# COMMENTS ON THE PROVISIONS ON SOCIALLY DANGEROUS PERSONS AS PROVIDED FOR IN THE PROPOSED CODE OF CRIMES

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*Introduction*

Criminal law, as we know it today, may be traced to two sources: vengeance as retaliation for a wrong committed, and subordination of the individual to some higher authority, which, be it the family or the State, seeks to maintain a certain degree of order, for purposes which are more or less clearly defined.[1] It may be argued that from time immemorial, criminal law has been an absolute necessity for the preservation of society and public order.

This right of society to protect itself has been repeatedly invoked as a justification for punishment. As an individual may resort to self defense, so may the State, in order to prevent a wrong from being inflicted upon it.

The Philippines has its own criminal laws which seek to protect the individual and the community. But like any other legislation, these laws must strike a balance between the rights of the individual and the rights of society as a collective mass. The restraining of the individual from committing a crime, or punishing him in order to protect society must not, at the same time, result in curtailing or restraining his other rights. Whether this balance is attained in the Proposed Code of Crimes, specifically by the provisions on socially dangerous people, is one of the points which this paper will examine.

*History of the Proposed Code of Crimes*

In 1947, President Manuel A. Roxas created[2] the Code Commission. The first code prepared and submitted by the commission was the new Civil Code enacted into law as Republic Act No. 386 on June 18, 1948. The proposed Code of Crimes is the second code. The draft of this code was started in June 1948, and was completed in March 1950, a period of one year and ten months.[3] Mem-

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1 GUEVARA, PENAL SCIENCES AND PHILIPPINE CRIMINAL LAW 2-3 (1974).

2 Executive Order No. 48, dated March 20, 1947.

3 Report of the Code Commission, p. 1.

bers of the Commission were: Jorge Bocobo (Chairman), Pedro Y. Ylagan, Francisco R. Capistrano, Arturo M. Tolentino and Guillermo B. Guevara. Guevara, a disciple of the positivist school of Criminology, was the Code's prime mover.

The Commission sought to replace the existing Revised Penal Code which was enacted on December 8, 1930 as Public Act No. 3815. The basic philosophy of the proposed code has also been changed since ". . . the present Penal Code of the Philippines is, so far as its philosophic foundation is concerned, at least 100 years old. As compared with the Spanish Penal Code of 1870, the Philippine Revised Penal Code of 1930 has undergone no important change of orientation or structure. On the other hand, the proposed Code of Crimes is, as it were, a new building, of a different style of architecture."[4]

A copy of the Code was submitted to Congress in 1950, but it was not until the sixth and seventh Congress in 1972 that the Code passed first reading under Representative Fermin Caram's sponsorship.[5] Congressman Manuel Zosa steered the legislation's approval by the House of Representatives as consolidated House Bills No. 1200 and 1855.[6] However, Book Three, which dealt with misdemeanors, was deleted.[7]

In September 1972 Martial Law was declared in the Philippines and Congress was abolished before the Code could be discussed in the Senate. President Marcos in 1974 referred the Code to a Committee of Undersecretaries, which in turn passed the work to a legal panel composed of representatives from the U.P. Law Center, the Department of Justice, Legal Office of Malacañang, Department of Social Welfare and the National Economic Development Authority. The present updated version, which is now pending in the Interim Batasang Pambansa as Cabinet Bill No. 2, was edited by Teodoro Bay of the Malacañang Legal Office in consultation with Professor Sulpicio Guevara, head of the Division of Research and Law Reform of the U.P. Law Center. The updated version was completed in February, 1977.

*Basic Philosophy*

The present proposed Code of Crimes, like the original model submitted by the Code Commission, leans toward the positivist

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[4] *Id.*, p. 2.

[5] Alhambra & Duran, *Comments on Crimes Against Family Solidarity as Provided for in the Proposed Code of Crimes*, 52 PHIL. L.J. 562 (1977).

[6] Philippines (Republic) House of Representatives, 79 Congress Congressional Records.

