

The Revised Penal Code: 77 Years After Promulgation

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I. INTRODUCTION

The Philippines, as a country, has often boasted of the democracy its people enjoy. The Filipino, as a nation, has taken pride in the fact that in this country, laws are founded on the principle that it is better to let the guilty free than the innocent be condemned.¹ Operating, thus, on these premises, the Filipino, as a people, often let little infractions pass and wounds created by grave ones heal with time. Nevertheless, because this is a country of laws and not of men, our legislators have promulgated the Revised Penal Code (RPC),² which took effect on 1 January 1932. They have also constantly enacted special laws³ to augment the lack of solutions to problems not covered by the Code. These laws, taken as a whole, make up our criminal law.

As defined, criminal law is that “branch of public substantive law which defines crimes, treats of their nature, and provides for their punishment.”⁴ The statutes that comprise criminal law are, to the members of the academe and law students, part of the great mass of laws that have evolved throughout the years. To ordinary citizens, these rules provide for boundaries that serve as guidelines in determining whether an action is not only wrong but unlawful. To lawyers, these rules are either the bases of their theories or the obstacles that they will have to surpass. Because law and order are the primordial considerations in determining these rules, it becomes imperative to reevaluate statutes in order to make them applicable to the present situation.

The RPC, as its name suggests, revised the old Penal Code, based on the Spanish Penal Code of 1870,⁵ which was in force before the effectivity of the former. The RPC, as it stands, is a codification of penal laws since the Spanish and American regimes and subsequent enactments by the Philippine legislature and by the Chief Executive.⁶

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1. See *People v. Asinas*, 53 Phil. 59, 71 (1929).
 2. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).
 3. FLORENZ D. REGALADO, *CRIMINAL LAW CONSPECTUS 2* (4th ed. 2009). For criminal law purposes, a special law or a special penal law is “one which is not amendatory of the provisions of the [Revised Penal Code] but which defines and punishes offenses not covered by the latter.”
 4. *Id.*
 5. 1870 CÓDIGO PENAL [C.P.] (Spain).
 6. REGALADO, *supra* note 3, at 2-3.

For 77 years, this revision of the Penal Code has been the standing law that defines and penalizes crimes in this country. While there have been amendments to this piece of legislation, most of it has remained the same despite the changing times. Hence, the author felt not only the need to revisit the Code, but more importantly to challenge the existing provisions in light of present developments.

This Article is an attempt to do just that. Without endeavoring to provide for alternative provisions to the RPC as it is, this Article undertakes to assess whether, in our constantly evolving society, the statutes that comprise our criminal law have not been reduced to a set of words which fail to fully encompass the definition of criminal law and breathe life into the law. This is simply an effort to put the Code in the here and now.

The author realizes this need in light of present societal developments which our criminal statutes fail to address. It is in this sense that in this jurisdiction, those who are guilty are set free because of the legal maxim *nullum crimen sine poena, nulla poena sine legis*,⁷ which simply means that no matter how wrongful an act may seem and no matter the strength of condemnation by society, if there is no law that defines the act as a crime and provides for its punishment, then the person committing that act cannot be said to have transgressed the bounds of legality.

II. GENERAL PROVISIONS OF THE CODE

A. *Territoriality*

In Book One of the RPC, we encounter the principle of territoriality, which mandates that the State has jurisdiction to try only the crimes committed within its territory and nothing more, in deference to the broader consideration that is international comity.⁸ The principle is enunciated in *United States v. Look Chaw*,⁹ where the accused descended from an English vessel onto Philippine shores bringing with him the prohibited substance of opium. It was said that:

although the mere possession of thing of prohibited use in these Islands, aboard a foreign vessel in transit, in any of their ports, does not, as a general rule, constitute a crime triable by the courts of this country, on account of such vessel being considered as an extension of its own nationality, the same rule does not apply when the article, whose use is prohibited within

7. RUBEN E. AGPALO, STATUTORY CONSTRUCTION 494 (6th ed. 2009). (“There is no crime without a penalty, and there is no penalty without a law.”).

