imposed (Sec. 9 of the Judiciary Code of 1948 as amended by the 1973 Constitution and the internal rules of the Supreme Court), it being understood that the penalty next lower in degree, or *reclusion perpetua,* was imposed if at least eight justices concurred in the imposition of such penalty; otherwise, the penalty imposed was that agreed upon by at least eight Justices.

Under the new Constitution, constitutional cases and all other cases which under the Rules of Court are required to be heard *en banc* shall be decided by "a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon." Theoretically, this majority could be less than eight Members. In the event that Congress hereafter provides for the imposition of the death penalty in cases involving heinous crimes, the Supreme Court may by internal rules require the concurrence of at least eight or ten Members for the imposition of such penalty.

In this connection, Sec. 3, Rule 125 of the 1985 Rules on Criminal Procedure (which is the same as the 1964 Rules) provides that "when the court *en banc* is equally divided in opinion or the necessary majority cannot be had, the case shall be reheard, and if in rehearing no decision is reached, the judgment of conviction of the lower court shall be reversed and the accused acquitted." This provision applies to all appeals to the Supreme Court, whether an ordinary appeal as of right on both questions of fact and law in criminal cases in which the penalty imposed is reclusion perpetua or higher, or an appeal by certiorari on questions of law which is not a matter of right.[12]

Under the new Constitution, the necessary majority is not necessarily eight Justices, but depends on the number of Justices who actually took part in the deliberations of the issues in the case and voted thereon. If a majority of the Justices who participated in the deliberations and voting do not concur in affirming the judgment of conviction after a rehearing, the accused is acquitted.

Under the old Constitution, cases heard by a division were decided with the concurrence of at least five Members, but if such required number was not obtained, the case was decided *en banc.*

Under the new Constution "cases heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues on the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided *en banc."* Theoretically, again, the decision of a division of seven Members could be concurred in by three Members only.

These amendments will certainly expedite the decision of cases appealed to the Supreme Court and further ensure the right of the accused to a speedy judgment. However, they may adversely affect the quality of such decisions.

March 27, 1987.

[12] Sec. 5 (2-d & e) of Art. VIII, 1987 Constitution.

THE CRUEL, THE DEGRADING, AND THE INHUMAN

JACINTO D. JIMENEZ*

I. HISTORICAL BACKGROUND

A. Early Times

Because of evolving standards of decency through the centuries, barbaric punishments have been abolished in civilized societies. Inhuman punishments characterized the penal systems during the early times.

The early developments in the punishment of offenses delved more on the proportionality of the punishment to the offense rather than on the nature of the punishment.

In handing down to Moses the laws that would govern the Israelites, God commanded:

> "But if there is serious injury, you are to take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise."[1]

This was repeated in the following passage from the Book of Leviticus:

> "If anyone injures his neighbor, whatever he has done must be done to him: broken limb for broken limb, eye for eye, tooth for tooth. As he has injured the other, so he is to be injured."[2]

While the punishments imposed by the laws God gave to Moses may seem cruel, they were intended to provide for equality between the offense and the penalty by prohibiting the imposition of a greater punishment.

In the same vein, Aristotle taught that inequality, whether in favor of or against the criminal, constituted an injustice.[3]

B. England

The concept of equality between the offense and penalty became woven into the laws of the Angles and the Saxons before the Norman conquest. The laws of King Alfred the Great contained a long list of fines for injury to every part of the human body.[4] Thus, the law provided:

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[1] Genesis, 21:23-25.

[2] Leviticus, 24: 19-20.

[3] Aristotle, Ethics, pp. 148-149.

[4] Granucci, 'Nor Cruel and Unusual Punishments Inflicted:' The Original Meaning, *California Law Review,* October 1969, Vol. 57, No. 4, pp. 844-845.

"For a wound in the head, if both bones are pierced, 30 shillings shall be given to the injured man.

"If the outer bone is pierced, 15 shillings shall be given . . . If a wound an inch long is made under the hair, one shilling shall be paid . . .

"If an ear is cut off, 30 shillings shall be paid . . .

"If one knocks out another's eye, he shall pay 66 shillings, 6 1/3 pence . . .

"If the eye is still in the head but the injured man can see nothing with it, one-third of the payment shall be withheld . . ."[5]

After the Norman conquest of England in 1066, the system of penalties, which guaranteed the equality between the crime and the penalty, disappeared. With the exception of grave crimes for which the penalty was death or outlawing, fines were replaced by disretionary amercements. During the thirteenth century, a fine was a voluntary offering made to the king to obtain his favor or escape his displeasure. An amercement was a compulsory sum imposed as a punishment for a misdeed. It is the equivalent of a fine in modern times. It was the most common penalty in England during the thirteenth century.[6]

The discretion given in fixing the amount of the amercements resulted in excessive or oppressive amercements.[7]

On June 15, 1215, the barons wrung from King John the Magna Carta. Chapter 14 of the Magna Carta provided:

"A free man shall not be amerced for a trivial offence, except in accordance with the degree of the offence; and for a serious offence he shall be amerced in according with its gravity, saving his livelihood; and a merchant likewise, saving his merchandise, in the same way a villain shall be amerced saving his wainage; if they fall into our mercy. And none of the aforesaid amercements shall be imposed except by testimony of reputable men of the neighborhood."

A writ to enforce this provision by setting aside excessive fines, the writ *de moderate misericordia,* was created. In 1253, such a writ ordered the sheriff of Northampton to see to it that neither a certain Mr. Payne nor his bailiffs were to distrain John Le Franceys "for any amercement contrary to the tenor of the great charter of liberties." The monastery of St. Albais succeeded in setting aside an amercement of 100 pounds by means of a writ *de moderata misericordia.*

A fourtheenth century document, purporting to be a copy of the laws of Edward the Confesor, extended the rule on amercements to physical punishments. It read:

"We do forbid that a person shall be condemned to death for a trifling offense. But for the correction of the multitude, extreme punishment shall be inflicted according to the nature and extent of the offense."

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[5] Dawson, The Development of Law and Legal Institutions, p. 44.

[6] Granucci, *op. cit.*, p. 845; Furman vs. Georgia, 408 U.S. 238, 242-243; Solem vs. Helm, 463 U.S. 277, 284.

[7] Granucci, *op. cit.*, p. 845; Furman vs. Georgia, 408 U.S. 238, 243.

By 1400, it was well-settled in England that the punishment should be commensurate to the offense. In 1615, in the case of Hodges vs. Humkin, the King's Bench applied Chapter 14 of the Magna Carta to the imprisonment of Hodges for his unseemly speech against the Mayor of Liskereet.[8] Thus, when imprisonment became the normal penal sanction, English law recognized that the sentence should be proportionate to the offense.[9]

While the idea that the punishment should be proportionate to the offense became implanted in English law at an early stage, the penalties for serious offenses were usually harsh. Sir William Blackstone, the great English jurist, described in ghastly detail the penalties being imposed then.

"Of these some are capital, which extend to the life of the offender, and consist generally in being hanged by the neck till dead; though in very atrocious crimes other circumstances of terror, pain or disgrace are superaded: As, in treason of all kinds, being drawn or dragged to the place of execution; in high treason affecting the king's person to the place of execution; in high treason affecting the king's person or government, emboweling alive, beheading and quartering; and in murder, a public dissection. And, in case of any treason committed by a female, the judgment is to be burned alive."[10]

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"Some, though rarely, occasion a mutilation or dismenbering, by cutting off the hands or ears, others fix a lasting stigma on the offender by slitting the nostrils, or branding in the hand or face."[11]

During the reign of King Henry VIII, an Act of Parliament authorized a certain Rouse to be thrown into boiling water and boiled to death for poisoning the family of the Bishop of Rochester.[12]

In 1579, Queen Elizabeth had the right hands of John Stubbs, an author, and William Page, his printer, chopped off for publishing an attack on a marriage that she wanted to contract with a French nobleman.[13]

In 1583, John Whitgift, the Archbishop of Canterbury, converted the High Commission into a permanent ecclesiastical court; and the High Commission began to resort to torture to extract confessions. Sir Robert Beale, a member of the High Commission, resigned in protest over the use of such methods.[14] Late

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[8] Granucci, *op. cit.*, pp. 846-847.

[9] Solem vs. Helm, 463 U.S. 277, 285.

[10] Blackstone, Commentaries on the Laws of England, Book IV, pp. 376-377.

[11] *Ibid., p. 377.*

[12] State vs. Williams, 77 Mo. 310, 312.

[13] Mulligan, 'Cruel and Unusual Punishments: The Proportionality Rule", *Fordham Law Review*, April 1979, Vol. XLVII, p. 640.

[14] Granucci, *op. cit.*, p. 848; Furman vs. Georgia, 408 U.S. 238, 316.

in 1583, he published a manuscript entitled *A Book against Oaths Ministered in the Courts of Ecclesiastical Commission,* in which he condemned the use of torture. As a result, John Whitgift had a "Schedule of Misdeameanors" drawn up against him and presented to the Privy Council. The thirteenth count charged him:

> "He condemneth (without exception of any cause) the racking of grievous offenders as being cruel, barbarous contrary to law, and unto the liberty of English subjects."

