PENAL CODE REVISION: VIGNETTES, VAGARIES AND VARIETIES*

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When the Philippine Supreme Court in its resolution *en banc* dated August 5, 1975, amended, upon petition of Judge Guillermo B. Guevara, Sections 5 and 9 of Rule 138 of the Revised Rules of Court, so that Criminal Law as (1) a course satisfactorily completed by an applicant for admission to the bar examinations and as (2) a bar examination subject, should include the general principles and major theories of penal sciences or criminology, this order constitutes a recognition of Judge Guevara's continuing crusade for the adoption in Philippine criminal law of the positivist school of thought. This fight which he has been waging for the last several decades commenced even when he was still Fiscal of the City of Manila. As narrated in his autobiographical book, *Across Four Generations*, he was introduced to the positivist school, then properly referred to as the experimental school, and the works of the positivists by no less than a compatriot, Justice J.B.L. Reyes, who was then pursuing advanced studies in Civil Law at the *Universidad Central de Madrid.*

With the qualifications this advocate of the positivist school possesses, it is not surprising if many have been won over to his way of thinking. Judge Guevara is a member of the Philippine and United States Supreme Court bars, a former judge of the Court of First Instance, a former Fiscal of the City of Manila, and a former professor of Criminal Law and Criminal Procedure at the University of the Philippines College of Law; was a member of the Committee on Revision of the Penal Code, was a member of the Code

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Commission of 1947; and he was referred to by the late Justice Ignacio Villamor as a criminalist and a criminologist. The same justice commented that Judge Guevara "has consolidated the honorable position he occupied in the field of authorship" with his following law books: Essentials of Criminal Law and Criminology, Penal Code Annotated, Code of Criminal Procedure Annotated, and Commentaries on the Revised Penal Code. Lately Judge Guevara authored the following works: Penal Sciences and Criminal Law (1974) and Commentaries on the Code of Crimes (1978). Even in the discharge of official functions and in his writings and civic activities, Judge Guevara has steadfastly devoted himself to his cause as a proponent of the positivist school.

Judge Guillermo B. Guevara continued his one-man mission to spread information on the comparative schools of thought on penology. For this reason, as already referred to, he presented the said petition before the Supreme Court to include the prevailing concepts, general principles, and major schools of penal sciences or criminology, i.e., the classical, positivist and eclectic schools in the curriculum of law schools and among the subjects for bar examinations. Thus all the law schools revised their curricula in conformity with this order of the Supreme Court. In a subsequent resolution *en banc* of the Supreme Court, dated August 28, 1975, upon request of the deans of law schools, said resolution of August 5, 1975 was made effective the following year.

A professorial chair in Penal Sciences and Criminology was created by Judge Guevara in the U.P. College of Law. In establishing the chair it was the aim of the Judge Guillermo B. Guevara Foundation, Inc. to teach through the U.P. College of Law, "the gospel of penal sciences and criminology as such new discipline." In January, 1974, the U.P. Board of Regents accepted from the Judge Guillermo B. Guevarra Foundation, Inc., an annual endowment the moiety of which is to finance a professorial chair and the other half "is earmarked for fellowships, research and development of courses and teaching materials in the field of penal sciences and the administration of justice and related subjects for advanced studies in law." The U.P. Board of Regents appointed this writer as the first holder of the said professorial chair as an additional assignment.

The founder of the professorial chair in Penal Sciences and Criminology is the principal author of the Proposed Code of Crimes which since 1950 has been recommended by the Code Commission to replace the present Revised Penal Code. This Proposed Code of Crimes which has many salient features of the Positivist School, retains the good features of the Classical School, belongs to the

Eclectic School and therefore adheres to the compromise theory as it could be considered a happy medium.

Though martial law has already been declared, Judge Guevara keeps on writing, for a larger coverage, in popular magazines, advocating for the promulgation of the Proposed Code of Crimes. An example of said articles is entitled The New Code of Crimes which appeared in the Philippine Panorama, on February 29, 1976. According to Judge Guevara the revision of the Philippine Penal Code, enacted in 1930, is long overdue since this Code together with its underlying philosophy is based on the Spanish Penal Code of 1870 which in turn is a carry-over of the Spanish Penal Code of 1848 so that the philosophy thereof is more than a hundred years old. To this observation that the present Penal Code should be revised, this writer and professorial chair holder is in full accord so that this inaugural lecture is entitled "Penal Code Revision: Vignettes, Vagaries, and Varieties".

Introduction

Since the dawn of civilization, man has always encountered some form of sanctions to assure conformity with socially desirable conduct demanded by the mores of the community.[1] The sanction is imposed by what some quarters refer to as the force monopoly of the state.[2] Even though they may have no lawgiver, primitive people have also norms of conduct to follow.[3] Development of the law has been determined principally by the exigencies and demands of social life, the force of logic, custom, history, and by the socially accepted norms. Law is a living thing so that it grows and changes with the needs of the times. Criminal law follows the general rule. Economic, social, and cultural developments effect changes in substantive criminal law, foundations and theories of criminal justice. The science of criminology has also undergone evolution so that changing schools of thought produced varying effects upon the administration of penal justice.[4]

Criminal law has undergone different periods of development. These are the periods of private vengeance, divine vengeance also referred to by some as divine justice, public vengeance, the humanitarian period and the scientific period. Each of these periods had

[1] DAY, CRIMINAL LAW AND SOCIETY 4 (1964).

[2] Hans Kelsen originated this concept of force monopoly of the state. The power behind the sanction determines the period of development of criminal law existing at the time.

[3] This statement can be attributed to Malinowski.

[4] The schools referred to by Judge Guillermo B. Guevara, father of positivism in the Philippines, are the classical, the positivist, and the eclectic schools.

different foundations or predominant principles and sentiments suggested by the name of each period. Even the theory of social defense had changed its viewpoint inasmuch as where the penalty was imposed before due to moral blame or responsibility of the felon, at present the penalty is imposed since the criminal is regarded as a menace to society.[5] In the light of the foregoing changes is the present Penal Code still relevant to this time of rapid growth? Is it still adequately responsive to present day needs? Can it catch up and accord with evolving conditions? Can it be equal to the occasion in this period of crisis?

Other questions which may be asked are whether there should be an entire revision of the Revised Penal Code as well as its underlying philosophy or should there be a revision on statute to statute basis, amending or abrogating provisions of the Code, or supplying a lacuna, therefore enacted from time to time as the need arises? It goes without saying that in Penal Code revision the strong points should be retained while the weak points should be the subject of remedial legislation. In a total revamp[6] of the Revised Penal Code shall the wealth of legal history materials behind the penal code be thrown overboard when such historical lore is a source of strength of the Penal Code? Of course weaknesses should be properly taken care of so that ambiguities and uncertainties should be done away with, and oddities and errors should be corrected. To set the record straight if there be errors in the Penal code these are mistakes in the English translation from the Spanish original, which Spanish text is controlling because the Revised Penal Code has been approved in its Spanish version by the house that finally enacted the same.[7]

Vignettes of Legal History

The Revised Penal Code, Act 3815 of the Philippine Legislature, has a wealth of legal history materials behind it. Approved December 8, 1930, became effective on January 1, 1932, the Revised Penal Code expressly repealed the old Penal Code together with the Provisional Law for the application of the provisions of the Code, and some specific acts. The old Penal Code was based largely on the Spanish Penal Code of 1870 and it became effective in the Philippines on July 14, 1887, four (4) months after its publication in

[5] 1 CALON, DERECHO PENAL 56-65 (1951).