8. I LUIS B. REYES, THE REVISED PENAL CODE 13 (17th ed. 2008).

9. *United States v. Look Chaw*, 18 Phil. 573 (1910).

the Philippine Islands, in the present case a can of opium, is landed from the vessel upon Philippine soil, thus committing an open violation of the laws of the land, with respect to which, as it is a violation of the penal law in force at the place of the commission of the crime, only the court established in the said place itself has competent jurisdiction in the absence of an agreement under an international treaty.¹⁰

Nevertheless, Article 2 of the RPC gives exceptions to this principle.¹¹ To the mind of the author, while the exceptions are logical, this particular provision is misplaced because it provides for offenses which are triable within the Philippines even if committed elsewhere. These exceptions are really crimes that should have been placed in Book Two for the sole reason that it is this next Book that provides for crimes and their penalties. By providing for a broad description of crimes outside of the territorial jurisdiction that the Philippines may take cognizance of, Article 2 of the RPC limits the exceptions only to those specifically enumerated herein, precluding other crimes that may be defined in the future from belonging to the list.

Take for example the fifth exception which involves the commission of any crime against national security and the law of nations as defined in Book Two. Unfortunately, despite the advent of the times, the crime of terrorism has not been defined in Book Two of the RPC. The predicament arises

10. *Id.* at 577-78.

11. REVISED PENAL CODE, art. 2.

Application of its provisions. — Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zones but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship;
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number.
4. While being public officers or employees should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations defined in Title One of Book Two of this Code.

from the fact that, contrary to this declaration in Article 2 of the Code, the crime of terrorism may very well be prosecuted in the Philippines even if the same be committed elsewhere. This extraterritorial jurisdiction of our courts over acts of terrorism has not been conferred to it by any law but by the very essence and nature of the acts.¹² Thus, in this sense, the restrictive enumeration set forth in Article 2 does not fully provide for a substantial list of acts over which our courts can exercise jurisdiction.

Fortunately, on 6 March 2007, Congress enacted the Human Security Act of 2007,¹³ which gives us the definition of the offense, to wit:

Sec. 3. Terrorism. — Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

- (a) Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
- (b) Article 134 (Rebellion or Insurrection);
- (c) Article 134-A (Coup d' Etat), including acts committed by private persons;
- (d) Article 248 (Murder);
- (e) Article 267 (Kidnapping and Serious Illegal Detention);
- (f) Article 324 (Crimes Involving Destruction), or under
 - (1) Presidential Decree No. 1613 (The Law on Arson);
 - (2) Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
 - (3) Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
 - (4) Republic Act No. 6235 (Anti-Hijacking Law);
 - (5) Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
 - (6) Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

12. PETER J. VAN KRIEKEN, *TERRORISM AND THE INTERNATIONAL LEGAL ORDER* 48 (2002).

13. An Act to Secure the State and Protect Our People from Terrorism [Human Security Act of 2007], Republic Act No. 9372 (2007).

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.¹⁴

Congress, in creating this law, bestowed upon our courts the power to try this offense. This, however, does not erase the fact that the acts defined by this special law are not found in Article 2 of the RPC, which provides for the instances when crimes committed outside the Philippines may be tried in the country.

B. Felonies, Crimes, and Offenses

The RPC defines a felony as an act or omission punishable by law which may be committed by deceit or fault.¹⁵ There is deceit “when the act is performed with deliberate intent;” there is fault “when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.”¹⁶

This definition is not entirely complete as a felony is different from a crime and an offense. Even the Code uses the terms interchangeably or synonymously. Strictly speaking, the RPC defines a felony under Article 3, which means that all violations against the provisions of the RPC are felonies. On one hand, a crime is an act “that the law makes punishable.”¹⁷ Crimes, therefore, refer to violations of statutes or regulations other than the RPC. On the other hand, an offense generally refers to violations of the law¹⁸ or the “act of the person rather than the crime as defined by law.”¹⁹ Offenses thus include both crimes and felonies.

Being the primary source of criminal law, the Code should have also defined a crime and an offense. While it may be argued that the RPC simply defined a felony because these acts are the only ones which the Code provides punishment for, to the ordinary citizen, a felony is also called a crime or an offense, which is inaccurate. This is important because the RPC is not only intended to guide lawyers and law students, but more importantly ordinary citizens who believe that when a wrong is done against them, they

14. *Id.* § 3.

15. REVISED PENAL CODE, art. 3.

16. *Id.*

17. BLACK’S LAW DICTIONARY 399 (Bryan A. Garner ed., 8th ed. 2004).

18. *Id.* at 1110.