Sir Robert Beale was unfazed. He continued his protests against the use of torture. Thus, he originated the idea that cruel methods of punishment are unlawful.[15]

In 1678, Titus Oates, a minister of the Church of England, falsely swore that he was present at a meeting at the White Horse Tavern at which a group of Catholic laymen and two Jesuit priests plotted to assassinate King Charles II, a Protestant, and place his brother James, a Catholic, upon the English throne. As a reult, fifteen Catholics were executed for treason. It turn out that Titus Oates was not even in England on the date the meeting was supposed to have taken place. Titus Oates was convicted of perjury on two counts.[16] He was stripped of all canonincal titles and fined 2,000 marks. He was also ordered to stand upon the pillory before Westminister hall gate for an hour on Monday and Tuesday with an inscription over his head declaring his crime. In addition, he was sentenced to be whipped on Wednesday and Friday. Finally, he was sentenced to stand upon and in the pillory for an hour on April 24, August 9 and 10, and September 2 every year, as long as he lived.[17]

The reign of the Stuart kings was characterized by barbarous punishments. The harsh rule of the Stuart kings ended when James II fled to France. Following the Glorious Revolution, William of Orange ascended to the English Throne. On December 16, 1689, Parliament adopted an Act for declaring the rights and liberties of the subject, and settling the succession of the crown. which is popularly known as the English Bill of Rights of 1689. The tenth clause of the English Bill of Rights of 1689 stated:

> "That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted."[18]

The original draft of February 2, 1689 spoke of illegal punishments. The later draft of February 12, 1689 complained of "illegal and cruel punishments" inflicted during the reign of the Stuart dynasty and then went on to prohibit "cruel and unusual punishments." Thus, the use of the word "unusual" in the final draft seems to be inadvertent.[19]

Despite the enactment of the English Bill of Rights of 1689, the traditional methods of punishment continued to be used. The burning of female criminals

[15] Granucci, *op. cit.*, pp. 848-849.
[16] Ibid., p. 857.
[17] Case of Titus Oakes, 10 How. St. Tr. 1079.
[18] Granucci, *op. cit.*, p. 855; Furman vs. Georgia, 408 U.S. 238, 318.
[19] Granucci, *op. cit.*, p. 855; Furman vs. Georgia, 408 U.S. 238, 318.

continued until the repeal of the penalty in 1790. Male rebels were executed by drawing and quartering until 1814, when disembowelling was eliminated by statute. Beheading and quartering were not abolished until 1870.[20] Thus, it would seem that the tenth clause of English Bill of Rights of 1689 was intended to be a prohibition against the imposition of punishments not authorized by statute and a reiteration of the rule on the proportionality of the penalty to the offense.[21] In fact, barely three months after the approval of the English Bill of Rights of 1689, the House of Lords declared that "a fine of thirty thousand pounds imposed by the court of King's Bench upon the earl of Devon was excessive and exorbitant, against magna charta, the common right of the subject, and the law of the land."[22]

C. America

The first prohibition against cruel punishments in America is found in the Massachusetts Body of Liberties adopted on December 10, 1641.

The year 1634 was characterized by political unrest in Massachusetts. One of the major grievances of the freemen was the lack of fundamental laws limiting the discretion of the magistrates in inflicting punishments. The freemen assembled in a General Court, but the first two committees failed to agree on a draft. A third attempt was made in 1638. In 1639 Rev. Nathaniel Ward, a Puritan minister who was educated at Cambridge and was admitted to the Lincoln's Inn Society before he entered the ministry, submitted a draft. His draft was adopted on December 10, 1641, as the Massachusetts Body of Liberties. Clause 46 of the Massachusetts Body of Liberties read:

> "For bodilie punishments we allow amongs us none that are inhumane, barbarous or cruel."

Sir Robert Beale was well known among Puritan law students and lawyers. It was thus possible that Rev. Nathaniel Ward came across his writings while he was studying in Cambridge.[23]

In May, 1776, a convention of delegates from the counties of Virginia was called to determine whether Virginia should declare its independence from the English crown. Nine days later the convention passed two resolutions. The first instructed the Virginia delegates to the Continental Congress to declare independence from England. The second created a committee to draft a Declaration of Rights. George Mason, a member of the committee, drafted a bill of rights which was adopted with slight changes. Section 9 of the Declaration of Rights stated:

> "That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted."

This was a verbatim copy of the tenth clause of the English Bill of Rights of 1689.

[20] Granucci, *op. cit.*, pp. 855-856.
[21] *Ibid.*, p. 860; Furman vs. Georgia, 408 U.S. 238, 318.
[22] Case of Earl of Devon, 11 How. St. Tr. 133, 136.
[23] Granucci, pp. 850-851.

Seven other states, namely, Delaware, New Hampshire, North Carolina, Maryland, Massachusetts, Pennsylvania, and South Carolina, adopted a similar provision.[24]

The Northwest Ordinance, enacted under the Articles of Confederation, included a prohibition against crue and unusual punishments.[25]

The original text of the Constitution of the United States approved by the Constitutional Convention in 1787 did not contain a Bill of Rights. This sparked a great deal of controversy during the debates for its ratification. In 1789, Congress adopted a Bill of Rights by approving the first Ten Amendments. The Bill of Rights was ratified in 1791.

The Eighth Amendment provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

This was based on Section 9 of the Declaration of Rights of Virginia.[26]

D. The Philippines

After Spain ceded the Philippines to the United States by virtue of the Treaty of Paris, the American colonial forces initially governed the Philippines by virtue of the authority of the President of the United States as commander-in-chief of the Army and Navy. On April 7, 1900, President William McKinley issued his Instructions to the Second Philippine Commission, which directed:

> "Upon every division and branch of the Government of the Philippines, therefore, must be imposed these inviolable rules:
>
> "That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted;"

This was copied verbatim in Section 5 of the Philippine Bill of 1902, approved by the Congress of the United States on July 1, 1902, and in Section 3 of the Autonomy Act, enacted by the Congress of the United States in 1916.

Section 1(19), Article III of the 1935 Constitution provided:

> "Excessive fines shall not be imposed, nor cruel and unusual fines inflicted."

Section 21, Article IV of the 1973 Constitution modified this to read as follows:

> "Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted."

Thus, under this provision, for a punishment to be unconstitutional, it is

[24] *Ibid.*, pp. 839-840; Furman vs. Goergia, 408 U.S. 238, 243.
[25] Furman vs. Georgia, 408 U.S. 238, 244.
[26] Solem vs. Hlem, 463 U.S. 277, 285.

sufficient if it is either cruel or unusual. If it is unusual, it is unconstitutional even if it is not cruel.

On the other hand, Section 19(1), Article III of the 1987 Constitution reads:

> "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua.*"

Thus, this provision introduced three important changes. First, it eliminated the prohibition against unusual punishments. This was intended to make it clear that Congress can innovate. It is intended to allow for the development of penology by permitting Congress to adopt new forms of punishments.[27] Thus, Congress can impose compulsory community service as a novel form of penalty. Second, the provision prohibited degrading penalties also. Third, it qualifiedly abolished the death penalty. It reduced the death penalties already imposed to *reclusion perpetua.* However, it left the door open for Congress to restore it for heinous crimes when there are compelling reasons for its revival.

II. CONCEPT OF CRUEL, DEGRADING, AND INHUMAN PUNISHMENTS

A. Nature of the Penalty

1. General Principles

A. Cruel and Inhuman Punishments

In the seventeenth century the word "cruel" did not have the meaning that it has today. It simply meant "severe" or "hard". The prohibition against cruel punishments in the English Bill of Rights of 1689 thus referred to severe or excessive penalties.

However, George Mason and the framers of the United States Constitution construed the prohibition against cruel and unusual punishments as referring to barbarous penalties. They thus subscribed to the views of Sir Robert Beale and Rev. Nathaniel Ward.[28]

The purpose of Section 19(1), Article III of the 1987 Constitution is to prevent inhuman, barbarous, or torturous punishments.[29] The United States Supreme Court explained its purpose as follows:

> "The basic concept underlying the Eight Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment

[27] Record of the Constitutional Commission, Vol. I, July 17, 1986, pp. 707-708.
[28] Granucci, *op. cit.*, p. 860.
[29] Hermans vs. United States, 163 F2d 228, 237; In re Pinaire, 46 F Supp 113, 113; Rosenberg vs. Carroli, 99 F Supp 630, 632.

stands to assure that this power be exercised within the limits of civilized standards."[30]

For a punishment to be cruel, it must be inhuman and barbarous.[31] It must involve torture or lingering death.[32] A punishment is cruel if it involves unnecessary and wanton infliction of pain.[33] Examples of cruel punishment include burning at the stake, crucifixion, breaking on the wheel, disembowelling, and those inflicted at the whipping post or in the pillory.[34] Chopping the fingers of a thief and cutting the penis of a rapist are prohibited by the Bill of Right.[35] However, fines and imprisonment are not in themselves cruel.[36]

Thus, in explaining the meaning of cruel and unusual punishments, Henry Campbell Black wrote:

> "It was intended to exclude all such barbarous punishments as torture, disemboweling, burning, branding, mutilation, the pillory, and the ducking stool. But it does not apply to the ordinary methods of punishment, such as death by hanging, pecuniary fines, imprisonment, disenfranchisement, or forfeiture of civil rights."[37]

In the land mark case of Weems vs. United States, 217 U.S. 349, the United States Supreme Court struck down as cruel and unusual the penalty of fifteen years of *cadena temporal* imposed upon a disbursing officer in Manila for falsification of a public and official document pursuant to Article 56 of the Penal Code. Service of the penalty involved imprisonment with the convict carrying a chain at the ankle, hanging from the waist, and being employed at hard and painful labor. In declaring the punishment as unconstitutional, the United States Supreme Court observed:

> "It is cruel in its excess of imprisonment and that which accompanies and follows. It is unusual in its character. Its punishments come under the condemnation of the Bill of Rights, both on account of their degree and kind."[38]

The Supreme Court of the Philippines followed this ruling in the case of the United States vs. Pacheco, 18 Phil. 399, 400, which also involved falsification of a public document by a public official.

The Supreme Court, however, refused to follow it in the case of the United States vs. Pico, 18 Phil. 386, which involved a prosecution for murder. The reading of the Supreme Court of the Philippines was that the decision in the case of

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[30] Trop vs. Dulles, 356 U.S. 86, 100.
[31] Weems vs. United States, 217 U.S. 349, 368; United States vs. Borromeo, 23 Phil. 279, 288; Harden vs. Director of Prisons, 81 Phil. 741, 747; People vs. Dionisio, 131 Phil 408, 411; People vs. Camano, 115 SCRA 688, 702; People vs. Garay, 2 ACR 149, 152.
[32] Harden vs. Director of Prisons, 81 Phil. 741, 747; People vs. Camano, 115 SCRA 688, 702; People vs. Garay, 2 ACR 149, 152.
[33] Gregg vs. Georgia, 428 U.S. 153, 173; Estelle vs. Gamble, 429 U.S. 97, 103.
[34] Legarda vs. Valdez, 1 Phil. 146, 149; People vs. De la Cruz, 90 Phil. 902, 908.
[35] Nolledo, The Constitution of the Republic of the Philippines, p. 27.
[36] People vs. De la Cruz, 92 Phil. 902, 908; People vs. Dionisio, 131 Phil. 408, 411.
[37] Black, Handbook of American Constitutional Law, 3rd ed., p. 706.
[38] Weems vs. United States, 217 U.S. 349, 377.

