Code has drawn high praises because not the least of its many virtues is the logical classification of crimes.[53]

A value-oriented approach should then prove useful in reclassifying the crimes dealt with in Titles II, IX and VII of Book Two.

---

[49] 49 O.G. 5331, 5332 (1953). See Mendoza, *A Positive Approach to Freedom,* 29 LAW. J. 66 (1964); FREUND, THE SUPREME COURT OF THE UNITED STATES 79 (1961).

[50] See Hughes, *op. cit., supra* note 7, at 635: "Thus, in Catlette v. United States, 132 F. 2d 902 (4th Cir. 1943), it was held that a police officer who made no effort to protect some Jehovah's witnesses from an aggressive mob was properly convicted. . . . In Lynch v. United States, 189 F. 2d 476 (5th Cir. 1951). Police officers were convicted for failure to take action to prevent the Ku Klux Klan from seizing and beating Negroes. The court of appeals said: 'There was a time when the denial of equal protection of the laws was confined to affirmative acts, but the law now is that culpable official inaction may also constitute a denial of equal protection.' And recently, in United States v. Konovsky, 202 F. 2d 721 (7th Cir. 1963), where the conviction of a police officer for failing to take steps to suppress a race riot was quashed on the ground that the trial court wrongly admitted evidence, the court at the same time held that evidence of a willful failure to disperse the crowd would properly be admitted as evidence of conspiracy."

[51] For an account of the British program establishing a Criminal Injuries Compensation Board, see Recent Legislative Action, 78 HARV. L. REV. 1683 (1965).

[52] *Op. cit. supra* note 7, at 2.

[53] See *Symposium on the Model Penal Code,* 63 COLUM. L. REV. 594, 609 (1963).

Such an approach involves (1) identifying the value sought to be protected through the criminal law and (2) collating the scattered provisions of the Code under appropriate titles.

A. Crimes against Constitutional Rights

Since, as already noted, the offenses treated under the headings "Crimes against the Fundamental Laws of the State" and "Crimes against Personal Liberty and Security" are substantially alike, they should be lumped together under one appropriate title.

"Crimes against the Fundamental Laws of the State" is a misleading title. For one thing, there is only one fundamental law in the Philippines—the Constitution. For another thing, contrary to what it purports to cover, this title does not encompass all infringements of the Constitution but only violations of the Bill of Rights and related provisions of the Constitution.[54] Other offenses against the fundamental law, such as preventing or disturbing meetings of Congress or any of its bodies and violations of parliamentary immunities of its members, are treated under a separate title in the Code.[55] On the other hand, "Crimes against Personal Liberty and Security" is too narrow a title to embrace violations of the totality of the Bill of Rights.

"Crimes against Constitutional Rights," a term suggested for describing the collectivity of civil, political and social and economic rights,[56] would seem to be a more appropriate title. For the divisions of this title, the following rubrics which are descriptive of the social values involved, may be used: liberty in general, security, liberty of abode, privacy of communication and correspondence, freedom of speech and assembly, freedom of religion and social and economic rights.

Liberty in General.— The following articles of the Code fall under this heading:

(1) Art. 124. Arbitrary detention
(2) Art. 125. Delay in delivery of detained persons to the proper judicial authorities
(3) Art. 126. Delaying release
(4) Art. 267. Kidnapping and serious illegal detention
(5) Art. 268. Slight illegal detention
(6) Art. 269. Unlawful arrest
(7) Art. 270. Kidnapping and failure to return a minor

---

[54] PHIL. CONST. art. II § 4; art. XIV § 5.
[55] REV. PENAL CODE arts. 143-145.
[56] 2 FERNANDO, POLITICAL LAW 563 (1953).

(8) Art. 271. Inducing a minor to abandon his home
(9) Art. 286. Grave coercions
(10) Art. 287. Light coercions
(11) Art. 288, Other similar coercions (Compulsory purchase of merchandise and payment of wages by means of tokens)

These articles are all designed to secure the interest in liberty which has been described as embracing—

> the right of the citizen to be free in the engagement of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.[57]

Security.—The Constitution guarantees to the people the right "to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." [58] This is a fundamental right of the residents of any civilized community. As President Truman's civil rights committee stated in its report:

> Where the administration of justice is discriminatory, no man can be sure of security. Where the threat of violence by private persons or mobs exists, a cruel inhibition of the sense of freedom of activity and security of the person inevitably results. Where a society permits private and arbitrary violence to be done to its members, its own integrity is inevitably corrupted. It cannot permit human beings to be imprisoned or killed in the absence of due process of law without degrading its entire fabric.[59]

The related provisions of the Code which may be treated under this heading are:

(1) Art. 128. Violation of domicile
(2) Art. 129. Search warrants maliciously obtained and abuse in the service of those legally obtained
(3) Art. 130. Searching domicile without witnesses
(4) Art. 209. Betrayal of trust by an attorney or solicitor—Revelation of Secrets
(5) Art. 229. Revelation of secrets by an officer
(6) Art. 230. Public officer revealing secrets of private individual
(7) Art. 280. Qualified trespass to dwelling
(8) Art. 281. Other forms of trespass

---

[57] Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897).
[58] Art. III § 1(3).
[59] 1 EMERSON & HABER, POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 1-2 (1958).

(9) Art. 291. Revealing secrets with abuse of office
(10) Art. 292. Revelation of industrial secrets
(11) Art. 282. Grave threats
(12) Art. 283. Light threats
(13) Art. 284. Bond for good behavior
(14) Art. 285. Other light threats
(15) Art. 275. Abandonment of persons in danger and abandonment of one's own victim
(16) Art. 276. Abandoning a minor
(17) Art. 277. Abandonment of minor by a person entrusted with his custody; indifference of parents
(18) Art. 278. Exploitation of minors

Liberty of Abode.—Article 127 safeguards the general interest in the liberty of the abode.

Privacy of Communication.—The penal sanctions for breaches of this interest are found in Article 228 (Opening secrets through seizure of correspondence.)

Freedom of Speech and Assembly.—Article 131 (Prohibition, interruption, and dissolution of peaceful meetings) implements the constitutional right to free speech and assembly. Article 289 (Formation, maintenance and prohibition of combination of capital or labor through violence or threats) should also be treated under the rubric of free speech and assembly. It should be noted, in this connection, as to the constitutional status of peaceful picketing despite the decision in *Thornhill v. Alabama*,[60] peaceful picketing as part of the freedom of speech seems to be a fairly well-established proposition in the Philippines.[61]

Freedom of Religion.—The related provisions of the Code on religious freedom are found in Articles 132 (Interruption of religious worship), 133 (Offending the religious feelings) and 286 (Grave coercion).

Involuntary Servitude.—The following fall under this heading: Articles 272 (Slavery), 273 (Exploitation of child labor) and 274 (Services rendered under compulsion in payment of debts).

Right against Self-Incrimination.—Article 235, second paragraph, which is found in Title VII of the Code, should be placed under this heading since "third-degree" methods used to extort confessions from the accused are outlawed by the Bill of Rights.

---

[60] 310 U.S. 88 (1940). See, *e.g.*, Teamsters' Union v. Voght, Inc., 354 U.S. 284 (1957); Teller, *Picketing and Free Speech*, 56 HARV. L. REV. 180 (1942); Dodd, *Picketing and Free Speech: A Dissent*, 56 HARV. L. REV. 513 (1943).

[61] See Philippine Ass'n of Free Labor Unions v. Barot, 52 O.G. 6544 (1956); Mortera v. CIR, 79 Phil. 345 (1947).

Social and Economic Rights.—This should include the various labor laws designed to implement the social justice provisions of the Constitution.

It has thus been shown that the provisions of Titles VII and IX and some provisions of Title VII can be put together under the meaningful title "Crimes against Constitutional Rights."

B. Crimes against Public Administration

The denomination of Title VII itself should be changed. One going over Book Two of the Code will not fail to be impressed by the success with which the draftsman has been able to identify the values involved in classifying crimes—"Crimes against Persons," [62] "Crimes Against Property," [63] etc.—until one is confronted by such awkward phrasing as that found in Title VII—"Crimes Committed by Public Officers." One could then wish that, if only to preserve the symmetry, let alone facilitate the search for the relevant provision a title descriptive of the value involved, rather than of the offender, were given to this class of crimes.

Crimes against Public Administration" would be a more apt title.[64] After all, it is not true that all crimes embraced in Title VII can be committed only by public officers. *United States v. Ponte* [65] has shown that a private person, who abstracts public funds with the consent of the officer in charge of the custody of such funds, is just as guilty of malversation. Then, too, Article 212, which penalized *any* person for bribing public officials, Article 209, which punishes any lawyer or even a *procurador judicial* who betrays his client's cause, and Article 216, which prohibits experts, arbitrators and private accountants from having any interest in any contract or transaction in which they have acted as well as guardians and executors with respect to the property of their wards or of the estate, all belie the claim that the Title VII crimes are "Crimes Committed by Public Officers."