[7] *Ibid.*

school. The Revised Penal Code, on the other hand, has for the basis of criminal liability human free will.[8] The purpose of penalty is retribution. More stress is placed upon the effect or result of the felonious act than upon the criminal himself; a mechanical and direct proportion between crime and penalty is sought to be established.[9]

However, to the positivist, free will is a myth, a mere figment of the imagination. Man is "subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong, in spite of or contrary to his volition.'[10] For this reason, the central idea of all positivist thinking is the defense of the community from all antisocial activities, whether actual or potential, against the "morbid type of man who is called a 'socially dangerous person.' "[11] Since man is primary and his deed secondary, the Positivist School views crime as essentially a social and natural phenomenon, and as such, it cannot be treated by a mere application of abstract principles of law and jurisprudence, nor by the imposition of a fixed and predetermined punishment. Instead, individual measures should be enforced in each particular case after a thorough and personal investigation conducted by a competent group of psychiatrists and social scientists.[12]

The Code Commission after deliberating the merits of each school reached the conclusion that "no particular school of thought or theory could claim perfection and monopoly of the true and rightful approach toward the administration of criminal justice."[13] Thus, even while it laid heavier emphasis on the Positivist School, the Commission followed the path of the Criminal Politic[14] which was the *giusto mezzo* or the happy medium between the Classical and Positivist theories. The principle of moral blame or free will in every act or omission (Articles 13 and 15, updated Draft) is retained, but the actor, at the same time, is considered more important than the act itself (Articles 104 and 110, updated Draft). The principle of moral responsibility was adopted along with the consecration of the theory of "social danger" which requires a peculiar treatment.[15]

Since the classical concept of retribution and restoration of the judicial order is incompatible with the theory of social danger,

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[8] Report of the Code Commission, p. 2.
[9] *Ibid.*
[10] *Ibid.*
[11] *Id.*, p. 3.
[12] *Ibid.*
[13] *Ibid.*
[14] This school believes in short detentive penalty without prejudice to imposing security measures up on criminals or socially dangerous persons.
[15] Report of the Code Commission, p. 4.

the former was largely abandoned. The proposed Code therefore provides that repressions "are applied for social defense, to forestall social danger, to rehabilitate, cure or educate the person concerned, and to warn such other members of society as may be possible transgressors of criminal law.[16] To carry out this new philosophy, the Commission proposed two methods:

(1) The imposition of security measures to forestall social danger.[17] There are four types based on the purpose thereof: (a) precautionary, (b) detentive, (c) curative, and (d) educative.[18]

(2) the imposition of a fixed term of imprisonment or a definite fine in terms of daily earnings to satisfy the ends of retributive justice.[19]

*Socially Dangerous Persons*

Dean Roscoe Pound once said: "Law must be stable, but it cannot stand still." Therefore, any improvement or advance towards more effective legislation is welcome. However, it should obviously be for the better. The Code Commission itself admitted that changes should not be merely "for the sake of innovation."[20] We need not adopt new trends merely for the sake of being modern, nor replace old laws because "they are no longer in keeping with the spirit of the atomic age."[21] With these points in mind we may examine the provisions of the Proposed Code of Crimes which deal with socially dangerous persons.

These provisions are contained in Title IV (Security Measures), Chapter I (General Provisions). Possibly foreseeing the controversy the provisions could generate the Commission straight off provides the authority upon which the security measures are to be exercised. Article 104 which deals with the nature and types of security measures reads:

> Security measures provided for in this Code may be imposed in the exercise of the police power of the State for the attainment and promotion of public weal, welfare and safety.
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> Security measures are of four types, to wit: (1) precautionary, (2) detentive, (3) curative; and (4) educative.

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[16] Art. 33, Proposed Code of Crimes updated draft (hereinafter referred to as Proposed Code).
[17] Art. 106, Proposed Code.
[18] Art. 104, Proposed Code.
[19] Art. 37, Proposed Code.
[20] Report of the Code Commission, p. 43.
[21] Guevara, *Explanatory Notes to the Proposed Code of Crimes*, 15 LAW. J. 83 (1950).

Article 105 defines a socially dangerous person thus:

> A person is socially dangerous when he shows a certain morbid predisposition, congenital or acquired by habit, which by destroying or enervating the inhibitory controls, favors the inclination to commit a crime.
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> Such predisposition may be deduced from any one of more of the following facts or conditions:
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> (1) The nature, object, time, place and other circumstances of his behavior.
>
> (2) His criminal antecedents, if any, the mode of life of the offender.
>
> (3) His individual, family domestic and social background.
>
> (4) Other analogous circumstances.