Weems vs. United States, 217 U.S. 349 declared the penalty unconstitutional because it was excessive in comparison to the gravity of the crime committed.[39]

The Supreme Court further pointed out that the decision of United States Supreme Court was based on a wrong translation of the Spanish text of the Penal Code:

> "But the Spanish original is not accurately or correctly rendered by the words 'hard and painful labor.' On this point the court was doubtless led into error by the inaccurate and erroneous rendering of the Philippine Penal Code printed by the Government Printing Office at Washington, in June, 1900, for the Division of Customs and Insular Affairs. In this translation the words *'se emplearon en trabajos duros y penosos'* were rendered as follows: 'They shall be employed in hard and painful labor'. In this connection, however, the English word 'painful' is not synonymous with the Spanish word *'penoso'*. The more usual and important meaning of the Spanish word *'penoso'*, as given by both the 'Diccionario de la Lengua Castellana por la Real Academia Espanola' and the 'Diccionario Enciclopedico de la Lengua Castellana," is *'trabajoso', 'que causa pena o causa gran dificultad'*, (laborious, that which cases hardship or great difficulty)."[40]

On the use of chains, the Supreme Court of the Philippines had this to say:

> "But it must be apparent that while the carrying of a chain in this manner may and undoubtedly does add ignominy and degradation of the principal penalty, the question of its painfulness, physical painfulness, must depend on the kind of chain used for this purpose. While the use of chains has fallen into disuse under the American occupation of these Islands, most of the members of this court have seen and handled chains such as were formerly in use in the Spanish prisons, and we do not think that the carrying of a chain of the size and weight and shape of those formerly employed necessarily resulted in the infliction of physical pain."[41]

b. Degrading Punishments

The word "degrading" means "reviling; holding one up to public obloquy; lowering a person in the estimation of the public, exposing to disgrace, dishonor, or contempt."[42] Thus, a penalty should not unnecessarily humiliate the convict. As Justice William Brennan, Jr. pointed out, even the vilest criminal remains a human being possessed of common human dignity.[43] Requiring a prostitute to go naked in public or a thief to wear a stimagtizing emblem of his calling is unconstitutional.[44] Likewise, branding a criminal violates the prohibition against degrading punishments.

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[39] United States vs. Pico, 18 Phil. 386, 390.
[40] *Ibid.*, p. 392.
[41] *Ibid.*, pp. 393-394.
[42] Black's Law Dictionary, 5th ed., p. 381.
[43] Concurring opinion of Justice William Brennan in Furman vs. Georgia, 408 U.S. 238, 273.
[44] Cruz, Constitutional Law, 1984 ed., p. 292.

c. **Progressive Standards of Decency**

The concept of the constitutional prohibition against cruel, degrading, and inhuman punishments in not static but is progressive. Its meaning depends on the evolving standards of decency that mark the progress of a maturing society.[45] This principle was first laid down in the case of Weems vs. United States, 217 U.S. 349, 378, when the United States Supreme Court said:

> "The clause of the Constitution, in the opinion of the commentators, may be therefore progressive, and is not fastened to the obsolete, but may acquire meaning as public opinion becomes enlightened by a humane justice."

Thus, a penalty which was permissible before may not necessarily be permissible later.

However, great weight should be given to the judgment of Congress in prescribing the penalty for an offense. Since the members of Congress are the elected representatives of the people, penal statutes enacted by Congress presumably reflect the standards of decency of the country.

2. **Specific Penalties**

a. **Banishment**

In its first decision involving the prohibition against cruel and unusual punishments, the Supreme Court upheld the validity of banishment as a penalty. If imprisonment is indisputably valid, *a fortiori* banishment is valid. It entails a lesser restriction upon liberty than that involved in imprisonment. Banishment consists only in the prohibition against entering the place designated in the decision. The convict is free to go to any other place.[46]

b. **Deportation**

It is well settled that the deportation of an alien does not violate the constitutional ban against cruel and unusual punishments. Deportation is not a penalty for an offense. it is a protective measure taken by a state against an alien because his presence within its territory is inimical to its best interest.[47]

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[45] Trop vs. Dulles, 356 U.S. 86, 101; Gregg vs. Georgia, 428 U.S. 153, 173; Woodson vs. North Carolina, 428 U.S. 280, 301; Estelle vs. Gamble, 429 U.S. 97, 102.

[46] Legarda vs. Valdez, 1 Phil. 146, 148.

[47] Costanzo vs. Tillinghast, 56 F2d 566, 567; Soewapadji vs. Wixon, 157 F2d 289, 290; United States vs. Sahli, 216 F2d 33, 40; Burr vs. Immigration & Naturalization Service, 350 F2d 87, 91; Delgado vs. Immigration & Naturalization Service, 384 F2d 360, 360; Cortez vs. Immigration & Naturalization Service, 395 F2d 965, 967; Rochu vs. Immigration & Naturalization Service; 414 F2d 792, 798; Bufalino vs. Immigration & Naturalization Service; 473 F2d 728, 739; Santelisen vs. immigration & Naturalization Service, 491 F2d 1254, 1255-1256; Oliver vs. United States Department of Justice, Immigration & Naturalization Service, 517 F2d 693, 698; Le Tourneur vs. Immigration & Naturalization Service, 538 F2d 1368, 1370; Bassett vs. United States Immigration & Natraulization Service, 581 F2d 1385, 1387.

In an isolated decision, however, United States District Court ruled that an Italian convicted of selling marijuana could not be deported under the peculiar facts in that case, beucase he was the only source of financial support of his family, had no close relative in Italy, and had otherwise conducted himself in an exemplary manner.[48] This is a freak decision. It flies in the teeth of the settled jurisprudence holding the opposite.

Thus, the decision of the Supreme Court rendered in 1912 ruling that in the absence of exceptionally strong and compelling reasons, the deportation of an alien for a second conviction for smoking opium was an excessive penalty, because it would ruin his business and separate him from his family, should be considered as erroenous and obsolete.[49] It failed to take into consideration the fact that deportation is not intended to be a penalty for an offense.

c. **Loss of Citizenship**

In a landmark decision, the United States Supreme Court ruled that an American citizen could not be stripped of his citizenship as a penalty for being a deserter in war. The court explained at length:

> "We believe as did Chief Judge Clark in the court below, that the use of denationalization as a punishment is barred by the Eighth Amendment. There may be involved no physical mistreatment, no primitive torture. Thereis instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself. While any one country may accord him some rights, and presumably as long as he remained in this country he would enjoy the limited rights of an alien, no country need to do so because he is stateless. Furthermore, his enjoyment of even the limited rights of an alien might be subject to termination at any time by reason of his deportation. In short, the expatriate has lost the right to have rights."[50]

This decision is relevant to the Philippines, because under Section 1(6) of Commonwealth Act No. 63, as amended, Philippine citizenship may be lost in case one is declared a deserter of the Armed Forces of the Philippines in time of war.

d. **Loss of Suffrage**

Depriving a convict of suffrage does not violate the Bill of Rights, because it is not a penalty. It is a non-penal exercise of the power of the state of regulate suffrage.[51] The 1987 Constitution impliedly recognizes the validity of this rule,

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[48] Lieggi vs. United States Immigration & Naturalization Service, 389 F Supp-12, 21.

[49] United States vs. Lim Sing, 23 Phil. 424, 433.

[50] Trop vs. Dulles, 356 U.S. 86, 101-102.

[51] Green vs. Board of Elections of City of New York 380 F2d 445, 450; Kronlund vs. Honstein 327 F Supp 71, 73; Fincher vs. Scott, 352 F Supp 117, 120, Thiess vs. State Administrative Board of Election Laws, 387 F Supp 1038, 1042, Harper vs. Commonwealth, 19 SW 737, 738.

for it empowers Congress to impose disqualifications from the exercise of the right of suffrage. Section 1, Article V of the 1987 Constitution reads in part:

> "Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election."

e. Hard Labor

Hard labor is not in itself a cruel penalty.[52] Likewise, the Bill of Rights recognizes this as a valid penalty, for servitude can be imposed as a punishment for a crime. Section 18(2), Article III of the 1987 Constitution states:

> "No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have duly convicted."

f. Whipping

American decisions on the validity of whipping as a penalty are conflicting. One line of decisions holds that it is not in itself unconstitutional.[53] Another line of decisions consider it violative of contemporary standards of decency and human dignity.[54] The latter represents the better rule.

g. Sterilization

American decisions on the validity of a law directing the sterlization of criminals are conflicting. Some decisions sustain its validity for different reasons.[55] in the case of State vs. Feilen, 126 P 75, the Supreme Court of Washington simply deferred to the judgment of the legislature. This is begging the question. For its part, the Supreme Court of Oklahoma justified it in Skimmer vs. State, 115 P2d 123, as a measure intended to promote the general welfare. The court considered it a eugenic measure, because habitual criminals were likely to beget children who would also become criminals. The validity of this reasoning is open to question. The inclination to commit crimes is not a physical trait like blonde hair or blue eyes that may be inherited

On the other hand, two United States Disrict Courts have ruled that the sterilization of criminals conflicts with the Bill of Rights.[56] In Davis vs. Berry, 216F

[52] Pervear vs. Massachusetts, 5 Wall. 475, 480; State vs. Griffin, 129 SE 410, 412-413; State vs. Bolin, 157 SE 79, 81; State vs. Huffsteller, 49 SE 2d 585, 587; McLanore vs. State 186 SE 2d 250, 254; Durham vs. State 18 SW 74, 76, Clampitt vs. United States, 89 SW 666, 668.

[53] State vs. Cannon, 190 A2d 514, 518-519; Balser vs. State, 195 A2d 757, 758; Jackson vs. Bishop, 268 F Supp 804, 814.

[54] Jackson vs. Bishop, 404 F2d 571, 597; Nelson vs. Heyne, 355 F Supp 451, 454.

