COMMENTS ON CRIME INVOLVING MORAL TURPITUDE

TERESITA J. HERBOSA *
CORAZON P. PAREDES *

INTRODUCTION —

The relationship between law and morals has been the subject of many controversies. While no fine distinction can ever be made, certain principles have generally been accepted as governing this relationship. First of all, in modern or advanced communities, what is legal is not necessarily moral. On one hand, there is a variety of conduct which, although criminal in the legal sense, is not offensive to the moral conscience of a considerable number of persons.[1] As Lord Devlin said "rules which impose a speed limit or prevent an obstruction on the highway have nothing to do with morals.[2]" On the other hand, the law does not take cognizance of offenses against the moral order unless they are prohibited by the legal order as well.[3] Even though an act may be condemned as immoral, there may be other outbalancing reasons why it should not be condemned by criminal law. The chief of these, in Bentham's exposition, would be that the punishment would be inefficacious as a deterrent, that is, where it would not prevent the disapproved conduct; secondly, that the punishment would be unprofitable, that is, where the mischief produced by the criminal prohibition would be greater than the mischief produced by letting the disapproved act go unpunished; and thirdly, that the punishment would be needless, that is, where the mischief may be prevented without the punishment.[4]

To conclude at this point that the function of criminal law is the prevention of harmful actions, *per se,* and not the denunciation of immorality[5] is, however, a bit premature. One cannot simply disregard the case of *Shaw v. Director of Public Prosecutions*[6] in a discussion of the relationship between law and morals. There, the judges, quoting Lord Mansfield's dictum of 1174 in the case of *Jones v. Randall,*[7] said:

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* *Member,* Student Editorial Board, Philippine Law Journal.
1 Fuller, *Morals and the Criminal Law,* 32 J. CRIM. L. 624, 625 (1962).
2 Hughes, *Morals and the Criminal Law,* 71 YALE L.J. 662, 669 (1962).
3 CLARKE & MARSHALL, A TREATISE ON THE LAW OF CRIMES 4 (4th ed., 1960).
4 Hughes, *supra,* note 2 at 663.
5 HART, THE MORALITY OF THE CRIMINAL LAW, TWO LECTURES 39 (1965).
6 2 A.E.R. 446 (1961). As cited in HART, LAW, LIBERTY, AND MORALITY 7-8 (1966).
7 As cited in HART, *Ibid.*

> "Whatever is *contra bonos mores et decorum* the principles of our laws prohibit and the King's court as the general censor and guardian of public morals is bound to restraint and punish."

Whether one adheres to the view that the preservation of morality is not the law's concern,[8] or to that expressed in the case of *Shaw,* that is, what is immoral is illegal and should, therefore, be punished, the problem, first of all, lies in a determination of what is immoral.

Society is morally a plural society comprising a number of different mutually tolerant moralities.[9] Bentham believed that "the good of the community cannot require that any act should be made an offense, which is not liable, in some way or the other, to be detrimental to the community."[10] Stephen, on the other hand, stressed that criminal law should not be used unless it was supported by an "overwhelming moral majority".[11] Lord Devlin in speaking of how the collective judgment of society is to be ascertained stated:

> "It is that of the reasonable man. He is not to be confused with the rational man. He is not expected to reason about everything and his judgment may be largely a matter of feeling."[12]

Immorality then, in its simplest sense and for the purpose of law, is that species of conduct which is likely to harm specific individuals (Lord Devlin's "reasonable man") or an indefinite number of unidentifiable individuals which is capable of sufficiently precise definition (Bentham's "community" or Stephen's "overwhelming moral majority"). Thus, criminal law becomes a mere formal embodiment of the moral values of the dominant group in society.[13] But, then, this dominant group is not precluded from prohibiting or punishing any act which they would like to prohibit or punish regardless of the morality or immorality of said act. In the end, therefore, the mere fact that a given act is made punishable by law does not settle the question of immorality of the prohibited conduct, it does not preclude the people from passing moral judgments on the rightfulness or wrongfulness of the behavior.

At this point, it is submitted that the term "crime involving moral turpitude" aptly demonstrates what has so far been said. Why so? The word "crime" by itself refers to an act or omission prohibited by public law. When such is qualified by the words "moral turpitude", it can only mean an act or omission which is against both law and morals. This is,

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[8] HART, *supra,* note 5 at 46.
[9] *Ibid.,* p. 40.
[10] BENTHAM, THE PRINCIPLES OF MORALS AND LEGISLATION 205 (1948).
[11] HART, *op. cit., supra,* note 5 at 40.
[12] Hughes, *op. cit., supra,* note 2 at 675.
[13] Fuller, *op. cit., supra,* note 1 at 624.

of course, an oversimplification of what the term means. This paper is a study of the definition, nature and interpretation to be given "crime involving moral turpitude", the purpose of which being to show that the term has more to it than has been taken for granted as its "obvious" meaning.