The declaration of social dangerousness is done either by operation of law in the case where the subject has been sentenced more than twice to medium imprisonment or longer, or by the Court when, as per the definition in Article 105, it finds that the offender presents signs of a morbid predisposition.[22] In the former case, the first of the detentive measures described in Article 112 shall be imposed.[23] Offenders whom the courts consider socially dangerous may be subject to detentive security measures even if the offense committed entails less than medium imprisonment.[24] Article 106 which provides for precautionary security measures provides the second instance when a person may be judicially declared socially dangerous. Article 106 reads:

> A person may be judicially declared socially dangerous, and be subjected to the applicable measures prescribed in Article 112, when upon petition and proper showing made by the police or the fiscal, the court of competent jurisdiction is satisfied that the subject is a known criminal either by his own confession or his police records, or that the subject is a habitual ruffian or rowdy.
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> There is habitual rowdyism or ruffianism when a person publicly and habitually, through words, threats, attitudes, behavior, use of arms or any similar conduct or means tries to intimidate others or to impose his will on them.

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[22] *Id.*, p. 142.

[23] Art. 112 reads:

> Detentive security measures are:
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> (1) Compulsory residence and work in an agricultural settlement or labor establishment;
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> (2) Confinement in a diagnostic center for medical treatment and custody;
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> (3) Confinement in a lunatic asylum;
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> (4) Confinement in a reformatory.
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> Detentive security measures shall be executed immediately after the service of the principal repression, if any, and shall last until the court has pronounced that the subject is no longer socially dangerous.

[24] Art. 107 (2), Proposed Code.

As the abovecited provisions show, the effects of being considered a socially dangerous person are as follows: if he has been sentenced more than twice to medium imprisonment or longer, or even if he has committed an offense entailing less than medium imprisonment, the law provides his compulsory residence and work in an agricultural settlement or labor establishment. If, on the other hand, the Court is satisfied that the person is a criminal (either by confession or police records) or the subject is a habitual ruffian or rowdy, he may be subjected to the detentive security measures provided for under Article 112 even if he has not committed any overt criminal act.

Detentive security measures, as provided for in Article 112, shall be executed immediately after the service of the principal repression, if any, and *shall last until the Court has pronounced that the subject is no longer socially dangerous.*

There is no question that the State has the authority, under its police power, to define and punish crimes and to lay down the rules of criminal procedure.[25] Nor can it be denied that society has the inherent right to protect itself and its members from vicious acts which imperil the proper administration of justice.[26]

However, are we prepared to say that the inherent power of the State may be used unchecked to increasingly enroach on the rights of the individual? Are we ready to brush aside these rights all in the name of society, as one author did in this manner:

> The bill of rights in our Constitution as well as in the Federal Constitution of the United States, and even the Magna Carta of human rights, the famous Declaration of the Rights of Man proclaimed by the French Revolution, are all wonderful but one-sided documents. The authors and framers of these immortal documents have only specialized in and endeavored to undertake the defense of the rights of men, the rights of individual persons; but none of them had given serious thought to the defense of the rights of society. The Code of Crimes is an endeavor to fill this gap.[27]

Commenting on Article 105,[28] Judge Guillermo B. Guevara wrote:

> The Code Commission takes advantage of this opportunity to allay the fear of the guardians of our civil liberties to the effect that preventive or detentive security measures provided for in Article 105 may eventually end in the imprisonment of a citizen without due process of law. In the first place, as premise under the definition of Article 106 of the Code, Security Measures are neither punishment.

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[25] People v. Santiago, 43 Phil. 120 (1922).
[26] Catrino v. U.S., C.A. MONT., 176 F. 2d 884 (1949).
[27] GUEVARA, COMMENTARIES ON THE CODE OF CRIMES xxiv (1977).
[28] *Id.*, pp. 58-59.

repression or retribution but only an administrative or shall we say *an exercise of the Police Power of the State designed for the promotion of public weal, welfare and safety.*

In the exercise of the Police Power of the State, special laws had been passed by the Philippine Commisison and the Legislature providing for the detention of lepers in leper camps and colonies, the confinement of vagrants, lunatics, alcoholics or persons suffering from communicable disease. The constitutionality of these laws have not been assailed. No lawyer at the present time dare contend that these laws violate the constitutional guarantee against deprivation of liberty without due process.