[55] State vs. Feilen, 126 P 75, 76; Skinner vs. State, 115 P2d 123, 126; In re Opinion of the Justices, 162 So 123, 128.

[56] Davis vs. Berry, 216 F413, 416; Micle vs. Henrieks, 262 F 687, 690.

413, 416, the United States District Court reasoned out:

> "The physical suffering may not be so great, but that is not the only test of cruel punishment; the humiliation, the degradation, the mental suffering are always present and known by all the public, and will follow him wheresoever he may go. This belongs to the Dark Ages."

This represents the better rule. While the surgical operation to sterilize a criminal may in itself entail minimal pain, the consequence of the penalty is cruel and inhuman. It destroys his right to procreate, a basic human right.

h. Solitary Confinement

Solitary confinement in itself is not an unconstitutional penalty for being cruel and unusual.[57] Indeed, this is one of the means by which the warden can impose discipline in the penitentiary.

However, solitary confinement can degenerate into a cruel punishment under certain conditions.[58] One of the important factors to consider is the length of the solitary confinement.[59] The United States Supreme Court painted in horrifying detail and adverse consequences of prolonged solitary confinement:

> "A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide, while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any consequent service to the community."[60]

If is difficult to lay down a hard-and-fast rule menchanically indicating how long solitary confinement may last before it becomes curel and inhuman. In one case, a United States District Court allowed solitary confinement for two months.[61] In another case, a United States District Court gave its sanction to solitary confinement for more than four hundred days.[62]

Among the conditions that should be considered in determining whether solitary confinement is cruel and degrading are the physical conditions surrounding the confinement, the reason for the confinement, and the control of the inmate over his status of confinement.[63] Time and again, American courts have held that solitary confinement violated the constitutional prohibition against cruel and unusual punishments where the inmate was locked up with no clothing,

[57] McElvaine vs. Brush, 142 U.S. 155, 160; Terreza vs. Brush, 142 U.S. 160, 161; Hutto vs. Finney 437 U.S. 678, 686; Kostal vs. Tinsley, 337 F2d 845, 846; Graham vs. Willingham, 384 F2d 367, 368; Ford vs. Board of Managers of New Jersey State Prison, 407 F2d 937, 940; Burns vs. Swenson, 430 F2d 771; 777; Adams vs. Pate, 445 F2d 105, 108.

[58] Holt vs. Saver, 300 F. Supp 825, 827; Gates vs. Collier, 349 F Supp 881, 894; Wilkinson vs. Skinner, 312 NE 2d 158, 163.

[59] Hutto vs. Finney, 437 U.S. 678, 686; Kelly vs. Brewer, 378 F Supp 447, 453; Wilkinson vs. Skinner, 312 NE 2d 158, 163.

[60] Ex Parte Medley, 134 U.S. 160, 168.

[61] Johnson vs. Anderson, 370 F Supp 1373, 1391.

[62] Knuckles vs. Prasse, 302 F Supp 1036, 1061.

[63] Kelly vs. Brewer, 378 F Supp 447, 453.

no bedding, no eating utensils, no provision for personal hygiene, and no adequate lighting.[64]

Accordingly, in the case of LaReau vs. MacDougall, 473 F2d 974, 978, the United States Circuit Court of Appeals held:

> "We cannot approve of threatening an inmate's sanity and severing his contacts with reality by placing him in a dark cell almost continuously day and night. Nor can we find any justification for denying a man the ability to maintain his personal cleanliness. What is most offensive to this Court was the use of the 'Chinese toilet.' Causing a man to live, eat and perhaps sleep in close confines with his own human waste is too debasing and degrading to be permitted."

In the case of Sison vs. Enrile, G.R. No. 65945, June 21, 1984 (unreported), the Supreme Court ordered that Jose Ma. Sison, who was facing criminal charges for subversion and has been kept under solitary confinement for years, be kept in a detention area where he could have the opportunity to associate with other persons under detention. Justice Vicente Abad Santos advanced the view that under the circumstances the solitary confinement of Jose Ma. Sison constituted cruel and unusual punishment.

Three points can be drawn from this resoltuion of the Supreme Court. First, the prohibition against cruel and inhuman punishments applies even to inmates who are not serving sentence because of final conviction but are under preventive detention during the pendency of their case. Second, solitary confinement, if unduly prolonged, is cruel and inhuman. Third, prolonged solitary confinement cannot be justified on the ground that it was necessary to prevent the inmate from escaping and that he might contaminate other inmates with his political philosophy.

i. Death

As early as 1880, the United States Supreme Court held that the death penalty is not in itself cruel and unsual.[65] However, the constitutionality of the death penalty has been challenged again in recent times.

In the case of Furman vs. Georgia, 408 U.S. 238, a five-to-four majority of the United States Supreme Court declared the death penalty unconstitutional under the peculiar circumstances in that case. Justices William Douglas, Potter Stewart, and Byron White condemned the discriminatory way in which the death penalty was being imposed in Georgia on the basis of race, religion, wealth, social position, and class. It was the minorities like the Negroes, the poor, and members of unpopular groups who were invariably being sentenced to death.[66] For Justices

[64] Wright vs. McMann. 387 F2d 519, 526; Gates vs. Collier, 501 F2d 1291, 1305; Jordan vs. Fitzharris, 257 F Supp 674, 681; Hancock vs. Avery, 301 F Supp 786, 792; Keely vs. Davis 378 F Supp 447, 453.

[65] In re Kemmaler, 136 U.S. 436, 447.

[66] Furman vs. Georgia, 408 U.S. 238, 242, 309-310, and 313.

William Brennan, Jr. and Thurgood Marshall, the death penalty was in itself cruel and unusual.[67]

The question of whether or not the death penalty is in itself cruel and unusual had to be reserved for the future. Eventually, by a seven-to-two vote, the United States Supreme Court ruled that the death penalty is not in itself cruel and unusual.[68]

In the Philippines, the Supreme Court has uniformly upheld the constitutionality of the death penalty. In the case of People vs. Ramos 94 SCRA 842, 851, the Supreme Court relied upon the decision in the case of Ex Parte Kemmler, 136 U.S. 436. In the cases of People vs. Camano, 115 SCRA 688, 702; People vs. Pudo, 133 SCRA 1, 13; and People vs. Marcos, 147 SCRA 204, the Supreme Court pointed out that for a penalty to be cruel it must involved torture or lingering death. In the case of People vs. Villanueva, 128 SCRA 488, 502, the Supreme Court reasoned out:

> "The Constitution itself validates the imposition of the death penalty whenever applicable under the law because it vests in the Supreme Court the power of review over all criminal cases where the penalty imposed is death or life imprisonment. (Article X, Section 5, 1973 Constitution.)"

When the constitutional convention was drafting the 1935 Constitution, Delegate Manuel Lim proposed the abolition of the death penalty. His proposal was defeated.[69] In the face of the inclusion in Section 1(19), Article III of the 1935 Constitution of the prohibition against cruel and unusual punishments, the defeat of the proposal of Delegate Manuel Lim meant that the delegates understood that the death penalty is not in itself a cruel and unusual punishment.

Likewise, the delegates to the constitutional convention that drafted the 1973 Constitution understood that the prohibition against cruel or unusual punishment did not forbid the imposition of the death penalty.[70]

Indeed, three provisions of the 1973 Constitution implicitly recognized the validity of the death penalty. Section 1, Article IV of the 1973 Constitution provided:

> "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."

Section 18, Article IV of the 1973 Constitution read in part:

> "All persons except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties."

[67] *Ibid.*, pp. 286 and 418.

[68] Gregg vs. Georgia, 428 U.S. 153, 169; Proffitt vs. Florida, 428 U.S. 242, 247; Jurek vs. Texas, 428 U.S. 262, 268.

[69] Francisco, Journal of the Constitutional Convention of the Philippines, Vol. III, No. 91, November 19, 1934, pp. 1060-1061.

[70] Bernas, Philippine Constitutional Law, p. 432.

Section 5, Article X of the 1973 Constitution stated:

> "The Supreme Court shall have the following powers:
>
> xxx
>
> "(2) Review and revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in—
>
> xxx
>
> "(d) All cases in which the penalty imposed is death or life imprisonment."

The same observation may be made of the 1987 Constitution. In fact, Section 19(1), Article III of the 1987 Constitution authorizes Congress to impose the death penalty upon heinous crimes for compelling reasons.

While the death penalty is not in itself cruel, degrading, nor inhuman, to comply with the Bill of Rights, the manner of execution should not be cruel, degrading or inhuman. Death is qualitatively different from all other penalties. Once implemented, it is final and irreversible. The imposition of the death penalty somehow always involves some degree of pain and some form of terror upon the convict. The desire to live is one of the strongest human inclinations.

Shooting is a lawful method of executing a convict.[71] The same is true of electrocution.[72] Executing a convict by the administration of lethal gas is also legal.[73] This may be done by filling as gas chamber in which the convict is confined with lethal gas[74] or by injecting lethal gas into the veins of the convict.[75]

What has recently become controversial is execution by hanging. Most American decisions have upheld the validity of execution by hanging.[76]

Hanging requires a certain skill on the part of the executioner. It is important that the neck of the convict be snapped broken when the trap door is sprung. Otherwise, death will be excruciatingly painful while the convict writhes from the noose.[77]

In a 1981 decision, the Supreme Court of Washington ruled that hanging was an unconstitutional method of execution. First, the court invoked the evolving standards of decency.:

> "Although prior to 1900 hanging was the nearly universal form of execution, at the present time in the English speaking parts of the world, only four jurisdictions provide for execution by hanging. Washington, Delaware, Montana and South Africa. See M. Gardner, *Executions and Indignities: An Eighth Amendment Assessment of the Methods of Inflicting Capital Punishment*, 39 Ohio St. L.J. 96, 119 (1978), NAACP Legal Defense Fund, *Death Row U.S.A.* (June 30 1980), *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 346 (1972) (Brennan, J., concurring). These facts alone indicate execution by hanging can hardly be compatible with the evolving standards of decency that mark the progress of a maturing society."[78]

[71] Witherson vs. People 99 U.S. 130, 135.
[72] Ex Parte Kemmler, 136 U.S. 436, 447; McElvaine vs. Brush, 142 U.S. 155, 158.
[73] Calhoun vs. State 468 A2d 45, 70; Hernandez vs. State, 32 P2d 18, 25; People vs. Daugherty, 256 P2d 911, 923; In re Anderson, 447 P2d 117, 130; Duisen vs. State, 441 SC 2d 688, 693.
[74] Gray vs. Lucas, 710 F2d 1048, 1060-1061; State vs. Gee John, 211 P 676, 681.
[75] Ex Parte Granviel, 561 SW 2d 503, 510; Earvin vs. State, 582 SW 2d 794, 799.
[76] State vs. Burris, 190 NW 38, 43; State vs. Butchek, 253 P 367, 370; State vs. Kilpatrick, 439 P2d 99, 110; State vs. Coleman, 605 P2d 1000, 1059.
[77] Garcher, "Execution and Indignities – An Eighth Amendment Assessment of Methods of Inflicting Capital Punishment," *Ohio State Law Journal*, Vol. 39, No. 1, 1978, p. 120.