19. 22 C.J.S. *Criminal Law* § 1 (1940).

will find refuge in the Code. Hence, if the RPC provides for a definition of an offense and a crime, non-practitioners of law will at least have an idea that the punishment for the wrongful act may not be found in the Code but somewhere else. This makes the law more responsive to the people.

The problem simply is not one of failure to define but also failure to delineate. The writer opines that the Code should have provided the proper delineation between *mala in se* and *mala prohibita*, thereby limiting possible misinterpretations of the same. The general rule is that offenses *mala in se* are normally punishable by the RPC and are regarded as those “so serious in their effects on society as to call for almost unanimous condemnation,”²⁰ while *mala prohibita* offenses are normally punishable by special laws and are considered “violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society.”²¹

Nevertheless, this is not entirely true because although some crimes are punished by special laws, they are still regarded as *mala in se* because of their inherent immorality.²² The crime of plunder, for example, is punished by a special law²³ but is categorized by the courts as a crime *mala in se*.²⁴

While this point may be regarded as superfluous, the author opines that it should be addressed nonetheless not only for the sake of those who study and practice the law, but more importantly, for the ordinary citizens whose understanding of the law may be said to be on a first glance basis.

C. Criminal Liability

Article 4 of the RPC provides for the manner of incurring criminal liability either by committing a felony regardless of the original intent or by committing an impossible crime.²⁵

Yet again, the enumeration is not complete for it does not include the fact that being an accessory or an accomplice also attracts criminal liability. This enumeration, in fact, only pertains to the criminal liability incurred by a principal. It does not fully cover the liability of those persons criminally

20. REYES, *supra* note 8, at 58.

21. *Id.*

22. *Id.*

23. An Act Defining and Penalizing the Crime of Plunder [Anti-Plunder Act of 1991], Republic Act No. 7080 (1991).

24. Estrada v. Sandiganbayan, 369 SCRA 394, 451 (2001).

25. REVISED PENAL CODE, art. 4, ¶ 2.

liable as set forth in Article 16 of the RPC.²⁶ The writer opines that before criminal liability is presented, the RPC should have first stated who are criminally liable in the first place and thus, Article 16 should have been placed before the article currently discussed.

D. Duty of the Courts

Article 5 of the RPC,²⁷ which mandates judicial magistrates to make a report to the President whenever they feel that an act should be repressed but is not made unlawful by any law, is an almost a useless provision. In the 77-year existence of the RPC, courts have never recommended to the President that a particular act be made the subject of penal legislation. This may be because of the fact that before a penal matter is brought before the courts, the legislature takes it unto itself to conduct the proper investigation “in aid of legislation.”²⁸

Thus, the very recent investigation of the Hayden Kho²⁹ case is a perfect example of a situation where, even before the courts have an opportunity to determine whether or not a crime has been committed, the legislature conducted its own investigation only to reach no conclusion.³⁰

E. Mitigating, Justifying, and Exempting Circumstances

1. The Battered Woman Syndrome

Book One also enumerates the circumstances that mitigate criminal liability,³¹ justify the act done,³² or exempt a person from criminal liability altogether.³³ The Supreme Court later on provided for other circumstances

26. *Id.* Article 16 provides that principals, accomplices and accessories are criminally liable for grave and less grave felonies, while principals and accomplices are criminally liable for light felonies.

27. *Id.* art. 5.

28. *See* Senate of the Philippines v. Ermita, 488 SCRA 1 (2006), for a discussion on legislative power to conduct inquiries in aid of legislation.

29. Hayden Kho, Jr. is a celebrity doctor involved in a scandal where videos and images in compromising situations were disseminated through the Internet in 2009.

30. Christine Avendaño, Sex, Lies, Drugs Top Katrina, Hayden Face-Off, *available at* http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20090529-207699/Sex,_lies,_drugs_top_Katrina,_Hayden_face-off (last accessed Sep. 30, 2009).

31. REVISED PENAL CODE, art. 13.

32. *Id.* art. 11.

33. *Id.* art. 12.

outside of the RPC, which either justify or mitigate the liability of the accused. An example of this is the battered wife syndrome as a valid form of self-defense, first enunciated in the leading case of *People v. Genosa*.³⁴ It was said therein that:

[w]hile our hearts empathize with recurrently battered persons, we can only work within the limits of law, jurisprudence and given facts. We cannot make or invent them. Neither can we amend the Revised Penal Code. Only Congress, in its wisdom, may do so.