[6] The insistence for the need of a total revamp of the Code has been diminished by the promulgation of presidential decrees and other issuances which solved urgent needs for reforms and by the convening and on-going sessions of the Interim Batasang Pambansa which exercises the power of legislation.

[7] REV. ADM. CODE, sec. 15.

the Gaceta de Manila, pursuant to a Royal Decree of December 17, 1886, upon recommendation of the Spanish Minister for Overseas Provinces. By a proclamation issued by General Merritt, Commander of the American Army of Occupation, on August 14, 1898, the said Code and other municipal laws continued in full force and effect. Special penal laws were passed. Before 1887 penal provisions were provided in some royal decrees, the *Siete Partidas,* the Laws of the Indies, the *Novisima Recopilacion,* and the *autos acordados* of the Real Audiencia de Manila.[8]

The well-known attempt to revise the old Penal Code was undertaken by Rafael del Pan who authored a *Codigo Correccional* in 1916. Actually del Pan was a member of the First Code Commission created by the Philippine Legislature and this Correctional Code submitted under this authorship could be the forerunner of a modern penal code. This Correctional Code embodied many positivist features most noteworthy of which was the proposed treatment of incorrigible criminals with vasectomy, and as expected majority of the legislators would not accept vasectomy and other innovations of the positivist school.[9] This Correctional Code emphasized the rehabilitative function of penalties. Some of the provisions of this proposed Code were embodied in the Revised Penal Code. In his sponsorship speech the then Representative Quintin Paredes pointed out that although the Revised Penal Code largely adhered to the Classical School and did not adopt modern theories nor codify all penal laws, yet "it perfectly suits actual conditions and satisfies present day needs in the fulfillment of the two-fold purpose of prevention and repression of crimes."[10] He also stated that special laws could be approved to adopt other doctrines of the positivist school in addition to those already contained in the Code, and which special laws could easily be abrogated if there need be such repeal.

The Revised Penal Code was drafted by a special committee appointed by the Secretary of Justice.[11] The Revised Penal Code is a consolidation of the various penal laws enacted by the Philippine Legislature and the Philippine Commission as well as various provisions of the Spanish Penal Code of 1870 which were then currently in force. In the strict sense of the term the Revised Penal

[8] GUEVARA, PENAL SCIENCES AND PHILIPPINE CRIMINAL LAW 14-17 (1974).

[9] Guillermo B. Guevara, *The New Code of Crimes,* Panorama, February 29, 1976; p. 6.

[10] *Supra,* note 8.

[11] The special committee was composed of well-known and very capable lawyers and judges as Mariano H. de Joya, Fiscal Guillermo B. Guevara, then Judge Anacleto Diaz and then Solicitor General Alexander Reyes and then Rep. Quintin Paredes.

Code is not a codification. However it is not merely a compilation of statutes and is properly a consolidation.[12] The Revised Penal Code adheres to the classical or juristic school although there are provisions thereof which belong to the positivist school the latter being best exemplified by the article punishing impossible crimes.[13]

Originally founded by Cesare Bonesa better known as the Marquis de Becarria, and perfected by the eminent Dr. Francisco Carrara, the genial professor of Pissa, the classical school considered crime as a legal entity or creation so that there is no crime unless there be a law defining and punishing it. Criminal responsibility can be exacted only when imputability exists. Penalty inflicted upon the malefactor or perpetrator of the crime for purposes of retribution, must be proportionate to the crime or harm done. Carrara introduced the classification of punishment in several sets of graduated scales establishing the proportion between crime and penalty quantitatively and qualitatively, correspondingly illustrated by the longer imprisonment for a more serious offense, and the imposition of penalties of different nature like *destierro* or banishment, and disqualification to hold office.[14]

A serious and vigorous attempt to revise the present penal code was made by the then existing Code Commission starting in June, 1948, and culminating in March, 1950 in a Proposed Code of Crimes. This proposed code remained a proposal as the Senate of the then Congress of the Philippines delayed action thereon. This Code of Crime belongs to the Eclectic School which combines the good features of the classical and positivist theories. Under the positivist school made famous by Rafael Garofalo, Enrico Ferri and Cesare Lombroso, the emphasis is on man the criminal who is regarded as a socially dangerous person and penalty if imposed is for rehabilitation and prevention.

An authority in Civil Law and Criminal Law, Senator Ambrosio Padilla observed that the Revised Penal Code, having been construed and applied by the courts is one of the most stable Philippine legislations. He considered the Code as philosophically

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[12] Codification, compilation, and consolidation of statutes had been described and differentiated from each other as regards the nature of the acts covered by each. While codification and consolidation must necessarily be reenacted by the Legislature a mere compilation does not need any reenactment. ILBERT, MECHANICS OF LAW MAKING 30-43, cited in Sinco, *The Revised Penal Code, A Brief Review*, 10 PHIL. L.J. 165-166 (1930).

[13] Art. 4, par. 2. Another is Art. 80 on suspension of sentence of minor offenders. However, Art. 80 is expressly repealed by Pres. Decree No. 1179 which amends Sec. 189 of Pres. Decree No. 603 (1976), the Child and Youth Welfare Code. In turn, Des. Decree No. 1210 deleted said provision repealing Art. 80.

[14] Guevara, *op. cit.*, note 9.

and harmoniously correlated and consistent in its more than three hundred (300) articles, to be exact three hundred and sixty seven articles. However, though there is hardly any room for ambiguity or equivocation he noted that there are some uncertainties partly in the law and mostly in the interpretation of its provisions.[15]

Vagaries, Ambiguities, Errors, and Oddities

As regards ambiguities which had already been clarified, gaps in the law already filled up, errors already rectified, they will no longer be dealt with in these discussions. In connection with impossible crimes, acts which are subjectively complete and which would never be objectively complete, why should the law confine impossible crimes solely to impossible attempts of crimes against persons or crimes against property? The article should be extended to cover impossible attempts of crimes punishable under other titles of the Code.[16] If the penal codes of some countries punish necrophilia, then raping a woman who is already dead but believed by the malefactor as still alive and only sound asleep, should be punished as an impossible crime. Since it is the criminal propensity and criminal proclivity which are punished in impossible crimes, then the malefactor in the impossible crime against chastity is more perverted compared with impossible attempts against persons or property.[17]

The offense of Abuse Against Chastity can be committed by a public officer who shall solicit or make immoral or indecent advances to a woman interested in a case pending before him for decision or report, as well as a warden or public officer charged with the custody of a woman prisoner who shall be liable for the same acts. In the latter, the law imposes a lower penalty provided the person solicited is the wife, daughter, sister or relative by affinity within the same degrees of the person under custody. The criticism against this provision[18] is two-pronged. There seems to be no justification for the lower penalty provided in the second case not to be extended to cover the first case. In addition the exclusion of the mother from the enumeration of relatives mentioned therein is unwarranted because of the direct and closer family ties betwen the mother and son compared with the ties existing between the son and his sister-in-law.