CRIMES MALA IN SE AND MALA PROHIBITA —

Originally, crimes were divided into those that were *mala in se,* or wrong in themselves, and those that were *mala prohibita,* or wrong merely because they were prohibited and punished by statute. Crimes *mala in se* included all common law offenses, for the common law punished no act that was not wrong in itself. These include murder, rape, arson, burglary and larceny, breaches of peace, injury to person or property, forgery and the like. Acts *mala prohibita* included any act forbidden by statute, but not otherwise wrong;[14] or acts to which, in the absence of statute, no moral turpitude attaches, and which are crimes only because they have been prohibited by statute.[15]

The above classification of crimes was not founded upon any sound principle in law. From the legal viewpoint, only such acts as are prohibited by the lawmaking body constitute crimes. In the ultimate analysis, it does not really matter whether an act be prohibited because it is against good morals, or whether it be prohibited simply because the legislature has held it to be since the wrongdoer can neither claim any benefit or advantage from the distinction or be adjudged less guilty in any instance. In *People v. West*[16] the Court said:

> "It is not a good objection to a statute prohibiting a particular act, and making its commission a public offense, that the prohibited act was before the statute lawful, or even innocent, and without any *elements of moral turpitude.* It is the province of the legislature to determine, in the interest of the public, what shall be permitted or forbidden, and the statutes contain very many instances of acts prohibited the criminality of which consists solely in the fact that they are prohibited, and not at all in their intrinsic quality. x x x" (Emphasis ours)

However, the relevancy of the distinction between crimes *mala in se* and *mala prohibita* to the interpretation of the term "crime involving moral

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[14] CLARKE & MARSHALL, *op. cit., supra,* note 3 at 5.

[15] Katz, *Criminal Law: Moral Turpitude: National Prohibition Act,* 11 CORNELL L. Q. 241 (1925-26).

[16] 106 N.Y. 293, 12 N.E. 610, 612 (,887).

turpitude" cannot be disregarded. In a number of cases,[17] the test applied in the determination of whether a crime is one involving moral turpitude or not was held as synonymous to that differentiating crimes *mala in se* and *mala prohibita.*

HISTORY OF THE TERM "CRIME INVOLVINNG MORAL TURPITUDE" —

The term "moral turpitude" is not new. It has been used in the law for centuries.[18] In the United States, the term was supposedly *first* used in 1809 in defining slander in the case of *Booker v. Coffin.*[19] It was held therein that to call the plaintiff a prostitute does not charge her with a crime involving moral turpitude.[20]

The term was also at the start frequently used in cases in which a prior conviction is attempted to be proven for the purpose of impeaching a witness. The reason being given that the witness previously convicted of such crime is of depraved mind and because of this he is not worthy of belief even under oath.[21]

As to how the term assumed the prominence it now has in civil law, the following is a sufficient account. Before the evolution of the term "crime incolving moral turpitude" the classifications used in common law were those between felony and misdemeanor, crimes *mala in se* and *mala prohibita* and *crimen falsi* and infamous crimes. It was not long before the legal minds of those times realized that these categories were objectionable because of their uncertainty, and the abundance of conflicting precedents and unsuccessful attempts at redefinition. Thus, upon the drafting of civil statutes, the legislators looked for a classification which was less confusing to refer to criminal offenses. And instead of enumerating the specific crimes at which their enactments were concerned, they employed the general term "crime involving moral turpitude". It is not clear whether this established a new criterion, or was merely a synthesis of previously recognized distinction. At any rate, the phrase has since been in use.[22]

In the Philippines, no record is made as to when the term was first used. We can only surmise it was part of the laws made applicable to the Philippines by Spain, a civil law country. The earliest case which dealt with the term is *In re Basa.*[23]

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[17] Bartos v. U.S. District Court for District of Nebraska, 19 F. 2d 722, 724 (1927); *In re* Dampier, 46 Idaho 195, 267 P. 452 (1928); Pippin v. State, 197 Ala. 613, 73 So. 340 (1916); *In re* Williams, Mo. App., 113 S.W. 2d 353 (1938).

[18] State v. Malusky, 59 N.D. 501, 230 N.W. 735 (1930).

[19] 5 Johns. (N.L.) 188 (1809), as cited in *Note*, 43 HARV. L. REV. 118 (1929).

[20] *Ibid.*, p. 118.

[21] Bartos v. U.S. District Court for District of Nebraska, *supra*, note 17 at 724.

[22] *Note*, 43 HARV. L. REV. 118 (1929).

[23] 41 Phil. 475 (1920).