The four types of security measures mentioned in the second paragraph of Article 105 are of the same nature as the measures provided for in the special laws abovementioned. They are not repressions nor punishment. Hence, contrary to the contention which is based on fascinating generalities taken from American authors, they do not violate the constitutional guarantee against deprivation of liberty without due process of law. The juridically progressive European and South American countries which have adopted the positivist theory, among them Italy, France, Germany, Russia, Cuba, Peru, Spain, Portugal, Switzerland, Continental US and in Asia, China and Japan also came under the fold of positivism, whose modern Code of Crimes contain provisions on security measures, do not consider these violative of the constitutional guarantee against deprivation of liberty without due process of law.

For a better understanding of this distinction between security and repressive or punitive measures, it would be pertinent to take into account that the former is an administrative action taken by the government to refrain from carrying about his evil desire; while repression or penalty is administered upon subjects who have already violated some penal or repressive law.

Among the latest country to come to the fold of social defense and security measures is Spain.

The Spanish law on dreadfulness and social rehabilitation follows the pattern of our Code of Crimes. It divides the administrative or criminal Jurisprudence into two parts namely: preventive and repressive or punitive.

The preventive procedure is practically a copy of Title IV of Book I of the Code of Crimes while the punitive is identical to our Book II.

Like the security measure of our proposed Code of Crimes, its counterpart is Ley de Peligrosidad y Rehabilitacion Social de 4 de Agosto, 1970 of Spain. As in many laws in Italy and South American Countries, the provisions regarding the predelictual detentive security measure drew up questions on constitutionality. The prevailing judicial opinion is to the effect that the imposition of predelictual detentive security measure is not a punishment nor a penalty, and therefore, its imposition cannot be considered a sa deprivation or denial of due process of law. (Underscoring supplied)

In spite of Judge Guevara's foregoing comments, we must examine the Constitutional provisions which are related to the provisions on socially dangerous persons.

The first of these Constitutional provisions is Article IV, Section 1 which provides "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." The principle of due process and equal protection must be discussed in relation to the State's exercise of police power.

As stated before, police power, with taxation and eminent domain is an inherent power of the State. Our Supreme Court has described this doctrine as "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. Persons and property could thus 'be subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State.'[29]"[30] In *Morfe v. Mutuc*,[31] the Court said:

> As currently in use both in Philippines and American decisions then, police power legislation usually has reference to regulatory measures, restraining either the rights to property or liberty of private individuals. It is undeniable however, that of its earliest definitions, valid then as well as now given by Marshall's successor, Chief Justice Taney does not limit its scope to curtailment of rights whether of liberty or property of private individuals. Thus: "But what are the police powers of a State? They are nothing more or less than the power of government inherent in every sovereignty to the extent of its dominions and whether a State passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say the power of sovereignty, the power to govern men and things within the limits of its domain." Textwriters like Cooley and Budick were of a similar mind.[32]

Police power, therefore, to be lawfully exercised presupposes the existence of a definite and vital social interest. The following conditions must be present: that public interests in the case are more important than the interests of the individual and that the means employed must have a substantial and reasonable relation to the end sought to be achieved.[33]

Furthermore, the regulatory measure may be questioned if, in the enactment, the standards of due process and equal protection are not satisfied.[34]

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[29] Calalang v. Williams, 70 Phil. 726 (1940).
[30] Edu v. Ericta, G.R. No. L-32096, October 24, 1970, 35 SCRA 481 (1970).
[31] G.R. No. L-20387, January 31, 1968, 22 SCRA 424 (1968).
[32] *Ibid.*, pp. 436-437.
[33] U.S. v. Toribio, 15 Phil. 85 (1910); U.S. v. Villareal, 28 Phil. 390 (1914).
[34] FERNANDO, THE CONSTITUTION OF THE PHILIPPINES 517 (1977).