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[15] Padilla, in his *Observations on the Revised Penal Code*, 131 LYCEUM L. REV. 1-2 (1958).

[16] However in People v. Casals, CA-G.R. No. 124557, May 17, 1955 the accused was convicted of an impossible crime of counterfeiting, which is a crime against public interest. Whether a judicial slip or oddity, this is a step in the direction suggested or indicated.

[17] Feria, L., *Comments and Observations on the Revised Penal Code*, 3 LYCEUM L. REV. 115-116 (1958).

[18] Art. 245.

Besides there are instances where the mother may be more beautiful than the daughter. The more the warden will therefore be tempted to commit the said immoral or indecent advance.

To Senator Padilla there are provisions and situations in the Code which may give rise to equivocation. In connection with the stages of the execution of the offense, he specifically refers to the frustrated stage in relation to the subjective phase; in defense of property whether there should be an attack upon the person making the defense; in complex crimes, the question of a single act and not a single impulse; the reduction of fines by degrees.[19] He He also brings out the length of time required of the grantee to comply with the conditions of the pardon — coterminous with the period of sentence, during the period for prescription of the offense, or during the lifetime of the grantee (although cases had held that the last two alternatives would be unfair and iniquitous to the grantee); the question of prescription of the penalty of a fine of ₱200.00 whether as a light or correctional penalty.[20] Lastly he advocated that possession of obscene publication be punishable.[21]

Contributing to the weak points of the Revised Penal Code are oddities and errors and as already pointed out the mistakes are found in the English translation from the Spanish original. Any correction therefore should conform with the controlling Spanish text.[22] There are plenty of instances of said erroneous translation but only the significant ones will be discussed. The terms employed in the Code[23] to describe the components of violence in the crime of rebellion are too broad. The Spanish text states the rebels' acts, among others, may consist of "sosteniendo combate con la fuerza leal". This has been erroneously translated "engaging in war against the forces of the Government." The correct translation should be "engaging in combat with the loyal troops" so that arguments based on alleged violations of law of war by the rebels would be out of place. If the overt acts charged in the information were perpetrated, for political ends meaning in furtherance of the rebellion, then they are acts of committing serious violence. Thus the commission of serious violence should therefore not be limited to hostilities waged

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[19] To reduce a fine by degrees is illustrated in the case of People v. Quinto, 60 Phil. 351 (1974). Art. 75. On defense of property see Art. 429 of the new Civil Code and the cases of Apolinar, CA 38 G.R. 2870; Goya, CA-G.R. No. 1673-R, September 29, 1956, and People v. Arquiza, 62 Phil. 611 (1935).

[20] People v. Canson, Jr. 101 Phil. 537 (1957), the offense of gambling punishable with a fine of not exceeding ₱200, the offense is deemed to be a light felony under Art. 9, and therefore prescribe in two months.

[21] Art. 201 on immoral doctrine, obscene publications and exhibitions does not include possession of obscene publications among the acts punishable therein. See Pres. Decree No. 969 (1976) amending Pres. Decree No. 960 (1976).

[22] People v. Manaba, 58 Phil. 665 (1933).

[23] Art. 135, par. 1.

against Government troops otherwise this would result in a redundancy, and a mere duplication of what has been stated in the same article as engaging in combat with loyal troops.[24]

As regards the offense of kidnapping and serious illegal detention[25] the Spanish text uses the terms "lock up" (encerrar) instead of "kidnap" ("secuestrar" or "raptar"). Locking up is necessarily included in the broader term detention since detention not only refers to placing a person in confinement, in an enclosure which he cannot leave, but also includes other deprivations of liberty which may not involve locking up.[26] In the article on "other light threats", paragraph 2 thereof states: "shall orally threaten another with some harm not constituting a crime."[27] This is an incorrect translation of the Spanish text which states: "un mal que constituya delito y por sus actos demostrare que no persistio en la idea que significo con su amenaza." The old provision reads: "shall orally threaten to do another some harm, which if accomplished would constitute a felony and who by subsequent acts shows that he did not persist in the idea signified by the threat." Paragraph 3 speaks of "un mal que no constituya delito" (any harm not constituting a felony). Therefore paragraphs 2 and 3 of the article cover different situations.[28]

In the enumeration of penalties which could be imposed under the Revised Penal Code, bond to keep the peace is among them.[29] It is strange or odd that nowhere in the Revised Penal Code has it been prescribed as a penalty for an offense. What appears as an additional penalty which could be imposed as a penalty for threats is bond for good behaviour.[30] But the two are not identical so that failure to file either bond will result in different effects, thus for the bond to keep the peace, failure to file will result in detention or imprisonment, while for the bond for good behaviour, failure will mean *destierro*. Some writers treat the two as similar and the two designated bonds are refered to or used interchangeably. However in the enumeration of the incidental powers of municipal courts and city courts the last in the enumeration states: "and to require any person arrested, a bond for good behaviour or to keep

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[24] People v. Geronimo, 100 Phil. 90 (1956).
[25] Art. 267.
[26] Groizard and Cuello Calon, cited in People v. Marasigan and Robles, CA-G.R. No. 20657-R, March 23, 1959, 55 O.G. 8297 (Sept. 28, 1959), 2 AQUINO, THE REVISED PENAL CODE 1331 (1976).
[27] Art. 285.
[28] 2 AQUINO, THE REVISED PENAL CODE 1389-1390 (1976).
[29] Art. 25.
[30] Art. 284.

the peace, or for further appearance of such person before a court of competent jurisdiction."[31]

Another oddity in the Revised Penal Code is the article on death inflicted under exceptional circumstances.[32] It provides that "any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury shall suffer the penalty of *destierro*. If he shall inflict upon them physical injuries of any other kind he shall be exempt from punishment. However any person who shall promote or facilitate the prostitution of his wife . . . or shall otherwise have consented to the infidelity of the other spouse, shall not be entitled to the benefits of this article." This would amount to a special mitigating circumstance, and it may even be an exempting circumstance where the injury inflicted be less serious or slight.