The Court, however, is not discounting the possibility of self-defense arising from the battered woman syndrome. We now sum up our main points. *First*, each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the appellant and her intimate partner. *Second*, the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life. *Third*, at the time of the killing, the batterer must have posed probable — not necessarily immediate and actual — grave harm to the accused, based on the history of violence perpetrated by the former against the latter. Taken altogether, these circumstances could satisfy the requisites of self-defense.³⁵

While the Court recognized the battered woman's syndrome as a valid form of defense, it did not, however, acquit the accused as all the elements of the defense were not established. This prompted Justice Ynares-Santiago's vigorous dissent, pleading:

[t]he *ponencia's* acknowledgement of "Battered Woman Syndrome" as a valid form of self-defense, is a noble recognition of the plight of, and a triumph for battered women who are trapped in a culture of silence, shame, and fear. This would however be an empty victory if we deliberately close our eyes to the antecedents of this case. The facts are simple. Marivic was suffering from the "Battered Woman Syndrome" and was defending herself when she killed her husband. Her acquittal of the charge of parricide is therefore in order.³⁶

Later that year on 8 March 2004, Congress enacted the Anti-Violence Against Women and Their Children Act of 2004,³⁷ which defines the

34. *People v. Genosa*, 419 SCRA 537 (2004).

35. *Id.* at 594.

36. *Id.* at 606.

37. An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes [Anti-Violence Against Women and Their Children Act of 2004], Republic Act No. 9262 (2004).

battered woman syndrome as referring to “a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.”³⁸

2. The Age of Criminal Responsibility

The Juvenile Justice and Welfare Act of 2006 (JJWA)³⁹ amended the provisions of the RPC anent the age of criminal responsibility. Section six of the JJWA places the minimum age of criminal responsibility at 15 years of age or under at the time of commission of the crime. A child above 15 years of age but below 18 years old is also exempted from criminal responsibility. In both instances, however, the child will be subjected to an intervention program.⁴⁰ Nevertheless, the JJWA only exempts the child from criminal liability; civil liabilities may still be enforced.⁴¹

F. Aggravating Circumstances

Likewise, the aggravating circumstances enumerated under Article 14 of the RPC have been modified by special laws later enacted. The commission of a crime while under the influence of dangerous drugs is a qualifying aggravating circumstance and makes the penalty applicable in its maximum period.⁴² The use of unlicensed firearms in the crime of homicide or murder is also treated as an aggravating circumstance.⁴³

38. *Id.* § 3 (c).

39. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor, and for Other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344 (2006).

40. *Id.* § 6.

41. *Id.*

42. An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes [Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165, § 25 (2002). *See also* People v. Tac-an, 182 SCRA 601 (1990).

43. An Act Amending the Provisions of Presidential Decree No. 1866, as Amended, Entitled “Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes,” Republic Act No. 8294, § 1 (1997). *See also* People v. Candido, 383 SCRA 296 (2002).

III. PENALTIES IN GENERAL

A. The Death Penalty

In light of R.A. No. 9346,⁴⁴ which prohibited the imposition of the death penalty, this writer opines that the Code's provisions should be amended to remove the death penalty from the list of penalties that may be imposed. In lieu of the death penalty, R.A. No. 9346 provides for two alternatives. First, where the law violated makes use of the Code's nomenclature of penalties, the penalty of *reclusion perpetua* is imposed.⁴⁵ Second, where the law does not make use of the Code's nomenclature of penalties, the penalty of life imprisonment is imposed instead.⁴⁶ The new law also provides that persons convicted of offenses punishable with *reclusion perpetua* or those whose penalties are reduced to *reclusion perpetua* by reason of R.A. No. 9346 will be ineligible for parole under the Indeterminate Sentence Law.⁴⁷

Because of this, Article 47 of the RPC which provides for cases where the death penalty should not be imposed under the Code and for the automatic review of death penalty decisions, Article 81 of the RPC which provides for when and how the death penalty is to be executed, and Article 83 of the RPC which provides for suspension of the execution of the penalty, should either be deleted in view of the prohibition of the death penalty, or be amended to provide for contingency measures in the event that the death penalty be revived in the future.

B. Fines

It is likewise important to point out that the amount of the fines imposed by the RPC should be increased if only to make sure that the penal code serves its purpose, that is, to serve as a deterrent to the further commission of crimes. For example, a fine of two hundred pesos (₱ 200.00) cannot deter offenders from committing crimes in the future.