Second, the court pointed out that hanging involves lingering death by describing in horrifying detail actual executions.

A warden of San Quentin Prison who had participated in sixty hangings described his first hanging:

> "The man hit bottom and I observed that he was fighting by pulling on the straps, wheezing, whistling, trying to get air, and that blood was oozing through his black cap. I observed also that he urinated, defecated, and droppings fell to the floor, and the stench was terrible. I also saw witnesses pass out and have to be carried from the witness room. Some of them threw up . . .
>
> "When the man was taken down and his black cap removed, Duffy testified that 'big hunks of flesh were torn off' the side of his face where the noose had been, 'his eyes were popped,' his tongue was 'swollen and hanging from his mouth,' and he had turned purple."[79]

Then, the court cited the newspaper accounts of executions in Washington during the twentieth century. The newspaper accounts reported that while death came in four minutes in one case, in several cases it took twenty minutes or more.[80] The court went on to describe an execution that lasted more than wenty-two minutes:

> "The unfortunate man strangled to death as he pleaded pitifully with the attendants to take him up and spring the drop again. So conscious was he throughout his agony that he was able to unbuckle the straps that bound his arms and drop the straps to the ground."[81]

A former employee of the State Penitentiary at Walla Walla related another execution he witnessed:

> "He recalls that, because the rope was left too long, Rio had his neck cut badly and was partially decapitated when the trap door was opened. Nineteen minutes later Rio was pronounced dead."[82]

Since hanging involves slow, agonizing death, it should be considered forbidden by the Bill of Rights.

In any event, there can be no dispute that other methods of execution like beheading, burning, and crucifixion are unconstitutional.

Unnecessary mutilation of the bodies of convicts, such as, by drawing and quartering, affronts human dignity.[83] It is therefore banned by the Bill of Rights.

[78] State vs. Frampton, 627 P2d 922, 934.
[79] *Ibid.*, p. 935.
[80] *Ibid.*, p. 936.
[81] *Loc. cit.*
[82] *Loc. cit.*
[83] Gardner, *op. cit.*, p. 108.

A novel issue cropped up in the case of Louisiana ex rel. Francis vs. Resweber, 329 U.S. 459, 464. The petitioner in that case was sentenced to death by electrocution. At the appointed time, when the executioner threw on the switch, the petitioner did not die. The electric chair malfunctioned because of mechanical trouble. Describing the mental anguish he went through, the petitioner grabbed at this opportunity to argue that to re-schedule his execution would amount to inflicting a cruel and unusual punishment upon him.

The United States Supreme Court brushed aside the argument of the petitioner, saying:

> "Petitioner's sugguestion is that because he once underwent the psychological strain of preparation for electrocution, now to require him to undergo this preparation again subjects him to a lingering or cruel and unusual punishment. Even the fact that petitioner has already been subjected to a current of electricity does not make his subsequent execution any more cruel in the constitutional sense than any other execution. The cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely. The face that an unforeseeable accident prevented the prompt consummation of the sentence cannot, it seems to us, add an element of cruelty to a subsequent execution. There is no purpose to inflict unnecessary pain nor any unnecessary pain involved in the proposed execution. The situation of the unfortunate victim of this accident is just as though he had suffered the identical amount of mental anguish and physical pain in any other occurrence, such as, for example a fire in the cell block."[84]

B. Proportionality between the Offense and the Penalty

1. Need for Proportionality

Even if a penalty in itself may not be cruel, if it is disproportionate to the offense, it may constitute a cruel punishment.[85]

2. Meaning of Excessive Penalty

Traditionally, it has been said that in order that a penalty may be considered cruel, it must be so disproportionate to the offense as to shock the moral sense of all reasonable men as to what is right and proper under the circumstances.[86] Recent American decisions, however, have stressed that a punishment should not involve unnecessary and wanton infliction of pain.[87] Thus, a penalty is excessive if it makes no measurable contribution to acceptable goals of punishment and is nothing more than the purposeless and needless infliction of pain and suffering.[88]

[84] Lousiana ex rel. Francis vs. Resweber, 329 U.S. 459, 464.
[85] Weems vs. United States, 217 U.S. 349, 368; United States vs. Borromeo, 23 Phil. 279, 289;
[86] United States vs. Borromeo, 23 Phil.279, 289; United States vs. Ang Y, 26 Phil. 598, 600, people vs. De la Cruz 92 Phil. 602, 608; People vs. Estoista, 93 Phil. 647, 655; People vs. Dionisio, 131 Phil. 408, 411.
[87] Furman vs. Georgia, 428 U.S. 153, 173; Estelle vs. Gamble, 429 U.S. 97, 103.
[88] Gregg vs. Georgia, 428 U.S. 153, 173; Coker vs. Georgia, 433 U.S. 584, 592.

3. Factors to be Considered

Several factors should be considered in determining whether a penalty is excessive, namely, the nature and the gravity of the offense, the harshness of the penalty, the moral depravity of the criminal, the severity of the penalty for the offense in question as compared with the penalties for other offenses,[89] the attitude of the public, [90] and the legislative purpose behind the punishment.[91]

Thus, the harm caused by an offense because of its nature and gravity should be considered.

Likewise, the Supreme Court has held that an additional penalty imposed upon habitual delinquents by Article 63 of the Revised Penal Code does not constitute cruel and inhuman punishment.[92] The Supreme Court reasoned out:

> "They are not punished the second time for the earlier offense but the repetition of criminal conduct aggravates their guilt and justifies heavier penalties when they are again convicted."[93]

The rule that in determining whether a penalty for a particular offense is excessive the penalties for other offenses shouldbe considered was first laid down in the case of Weems vs. United States, 217 U.S. 349. In striking down the sentence of imprisonment for fifteen years with hard labor and a fine of four thousand pesetas for falsification of a public document, the United State Supreme Court observed:

> "There are degrees of homicide that are not punished so severely, nor are the following crimes, misprision of treason, inciting to rebellion, conspiracy to destroy the government by force, recruiting soldiers in the United States to fight against the United States, forgery of letters patent, forgery of bonds and other instruments for the purpose of defrauding the United States, robbery, larceny, and other crimes."[94]

Accordingly, the United States Circuit Court of Appeals ruled that the penalty of imprisonment for the rest of his life imposed upon a criminal for perjury because of his prior conviction for issuing a check for fifty dollars with insuffi-

[89] Solem vs. Helm, 463 U.S. 277, 292; In re Maston, 109 Cal. Rptr. 164, 166; People vs. Morgan, 111 Cal. Rptr. 548, 550; People vs. Wengo, 113 Cal. Rptr. 695, 696; People vs. Romo, 114 Cal. Rptr. 289, 296-297; People vs. Keogh, 120 Cal. Rptr. 817, 823; In re Wells, 121 Cal. Rptr. 23, 26-27; Bosco vs. Justice Court of the Exeter-Farmersaville Judicial District, 143 Cal. Rptr., 468, 472; Smith vs. Municipal Court of the Country of the State of California, Country of San Joaquin, 144 Cal. Rptr. 504, 506; Commonwealth vs. Jackson, 344 NE 2d 166, 171-172; State vs. Gibson, 553 P2d 131, 136.
[90] Coker vs. Georgia, 433 U.S. 584, 592.
[91] Davis vs. Davis, 585 F2d 1226, 1231; Commonwealth vs. Jackson, 344 NE 2d 166, 171-172; People vs. Venable, 361NYS 2d 398, 403; State vs. Gibson, 553 P2d 131, 136.
[92] People vs. Silvestre, 52 Phil. 801, 803; People vs. Montera, 55 Phil. 933, 933; People vs. Sy Chay, 64 Phil. 900, 905; People vs. De la Pena, 66 Phil. 451, 454; People vs. Evangelista, 69 Phil. 583, 584.
[93] People vs. Madrano, 53 Phil. 860, 862.
[94] Weems vs. United States, 217 U.S. 349, 380.

cient funds and transporting across state lines forged checks in the amount of one hundred forty dollars, was excessive, since only rape, kidnapping, and first degree murder were similarly punished, the penalty for second degree murder was imprisonment for ten to eighteen years, and the penalty for robbery was imprisonment for ten years.[95]

Similarly, the penalty of imprisonment for ten years for possession of marijuana and imprisonment for twwenty years for selling marijuana was considered unconstitutional, because the penalties for more serious offenses were lighter. Kidnapping, armed robbery, burglary, rape, and voluntary manslaughter were punished with imprisonment for four to seven years, while assault with a deadly weapon was penalized with imprisonment from two to five years.[96]

The Supreme Court of California considered life imprisonment for a second offense of indecent exposure as excessive, because it was a nonviolent crime and caused minimlal harm, while the penalty for manslaughter was imprisonment for fifteen years only.[97]

Along the same line, if the penalty for a lesser offense is greater than the penalty for a greater offense, which includes that lesser offense, it is unconstitutional.[98] Thus, the Supreme Court of Oregon declared the penalty of life imprisonment for assault with intent to commit rape unconstitutional, since the penalty for rape was imprisonment for twenty years only.[99] Similarly, the Supreme Court of Indiana struck down for being excessive the penalty for ordinary robbery of imprisonment from ten to twenty-five years when the penalty for armed robbery was imprisonment from ten to twenty years.[100] Likewise, a United States District Court considered the penalty of imprisonment for twenty years for simple assault as disproportionate, since the penalty for assault with intent to commit murder was imprisonment for fifteen years.[101]

In the light of the rule on proportionality, Executive Order No. 187 (1987) is controversial.