This absolutory cause by which the offended spouse is given the power to take the law into his own hands has given rise to dissent. Some contend that this is only acceptable during the immature stages of human evolution.[33] It is interesting to note that this power or privilege was originally given only to the husband under Article 348 of the Spanish Penal Code of 1850 (the prototype of Article 438 of the Spanish Penal Code of 1870). This reflected the exaggerated notion of the husband's honor then prevailing in medieval Spain. However to do away with the double standard of morality, the Philippine Legislature extended this right also in favor of the wife.[34] The history of the article has been traced in a decision of the Court of Appeals, *People v. Lauron*.[35] Senator Padilla made the observation that the philosophy underlying the article is based upon human nature; and so any opposition to or criticism against the article is based on the erroneous premise that "modern civilization has relaxed the sanctity of marital fidelity or has changed the basic nature of man."[36]

Another situation which may seem odd is the retention of the paragraph 3 of the provision governing the penalty to be imposed where the crime committed is different from that intended, so that the acts committed by the malefactor shall also constitute an at-

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[31] Rep. Act No. 296 (1973), sec. 91.
[32] Art. 247.
[33] People v. Coricor, 79 Phil. 672 (1947).
[34] Act 3195 of the Philippine Legislature so that on this matter, the husband and the wife are now on a footing of equality.
[35] G.R. No. 22647-R, January 30, 1961 57 O.G. 7360 (Oct. 9, 1961), cited in 2 PADILLA, REVISED PENAL CODE ANNOTATED 616 (1976).
[36] Padilla, *op. cit.*, note 35.

tempt or frustration of another crime and if the law prescribes a higher penalty for either of the latter offenses, then the penalty provided for the attempted or frustrated crime shall be imposed in its maximum peirod.[37] Under the present laws, there is no occasion for the application of this third paragraph Article 49. This rule was applicable under the old Spanish Penal Code where certain offenses, such as regicide in its different stages of execution, were penalized with great or special severity. Under the Spanish Penal Code of 1870 if a person intended to commit regicide but the crime actualy committed or which resulted was merely homicide, he should be punished, not for the crime of homicide, but for the frustrated regicide which carries a specially severe penalty.[38] Regicide no longer exists in our statute books, and neither are there crimes of such gravity that the attempted and frustrated stages should be punished with specially severe penalties. Furthermore the crimes of *lese majeste* and *scandalum magnatum* are things of the past since our government has changed to a government of laws and not of men.[39] However, even though Presidential Decree 1110-A punishes with death any attempt against the life of the Chief Executive or against any Cabinet member, or against any immediate member of the family of either, yet there is no room for the application of paragraph three of Article 49 of the Code to any attempt covered by P.D. 1110-A inasmuch as the decree is a special law.

Another oddity worth mentioning is that spawned by the article punishing violation of parliamentary immunity.[40] This provides that the penalty of *prision correccional* shall be imposed upon any public officer or employee who shall, while Congress is in regular or special session arrest or search any member thereof, except in case such member has committed a crime punishable under the Code by a penalty higher than *prision mayor*. In American parliamentary immunity, by excepting treason, felony, and breach of peace, ultimately the members of Congress really enjoy no exemption whatsoever from the ordinary processes of criminal law. No attempt was ever made to exempt said officers from "search" during such period and under the same stated circumstances, thus it is in the Philippines where parliamentary immunity has the widest scope or coverage. To Judge Guevara, there is no justification for exempting members of Congress from search under any circumstances, so much so that the special protection extended to mem-

[37] Art. 49.
[38] GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE, 139-140 (1957).
[39] U.S. v. Perfecto, 43 Phil. 225 (1922).
[40] Art. 145.

bers of Congress under this article speaks of unjust discrimination amounting to class legislation.[41]

The same view is upheld in the case of *Martinez v. Morfe*[42] which was jointly decided with the case of *Bautista v. Chanco*. In construing the 1935 Constitution the Supreme Court followed the literal import thereof in defining treason, felony and breach of peace. Public peace should be maintained and any breach thereof will render one liable to prosecution so that petitioners could not justify their claim to immunity from arrest.[43] In England the source of the exception and the expression "treason, felony, and breach of peace" the exception will cover all indictable offenses as well as all constructive breaches of the peace of the government inasmuch as they violate its good order, the Court explained, citing with approval the opinion of Chief Justice White in *Williamson v. U.S.*[44] However whatever progress has been attained in the foregoing joint decision, has been overturned or set back by Section 9 of Article VII of the New Constitution which provides: "A member of the National Assembly shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest during his attendance at its session, and in going to and returning from the same, but the National Assembly shall surrender the member involved to the custody of the law within twenty four hours after its adjournment for a recess or for its next session otherwise such privilege shall cease upon its failure to do so."[45]

Diverse Types of Codal Revision

All the foregoing discussions on the historical lore and good traits of the Revised Penal Code as well as its ambiguities or uncertainties, oddities and errors, have furnished the focal points for the revision of this Code. In any kind of revision all these defects and deficiencies of the Code should therefore be the subject of proper remedial legislation; and it goes without saying that the strength of the Code should be further bolstered. So that in effecting penal reforms towards said ends the primordial questions to dispose at the moment would be whether there should be a total revamp of the Revised Penal Code including its underlying philosophy or that mere special laws should be enacted to fill up any *lacuna leges,* or amend, or repeal any provision of the Revised Pe-

[41] GUEVARA, PENAL SCIENCES AND PHILIPPINE CRIMINAL LAW 271 (1974).
[42] G.R. No. L-34022, March 24, 1972, 44 SCRA 22 (1972).
[43] FERNANDO, THE CONSTITUTION OF THE PHILIPPINES 198-199 (1977).
[44] 207 U.S. 425 (1908).
[45] Drafted by the 1971 Constitutional Convention, this New Constitution became effective on January 17, 1973.

nal Code; should there be a need for such type of legislation without altering the pervading philosophy thereof or as discussed earlier, though there be changes in the provisions and even the underlying philosophy, yet, it does not totally adhere to one school or theory to the exclusion of the other, but rather combines the good traits or features of the classical and positivist theories.

The statute-to-statute type of revision envisaged in the preceding paragraph has been consistently used and has proved to be effective in effecting or making amendments to the Revised Penal Code partaking of the nature of Acts of the Philippine Legislature, Commonwealth Acts, war-time Executive Orders, Republic Acts, and Presidential Decrees and acts of the Batasang Pambansa.[46] A statute can be revised by a subsequent amendatory or repealing statute. Such repeal can be total or partial, or it can be express or implied. When two repeals are involved so that the first repeal is by implication and this repealing law is itself repealed, then the law first repealed is revived unless there be a provision to the contrary in the second repealing law. Specially so in penal statutes, the repeal may be by re-enactment so that the act remains punishable as an offense in the repealing statute which may prescribe a higher or lighter or the same penalty as in the repealed statute.

Samples of such amendatory laws are Act 4103 of the Philippine Legislature as amended by Act 4225, which provided for an indeterminate sentence and parole for persons convicted of certain crimes and this law created a Board of Indeterminate Sentence;[47] and Commonwealth Act 616 which punishes espionage and other offenses against national security supplements the pertinent provisions of the Revised Penal Code. Among the amendatory acts of recent vintage could be mentioned the Anti-Subversion Law,[48] as amended or revised; the act amending Article 29 on preventive imprisonment;[49] the act amending Article 39 on subsidiary penalty,[50] and the act amending Article 14 on aggravating circum-

[46] Specific mention should be made of Executive Order No. 44 dated May 31, 1945 by which Art. 115 on treason has been amended to cover aliens residing in the Philippines, who commit acts of treason as defined in said article. An act of the IBP is referred to as Batas Pambansa.

[47] This board is now designated as the Board of Pardons and of Parole.

[48] Rep. Act No. 1700 (1957) whose coverage has been broadened by Pres. Decree No. 885 (1976), the Revised Anti-Subversion Law, which section 2 defining subversive organizations failed to include organizations to overthrow the government without the open or covert assistance and support of a foreign power, so that this loophole is sought to be remedied by Parliamentary Bill No. 292 filed by Assemblyman Hilario G. Davide, Jr. of Cebu City.