In *Ermita-Malate Hotel and Motel Operators Assoc., Inc. v. City Mayor of Manila*,[35] the standard of due process was described thusly:

> It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided . . . Due process is thus hostile to any official action marred by lack of reasonableness. Correctly it has been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play . . . . It is not a narrow technical conception with fixed content unrelated to time, place and circumstances; decisions based on such a clause requiring a close and perceptive inquiry into fundamental principles of our society. Questions of due process are not be treated narrowly or pedantically in slavery to form or phrases.

From several cases[36] decided by the Supreme Court dealing with police power it can be gleaned that many a time an unavoidable diminution of liberty results from communal existence.[37] The due process clause cannot stand in the way. Nevertheless it remains an important safeguard to freedom. When the governmental act is arbitrary, or lacks fairness or in Cardozo's words, "outruns the bounds of reason," the due process clause is an effective barrier.

Equal protection is also a prerequisite to the validity of any statute of government act affecting liberty or property.

The standard of equal protection is based on the premise that among individuals whose dealings with the state are regulated by law, all must share the benefits and burdens. The laws, to meet this standard; must operate uniformly on all persons under circumstances which cannot be considered different. Classification is thus allowed. Persons in the same class are treated the same.

The classification to be reasonable must be based on substantial distinctions which make real differences, or it must be germane to the law's purposes and must not be limited to existing conditions only, applying itself to each member of the class.[38] However, later cases[39] only required that the classification is not unreasonable and the differentiation is not arbitrary or that it should at least be based on a reasonable foundation.

Therefore an objection based on equal protection grounds to a police power measure, unless "the affront to reason is quite manifest," the objection will not be entertained. As Senior Associate

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[35] G.R. No. 24693, July 3, 1967, 20 SCRA 849, 860 (1967).

[36] Morfe v. Mutuc, *op. cit.*, note 32; People v. Lagman, 66 Phil. 13 (1938); People v. Cayat, 68 Phil. 12 (1939); Calalang v. Williams, *op. cit.*, note 29.

[37] FERNANDO, *op. cit.*, note 34 at 532.

[38] People v. Vera, 65 Phil. 126 (1937).

[39] Laurel v. Misa, 76 Phil. 372 (1946); People v. Carlos, 78 Phil. 535 (1947).

Justice Fernando put it "the necessities imposed by public welfare may justify the exercise of the governmental authority to regulate, even if thereby certain groups may plausibly assert that their interests are disregarded. What is indispensable is that the challenged legislative or executive act finds its justification in the satisfaction of the communal good, with which the class singled out for favorable treatment is identified."[40] Prime examples are the primacy accorded to the claims of labor as against management and nationalistic moves which cannot be assailed by aliens (nationalization of retail trade).

Examining the Proposed Code of Crimes, the Security Provisions above quoted have been labelled as an exercise of police power. However, as one may immediately discern from Article 105 which defines a socially dangerous person, there is no objective act or omission which would permit the State to detain the individual. Rather, one's morbid disposition must be deduced; the individual's behavior, his mode of life, his individual or family background and other analogous circumstances must be investigated. These do not seem adequate guidelines in deciding a person as "socially dangerous." The void for vagueness[41] doctrine in Constitutional law may be applied; the socially dangerous provisions may also arguably be struck down by applying the overbreadth doctrine. This latter doctrine maintains that a statute or regulation is rendered unconstitutional when the means used have an unnecessarily broad sweep and invade constitutionally protected liberties. It differs from the void for vagueness doctrine in nature. In the overbreadth doctrine there is fair notice of what is prescribed but the prohibitions are so broad as to reach, and curtail constitutionally protected conduct.[42] To paraphrase *Morfe v. Mutuc,* there is no substantial and reasonable relation between the means employed and the end sought to be achieved, so that there is no valid exercise of police power. The individual, by the provision, may be leading an ordinary life, and even if he has not done any overt act, he may still be detained if his background or family life were investigated.

Since most judges are not equipped to shift through the evidence as to one's morbid predisposition, the decision would finally have to rest on a physician or psychiatrist. Even glossing over the lack of trained psychoanalists and psychiatrists, "behavioral science has

[40] FERNANDO, *op. cit.*, note 34 at 548.