Originally, under Article 135 of the Revised Penal Code, the penalty for rebellion was imprisonment for six years and one day and a fine of not more than twenty thousand pesos for the leaders and imprisonment for six years and one day to eight years for the participants. Former President Ferdinand Marcos issued Presidential Decree No. 1996, which raised the penalty to *reclusion perpetua* to death for the leaders and imprisonment from fourteen years, eight months and *reclusion temporal* in its medium period, that is, imprisonment for one day to seventeen years and four months and a fine of not more than twenty thousand pesos for the followers. President Corazon Aquino issued Executive Order No.

[95] Harte vs. Coiver, 483 F2d 136, 142.
[96] Douney vs. Perini, 518 F2d 1288, 1291-1292.
[97] In re Lynch, 503 P2d 921, 935.
[98] Hobbs vs. State, 252 NE 2d 498, 501.
[99] Cannon vs. Gladden, 281 P 2d 233, 235.
[100] Dembowski vs. State, 240 NE 2d 815, 817.
[101] Roberts vs. Collins, 404 F Supp 119, 124.

187, which restored the original penalty under Article 135 of the Revised Penal Code.

Rebellion may involve massive destruction of property and massacres. Because of the reduction of the penalty for rebellion, the penalties for the following offenses are vulnerable to attack for being excessive, since the following offenses are clearly less serious than rebellion:

	Offense	Penalty	Statute
a.	Mutilation	*Reclusion temporal* to *reclusion perpetua*	Art. 262, Revised Penal Code.
b.	Theft of a letter or coconuts worth more than fifty pesos.	*Prision mayor* in its medium period to *reclusion temporal* in its minimum period.	Arts. 311 and 310, Revised Penal Code, is amended by Republic Act No. 120.
c.	Swindling if the amount involved exceeds twelve thousand pesos.	*Reclusion temporal*	Art. 315, Revised Penal Code, as amended by Presidential Decree No. 818.
d.	Stealing a motor vehicle without the act of violence against persons or force upon things.	Imprisonment from fourteen years and eight months to seventeen years and four months.	Sec. 14, Republic Act No. 6539.
e.	Cattle rustling if committed without violence against its persons or force upon things.	*Prision mayor* in its maximum period to *reclusion temporal* in its *medium* period.	Sec. 8, Presidential Decree No. 533.
f.	Possession of heroin or cocaine.	Imprisonment for twelve years and one day to twenty years and a fine from twelve thousand persos to twenty thousand pesos.	Sec. 8, Dangerous Drugs Act, as amended by Batas Pambansa Blg. 179.
g.	Selling a stick of marijuana.	Life imprisonment to death and a fine from twenty thousand pesos to thirty thousand pesos.	Sec. 4, Dangerous Drugs Act, as amended by Presidential Decree No. 1675.

Another factor that should be considered in determining whether or not a penalty is excessive is the attitude of the public. The United States Supreme Court explained this factor in the following words:

> "To this end, attention must be given to the public attitudes concerning a particular sentence – history and precedent, legislative attitudes, and the response of juries reflected in their sentencing decisions are to be consulted."[102]

The legislative purpose for imposing a particular penalty should also be considered in determining whether or not a certain penalty is excessive. This usually refers to the intention to deter the commission of a particular offense because of the great harm it is perceived to inflict upon society.

Thus, the Supreme Court upheld the sentence of *prision correcional* in its medium period, that is, imprisonment for two years, eleven months, and eleven days, for possession of gambling paraphernalia because of the need to suppress an evil that is undermining the social, moral, and economic growth of the country.[103] Likewise, the Supreme Court sustained a fine of five thousand pesos for selling milk for ten centavos higher than the price fixed by the government because of the national policy against profiteering in foodstuffs affecting public health, the need to stop speculation in such essential commodities, and the necessity of safeguarding public welfare in times of scarcity of food. The gain obtained by the measure should not be the only factor to be considered in determining whether or not the penalty is excessive.[104]

Imprisonment from five to ten years for illegal possession of firearms was considered valid because of rampant lawlessness involving crimes against property, persons, and national security directly traceable to the proliferation of unlicensed firearms.[105]

Likewise, the Supreme Court affirmed the imprisonment for one month imposed upon a convict for illegally accepting bets on a horse race because of the legislative intent to stamp out the scourge of gambling.[106]

4. *Judicial Review of Legislative Discretion*

In comparing the penalty for one offense with the penalty for another offense, it is easy to conclude that one penalty is excessive when the examples given are clear-cut. Thus, stealing one million pesos is more serious than stealing ten pesos. Attempted murder is more serious than the infliction of serious physical injuries. Robbery is more serious than theft. The criminal liability of an accessory is less than that of a principal. It is easy to compare smoking inseide a theater with the killing of a human being. However, the exercise by the legislature of its

[102] Coker vs. Gerogia, 433 U.S. 584, 592.
[103] People vs. Punto, 68 Phil. 481, 482.
[104] People vs. Cruz, 92 Phil. 902, 910; People vs. Chu Chi, 92 Phil. 977, 979; People vs.Tiu Ua, 96 Phil. 738, 742; Ayuda vs. People, G.R. No. L-6149. April 12, 1954.
[105] People vs. Estoista, 93 Phil. 647, 654; People vs. Melgar, 100 Phil. 298, 301.
[106] People vs. Dionisio, 131 Phil. 408, 411-412.

discretion in fixing the penalty for different offenses rarely give rise to such cut-and-dried examples. How about comparing arson with kidnapping, rape with robbery, obscenity with falsification of a public document?

When a penalty imposed by law is being challenged on the ground that it is excessive, it should be kept in mind that the determination of the penalty is primarily a legislative function. What penalty is adequate for a given offense is a matter of broad legislative discretion with which the courts should not interfere unless the penalty is clearly cruel, degrading, or inhuman.[107] On this precise point, the United States Supreme Court noted:

> "The function of the legislature is primary, its exercise fortified by presumptions of right and legality, and is not to be interfered with lightly, nor by any judicial conception of its wisdom or propriety."[108]

Indeed, when a court reviews the penalty imposed by law for a particular offense, the role of the court is limited to determining whether or not the legislature has exceeded the permissible constitutional limits. The court should not substtitute its discretion for that of the legislature. As the elected representatives of the people, the members of Congress presumably represent the attitude of the public towards the penalty for a prescribed offense and the standard of moral values in the community.

In comparing the relative severity of the penalties imposed for different offenses, absolute symmetry is not required. It is sufficient that the penalties for comparable offenses are within a reasonable range of each other.[109]

5. *Specific Penalties*

a. *Fines*

Rarely has the fine imposed for a penalty been declared unconstitutional. Thus, a fine of three hundred pesos[110] or even up to five hundred pesos[111] for illegal possession of opium was adjuged valid. Likewise, a fine of ₱3,430.01 imposed upon a treasurer who embezzled ₱6,860.03 was upheld in view of the nature of the offense, since Article 217 of the Revised Penal Code fixed the fine at one-half of the funds misappropriated.[112]

[107] Solem vs. Helm, 463 U.S. 277, 290; Schultz vs. Zerbst, 73 F2d 668, 670; Bailey vs. United States, 74 F2d 451, 452-453; Moore vs. Aderhold, 108 F2d 729, 732; United States vs. Sorcey, 151 F2d 899, 902; Edwards vs. United States, 206 F2d 855, 856; State vs. Smith, 276 A2d 369, 373; State vs. Seraphine, 62 NW 2d 403, 405; Steeves vs. State, 178 NW 2d 723, 726; King vs. State, 130 P2d 105, 108; State vs. Freitas, 602 P2d 914, 919.
[108] Weems vs. United States, 217 U.S. 349, 379.
[109] People vs. Gardner, 128 Cal. Rptr. 101, 107; Bosco vs. Justice Court of the Exeter-Farmersville Judicial District, 143 Cal. Rptr. 468, 476.
[110] United States vs. Ang Y. 26 Phil. 598, 600.
[111] United States vs. Jao Li Sing, 37 Phil. 211, 214-215.
[112] People vs. Pecano, 90 phil. 860, 862.

However, in state vs. Ross, 104 P 596, 604, the Suoreme Court of Oregon declared a fine of ₱$576,853.74 imposed upon a criminal convicted for stealing $288,426.87 as excessive. The fine was pegged at double the value of the amount stolen, and the sentence provided for subsidiary imprisonment of the convict at the rate of one day for every two dillars of the fine should he fail to pay the fine.

On the other hand, in Waters-Pierce Oil Company vs. Texas, 212 U.S. 86, the United States Supreme Court sustained the assessment of a fine of $1,549,500 against an oil company for violating the Anti-Trust Laws of 1899 and 1903 of Texas by entering into a conspiracy with another oil company to monopolize the petroleum industry. The fine was computed at the rate of $500 a day for violation of the Anti-Trust Law of 1899 and $50 a day for violation of the Anti-Trust Law of 1903. The culpable oil company owned assets worth more than forty million dollars and was declaring dividends at the rate of seven hundred per cent a year. Despite the enormity of the fine slapped upon it, it continued to engage in business. In upholdig the validity of the fine, the United States Supreme Court explained:

> "We can only interfere with such legislation and judicial action of the states enforcing it if the fines imposed are so grossly excessive as to amount to a deprivation of property without due process of law."[113]

The United States Supreme Court relied upon the due process clause for determining whether or not the fine was excessive. Thus, the question boils down to whether or not in the light of the circumstances, the fine is reasonable.

In State vs. Trailer Service, Inc., 212 NW 2d 683,689, the Supreme Court of Wisconsin enumerated the factors that should be considered in determining whether or not a fine is excessive.