GENERAL DEFINITION —

Webster's Dictionary says "turpitude" comes from the Latin word "turpitudo", the root being "turpis" which is translated as "foul" or "base." The meaning given is "inherent baseness" or vileness of principle, words or actions" and "depravity".

Decisions of the Supreme Court of the Philippines particularly those on disbarment[24] have relied mainly on the definition which states that "moral turpitude" includes "anything which is done contrary to justice, modesty or good morals". Needless to say this definition has been adopted from American decisions.[25]

Another popular or often cited definition which is also found in legal encyclopedias is "it is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man".[26]

Actually, the word "moral" which precedes the word "turpitude" does not add anything to the meaning of the term other than that emphasis which often results from a tautological expression.[27] And as if for the sake of emphasis indeed, some cases provide meanings to each separate word "moral" and "turpitude" in arriving at the above definition. As held in *State ex. rel Conklin v. Buckingham:*[28]

> "Turpitude" is defined as inherent baseness or vileness of principle, words or actions, or shameful wickedness or depravity, whereas 'moral' describes conduct that conforms to the generally accepted rules which society recognizes should govern everyone in his social and commercial relations with others, regardless of whether those rules constitute legal obligations, so that 'moral turpitude' implies something in itself whether punishable by law or not, the word 'moral' serving only to emphasize the nature of wrong committed. x x x"

Arriving at an exact definition of the term is not such an herculean task as evidenced by the above definitions cited in both American and Philippine cases. Uncertainty does not arise from the definitions themselves. The controversy lies in how to set the standards applicable to a given set of facts. In other words, what significant criterion or practical

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[24] *In re* Basa, *supra*, note 23; Royong v. Olena, G.R. Adm. Case No. 376, 7 SCRA 859 (1963); Villasanta v. Peralta, 101 Phil. 313 (1957); *In re* Vinzon, G.R. Adm. Case No. 561, 19 SCRA 815; *In re* Abesamis, 102 Phil. 1182 (1958).

[25] *In re* Williams, 64 Okl. 316, 167 P. 1149 (1917); Jacobs v. State Bar of California, 219 Cal. 59, 25 P. 2d 401 (1933); *In re* Disbarment of Coffey, 123 Cal. 522, 56 P. 448 (1899).

[26] Moore v. State, 12 Ala. App. 243, 67 So. 789 (1915); State v. Malusky, *supra*, note 18; Traders & Gen. Ins. Co. v. Russel, Tex. Civ. App., 99 S.W. 2d 1079 (1936).

[27] Hughes v. State Board of Medical Examiners, 162 Ga. 246, 134 S.E. 42 (1926); Holloway v. Holloway, 126 Ga. 459, 55 S.E. 191 (1906).

[28] 59 Nev. 36, 84 P. 2d 49, 51 (1938).

test is to be recognized in order to be able to determine that degree, nature or quality of conduct requisite to classify the same as one involving "moral turpitude". As succinctly put by one writer, how is one to judge the baseness implicit in the acts of one's fellowman?[29]

Courts in the United States have repeatedly acknowledged this problem. In *Kurtz v. Farrington,*[30] it was held that "no hard and fast rule" can be applied. In *Drazen v. New Haven Taxicab Co.,*[31] the Court was of the opinion that in itself "moral turpitude" is a vague term, lacking precision. In *Pullman Palace Car Co. v. Central Transp. Co.,*[32] the Court plainly said "what constitutes moral turpitude, or what will be held such, is not entirely clear". And in *State v. Malusky,*[33] "it connotes something which is not clearly and certainly defined".

An absolute definition of "moral turpitude" is of little value. The term being relative in character, it is susceptible of more than one interpretation. A crime might be held to involve moral turpitude when gauged by the public morals of one community, and in another community the same offense would not be so considered.[34] Furthermore, since it conforms to public morals, it is never stationary[35] and is necessarily adaptive.[36]

Despite the intrinsic vagueness of the term, it has been retained in Philippine law. What follows will be an enumeration of the specific laws embodying the words "crime involving moral turpitude".

STATUTORY USE OF THE TERM "CRIME INVOLVING MORAL TURPITUDE" —

In the Civil Code of the Philippines, there are three provisions of law which include the term "crime involving moral turpitude". These are those which deal with the annulment of marriage where consent of either party was obtained by fraud, with the revocation of donation by reason of ingratitude and with the qualifications of the adopter in adoption cases.