C. Civil Interdiction

44. An Act Prohibiting the Imposition of Death Penalty in the Philippines, Republic Act No. 9346, § 1 (2006).

45. *Id.* § 2 (a).

46. *Id.* § 2 (b).

47. See An Act to Provide for an Indeterminate Sentence and Parole for all Persons Convicted of Certain Crimes by the Courts of the Philippine Islands; to Create a Board of Indeterminate Sentence and to Provide Funds Therefor and for Other Purposes, [Indeterminate Sentence Law], Republic Act No. 4103 (1933).

Article 34 of the RPC⁴⁸ has been the subject of one too many discussions. It provides for the penalty of civil interdiction wherein the offender is deprived of parental authority or guardianship with respect to the person or property of the ward, marital authority, and the right to manage and dispose of any property through any conveyance *inter vivos* during the service of his sentence.

Nevertheless, the law is silent as to whether he can dispose of his property by will or by a disposition *mortis causa*. Hence, Article 34 is susceptible of two interpretations. It can be argued that, on one hand, the penalty should be limited only to *inter vivos* dispositions since criminal liability ceases upon death.⁴⁹ On the other hand, if the provision is inapplicable to dispositions *mortis causa*, the purpose of civil interdiction may be defeated. The writer agrees with the latter for the simple reason that to allow a convict to dispose of his property through a will is to allow him to circumvent the law.

IV. CRIMES

A. Crimes Against National Security

As earlier discussed, this particular Title should be amended to include the crime of terrorism, as defined by R.A. No. 9372. Looking at the provisions herein contained, one will have the impression that our penal code has been left in the era where wars were motivated by the desire to conquer and wars are waged through the use of ships. Unfortunately, modern wars use bombs of the highest caliber and are not delivered through ships but through planes or worse, suicide bombers.

B. Crimes Against Popular Representation

Article 143 of the RPC is a provision that should yet again be revisited. Under this provision, the Code punishes acts of fraud or force tending to prevent the meeting of any legislative body including Congress, any of its committees or subcommittees, constitutional commissions and its committees, and provincial, city, and municipal councils.⁵⁰

The act of preventing meetings of these bodies should be qualified to mean only those assemblies which are not authorized by permits.⁵¹ For to say

48. REVISED PENAL CODE, art. 34.

49. See REYES, *supra* note 8, at 621.

50. REVISED PENAL CODE, art. 143.

51. See *Bayan v. Zamora*, 342 SCRA 449 (2000), for a discussion on acquisition of permits.

that any act tending to prevent the meeting of the Assembly is punishable will make all the rallyists who choose to stage their demonstration in front of the House of Representatives or the Senate building liable under this provision, even if they have been allowed to stage their rallies through the permits issued by the local governments concerned. Strictly speaking, this provision is a suppression of our constitutionally guaranteed freedom to seek redress of grievances from the government.⁵²

Likewise, Article 144 of the RPC,⁵³ which punishes persons who disturb or disrespect the meetings in the preceding provision, should be given more teeth. For example, in the latest incident before the Senate investigation of the Hayden Kho scandal, Abner Afuang, a former police officer who poured water on Kho and thereby disrupted the hearing,⁵⁴ should, strictly speaking, have been liable under this provision. While he was arrested by the Senate sergeant-at-arms, no criminal charges were filed against him under Article 144.

The liability under Article 150 of the RPC on disobedience to summons issued by legislative bodies should be expressed to be without prejudice to the power of Congress to cite the erring person in contempt to harmonize the different rules. In *Neri v. Committee on Accountability of Public Officers and Investigations*,⁵⁵ the Supreme Court recognized the contempt powers of the Senate but reiterated that they themselves must follow their own rules:⁵⁶

Petitioner has the right to expect that he can be cited in contempt only through a majority vote in a proceeding in which the matter has been fully deliberated upon. There is a greater measure of protection for the witness when the concerns and objections of the members are fully articulated in such proceeding. We do not believe that respondent Committees have the discretion to set aside their rules anytime they wish. This is especially true here where what is involved is the contempt power. It must be stressed that the *Rules* are not promulgated for their benefit. More than anybody else, it

52. PHIL. CONST. art. III, § 4.

53. REVISED PENAL CODE, art. 144.

54. Maila Ager, Man Splashes Water on Kho at Senate Hearing, *available at* <http://showbizandstyle.inquirer.net/breakingnews/breakingnews/view/20090528-207622/Man-splashes-water-on-Kho-at-Senate-hearing> (last accessed Sep. 30, 2009).