> "To determine excessiveness of a fine in a constitutional sense, consideration should be given to the object designed to be 'accomplished, to the importance and magnitude of the public interest sought to be protected, to the circumstances and the nature of the act for which it is imposed, and in some instances the ability of the accused to pay.' "

Be that as it may, the Supreme Court refused to apply the constitutional prohibition against excessive fines to a fine imposed by the Bureau of Customs for smuggling of jewelry. The fine was fixed at three times the value of the smuggled jewelry. The Supreme Court based its ruling on the ground that the constitutional prohibition applied only to criminal prosecution and did not apply to a civil proceeding to enforce the collection of surcharges due on an imported article.[114]

b. Imprisonment

Life imprisonment is qualitatively different from the death penalty, because the dealth penalty, once implemented, is final and irreversible. Thus, a law providing for the mandatory imposition of life imprisonment is valid.[115]

[113] Waters-Pierce Oil Company vs. Texas, 212 U.S. 86, 111.
[114] Republic vs. 259 Pieces of Jewelry, 89 Phil. 333, 337.
[115] State vs. Fuhram, 261 NW 2d 475, 479-480; State vs. Fitz, 265 NW 2d 896, 899.

Because of its seriousness, kidnapping may be punished with life imprisonment.[116] This holds true even if the imposition of life imprisonment is made mandatory by law.[117] Rape may also be punished with life imprisonment.[118]

Similarly, because of the growing drug menace, life imprisonment has been declared a valid penalty for illegal possession of prohibited drugs.[119] With more reason, it can be imposed as a penalty for unlawfully selling prohibited drugs.[120] Again, this holds true even if the imposition of life imprisonment as a penalty is mandatory.[121]

In case the accused is convicted on several counts, the aggregate of the penalties imposed upon him may exceed even his natural life. However, Article 70 of the Revised Penal Code imposes a limitation on the maximum period of actual service of sentence by providing:

> "Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period.
>
> "Such maximum period shall in no case exceed forty years."

It was for this reason that the Supreme Court brushed aside the argument of a public officer who was convicted of six counts of malversation and six counts of falsification and sentenced to ninety-two years of imprisonment, that the duration of his sentence made it cruel.[122] The same was true of the sentence of im-

[116] Bailey vs United States, 74 F2d 451, 453; Smith vs. United States, 407 F2d 356, 359; United States vs. Bondurant, 555 F2d 1328, 1329; State vs. Hampton, 294 A 2d 23, 36; Cox vs. State, 177 NE 898, 900; Beard vs. State, 323 NE 2d 216, 219; Tewell vs. State, 339 NE 2d 792, 795; Critchlow vs. State, 346 NE 2d 591, 595; Carrooli vs. State, 355 NE 2d 408, 411; Parker vs. State, 358 NE 2d 110, 114; Osborne vs. State, 375 NE 2d 1094, 1097; Dragon vs. State, 383 NE 2d 1046; 1048; Carroll vs. State, 402 NE 2d 1234, 1235; Davis vs. State, 466 P2d 311, 316.
[117] Tyre vs. State, 412 A 2d 326, 330; Vacendak vs. State, 340 NE 2d 352, 355; Walker vs. State, 381 NE 2d 88, 90.
[118] Moore vs. Cowan, 560 F2d 1298, 1303; Phipps vs. State, 385 A 2d 90, 95; People vs. Collins, 168 NW2d 624, 625; Wilson vs. State, 264 So 2d 828, 831; Horton vs. State, 374 So 2d 764, 765; Johnson vs. State, 449 SW 2d 65; 70; Martin vs. Commonwealth, 493 SW 2d 714, 714; McDonald vs. Commonwealth, 569 SW 2d 134, 138.
[119] People vs. Broadie, 332 NE 2d 338, 341.
[120] People vs. Keller, 54 Cal. Rptr. 154, 157; People vs. Broadie, 332 NE 2d 338, 341; People vs. Ellison, 357 NYS 2d 773, 776; People vs. Lynch, 375 NYS 2d 665, 666; Pickard vs. State, 585 P2d 1342, 1344; State vs. Stetson, 317 So 2d 172, 177.
[121] Castillo vs. Harris, 491 F Supp 33, 35-36; People vs. Hollingsworth, 360 NYS 2d 765, 767; People vs. Mcnair, 363 NYS 2d 151, 157; People vs. Johnson, 369 NYS 2d 582, 583; State vs. Whitehurst, 319 So 2d 172, 177; State vs. Hopkins, 351 So 2d 474, 479; State vs. Mallery, 364 So 2d 1283, 1285; State vs. Sykes, 364 So 2d 1293, 1296.
[122] Veniegas vs. People, 115 SCRA 790, 792.

prisonment for fifty-six years and eight days imposed upon a right-of-way employee who was convicted of violation of the Anti-Graft and Corrupt Practices Act on eights.[123]

In the case of a litigant who was ordered locked in jail for contempt of court until he complies with the order he had disobeyed, the indefiniteness of the duration of his imprisonment does not make the punishment excessive. The Supreme Court explained that the means for his release was in his own hands:

> "If the term of imprisonment in this case is indefinite and might last through the natural life of the petitioner, yet by the terms of the sentence the way is left open for him to avoid serving any part of it by complying with the orders of the court, and in this manner put an end to his incarceration. In these circumstances, the judgment can not be said to be excessive or unjust (Davis vs. Murphy [1947], 188 p., 2nd, 229-231). As stated in a more recent case (De Wees [1948], 210 S.W., 2d, 145-147), 'to order that one be imprisoned for an indefinite period in a civil contempt is purely a remedial measure. Its purpose is to coerce the contemer to do an act within his or her power to perform. He must have the means by which he may purge himself of the contempt.' "[124]

c. Death

Death may be imposed as a penalty for serious offenses like murder[125] and kidnapping.[126] However, it cannot be imposed for robbery, because robbery is not sufficiently serious as to justify its imposition.[127]

The United States Supreme Court has ruled that death cannot be imposed as a penalty for rape, because it is not as serious as murder.

> "Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life. Although it may be accompanied by another crime, rape by definition does not include the death of or even the serious injury of another person. The murderer kills; the rapist, if no more than that, does not."[127]

It is debatable whether this ruling can be invoked in the Philippines. In determining whether or not a certain penalty is excessive, the attitude of the public should be considered. With the advent of sexual permissiveness, moral standards regarding sexual matters have been relaxed in the United States. In the Philippines, especially in the rural areas, moral standards still lay great stress on the value of chastity.

The United States Supreme Court also held that the death penalty could not be imposed upon a participant in robbery whose role was limited to driving the get-away car if in the course of the robbery one of his companions committed

[123] Mejorada vs. Sandiganbayan, G.R. No. 51065, June 30, 1987.
[124] Harden vs. Director of Prisons, 81 Phil. 741, 748.
[125] Gregg vs. Georgia, 433 U.S. 184, 187.
[126] People vs. Knowles, 217 P2d 1, 4-5.
[127] Enmund vs. Florida, 458 U.S. 782, 797; Gregg vs. State, 210 SE 2d 659, 667.
[128] Coker vs. Georgia, 433 U.S. 584, 598.

murder. Stressing the difference in the culpability of the participants in the robbery, the United States Supreme Court explained:

> "Enmund did not kill or intend to kill and thus his culpability is plainly different from that of the robbers who killed; yet, the State treated them alike and attributed to Enmund the culpability of those who killed the Kerseys. This was impermissible under the Eight Amendments."[129]

The United States Supreme Court has also invalidated penal statues which impose death as a mandatory penalty for an offense.[130] The United States Supreme Court reasoned out:

> "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration fixing the ultimate punishment the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind."[131]

Thus, the constitutional prohibition against cruel punishments precludes Congress from making an *a priori* judgment that because of the nature of an offense, no number of mitigating circumstances can justify the imposition of any penalty lower than death.

This doctrine is significant for the Philippines. Before the adoption of Section 19(1), Article III of the Bill of Rights in the 1987 Constitution, the Revised Penal Code contained several provisions making death the only imposable penalty for certain offenses. Thus, under Article 267 of the Revised Penal Code kidnapping for the purpose of demanding a ransom is punished with death. Article 320 of the Revised Penal Code imposes the death penalty for arson committed by two or more persons or by a group of persons. In cases of rape, Article 335 of the Revised Penal Code prescribes the death penalty if the victim becomes insane, or a homicide is committed by reason or on the occasion of the rape, irrespective of whether the rape was attempted, frustrated, or consummated. Section 4 of the Dangerous Drugs Act penalizes with death the distribution of prohibited drugs if the recipient is a minor or if the victim dies because of the prohibited drug. Under Section 3 of the Anti-Piracy and Anti-Highway Robbery Law, the death penalty is imposed for piracy if rape, murder or homicide was committed, the victims were abandoned without any means of saving themselves, or the vessel was seized by firing upon it or boarding it.

[129] Enmund vs. Florida, 458 U.S. 782, 798.
[130] Woodson vs. North Carolina, 428 U.S. 280, 304; Roberts vs. Louisiana, 428 U.S. 325, 333-334; Roberts vs. Louisiana, 431 U.S. 633, 635-637.
[131] Woodson vs. North Carolina, 428 U.S. 280, 304.

6. *Specific Offenses.*

In the following cases, the penalty was upheld despite the challenge that it was cruel because it was excessive:

a. Fisher vs. Yangco Steamship Co., 31 Phil. I

Offense	Penalty
Refusal of a common carrier to recieve goods for carriage	Fine of not more than $5,000 or imprisonment of not more than two years or both.

b. People vs. Constantino, 46 Phil. 745

Offense	Penalty
Arson consisting of burning a public building when the damage exceeded 6,250 pesetas	Twelve years and one day one of *cadena temporal.*

c. People vs. Araneta, 48 Phil. 650.

Offense	Penalty
Misappropriation of public fund worth ₱1.50 through falsification of public documents	Ten years of *prision mayor*

d. Talavera vs. Superintendent and Warden for Correctional Institution for Women at Mandaluyong, Rizal, 67 Phil. 538.

Offense	Penalty
Attempted estafa through falxification of a public document	Four years, nine months eleven days of *prision* correccional

d. People vs. Buluran, 69 Phil. 606.

Offense	Penalty
Violation of Section 2 of the Securities Act	Fine of not more than ₱10,000, or imprisonment of not more than 5 years or both.

f. People vs. Cruz, 126 Phil. 193.