Under Article 86, paragraph 2 the following is provided:

> "Any of the following circumstances shall constitute fraud referred to in number 4 of the preceding article:
>
> xxx xxx xxx
>
> (2) Non-disclosure of the previous conviction of the other party of a crime involving moral turpitude, *and the penalty imposed was imprisonment for two years or more;* (Emphasis ours)
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> xxx xxx xxx"

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[29] Bradway, *Moral Turpitude as the Criterion of Offenses that Justify Disbarment,* 24 CAL. L. REV. 16 (1935).
[30] 104 Conn. 257, 132 A. 540 (1926).
[31] 95 Conn. 500, 111 A. 861 (1920).
[32] 65 F. 158 (1894).
[33] *Supra,* note 18 at 735.
[34] *In re* Dampier, *supra,* note 17 at 454.
[35] State v. Malusky, *supra,* note 18.
[36] *In re* Dampier, *supra,* note 17, citing Beck v. Stitzel, 21 P. 522 (1853).

Aricle 765, on the other hand, provides:

> "The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:
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> xxx xxx xxx
>
> (2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;
>
> xxx xxx xxx"

Before Presidential Decree No. 603, the Civil Code had the following provision regarding those who cannot adopt:

> "The following cannot adopt:
>
> xxx xxx xxx
>
> (6) Any person who has been convicted of a crime involving moral turpitude, *when the penalty imposed was six months' imprisonment or more.*" (Emphasis ours)

Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, repeated Article 335. It is now provided:

> "Art. 28 — Who may not adopt — The following persons may not adopt:
>
> xxx xxx xxx
>
> (3) Any person who has been convicted of a crime involving moral turpitude;
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> xxx xxx xxx"

In the Revised Rules of Court of the Philippines, the term "crime involving moral turpitude" is mentioned with respect to the settlement of estate of deceased persons, more particularly regarding letters testamentary and of administration.

> "Rule 78, Sec. 1. *Who are incompetent to serve as executors or administrators.* — No person is competent to serve as executor or administrator who:
>
> xxx xxx xxx
>
> (c) is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude."

Regarding disbarment and suspension of attorneys, and admission to the bar, the following provisions are pertinent:

> "Rule 138, Sec. 27. *Attorney removed or suspended by Supreme Court on what grounds.* — A member of the bar may be removed

or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, x x x."

"Rule 138, Sec. 2. *Requirements for all applicants for admission to the bar.* — Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines."

Under special laws, Commonwealth Act No. 473, as amended, otherwise known as the Naturalization Law provides:

"Sec. 4. The following cannot be naturalized as Philippine citizens:
xxx xxx xxx
(d) Persons convicted of crimes involving moral turpitude;
xxx xxx xxx"

Relative to this, is Commonwealth Act No. 613, as amended, or the Philippine Immigration Act, which provides:

"Sec. 37 (a). The following aliens shall be arrested upon the warrant x x x and deported x x x:

(3) Any alien who, after the effective date of this Act, is convicted in the Philippines and sentenced for a term of one year or more for a crime involving moral turpitude committed within five years after his entry to the Philippines, or who at any time after such entry, is so convicted and sentenced more than once;
xxx xxx xxx"

The other special laws[37] wherein the term "crime involving moral turpitude" is found are substantially concerned with qualifications, disqualifications and conditions relative to certain professions, practices, Board membership and the like. Among the more important ones are:

(1) Labor Code of the Philippines. "Art. 241 — The following are the rights and conditions of membership in a labor organization:
xxx xxx xxx
(f) No person who has been convicted of a crime involving moral turpitude shall be eligible for election as a union officer or for appointment to any position in the union;
xxx xxx xxx

[37] A listing of a number of these laws shall be made at this point.

(2) Presidential Decree No. 692, The Revised Accountancy Law. "Sec. 17. *Grounds for proceedings against a Certified Public Accountant:*

(a) Conviction by a court of competent jurisdiction of any criminal offense involving moral turpitude;

xxx xxx xxx"

(3) Presidential Decree No. 6, Amending Certain Rules on Discipline of Government Officials and Employees. "Sec. 1. *Grounds for disciplinary action.* — The following shall be ground for disciplinary action:

xxx xxx xxx

(j) Conviction of a crime involving moral turpitude;

xxx xxx xxx"

(4) Presidential Decree No. 11, Amending Certain Sections of R.A. 5487, otherwise known as "The Private Security Agency Law". "Sec. 4. *Who may organize a security or Watchman agency.* — x x x That the operator or manager of said agency must be at least 25 years of age, a college graduate x x x of good moral character, having no previous record of any conviction of any crime or offense involving moral turpitude x x x"

(5) Republic Act No. 382, An Act To Regulate the Practice of Veterinary Medicine and Surgery in the Philippines. "Sec. 8. x x x The Veterinary Examining Board may refuse to issue or may suspend or revoke any license for any one or any of the following causes:

xxx xxx xxx

(2) Conviction of a crime involving moral turpitude or conviction of a felony, in which case the record of such conviction shall be conclusive evidence;

xxx xxx xxx"