55. *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, 564 SCRA 152 (2008).

56. *See* Senate of the Philippines, Rules of Procedure Governing Inquiries in Aid of Legislation, § 18 (Aug. 21, 1995).

is the witness who has the highest stake in the proper observance of the *Rules*.⁵⁷

C. Frauds

Another provision that still needs to be given more strength is Article 186 of the RPC,⁵⁸ which penalizes monopolies and combinations in restraint of trade. It is quite obvious that trade is directly and indirectly restrained in view of the fact that the players in the economic sphere are the same people who transact with each other, making free competition almost illusory. For example, the owners and operators of Globe Telecom are the same owners and operators of Touch Mobile,⁵⁹ a supposedly different telecom company that should provide competition for Globe Telecom. Free competition is commonly defined as

[t]he act or action of seeking to gain what another is seeking to gain at the same time and usually under or as if under fair or equitable rules and circumstances: a common struggle for the same object especially among individuals of relatively equal standing . . . a market condition in which a large number of independent buyers and sellers compete for identical commodity, deal freely with each other, and retain the right of entry and exit from the market.⁶⁰

Article 187⁶¹ of the RPC which defines and penalizes the act of importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys is a dead law because of its lack of application in the present setting. Likewise, Article 188⁶² which penalizes substituting and altering trademarks, trade names, or service marks, and Article 189⁶³ which punishes unfair competition, fraudulent registration of trade name, trademark, or service mark, fraudulent designation of origin,

57. *Neri*, 564 SCRA at 228.

58. REVISED PENAL CODE, art. 186.

59. Globe telecom is the second-largest telecommunications company in the country, while Touch Mobile is a mobile service brand of Globe through its subsidiary Innove Communications. These two mobile service providers are operated by Ayala Corporation.

60. *Tatad v. Secretary of the Department of Energy*, 281 SCRA 330, 372 (1997) (Kapunan, J., separate opinion) (*citing Webster's Third International Dictionary*).

61. REVISED PENAL CODE, art. 187.

62. *Id.* art. 188.

63. *Id.* art. 189.

and false description, have been repealed by the Intellectual Property Code of the Philippines.⁶⁴

D. Crimes Relative to Opium and Other Prohibited Drugs

As earlier pointed out, Articles 190 to 194 have been repealed by the Comprehensive Dangerous Drugs Act of 2002. Thus having been repealed, the same should be taken out of the RPC to avoid confusion in the mind of ordinary citizens.

E. Crimes Against Public Morals

1. Gambling and Betting

The chapter on gambling and betting has been repealed by P.D. No. 1602⁶⁵ prescribing stiffer penalties on illegal gambling. P.D. No. 449⁶⁶ dealt with, while P.D. No. 1802⁶⁷ created, the Philippine Gamefowl Commission. Also, P.D. No. 483⁶⁸ punishes betting and fraudulent machinations in sports contests, and Letter of Instructions No. 816⁶⁹ excluded certain prohibited games from the ambit of P.D. No. 1602. This chapter should likewise be excluded in the reprinting of the RPC for the same reason as the preceding chapter on crimes relative to opium and other prohibited drugs.

2. Offenses Against Decency and Good Customs

The Philippines is a country where the issues of morality are almost always never laid to rest because of its rather misplaced conservatism. Article 202⁷⁰ referring to vagrants and prostitutes is problematic because it stipulates that the activities therein specified, that is, vagrancy and prostitution, must be

64. An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and for Other Purposes [INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES], Republic Act No. 8293 (1997).

65. Prescribing Stiffer Penalties on Illegal Gambling, Presidential Decree No. 1602 (1978).

66. Cockfighting Law of 1974, Presidential Decree No. 449 (1974).

67. Creating the Philippine Gamefowl Commission, Presidential Decree No. 1802, as amended (1981).

68. Penalizing Betting, Game-Fixing or Point Shaving and Machinations in Sports Contests, Presidential Decree No. 483 (1974).

69. Letter of Instructions No. 816 to Exclude Certain Prohibited Games under P.D. No. 1602 (Feb. 20, 1979).

70. REVISED PENAL CODE, art. 202.

habitual. This interpretation is rather absurd because when a man or a woman allows himself or herself to be paid for sexual services in an isolated incident, he or she cannot qualify as a prostitute. Hence, if this is the case, a person who gets paid for sex in an isolated incident has committed no crime as the requirement of habituality is absent.