Offense	Penalty
Possession of smuggled cigarettes	Fine of ₱5,000 and imprisonment for six months.

g. People vs. Garay, 2 ACR 149, 153

Offense	Penalty
Illegal possession of dynamite	Imprisonment for three months.

c. Punishment because of Status

Because of the constitutional prohibition against cruel punishments, the legislature cannot punish someone because of his status. Otherwise, a person will be punished because of what he is and not because of what he has done.

Thus, the United States Supreme Court held that a person may not be punished for being a drug addict. He is not a criminal. He is ill. To imprison him is to punish him for being ill. The court explained:

> "Indeed, it is apparently an illness which may be contracted innocently or involuntarily. We hold that a state law which imprisons a person thus afflicted as a criminal, even though he has never touched a narcotic drug within the State or has not been guilty of any irregular behavior there, inflicts a cruel and unusual punishment in violation of the Fourteenth Amendment."[132]

However, possession of prohibited drugs by a drug addict can be penalized by law because of the broad power of the state to regulate such drugs in the interest of public welfare.[133] Likewise, the use of a prohibited drug by a drug addict can be penalized.[134]

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[132] Robinson vs. California, 370 U.S. 660, 667.

[133] United States vs. Moore, 486 F2d 1139, 1153; Wheeler vs. United States, 276 A 2d 722, 725-726; People vs. Zapata, 34 Cal. Rptr. 171, 174; People vs. Bowens, 40 Cal. Rptr. 435, 442; People vs. Thorp, 78 Cal. Rptr. 412, 416; People vs. Omori, 102 Cal. Rptr. 64, 66; People vs. Taylor, 287 NE 2d 672, 673; Martinez vs. State, 373 SW 2d 246, 247.

[134] Bruno vs. State, 316 F Supp 1120, 1121-1122.

Since chronic alcoholism is also a disease, alcoholism cannot be punished as a criminal act.[135] However, an alcoholic may be punished for appearing in public while drunk.[136] He is not being punished for being an alcoholic but for appearing in public while in a state of intoxication. He is being punished for his behavior in public. The state may punish such behavior because of the hazard it poses to the alcoholic, to other persons, or to property.

In distinguishing the punishment of an alcoholic for appearing in public while drunk from the case of Robinson vs. California, 370 U S. 660, the United States Supreme Court explained:

> "On its face the present case does not fall within that holding, since appellant was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion. The State of Texas thus has not sought to punish a mere status, as California did in Robinson; nor has it attempted to regulate appellant's behavior in the privacy of his home. Rather, it has imposed upon appellant a criminal sanction for public behavior which may create substantial health and safety hazards, both for appellant and for members of the genreal public, and which offends the moral and esthetic sensibilities of a large segment of the community."[137]

The pronouncement of the United States Supreme Court that a person cannot be penalized simply because of his status was foreshadowed by the District of Columbia Court of Appeals in the case of Stoutenburg vs. Frazier, 48 LRA 220. In that case, the District of Columbia Court of Appeals held that a person cannot be punished for being suspicious-looking. The court reasoned out:

> "Under the Constitution of the United States, articles 4 and 8 of the Amendments, every person is intended to be secure in his person against unreasonable searches and seizures, and against cruel and unusual punisnments; and it would clearly be a cruel and unnatural punishment to impose a fine and imprisonment upon a party, because he might happen to be regarded by some persons as a suspicious person, without anything more."[138]

D. *Prison Conditions*

1. Physical Conditions

Even if the penalty imposed by the court in itself is not cruel, degrading, or inhuman and is commensurate to the offense committed by the convict, the physical conditions in prison may render the penalty cruel.[139] This would call for in-

[135] Driver vs. Hinnant, 356 F2d 761, 764; City of Dayton vs. Sutherland, 328 NE 2d 416, 419.

[136] Powell vs. Texas, 392 U.S. 514, 532; Budd vs. Madigan, 418 F2d 1032, 1034; People vs. Myers, 332 NYS 2d 242, 247.

[137] Powell vs. Texas, 392 U.S. 514, 532.

[138] Stoutenburgh vs. Frazier, 48 LRA 220, 223.

[139] Estelle vs. Gamble. 427 U.S. 97, 103-104; Holt vs. Sarver, 442 F2d 304; 308; La Reau vs. MacDougall, 473 F2d 974, 978; Brenneman vs. Madigan, 343 F Supp 128, 132; Battle vs. Anderson, 376 F Supp 402, 420.

tervention by the courts to alleviate the conditions. The cruelty may take the form of subjection of the prison inmates to physical abuse, torture, and beatings.[140] The cruelty may also result from the unsuitability of the prison for human habition due to overcrowding, lack of ventilation, filth, lack of hygienic materials, lack of facilities for medical treatment, and lack of physical facilities.[141]

In Hutto vs. Finney, 437 U.S. 678, 687, the United States Supreme Court condemned the prison conditions in Arkansas as inhuman. The inmates were required to work in the field for ten hours a day for six days a week by using mule-drawn tooks and tending the crops by hand. The inmates were sometimes required to run with a guard in an automobile or on horseback prodding them on. The inmates were required to work under all weather conditions, so long as the temperature was above the freezing point, even if they were clad in unsuitably light clothing and had no shoes. In addition, the inmates slept in large hundredman barracks. As a result, stabbings were frequent and sodomy was common. Because of fear, some inmates dared not sleep at night but spent the night clinging to the bars nearest the station of the guards. The daily allowance for food was inadequate. Misconduct was punished with lashing or the application of electric shock.

In Hamilton vs. Schiro, 336 FSupp, 1016, 1019, a United District Court branded the confinement in prison as cruel and unusual punishment. Eight hundred to nine hundred inmates were packed in a prison that was designed for four hundred to four hundred fifty prisoners only. The inmates were subjected to extreme temperatures during summer and winter. Rats and cockroaches infested the jail. A foul ador permeated it. The kitchen was unsanitary. The bathing facilities were inadequate. The inmates were in constant danger of losing their lives from a fire. The inmates suffering from contagious diseases were not being isolated. The medical facilities were inadequate.

2. Deprivation of Privileges

A prisoner may not demand privileges which are not necessary for human existence. The United States Circuit Court of Appeals pointed out:

> "There exists a fundamental difference between depriving a prisoner of privileges he may enjoy and depriving him of the necessities of human existence."[142]

Thus, a prisoner cannot claim that denying him conjugal visits constitutes subjecting him to cruel punishment.[143] There is no inherent constitutional right

[140] Inmates of Attica Correctional Facility vs. Rockefeller, 453 F2d 12, 22-23.

[141] Gates vs. Collier, 501 F2d 1291, 1302-1303; Jones vs. Wittenberg, 323 F Supp 93, 99; Inmates of District of Clumbia Jail vs. Jackson, 416 F Supp 119, 121; Mitchel vs. Untreiner, 421 F Supp 886, 894.

[142] Finney vs. Arkansas Board of Correction, 505 F2d 194, 207.

[143] Tarlton vs. Clark, 441 F2d 384, 386; Polakoff vs. Henderson, 488 F2d 977, 978; McCray vs. Sullivan, 409 F2d 1332, 1334; Lyons vs. Gilligan, 201 F supp 198, 201; Polakoff vs. Henderson, 370 F Supp 690; 694; United States ex rel. Wolfish vs. Levi, 439 F Supp 977, 978; Imprisoned Citizens' Union vs. Shapp, 451 F Supp 893, 898; Wilkinson vs. McManus, 214 NW 2d 671, 677.

to heterosexual relations while one is serving sentence in prison.[144] Whether or not prison inmates will be allowed conjugal visits does not involve a question of constitutional right but of administrative policy.

3. The Philippine Situation

As early as 1965, the need to alleviate subhuman prison conditions gained judicial recognition. In refusing to impose the death penalty upon several prison inmates who stabbed to death the members of a rival gang during a riot, the Supreme Court deplored the prison conditions:

> "The evidence compels us to agree with the trial court that the accused-appellants are guilty beyond reasonable doubt of the crime of murder. But the members of the Court cannot in conscience concur in the death penalty imposed, because they find it impossible to ignore the contributory role played by the inhuman conditions then reigning in the penitentiary vividly described by the trial Judge in his decision. It is evident that the incredible overcrowding of the prison cells, that taxed facilities beyond measure and the starvation allowance of ten centavos per meal for each prisoner, must have rubbed raw the nerves and dispositions of the unfortunate inmates, and predisposed them to all sorts of violence to seize from that owners the meager supplies from outside in order to eke out their miserable existence. All these led inevitably to the formation of gangs that preyed like wolf packs on the weak, and ultimately to pitiless gang rivalry for the control of the prisoners, abetted by the inability of the outnumbered guards to enforce discipline, and which culminated in violent riots. The government cannot evade responsibility for keeping prisoners under such subhuman and dantesque conditions. Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death.[144]

This statement of concern has found recognition in Section 19(2), Article III of the 1987 Constitution, which decrees:

> "The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."

Thus, it is up to Congress to breathe life into the provision.

III. CONCLUSION

The cynic may sneer that inmates serving sentence in jail are not supposed to be in a country club, but society does not have the right to reduce their existence to that of caged animals. The task of the state is to see to it that the penalties imposed by law satisfy the demands of justice without violating human dignity. In the fulfillment of this task, the legislator, the judge, and the director of prisons must work hand in hand.

[144] People vs. De los Santos, 122 Phil. 55, 65-66.

The remarks of Sir Samuel Romilly, an English criminal law reformer, delivered before the House of Commons during the debate on the bill to abolish disembowelment as a penalty for high treason are worth noting:

> "I call upon you to remember that cruel punishments have an inevitable tendency to produce cruelty in the people. It is not by the destruction of tenderness, – it is not by exciting revenge, that we can hope to generate virtuous conduct in those who are confided to our care. You may cut out the heart of a sufferer and hold it up to the view of the populace, and you may imagine that you serve the community, but the real effect of such scenes is to torture the compassionate and to harden the obdurate. In times of tranquility you will not diminish offenses by rendering guilt callous, – by teaching the subjects to look with indifference upon human suffering; and, in times of turbulence, fury will retaliate the cruelties which it has been accustomed to behold."[145]

[145] Campbell, "Revival of the Eighth Amendment: Development of Cruel-Punishment Doctrine by the Supreme Court," *Stanford Law Review*, July 1969, Vol. 16, No. 4, p. 1003.