(6) Republic Act No. 6506, An Act Creating the Board of Examiners for Criminologists in the Philippines and for other Purposes. "Sec. 12. *Qualifications for examination.* — Any person applying for examination and for a certificate, shall, prior to admission to examination, establish to the satisfaction of the Board that:

xxx xxx xxx

(c) He must not have been convicted of a crime involving moral turpitude; and

xxx xxx xxx"

(7) Republic Act No. 877, as amended, An Act to Regulate the Practice of Nursing in the Philippines. "Sec. 4. *Qualifications of Board members.* — The members of the Board shall, at the time of appointment:

xxx xxx xxx

(e) Not have been convicted of any offense involving moral turpitude;

xxx xxx xxx"

The use of the term is also prevalent in administrative rules and regulations which implement provisions of law regarding the composition

or qualifications of persons filling certain position. An example of these is Central Bank Circular No. 356 which provides therein:

> "3. Without prejudice to specific provisions of law prescribing disqualifications for directors, following persons are disqualified from becoming directors:
>
> (a) Persons who have been convicted judicially or administratively of an offense involving moral turpitude, x x x"

These laws have been substantially adopted from those in the United States. As can be gleaned from American cases, the term has been in use at one time or another in referring to moral dereliction in the exclusion of aliens and deportation, disbarment, competency of witnesses, slander and defamation proceeding, revocation of a physician's license, application of an habitual offender act, deprivation of pension and others.

JUDICIAL INTERPRETATION OF THE TERM —

Definitely, there is a dearth in Philippine jurisprudence on the subject. Reliance is, therefore, placed upon decisions in American cases. While such decisions are not binding upon Philippine courts, they are noted for whatever persuasive value they may have, bearing in mind that our laws which contain the term are basically similar to laws in that jurisdiction. Furthermore, the problem is compounded by the fact that Philippine decisions do not seem to attach much significance to the term, and appear content to merely determine whether a certain crime is indeed one involving moral turpitude without elucidating on the matter. Emphasis on what crimes have been held to be crimes involving moral turpitude will characterize the following discussion.

Disbarment proceedings constitute majority of Philippine cases on the subject matter. Estafa is one crime which has been consistently held to involve moral turpitude.[38] Concubinage has also been classified as a crime involving moral turpitude and which would warrant the disbarment of an attorney.[39] In a particular proceeding to disbar a member of the bar,[40] the respondent while married courted another woman. He procured a blank marriage contract which he subsequently used to convince the woman to marry him and have carnal relations with her. The woman discovered the prior marriage and filed an action for bigamy and immorality. Finding the respondent's act immoral, the Supreme Court said, in clear and unmistakable language:

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[38] *In re* Jaramillo, 101 Phil. 323 (1957); *In re* Abesamis, *supra*, note 24; *In re* Vinzon, *supra*, note 24.

[39] *In re* Basa, *supra*, note 23; *In re* Isada, 60 Phil. 915 (1934).

[40] Villasanta v. Peralta, *supra*, note 24 at 314.

> "He made a mockery of marriage which is a sacred institution demanding respect and dignity. His conviction in the criminal case involves moral turpitude. The act of respondent in contracting the second marriage (even his act in making love to another woman while his first wife is still alive and their marriage still valid and existing) is contrary to honesty, justice, decency and morality."

In re Rovero,[41] respondent lawyer was found guilty of having violated the customs law by fraudulently concealing a dutiable importation (a piece of jewelry which he concealed in his wallet). The Court of Appeals convicted him of smuggling and sentenced him to pay a fine of ₱2,500.00. During the disbarment proceedings, respondent contended that his conviction is not sufficient to disqualify him from the practice of law, especially because the acts of which he was found guilty, while at most merely discreditable, had been committed by him as an individual and not in pursuance or in the exercise of his legal profession. The Supreme Court held that the act done was contrary at least to honesty or good morals and that this was aggravated by the fact that respondent sought to defraud, not merely a private person, but the Government.

Falsification of public document has also been uniformly held to involve moral turpitude.[42]

Naturalization cases constitute the other half of Philippine cases on crimes involving moral turpitude. In *Ao Lin v. Republic,*[43] the Court held that:

> "x x x The use of a meter stick without the corresponding seal of the Internal Revenue Office, by one who has been engaged in business for a long time, involves moral turpitude because it involves a fraudulent use of a meter stick, not necessarily because the Government is cheated of the revenue involved in the sealing of the meter stick, but because it manifests an evil intent on the part of the petitioner to defraud customers purchasing from him in respect to the measurement of the goods purchased."

In *Tak Ng v. Republic,*[44] the Court said that profiteering, an offense which is severely and heavily penalized with imprisonment of not more than 10 years or by a fine of not more than ₱10,000.00 or both, involves moral turpitude, inasmuch as it affects the price of prime commodities and goes to the life of the citizens, especially those who are poor and with hardly the means to sustain themselves.