III. THE UNEQUAL BURDEN OF FINES, THE CONFLICT IN THE CODE'S PROVISIONS AND OTHER PROBLEMS

A. Fines

Fines as penalties are numerous in the criminal law. They take various forms of expression, ranging from a specified amount, *e.g.*,

---

[62] REV. PENAL CODE Bk. Two, Tit. VII.

[63] *Id.*, Bk. Two, Tit. X.

[64] This is also the title given to similar crimes in the American Law Institute's MPC § 240.0-43.2, is the PROPOSED CODE OF CRIMES Bk. Two, Tit. VI and in the ARGENTINA PENAL CODE, Tit. XI.

[65] 20 Phil. 379 (1911). (Prosecution under Act No. 1740).

a fine not exceeding ₱500 in cases of unlawful arrest,[66] to a percentage of a given amount, *e.g.*, a fine from 5 to 50 per cent of the amount misapplied by a public officer in cases of technical malversation.[67]

The chief criticism against fines derives from the fact that they represent unequal burdens on the rich and the poor.[68] Thus, the story is told of a rich man who assaulted a poor man. Convicted, the rich man was made to pay a fine which to him was a relatively trifling amount. When he smiled derisively and expressed great satisfaction at the outcome of the case, the poor man was provoked into making uncomplimentary remarks as to the justice of the legal system which permitted the imposition of the fine, whereupon the poor man was held in contempt of court and sent to jail while his wife and children starved.[69]

As it is now, fines are fixed by courts, taking into account "not only [to] the mitigating and aggravating circumstances, but more particularly [to] the wealth or means of the culprit."[70] But the standard thus laid down leaves too much discretion to the sentencing authority. Differences among judges in the appreciation of the means of the offender is inevitable.

An attempt to equalize the burden is made in the Proposed Code of Crimes by basing the fine on the daily earnings of the offender. Thus, it is provided:

> ART. 42. *Fine, how computed.*—A fine shall be imposed in a sum equivalent to one or more days' earnings from property, labor, employment, profession, business, industry, or any other source. When the offender has no income, earnings shall be deemed those which would accrue to him if he were employed according to his condition and aptitude.

A similar technique may be used by making corresponding amendments to Articles 26 and 75 of the Penal Code, basing the fine on the earnings of the offender for a certain number of days. Where, however, the offender has no income, the fine should be a fixed amount. The reason for this is that where the offender has no income, a fine in a stated amount would be just as burdensome to him as to a poor man. After all, there is no difference between a poor man and a man without an income from any source. To impose on

---

[66] REV. PENAL CODE art. 269.
[67] *Id.*, art. 220.
[68] See Morris R. Cohen. *Moral Aspects of the Criminal Law*, 49 YALE L.J. 87, 1024 (1940); CODE COMMITTEE REPORT ON THE PROPOSED CODE OF CRIMES 25 (1958).
[69] Morris R. Cohen, *op. cit. supra* note 68.
[70] REV. PENAL CODE art. 66.

one who has no income a fine based on what he would earn according to his "condition and aptitude" would be just as iniquitous as it is to impose a fixed amount on one who is rich and one who is poor.

B. Conflicting Provisions

At the same time, efforts should be made to resolve the conflict between Articles 9 and 26 of the Code. This conflict becomes apparent when Articles 9 and 26 are considered in connection with Article 90 on prescription of offenses. These articles state:

> ART. 9. *Grave felonies, less grave felonies, and light felonies.*—Grave felonies are those to which the law attaches the capital punishment or penalties which is any of their periods are afflictive, in accordance with article 25 of the Code.
>
> Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional, in accordance with the above-mentioned article.
>
> Light felonies are those infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding 200 pesos or both, is provided.
>
> ART. 26. *Fine — When afflictive, correctional or light penalty.*—A fine, whether imposed as a single or as alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos and a light penalty, if it be less than 200 pesos.
>
> ART. 90. *Prescription of crimes.*—Crimes punishable by death, *reclusion perpetua or reclusion temporal* shall prescribe in twenty years.
>
> Crimes punishable by other afflictive penalties shall prescribe in fifteen years.
>
> Those punishable by a correctional penalty shall prescribe is ten years; with the exception of those punishable by *arresto mayor* which shall prescribe in five years.
>
> The crime of libel or other similar offenses shall prescribe in two years.
>
> The offenses of oral defamation and slander by deed shall prescribe in six months.
>
> Light offenses prescribe in two months.
>
> When the penalty fixed by law is a compound one the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article.