[41] Under this doctrine, the defect of the statute is the absence of fair notice as to what is prescribed. The statute or regulation violates this requirement of due process by either forbidding or requiring the doing of an act in terms so vague, ambiguous or uncertain that a man of common intelligence would have to guess its meaning and even differ as to its application.

[42] FERNANDO, *op. cit.*, note 34 at 476.

not yet sufficiently developed to the degree that its practitioners are agreed upon reliable indicators of criminal predisposition."[43]

The provisions on socially dangerous people are constitutionally infirm because they violate, among others,[44] the requisite degree of certainty to satisfy the requirements of due process. The provisions smack of arbitrariness and a lack of fairness. An enactment either forbidding or requiring the doing of an act that men of common intelligence must necessarily guess at its meaning and differ as to its application is constitutionally defective due to its vagueness.[45] An accused can complain of a denial of due process if the acts which are made criminal lack the degree of clarity necessary. No one may be required to speculate as to the meaning of penal statutes especially when their life, liberty or property is at stake. Everyone is entitled to be informed as to what the State prohibits or commands. Otherwise, the fundamental concept of fairness which is associated with due process will be disregarded. The argument that the provisions on socially dangerous persons are not arbitrary and are for a communal good cannot cure the existing constitutional defects.

But even granting that the provisions on socially dangerous persons and the precautionary measures can withstand questions on their constitutionality, we may still venture to question their wisdom or their underlying philosophy.

If the Code Commission recognizes the basic principle of *nulla poena sine lege* and specifically provides in Article 3 that "no act or omission shall be considered a crime or misdemeanor unless there is a pre-existing criminal law defining and repressing the same as an offense," why should a person be deprived of his liberty and subjected to curative or detentive security measures based on "vague and uncertain manifestations that he may be socially dangerous, if he has not in fact performed an overt act constituting a specific crime?"[46] Upon closer scrutiny of the provisions, we note that upon petition and proper showing made by the police or fiscal the Court may declare a person a habitual ruffian or rowdy and therefore socially dangerous.[47] The court will determine if the subject is a known criminal either by his confession or by his police record.

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[43] Tadiar, *A Philosophy of a Penal Code*, 52 PHIL. L.J. 171 (1977).

[44] Other constitutional provisions which may arguably be violated are the right to bail in non-capital offenses (Art. IV, s. 18) and the presumption of innocence (Art. IV, sec. 19) .

[45] Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, G.R. No. L-24693, July 31, 1967, 20 SCRA 849 (1967).

[46] Padilla, *An Appraisal of the Proposed Code of Crimes*, 28 PHIL. L.J. 902 (1953).

[47] Art. 106, Proposed Code.

Confessions have been known to have been obtained against the person's will. As for police records, any past violation may be used to commit one to jail again, no matter how minor the previous offense.

Detentive measures, it must also be remembered "shall last until the Court has pronounced that the subject is no longer socially dangerous."[48] Hence, the Code authorizes indefinite detention for persons who have been unfortunate enough to be considered socially dangerous[49] including habitual ruffians or rowdies.[50] And even if a convict has already served the maximum of his sentence, the Court should declare him no longer socially dangerous before he may be released (Article 112).

It is evident that too much discretion is given the trial court. If we must curb or lessen judicial abuse of discretion, the extent of such discretion must be limited.[51] If the standards are more subjective than objective, there can always be an apparent justification for unequal, if not arbitrary, discrimination among the accused persons similarly situated.[52]

Examining the provisions further, if the accused after a first offense, is declared no longer socially dangerous, how are the provisions on habitual criminals[53] and professional criminals[54] to be explained? For, if after his first conviction the convict is not capable of reformation but continues to be a threat to society, he would then suffer indefinite confinement.[55] Therefore how can judicial discretion determine whether a person has been reform and is no longer a danger to the State and the public or that he still constitutes a menace to his fellow citizens, if he remains under confinement?[56]

*Obstacles in Implementing the Provisions on Socially Dangerous Persons*

In line with the question of advisability of adopting the provisions on socially dangerous persons, we must consider if the government has the resources, funds and facilities for implementing them.[57] While there can be no serious objection to a criminal code