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[41] 92 Phil. 128 (1952).

[42] Paras v. Vailoces, G.R. Adm. Case No. 439, 1 SCRA 954 (1961); *In re* Avanceña, G.R. Adm. Case No. 407, 20 SCRA 1012 (1967); *In re* Abesamis, *supra,* note 24.

[43] G.R. No. L-18506, 10 SCRA 27, 29 (1964).

[44] 106 Phil. 727 (1959).

The only case where the Supreme Court did not consider a crime as one involving moral turpitude is *Ng Teng Lim v. Republic*.[45] It was held therein that "a minor transgression of the law, such as conviction for speeding which involves as no moral turpitude or wilful criminality, is not a ground for denying a petition for naturalization.

It is to be noted that in naturalization cases, the term "crime involving moral turpitude" is given a wide coverage. Relating this to the previous discussion on laws and morals, *mala in se* and *mala prohibita*, it would appear that Philippine decisions in said proceedings give preference to the bad effects of an act rather than on its nature as a crime *per se* because of a legislative enactment, or as both a crime and immoral act.

On the other hand, in disbarment cases, issue is made on the effects of a pardon on a crime involving moral turpitude. In *In re Lontoc*,[46] respondent was convicted of the crime of bigamy. Subsequently, he was granted a pardon. Could he still be disbarred on the ground of conviction of a crime involving moral turpitude notwithstanding the pardon? The Court decided therein that:

> "x x x where proceedings to strike an attorney's name from the rolls are founded on, and depend alone, on a statute making the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of attorney after pardon has been granted. x x x where proceedings to disbar an attorney are founded on the professional misconduct involved in a transaction which has culminated in a conviction of felony, it has been held that while the effect of the pardon is to relieve him of the penal consequences of his act, it does not operate as a bar to disbarment proceeding, inasmuch as the criminal acts may nevertheless constitute proof that the attorney does not possess a good moral character and is not a fit or proper person to retain his license x x x."

In the case of *In re Gutierrez*,[47] the Supreme Court stated that respondent must be judged upon the fact of his conviction for murder without regard to the pardon which he invokes in defense. The crime was qualified by treachery and aggravated by it having been committed in band and by taking advantage of his official position as municipal mayor. Quoting the decision "the degree of moral turpitude involved is such as to justify his being purged from the profession."

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[45] 103 Phil. 484 (1958).
[46] 43 Phil. 293, 295 (1922).
[47] G.R. Adm. Case No. L-363, 5 SCRA 661 (1962).

It would appear that the term professional misconduct or immoral act would fill in the gap whenever by reason of pardon, a crime involving moral turpitude is wiped out and cannot serve as a ground for disbarment. This is a reason based on technicality and the end result is the same which is to protect society from the immoral tendencies of the wrongdoer.

In order to fully study the meaning of the subject matter, and whether such is sufficiently clear to justify its continued use in law, reference to American cases is inevitable in view of the established usage of the term in that jurisdiction.

MORAL TURPITUDE, A FIXED, ABSOLUTE MEANING OR INDEFINITE, FLUCTUATING MEANING —

An analysis of two cases will show the divergence of court opinion with respect to the very basic problem of the nature of the meaning given to "moral turpitude". These are the cases of *Rudolph v. U.S.*[48] and *Bartos v. U.S. Dist. Court for District of Nebraska.*[49] Both involve violations of the national liquor laws and in both cases the offender was an official. Both have dissenting opinions.

In the *Rudolph* case, the offender was a retired policeman who was receiving a pension. The Commissioners ordered his pension discontinued on the ground of his conviction of "unlawful possession and transportation of intoxicating liquors" pursuant to a statute providing that the Commissioners "may, in their discretion, reduce or discontinue relief x x x upon receipt of duly certified information from a court of competent jurisdiction that any person receiving such relief has been convicted of any crime involving moral turpitude x x x". The Court therein, held:

> "There is no hard and fast rule as to what constitutes moral turpitude. It cannot be measured by the nature or character of the offense, unless, of course, it be an offense, inherently criminal, the very commission of which implies a base and depraved nature. *The circumstances attendant upon the commission of the offense usually furnish the best guide.* For example, an assault and battery may involve moral turpitude on the part of the assailant in one case and not in another. *Intent, malice, knowledge, of the gravity of the offence, and the provocation, are all elements to be considered.* It may well be that an unsophisticated person would be caught in the act of transporting liquor, in violation of law, under circumstances which would not justify the court in holding that the act involved moral turpitude; but this rule can hardly be applied to a police officer of many years' experience, sworn to defend and uphold the law." (Emphasis ours)

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[48] 6 F. 2d 487 (1925).
[49] *Supra*, note 17.