[49] Rep. Act No. 6127 (1970).

[50] Rep. Act No. 5465 (1969).

stances by which use of motorized watercraft has been added; and also the Anti-Graft and Corrupt Practices Act.[51]

Among the significant Presidential Decrees which should be mentioned here are the decree (a) penalizing betting, game-fixing, or point-shaving and machinations in sports contests,[52] (b) outlawing pinball and slot machines and other similar gambling devices and nullifying all existing permits or licenses to operate the same,[53] (c) amending the Dangerous Drugs Act of 1972,[54] (d) prohibiting and penalizing defacement, mutilation, tearing, burning or destruction of Central Bank notes and coins,[55] (e) repealing Republic Act 427—an act prohibiting and punishing possession and exportation of silver and/or nickel coins under certain circumstances;[56] (f) known as the Anti-Piracy and Anti-Highway Robbery Law of 1974,[57] (g) making it unlawful and therefore punishing rumormongering and spreading false information,[58] (h) prescribing a heavier penalty for theft of material spare parts, products, or articles by employees or laborers,[59] heavier penalty correspondingly prescribed for high-grading, illegal cutting of logs, or illegal fishing, or cattle rustling; (i) amending Article 152 of the Revised Penal Code as to who are persons in authority,[60] j) declaring unlawful the use or attachment of sirens, bells, horns, whistles or other similar gadgets that emit exceptionally loud or startling sounds including search-or headlights and other signalling or flushing devices on motor vehicles with exceptions thereto,[61] (k) requiring the report to be made to the nearest Philippine Constabulary unit of any

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[51] Rep. Act. No. 3019 (1960) as amended by Rep. Act No. 3047 (1961) and Pres. Decree No. 677 (1975). Under Pres. Decree No. 46 (1972) it makes it punishable for public officials and employees to receive and for private persons to give, gifts on any occasion including Christmas. Libel provisions have been amended by Rep. Acts Nos. 1289, on venue of actions, - 4363, on persons responsible, and 4661, on prescription.

[52] Pres. Decree No. 483 (1974).

[53] Pres. Decrees No. 519 (1974).

[54] Pres. Decree No. 44 (1972) amended Rep. Act No. 6425 (1972) otherwise known by above-title which act expressly repealed R.P.C. provisions under the title on Crimes Relative to Opium and Other Prohibited Drugs.

[55] Pres. Decree No. 247 (1973).

[56] Pres. Decree No. 118 (1973).

[57] Pres. Decree No. 532 (1974). Rep. Act No. 6235 (1971) punishes hijacking and prohibits certain acts inimical to civil aviation.

[58] Pres. Decree No. 90 (1973).

[59] Pres. Decree No. 133 (1973). Under Pres. Decree No. 581 (1974) a heavier penalty is prescribed for high grading or theft of gold from a mining camp or claim. Pres. Decree No. 330 (1973) penalizes timber smuggling or illegal cutting of logs from public forests and reserves as qualified theft. Pres. Decree No. 534 (1974) penalizes illegal fishing. Like Rep. Act No. 6539 which is the Anti-Carnapping Act of 1972, Pres. Decree No. 533 is the Anti-Cattle Rustling Law of 1974.

[60] Pres. Decree No. 299 (1973) and there are subsequent decrees of same nature.

[61] Pres. Decree No. 96 (1973).

person treated for physical injuries by any physician in hospitals, medical clinics, sanitaria, or by any medical practitioner;[62] but there is no penal law as yet governing organ transplants nor is there any provision of law squarely applicable to euthanasia; (l) preventing and controlling mosaic pollution;[63] (m) requiring all projects both governmental and private to secure Environmental Impact Statement System clearance before they are started;[64] (n) punishing with heavier penalty fencing or buying of stolen property;[65] (o) penalizing squatting and other similar acts;[66] (p) penalizing unauthorized installation of water, electrical or telephone connections and use of tampered water or electrical meters;[67] (q) simplifying and providing stiffer penalties for violations of Philippine gambling laws thereby repealing or accordingly modifying Articles 195-199 of the Revised Penal Code, Republic Act 3063 (Horse Racing Bookies), Presidential Decree No. 483 (Game Fixing), Presidential Decree No. 519 (Slot Machines) and Presidential Decree No. 1306 (Jai Alai Bookies) and other City and Municipal Ordinances on gambling inconsistent with this decree;[68] (r) outlawing subversive organizations and penalizing membership therein, and among other things abrogating except as to pending cases, the two witness-rule for conviction (under R.A. 1700 for offenses punishable with *prision mayor* to death), so that under this Revised Anti-Subversion Law the accused may be convicted on the testimony of one witness if sufficient under the rules of evidence or on his confession in open court.[69]

The foregoing array of testimonials re-assures the feasibility and effectiveness of revision on a law to law basis as the need for

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[62] Pres. Decree No. 169 (1973).

[63] Pres. Decree No. 600 (1974).

[64] Pres. Decree No. 1151 (1977). Other important presidential decrees which amended the Code are Pres. Decree No. 603 (1974), otherwise known as the Child and Youth Welfare Code as amended by Pres. Decree No. 1179 (1977) and Pres. Decree No. 1210 (1977); Pres. Decree No. 1179 expressly repealed Art. 80 of the Revised Penal Code. Equally important is Pres. Decree No. 968 (1976). The Probation Law.

[65] Pres. Decree No. 1612 (1979). Without this decree the fence will be prosecuted merely as an accessory who will be meted out a much lighter penalty. Another very recent decree is Pres. Decree No. 1613 which amends the law on arson by putting more teeth thereto by prescribing heavier penalties for arson, destructive arson and other cases of arson; punishing conspiracy to commit arson; providing for the confiscation of the object of the arson; and adding more circumstances to constitute prima facie evidence of arson. Mention should also be made of the decree which affects the causes for extinction of liability and this is also recent—Pres. Decree No. 1508 which establishes a system of amicably settling disputes at the barangay level.

[66] Pres. Decree No. 772 (1975).

[67] Pres. Decree No. 401 (1974). Two years earlier, Pres. Decree No. 55 (1972) penalized unauthorized telephone installations.

[68] Pres. Decree No. 1602 (1978).