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[48] Art. 112, Proposed Code.
[49] Art. 107, Proposed Code.
[50] Art. 106, Proposed Code.
[51] Padilla, *op. cit.*, note 46 at 903.
[52] *Ibid.*
[53] Art. 66, Proposed Code.
[54] Art. 67, Proposed Code.
[55] Padilla, *op. cit.*, note 46 at 903.
[56] *Ibid.*
[57] Aquino, *Observations on the Proposed Code of Crimes*, 35 PHIL. L.J. 1021 (1960).

anchored on social defense and intended to rehabilitate and cure the convict, we are faced with such simple questions as whether or not there are indeed so many dangerous criminals in our midst as may be the situation in the societies of Italy, Cuba, the United States, Switzerland, etc. whence the Code Commission got the provisions. Do our judges have the time, training, incentive, competence and interest to determine whether a criminal, who has served out his sentence is still dangerous or not?[58] Or even more fundamental, do our judges have the time or inclination to properly determine if the person is socially dangerous in the first place? Do we have honest, efficient and competent prison administrators who can perform the task of rehabilitating the criminals?[59] Do we have a sufficient number of trained social researchers and psychiatrists to help the courts in their tasks?

At present our courts cannot cope with their pending cases. Trials have been unduly delayed. To further burden them with the determination of whether a person is socially dangerous or not would be asking them to perform additional work which they would not be able to perform efficiently.[60] And if the provisions were to be passed, they would indeed be required to perform new tasks efficiently. To be declared socially dangerous and to be subject to an indefinite period of detention, to use an understatement, is no laughing matter.

*Recommendations*

Changes in our present penal system must be based on actual studies and surveys on the administration of criminal law.[61] Justice Ramon C. Aquino quoted Dean Harno as saying "the enactment of an effective Penal Code depends on research: not mere research into the foreign codes and the treatises of the criminalists and penologists but research into the conditions that spawn criminality or the etiology crime, the methods of criminal law enforcement and the treatment of criminals. Unless the rules in a Penal Code are based on data gathered through intensive research, such rules may operate *in vacuo*, good on paper but unworkable and inappropriate in practice. They would fall into the category of utopian criminological concepts that have no relation to the facts of criminal treatment."[62] The scrapping of the Revised Penal Code must be based on the postulate that it is unsatisfactory or ineffectual and not on the desire to keep up

[58] *Ibid.*
[59] *Ibid.*
[60] *Id.*, p. 1022.
[61] *Id.*, p. 1017.
[62] *Ibid.*

with more "progressive countries" which follow the Positivist School of Penal Law.

One can seriously question whether the Code Commission or the sponsors in the Interim Batasang Pambansa of its updated version undertook serious studies why the present Penal Code is unsatisfactory. Positivists say that a crime is a social phenomenon. What then is the nature and scope of crimes as a social phenomenon in this country? Unqualified importation from the Code of Crimes of Italy, Switzerland, Argentina and Mexico is not commendable if existing conditions in our country are not considered.[63] Their experience does not necessarily justify the enactment of their laws here. "While human nature is basically the same throughout the world and the wrongs done in other countries may be similar to those in the Philippines, it is undeniable that there are peculiar conditions here which spawn crime, but which do not exist abroad."[64]

*Conclusion*

A serious study must be conducted involving as many sectors of society as possible. From this study, the present Revised Penal Code may be amended and revised. We must remember that for all its faults, whether real or imagined, the RPC is certain and well known. It is based on a sound philosophical foundation intended to protect society from persons duly tried and convicted, and not from those who only had the misfortune of being declared socially dangerous.

Moreover, the present RPC, even if amended, would not create any serious problems for the courts and the people. We would not have to fear being declared socially dangerous and detained even before committing any overt act.[65]

To adopt the provisions on socially dangerous persons would indeed contribute to the curbing of potential dangers (whether unfounded or not), but at the same time leave nothing to the defense of an individual's rights—all in the name of society's welfare.

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[63] *Id.*, p. 1018.
[64] *Id.*, p. 1019.
[65] For example, spitting in public (Art. 676) and injurious cigarettes (Art. 672).