To the Court, therefore, in the *Rudolph* case, the term is a vague one, allowing discretion in its application to a given set of facts.

In the *Bartos* case, wherein an attorney manufactured and possessed in his home for use by himself and his guests 700 quarts of beer, the Court said that the act did not involve moral turpitude as to merit disbarment, saying:

> "x x x Crimes of a heinuos nature have always been considered by laymen and lawyers alike as involving moral turpitude, regardless of legislative action on the subject. A thief is a debased man, he has no moral character. The fact that a statute may classify his act as grand or petit larceny, and not punish the latter with imprisonment and declare it to be only a misdemeanor, does not destroy the fact that theft, whether it be grand or petit larceny, involves moral turpitude. It is *malum in se*, so the consensus of opinion — statute or no statute — deduces from the commission of crime *malum in se* the conclusion that the perpetrator is depraved in mind and is without moral character, because, forsooth, his very act involves moral turpitude. x x x"

Answering the contention that the phrase "moral turpitude" has no definite meaning, that it shifts and fluctuates in keeping with changes in the moral standards of a people or country, the opinion of the Court goes on to say:

> "x x x This is doubtless so when viewed solely as a question of morals and long periods of time are taken into consideration. But when private rights are being adjudicated, they are determined by rules of civil law, not moral; and so the civil law fixes a definite meaning to the phrase. It says the commission of crimes *malum in se*, infamous offenses and those classed as felonies involve moral turpitude, — none others. The phrase is centuries old, it has a definite meaning x x x."

The confusion in the application of the term has not been clarified. In fact a study of other cases reveal that proportionate to the rise in number of cases attempting to interpret the same, is the widening of the area of conflict. One author[50] has categorized these cases into three categories. To the first belong those acts which are in general accepted as involving moral turpitude. An example of this is the case of *In re Henry*[51] which stated that "larceny is a crime involving moral turpitude". "It is a crime *per se* and is inmately wrong and violative of the rights of property and of individuals and society". Another crime definitely falling under the coverage of the term is murder.[52] The next category refers to crimes which

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[50] Bradway, *op. cit., supra*, note 29.
[51] 99 P. 1054 (1909).
[52] Holloway v. Holloway, *supra*, note 27 at 193.

are in general not involving moral turpitude. Among the cases cited in this category are *Gillman v. State*[53] where mere assault and battery was not to constitute moral turpitude, it being the "result of transient ebullitions of passion"; *Ex Parte Saraceno*[54] and *U.S. ex rel. Andreacchi v. Curan*[55] where carrying of concealed weapons was held not to be a crime of moral turpitude; and *Traders & Gen. Ins. Co. v. Russell*[56] where driving while intoxicated was also held as not one of moral turpitude.

It is in the third category where the bone of contention lies. These refer to acts which are sometimes held as involving moral turpitude and at other times as not involving the same. Reference has already been made to violations of liquor laws in the *Rudolph* and *Bartos* cases. Involuntary manslaughter is also within this area.[57] It is probably safe to conclude that it is in this category when all circumstances attendant to the act are taken into consideration. Having this in mind, the next problem, therefore, is what general formula may be adopted or the standards to be applied to effect a reasonable classification of acts which are within the area of conflict.

GENERAL FORMULA TO BE ADOPTED IN THE DETERMINATION OF WHETHER AN ACT IS A CRIME INVOLVING MORAL TURPITUDE —

In the often cited case of *State v. Malusky*,[58] the standard by which the term is to be understood was lengthily expounded by the Court. It was said therein:

> "Some standard must exist according to which the determination as to whether an act or conduct is moral or immoral is to be made. That standard is public sentiment — the expression of the public conscience. It may be manifest, unwritten, and more or less nebulous, as legend, as tradition, as opinion, as custom, and finally crystallized as the written law. Thus the standard is fixed by the consensus of opinion, the judgment of the majority. When the majority is slight, there is, of course, greater opposition on the part of the minority to the standard. The majority may become the minority and the standard change. But so long as it is established, measurement must be made according to its terms. *So we must say that those things which are discountenanced and regarded as evil and accordingly forbidden by society are immoral and that the doing of them contrary to the sentiment of society thus expressed involves moral turpitude. x x x*"

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[53] 165 Ala. 135, 51 So. 722 (1910).
[54] 182 F. 955, 957 (1910).
[55] 38 F. 2d 498 (1926).
[56] *Supra*, note 26 at 1084.
[57] U.S. *ex rel.* Mongiovi v. Karnuth, 30 F. 2d 825 (1929).
[58] *Supra*, note 18.