[69] Pres. Decree No. 885 (1976).

such arises, and stresses out the fact that special laws can easily be repealed without adversely affecting the whole penal *corpus juris*. However although a law may have already been amended in this manner, yet the amended law may give rise to different interpretation so that there is again a need for revision as illustrated in the laws on bouncing checks in relation to estafa under Article 315 of the Code. In spite of the enactment of Republic Act 4885 on June 17, 1967 and the promulgation of Presidential Decree No. 818 on October 22, 1975 both amending Article 315 of the Revised Penal Code on swindling or estafa, yet the pernicious practice of issuing bouncing checks still prevails. Minister and Solicitor General Estelito P. Mendoza sponsored Cabinet Bill No. 9 (the new law on bouncing checks) which penalizes the making, drawing uttering or delivery of a check, draft or order without sufficient funds. Opinions of the Secretary or Minister of Justice and decisions of the Supreme Court hold that there is no estafa if the bouncing checks be issued in payment of a pre-existing obligation. In its latest decision on the matter the Supreme Court *en banc* upheld the same ruling in its joint decision in *People v. Hon. Sabio, Sr., Tan Tao Liap v. Court of Appeals, Laqua v. Hon. Cusi, Jr.*[70]

Another type of Codal revision already discussed earlier is referred to by Judge Guillermo B. Guevara, the architect and earnest proponent of the Proposed Code of Crimes as covered by Criminal Politics inasmuch as the Proposed Code combined the good features or characteristics of the positivist and classical schools. Properly the Proposed Code belongs to the Eclectic School. This is the second code drafted by the Code Commission appointed by Pres. Manuel A. Roxas in 1947.[71] The Code Commission authorized to revise and codify all substantive laws of the Philippines in accordance with progressive principles of law and the traditions, idiosyncraries and customs of the Filipino people was composed of Prof. Pedro Y. Ylagan, Dean later Justice Francisco R. Capistrano, Senator Arturo M. Tolentino, Judge Guillermo B. Guevara, and Secretary later Justice Jorge Bocobo, as chairman. This Code was referred to Congress for enactment and for supplanting the Revised Penal Code. Introduced and approved in the Lower House, however Book Three (of the Proposed Code) on misdemeanors was deleted inasmuch as local governments could punish minor infractions and misdemeanors through ordinances. When martial law was declared, and the law making body went out of existence, the Senate had not as yet acted

[70] Respectively G.R. No. L-45490, L-45711, L-42971 promulgated November 20, 1978. Assemblyman Vicente Millora also filed a bill on bouncing checks.

[71] Executive Order No. 48 of March 20, 1947. The first Code drafted by this Commission is the Civil Code of the Philippines, Rep. Act No. 386 (1949).

on the Proposed Code. Judge Guevara has been earnestly working for the Code's conversion into a decree. The President referred the Code to a Committee of Undersecretaries which in turn delegated the project to a working legal panel composed of representatives of the U.P. Law Center, the Departments of Justice, Social Welfare, National Economic Development Authority, and the Malacañang Legal Office. This legal panel produced the final draft where Book III on isdemeanors has been restored or again incorporated and which final draft has been waiting for sometime to be converted into a Presidential Decree.

The original draft of the Proposed Code of Crimes has been updated by the three surviving members of the Code Commission namely Professor Guillermo B. Guevara, former Supreme Court Justice Francisco R. Capistrano, and former Senate President Arturo M. Tolentino, by incorporating in the respective provisions of the Proposed Code the pertinent Presidential Decrees theretofore issued.[72] In the updated version, the Proposed Code consists of 940 articles grouped under three Books—One on General Provisions; Two on Crimes and Their Repressions; and Three on Misdemeanors. Under the General Provisions are six titles: a Preliminary Title on when and where the Code is applicable, Title One on Offenses and Circumstances Affecting Criminal Liability, Title Two on Persons Criminal Liable, Title Three on Repressions in General, Title Four on Security Measures, Title Five on Extinction of Criminal Liability; and Title Six on Civil Liability. Under Book Two there are thirteen titles under which the different crimes and their repressions are classified. Book Three on Misdemeanors consists of eight titles.[73]

According to Judge Guevara the Proposed Code answers the exigencies of the space age and modern times as it incorporates in its provisions elements of international penal law such as extra-territorial effect of Philippine laws when violated in space, and

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[72] GUEVARA, COMMENTARIES ON THE CODE OF CRIMES xiii (1978).

[73] In Book Two, Title One deals with Crimes Against Life and Limb; Title Two, Crimes Against Honor; Title Three, Crimes Against Liberty; Title Four, Crimes Against the Security of the State; Title Five, Crimes Against Humanity; Title Six, Crimes Against the Public Administration; Title Seven, Crimes Against the People's Will; Title Eight, Crimes Against Public Economy; Title Nine, Crimes Against the Public Faith; Title Ten, Crimes Against the Public Health; Title Eleven, Crimes Against the Family and Good Customs; Title Twelve, Crimes Against Property; and Title Thirteen, Crimes Against Public Security. In Book Three, there are eight titles: Title One on General Provisions; Title Two, Misdemeanors Against Persons; Title Three, Misdemeanors Against Public Order and Safety; Title Four, Misdemeanors Against Public Administration; Title Five, Misdemeanors Against Public Economy; Title Six, Misdemeanors Against Public Health and Title Seven, Misdemeanors Against Good Customs, and Title Eight, Misdemeanors Against Property and lastly, Final Provisions GUEVARA, COMMENTARIES ON THE CODE OF CRIMES, xxv-xxviii (1978).

abroad or even by a foreigner. It provides for extradition of criminals and it punishes genocide. To him the most outstanding feature of the Code of Crimes is the provision regarding precautionary security measures which authorizes any judge of the Court of First Instance upon proper motion and satisfactory showing made by a fiscal or chief of police, to issue the predelictual preventive detention of socially dangerous persons. Punishment is no longer called penalty but repression. A simple nomenclature has been adopted as confinement, light imprisonment, heavy imprisonment, among others. The purpose of penalty is no longer expiation or retribution but social defense to rehabilitate, cure or educate the felon and to deter other members of society who are possible transgressors of the penal law.

Among the vigorous oppositions voiced against the Proposed Code of Crimes was that of the U.P. Law Center's Division of Research and Law Reform. Its opposition was two-pronged. First was based mainly on constitutional and policy grounds and the second was on the difficulties of implementation. It is contended that the social defense sought to be achieved through therapeutic and security measures consisting in indefinite detention or confinement in an agricultural or labor camp, hospital, asylum, or reformatory of the so-called socially dangerous persons even before the commission of a crime or after service of sentence could subvert democratic institutions as this may result in deprivation of life, liberty and property without due process of law since due process requires that penal statutes should be sufficiently clear and definite in their terms so that men of common intelligence must not differ as to their application.[74] This requirement could be violated since there are varying interpretations of the term "social dangerousness" which the proponents of the Code consider as a form of mental illness equated with physical diseases as leprosy. But there exists no definite scientific standards by which psychiatrists, psychologists and sociologists could determine mental illness or social dangerousness. The inevitable result would be that the enjoyment or loss of the individual liberties and constitutional rights would be subject to the arbitrary discretion of the psychiatrists or experts on whom the implementation of social defense depends, resulting in the so-called tyranny by therapy or tyranny of experts.[75] It is also claimed that the indefinite detention or confinement even after service of sen-

[74] Citing SINCO, PHILIPPINE POLITICAL LAW 569-570 (1962).
[75] Citing HALL, SCIENCE, COMMON SENSE AND CRIMINAL LAW REFORM 6, 15 (1963).

tence of socially dangerous or mentally sick persons would amount to excessive penalty.[76]

Though one consider's confinement in an agricultural or labor camp not a repression or penalty but rehabilitation and preventive measures, yet such measures could be covered by the constitutional provision prohibiting involuntary servitude, it is further claimed. Furthermore the U.P. Law Center contended that since the Proposed Code sanctions the commitment of a person on the basis of information obtained from him by psychiatrists and experts during interviews, generally without assistance of counsel, this is violative of the constitutional right against self-incrimination.[77] Lastly the U.P. Law Center Division of Research and Law Reform stated that granting that the measures provided in the Proposed Code are beneficial and effective but the proper enforcement and implementation would be difficult because of financial limitations.[78]