If an offense, such as gambling,[71] is punished by *arresto menor,* or a fine not exceeding ₱200, what is its prescriptive period? Is it two months, because an offense is considered light if the penalty for it is *arresto menor* or a fine not exceeding ₱200 or both? Or is it ten years, because a fine of ₱200 is a correctional penalty and un-

[71] REV. PENAL CODE art. 195.

der article 90 crimes punishable by a correctional penalty prescribe in ten years?

In *People v. Yu Hai* [72] the court, faced with this issue, ruled that such offense is a light felony and therefore prescribes in two months:

> [W]hile Article 90 provides that light offenses prescribe in two months, it does not define what is meant by "light offenses" leaving it to Article 9 to fix its meaning. Article 26, on the other hand, has nothing to do with the definition of offenses, but merely classifies fine, when imposed as a principal penalty, whether singly or in the alternative into categories of afflictive, correctional and light penalties. As the question at issue is the prescription of crime and not the prescription of penalty, Article 9 should prevail over Article 26.

What the court failed to consider is that Article 90 depends on Articles 25 and 26 for the classification of penalties just as much as it does on Article 9 for definition of crimes. In fact in two other cases,[73] the court expressly relied on Article 26 for the classification of fines into afflictive, correctional and light in applying the provisions of Article 90.

The truth is that Articles 9 and 26 are at cross purposes with each other and the court should have recognized this as it in fact did in a later case.[74] Then, considering the discrepancy between the two provisions of the Code, the court could have rested its decision with the same result solely on the well-known principle that criminal statutes are to be liberally construed in favor of the accused as the *Yu Hai* case itself stated, especially where there is a conflict in the provisions of the statute.

The last paragraph of Article 9 should be amended so as to read as follows:

> Light felonies are those infractions of law for the commission of which the penalty of *arresto menor* or a fine of less than 200 pesos or both, is provided.

C. Other Problems

Indirect Bribery.—The provision on indirect bribery should be amended so as to exempt moderate gifts. For this purpose, the following proviso, taken from Section 14 of the Anti-Graft and Corrupt Practices Act, should be added to Article 211 of the Code:

---

[72] 52 O.G. 5116 (1956). *Accord,* People v. Canson, 53 O.G. 6512 (1957); People v. Aquino, G.R. No. L-9357-70, Aug. 21, 1956.

[73] People v. Crisostomo, G.R. No. L-16954, Aug. 31, 1962; People v. Basalo, 53 O.G. 4814 (1957).

[74] People v. Canson, *supra* note 67.

> Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from this provision.

The reason for this is that the present provision is too severe, not to say too unrealistic. Gratitude is in the fabric of the Filipino character. To punish its expression, when the gift given is moderate and, what is more, when it is unsolicited, is to unduly criminate.

Unlawful Search of Domicile.—Article 130 of the Code punishes any public officer who searches any domicile, papers and other belongings without the presence of two witnesses. However, with the issuance of the Revised Rules of Court, which took effect on January 1, 1964, a search may now be made even in the presence of only one witness.[75] In making this change, the Supreme Court obviously considered as procedural, and therefore subject to its rule-making power, the requirement as to the number of witnesses. However, there are others who believe otherwise and question the validity of the amendment.[76]

To resolve the conflict and at the same time remove all doubts as to the legality of the change made by the Rules of Court Article 130 of the Code should be amended so as to make the attendance of at least one witness sufficient for purposes of search.

Misfeasance.—Articles 204-206, so far as they seek to punish judges for knowingly rendering unjust judgments and others, should be made applicable to public officers who exercise quasi-judicial functions, such as the hearing officers, referees and commissioners in the Court of Industrial Relations, the Court of Agrarian Relations, the Workmen's Compensation Commission, the Public Service Commission and the other administrative tribunals.

---

[75] Rule 126 § 7.

[76] See, *e.g.*, 2 PADILLA, CRIMINAL LAW 120 (1965); FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES (CRIMINAL PROCEDURE) 948 (1963).