It would appear that the flexibility of the term "crime involving moral turpitude" is precisely the reason for its continued inclusion in the laws of both the United States and the Philippines. If we are to adopt the above standard which is also the standard applied in other aspects of law, *i.e.,* pornography, due process, and the like, that is, the determination is dependent on the particular set of facts and circumstances of each case, then whoever has the discretion of so applying it can do so with great latitude.

SHOULD COURTS EXERCISE THIS DISCRETION?

In *Kurtz v. Farrington,*[59] the Court said that "it (moral turpitude) must be left to the process of judicial inclusion and exclusion as the cases are reached, and as the standards of society change". But it has been so far shown that such has given rise to inconsistent rulings on the matter. If we are to consider that the problem of what is moral or immoral is one that persists and will always persist in the life of every human being, then it becomes inevitable that judges, influenced as they are by customs, moral sense and state of civilization of their respective communities, not to mention personal idiosyncracies, biases and prejudices, draw the line at very different points.[60]

Granting the need for flexibility and a consideration of all the circumstances of the case, the procedure is subject to criticism that a judge may unconsciously mistake his own bias for an intuitive perception of the common conscience.[61] The conclusion seems inevitable that in the classification of crimes it is perilous and idle to expect an indefinite statutory term to acquire precision by the judicial process of exclusion and inclusion.[62]

It is clear, therefore, that the disagreement is as to the means of ascertaining the moral judgment of the community respecting a particular act. Should it be the court or the legislature to formulate, determine and apply the standards applicable?

According to one view, the legislature has the advantage. It is more closely in touch with public sentiment and opinion. Its methods of arriving at a basis for legislation defining degrees of morality does not include the cumbersome taking of expert testimony, the determination of those qualified as expert witnesses on the subject, nor the judicial balancing of arguments pro and con in matters where the public is not in a state of agreement. The judicial process whether it proceeds on a basis of individual intuition

[59] *Supra,* note 30.
[60] Katz, *op. cit., supra,* note 15 at 243.
[61] Bradway, *op. cit., supra,* note 29 at 21.
[62] *Supra,* note 22 at 121.

or through the customary channels of litigation is not adapted to the task of making effective surveys of the instant status of moral codes.[63]

On the other hand, surely the court, with its elaborate truth-ascertaining apparatus, can judge best the moral implications of the criminal act upon which it had directed its search-light. If a man unfortunately kills while committing an unlawful act, the propriety of an application of the rule of constructive intent should be determined by the facts which appear — by his intent, malice, and knowledge, and by the provocation — and not by an arbitrary or prior classification. If a court is considering whether an attorney's criminal conduct justifies disbarment, its discretion should not be hampered by any pre-existing categorization of crimes.[64]

If we are to recognize the legislature as the more efficient judge of the public conscience, the remedy is for that body to enumerate the crimes, labelling these as one involving moral turpitude or not, whenever such classification is required. There will be a lot of factors to be considered in drawing up such a list which should be detailed in order to be practicable to any instance that may crop up. However, such list must continuously be updated in the light of new laws which promulgate new crimes.

Another remedy may be for the legislature to substitute another term for "moral turpitude" similar to such terms as "morally irreproachable conduct", "good moral character", "professional misconduct" or "conduct unbecoming x x x". Actually the current usage of some of these terms concurrent with the term "moral turpitude" in one particular statute contributes much to the confusion. These terms overlap each other. However, it should be conceded that one term may be more proper and fit for one particular statute than the other terms. For example, in the determination of qualification for admission to the practice of certain professions other than law, the term "good moral character" will perhaps be more than sufficient. In naturalization and immigration acts, "morally irreproachable character" may be deemed to cover also acts involving moral turpitude. The criticism of this remedy is that these terms are vague in themselves and no good will come out of their being adopted instead of the term in question.

Another solution which has already been done in some laws in the United States and the Philippines, is for the addition of words which will qualify the phrase crime involving moral turpitude. Before its repeal, Article 335 of the Civil Code of the Philippines added that in order to be disqualified from adopting one must have been convicted of a crime involving moral turpitude whose penalty is six months' imprisonment or

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[63] Bradway, *op. cit., supra,* note 29 at 21.
[64] Katz, *op. cit., supra,* note 15 at 244.

more. Presidential Decree No. 603 has eliminated said penalty requirement. The problem here lies in the fact that some crimes are punishable only by fines but would properly be classified as definitely involving moral turpitude.

Of course, some share the view that courts should retain the exercise of discretion. In view of what has been termed the "apocalyptic criteria of individual judges" a number of students of law are skeptical that a uniform standard can replace the present process of inclusion and exclusion. While in the Philippines, not much conflict is evident, such is not a healthy sign that all is well with its interpretation. This unconditional acceptance of the use of the term "moral turpitude" may precisely be due to the fact that there is no one who is willing to expose his ignorance of a term which he assumes everybody else knows and understands. Such assumption is, of course, wrong.