In their rejoinder, Judge Guillermo B. Guevara and Justice Francisco R. Capistrano explained that the security measures in the Proposed Code of Crimes, which are of four types, to wit: precautionary, defensive, curative, and educative, are not imposed as repressions or penalties but in the exercise of the police power of the State.[79] Acts of the Philippine Commission and Philippine Legislature providing for the detention of lepers in leper colonies, confinement of insane persons in insane asylums, and anti-vagrancy and mendicancy laws were all valid and not violative of the due process clause. The line has been drawn between penalty or repression on the one hand and security measure on the other hand so that the "security measure falls within the domain of the administrative or preventive rather than the penal or repressive law.[80] Lastly the rejoinder states that if the U.P. Law Center has raised a valid question against the constitutionality of the security measures as violative of the due process clause, then prudence dictates that the matter be left to the decision of the Supreme Court but the Proposed

[76] Art. III, sec. 19, Constitution; also citing SILVING, CONSTITUENT ELEMENTS OF CRIME 21 (1967).

[77] Citing ISASZ, LAW, LIBERTY, AND PSYCHIATRY 187, 188 (1963).

[78] Quoting Senator Paredes who pointed out the need for judges, psychiatrists, psychologists, and doctors with special qualifications; and the opening or establishment of agricultural farms, reformatory centers, correctional schools, psychiatric and health centers and hospitals with qualified personnel, welfare nurses and guards, all of which would require additional outlay when at present the government cannot adequately provide for the minimum requirements of the existing penitentiaries and rehabilitation centers and their inmates.

[79] Art. 106 of the Code of Crimes. These security measures therefore are for the promotion of public weal, welfare, and safety.

[80] Citing LUIS JIMENEZ DE ASUA, LA UNIFICACION DEL DERECHO PENAL 299-236.

Code must first be enacted into law before there could be a ruling on the constitutionality thereof.

In addition to Judge Guevara, Justice Capistrano and Senate President Tolentino, another legal luminary who is an adherent of the Proposed Code of Crimes is Justice Secretary Vicente Abad Santos who in a report to the President recommended the approval of the updated and revised draft of the Code of Crimes. He found the Code commendable due to its novel approach to crime repression or punishment in which "crime is a natural and social phenomenon which man is constrained to commit in spite of his contrary volition, a departure from the classical view." Code's primary concern is social defense and crime prevention as reflected in the provisions on security measures. Changes sought to be introduced are marked improvements such as: stages in the commission of a crime have been reduced to two—the consummated and attempted, eliminating the frustrated crimes; simplification of crimes and of application of penalties; effective and equitable way of computing fines in terms of day's earnings, adoption of more effective crime deterrents by provisions on preventive measures; timely provisions and safeguards against internal subversion; abolition of accessoryship in crimes and its conversion into separate and independent offenses; provisions fostering civic consciousness which are complementary to the Constitutional provisions on duties and obligations of citizens. He praised the Proposed Code which is more comprehensive than the existing Code for the former punishes also misdemeanors and every conceivable act which is contrary to law, public morals, good customs, public order and public policy.[81] This last observation, however, is utilized by opponents in contending that the Proposed Code is not a Code of Crimes but a code of morality.

As early as 1965 the U.P. Law Center has launched its criminal law reform project. It sponsored a Conference in Criminal Law Reform held on July 14-16, 1965. A team of researchers studied various areas of the Penal Code and the team produced working papers which became the springboard for discussions on the reform of the Code in the said Conference participated in "by judges, fiscals, prosecutors, law practitioners, law professors, criminologists, and civic-minded citizens interested in the proper administration of justice and in the law and order situation in the country." The problems, issues, suggested solutions were fully discussed culminating in proposals approved during the Conference finally reduced to a preliminary draft which was in turn distributed to various individuals, and entities for comments and additional proposals which had been

[81] GUEVARA, COMMENTARIES ON THE CODE OF CRIMES xi, xii (1978).

compiled and evaluated by an Implementation Committee and with the help of an Editorial Board became the official draft of the U.P. Law Center's Proposed Penal Code of the Philippines.

The Center's Proposed Code does not change the existing system of penology for it retains the basic philosophy of Revised Penal Code under which criminal responsibility rests on the concept of moral guilt which must be punished primarily for retributive, and incidentally reformative purposes. The proposed changes are those which must be immediately effected irrespective of the school of penology to which they may appertain.[82] A new Implementation Committee has been constituted, and this Committee has been meeting continuously since the academic year 1978-79, revising the draft, introducing up to the minute needed changes, and thereby placing the draft penal code in its final shape for submission to the Interim Batasang Pambansa.

Conclusion

Any revision of the penal code should be attended with caution. It is true that a rigid penal code has serious disadvantages and drawbacks, but it would also be a source of security or protection against a biased and capricious administration of penal justice. In an ideal system of criminal law, the penalty should be adjusted to and must fit the criminal instead of the crime. Much leeway and discretion should be given the judge to take into consideration the circumstances attending a particular offense, to enable him as much as possible to individualize the penalty to be imposed upon the particular malefactor. There should be a better adaptation of the penalty to the crime[83] as committed by the particular criminal. No two malefactors committing the same offense could be considered as similar and equal, so that their respective penalty should be individualized. As Aristotle once said, "There can be no greater injustice than to treat unequal things equally."[84]

Though the penalty be individualized yet its effect upon the individual and the entire community should also be taken into account. Punishment inflicted upon the criminal is the means and not the end of criminal justice, and the penalty has two general ob-

[82] Proposed Penal Code of the Philippines, Official Draft, Foreword pp. i, ii, iii (1966).

[83] E. A. Gilmore, *The Administration of Criminal Law in the Philippines*, 9 PHIL. L.J. 30 & 35 (1929). Although these observations appearing in footnotes 83 and 101 pertained to the old Penal Code, yet these are also applicable to the Revised Penal Code inasmuch as both Codes belong to the classical school.

[84] Guides for Sentencing by the Advisory Council of Judges of the National Probation and Parole Association, pp. 4-5 (1957).

jectives which are deterrence and rehabilitation or reformation. Each has for its purpose the prevention of the commission of further crimes. Deterrence prevents, as one method, the offender from repeating the commission of the crime through incapacitation. In olden times this took the form of cutting off the hand of a thief, or tearing out his tongue if a blashphemer, and its present form is imprisonment. But the offender may be deterred only temporarily, unless he be imprisoned till he dies for the prisoner returns to society by parole, pardon, or service of sentence. Imprisonment as a deterrent not only prevents the convict from repeating his offense during period of confinement, but also demonstrates to others in the community the probable consequences if they commit a similar offense.[85]

Punishment imposed for rehabilitation or reformation involves a wisely planned treatment program with changed habits of conduct which will be implemented in the subject so that his "future behavior will be less likely anti-social." Thus where deterrence operates on all the constituents, of the community, i.e. the subject as well as the rest of the community, the rehabilitation program addresses itself to the reformation of the particular individual undergoing rehabilitation.[86]

To some writers there is a third goal together with deterrence and reformation, and this is vengeance.[87] Historically this is the oldest, and this applies the *lex talionis*.[88] Punishment under this goal exists "to satisfy the human desire to inflict hurt upon the person who has done us hurt." It is observed that this is an unconstructive view of the goal of punishment as it does not concern itself with what has taken place in the past. But there are some persons who view the goal from a progressive angle which would also influence human conduct. "The criminal under this view had the supreme satisfaction of breaking himself from all the unpleasant inhibitions that all the law-abiding rest of us have been chafing under and observing, so the criminal has experienced a pleasure we have denied ourselves, and the balance can only be achieved by restored peace of mind to ourselves by forcing the criminal in his turn, to suffer by the punishment." Other apologists for vengeance maintain that the malefactor has angered the gods and it is only in punishing the wrongdoer that the wrath would be allayed and it is only in punishment that the curse will be taken off and the

[85] *Idem*, pp. 1-2.
[86] PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 8 (1953).
[87] *Idem*, p. 10.
[88] Law of the talion, eye for an eye, tooth for a tooth. To Cuello Calon, as pointed out earlier, the first stage in the development of criminal law, is the period of private vengeance.

community's well-being will be assumed. Thus vengeance would still modify future human conduct.[89]

However, deterrence, reformation, and vengeance as discussed, are not the only goals or objectives of punishment. The relative and absolute theories justify penal law. The relative theories of punishment are: prevention, public self-defense on the part of the State, reformation, deterrence, and exemplarity. The absolute theory is that punishment is an act of retributive justice to which exemplarity and reformation are just incidental.[90] In contrast to the absolute or retributive theory, is the utilitarian theory which embraces the reformative theory, the exemplary or deterrence theory, and the protective theory, in so far as protection of society against wrongdoers is concerned.[91]

The penalty may be meted out for the purpose of satisfying all the objectives above-stated. Deterrent exemplarity and retributive justice were the goals mentioned in *People v. Young*,[92] exemplarity and deterrence in *U.S. v. Sotto*,[93] public self-defense, and retribution when death penalty was also imposed in a case of robbery with homicide and attempted rape in the case of *People v. Carillo and Raquenio*[94] and in a Court of Appeals decision *People v. Revilla*[95] where the different theories of punishment, among them retributive justice, regenerative theory, exemplarity theory, had been discussed. In cases where penalty had been meted out, the Court always explains why death penalty has always been in our statute books, i.e. the Penal Code of 1870, the Revised Penal Code, and special penal laws, so that one who reviews and contemplates on these explanations would be more enlightened in giving his comments at the public hearing on Parliamentary Bill 543 which would abolish the death penalty. The Bill's sponsors criticize our penal system of retributive justice as wrongful and barbaric, reminiscent of the *lex talionis;* and they argue that the state degrades itself by using against the felon the criminal's own weapon — destruction; that being a Catholic country, human life should be respected; and penalty is a cruel and inhuman punishment unworthy of a humane society.[96]

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[89] PUTTKAMMER, *op. cit.*, p. 10.
[90] AQUINO, THE REVISED PENAL CODE 8 (1976).
[91] Wood, *Responsibility and Punishment*, CRIM. L. 630-640 (1938), cited in HARNO, CASES ON CRIMINAL LAW 12-14 (1950), cited in AQUINO, op. cit., p. 10.
[92] 83 Phil. 702 (1949), cited in AQUINO, *op. cit.*, p. 8.
[93] 38 Phil. 666 (1918), cited in AQUINO, *op. cit.*, p. 8.
[94] 85 Phil. 611 (1950), cited in AQUINO, *op. cit.*, p. 8.
[95] CA 37 O.G. 1898 cited in AQUINO, *op. cit.*, pp. 9-10.
[96] Seek Public's Views on Death Penalty Bill, Bulletin Today, June 3, 1979 p. 1 col. 3 p. 5, col. 3.

However in the processes of prescribing the penalty and imposing the penalty there must be caveat. Although the punishment may deter and reform yet the opposite effect way be produced. Although the convict leaves the prison and may no longer violate the law, long imprisonment may cause him to lose his self-respect, and his association with hardened criminals may unwillingly drag him to the society of undesirable men.[97] A stubborn reliance on deterrence will result in imposing sentences which became increasingly severe, and this excessively severe sentences will have deteriorating effects upon the prisoners without being correspondingly beneficial to society.[98] One great lesson of criminological history is that severity of punishment is not an adequate deterrent.[99] As an objective of punishment far more effective than deterrence is rehabilitation, the satisfactory adjustment of the offender to law-abiding society.[100]

It is now recognized that criminal law and penal justice are only parts and parcels of the larger subject and science of criminology. Intricate social problems are presented by crime and deliquency and their cause and treatment. Something more than a knowledge of law and legal principles is called for in the solution of these problems. The modern scientific method of treating crimes has availed of the cooperation of the interrelated and contributing sciences of psychology, medicine, and sociology. It is therefore advisable that a broad, accurate, scientific method be adopted in solving the problem of crime and its treatment; and more specifically in determining the penalty which should fit the criminal rather than the crime.[101]

Lastly, it should be noted that even a casual glance at legal controls brings out in bold relief the paramount role of criminal law because nothing less than life and liberty are at stake. Along the same vein penal code revision should therefore rate a high priority — and this is the law to which the people look for or invoke for the protection of their deepest interests and rights. The ideal situation is for the law as it is to be co-terminous with the law as it ought to be. There will always be a continuous race between the *lex lata* and the *lege ferenda*. Whatever reforms the Philippine Revised Penal Code undergoes, the inexorable fact is that

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[97] People v Galano y Carpio, CA-G.R. No. 1870-R, December 2, 1957, 54 O.G. 5897, (Sept. 8, 1958) cited in AQUINO, *op. cit.*, p. 10.

[98] *Supra*, note 84, pp. 2-3.

[99] HARRY EDMER BARNES, THE STORY OF PUNISHMENT 254, 269 (1930).

[100] *Supra*, note 84, pp. 3-4.

[101] E.A. Gilmore, *op. cit.*, note 83.

reforms will not stay or remain for all time so much that the unending cycle will always bear witness to the antinomy that "Law must be stable yet it cannot stand still,"[102] since law must be kept responsive to the continuing processes of social change.[103] For as far as any code is concerned it will be proper for us to heed the admonition and observation made by a noted jurist: "No doubt the ideal system if it were attainable will be a Code at once so flexible and so minute as to supply in advance for every conceivable situation the just and fitting rule. But life is too complex. All history demonstrates that legislation intervenes only when a definite abuse has disclosed itself, through the exercise of which public feeling has been finally aroused."

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[102] Prosser attributed this antinomy to Pound in the former's Handbook on Torts, in connection with balancing of interests and the "social engineering" process.

[103] H. Jones, *An Invitation to Jurisprudence*, 74 COLUM. L. REV. 1023 (1974) quoted in R. ALDICERT, THE JUDICIAL PROCESS 32 (1976).