The requirement of habituality to constitute prostitution goes against the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,⁷¹ a treaty to which the Philippines is a signatory. By requiring habituality characteristic to be present, we are contradicting the very convention we pledged to uphold by the simple fact that we allow what is, in a strict sense, prostitution, to be committed because we refuse to consider it as such if it is not done with habituality.

F. Crimes Committed by Public Officers

The provisions of Title Seven on Crimes Committed by Public Officers should be read together with the Anti-Graft and Corrupt Practices Act⁷² and the Code of Conduct and Ethical Standards for Public Officials and Employees⁷³ for the reason that any act committed under this Title may likewise be prosecuted under said special laws and without prejudice to prosecution under the RPC. Sadly, because this fact is not stated in the law itself; even those knowledgeable in the field of law sometimes forget that this is the case.

Section Three of Chapter Six on Usurpation of Powers and Unlawful Appointments should provide for a provision penalizing members of the legislature for usurping the powers of the executive and the judiciary. As currently worded, Article 240⁷⁴ only penalizes judges for usurping executive functions, and Article 241⁷⁵ punishes executive officers for usurping judicial

71. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Dec. 2, 1949, 96 U.N.T.S. 271.

72. Anti-Graft and Corrupt Practices Act [Anti-Graft Act of 1960], Republic Act No. 3019 (1960).

73. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES], Republic Act No. 6713 (1989).

74. REVISED PENAL CODE, art. 240.

75. *Id.* art. 241.

functions. The fact that members of Congress are lawmakers does not make them immune from usurpation.

This is precisely the reason why time is wasted by Congress in its inquiries and investigations even if no legislation is in fact created out of the same. When Congress investigates a crime, this is, strictly speaking, encroaching upon the powers of the prosecutors.⁷⁶ The Constitution provides that the only instances when Congress can make “judicial” decisions are when it is acting as an electoral tribunal⁷⁷ and when it is acting as an impeachment body.⁷⁸

On the same basis, Article 245⁷⁹ which provides penalties for abuses against chastity committed by public officers must be read together with the Anti-Sexual Harassment Act of 1995.⁸⁰

G. Crimes Against Persons

I. Certain Crimes

The penalty for Discharge of Firearms under Article 254 of the RPC should be increased in view of Article 282 for Grave Threats. Illegal discharge is punishable with *prision correccional* while grave threats are punishable by the penalty next lower in degree than the crime threatened to be committed. Thus, pointing a firearm at a person with the threat of killing him will make the offender liable for the penalty of *prision mayor*, the penalty next lower than *reclusion temporal* or the penalty provided for the crime of homicide. If said person actually discharges his firearm in the air, he will be liable to serve a penalty lower than *prision mayor*. In this scenario, absurdity is apparent because if a person pointing a gun at another wants to serve a lesser penalty, all he has to do is to illegally discharge his firearm.

Article 258 on Abortion practiced by the woman herself or by her parents creates a mitigating circumstance if a woman practices abortion on herself *and* the purpose is to conceal dishonor. This should have been included in the list of mitigating circumstances under Article 13, just like the other absolatory causes that remain scattered throughout the RPC.

76. See 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 110, § 5.

77. PHIL. CONST. art. VI, § 17.

78. PHIL. CONST. art. XI, § 3.

79. REVISED PENAL CODE, art. 245.

80. An Act Declaring Sexual Harassment Unlawful in the Employment, Education, or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995).

Article 260 which provides for the Responsibility of Participants in a Duel is a provision which no longer finds application in present times.

2. Rape

The definition of consummated rape has been swinging like a pendulum. Before, complete penetration was required to consummate this crime.⁸¹ Thereafter, the Supreme Court declared that the mere touching of the male organ on the *labia majora* of the female consummates rape.⁸² The latest decisions of the Court require only slight penetration to consummate this crime:

It is doctrinal that penetration, no matter how slight, or the mere introduction of the male organ into the labia of the pudenda constitutes carnal knowledge. Hence, even if the penetration in this case is only slight, the fact that Marites felt pain points to the conclusion that the rape was consummated.⁸³

The provision of the RPC should be specific enough to provide for the determinative point when this crime is consummated in order to preclude future conflicting interpretations of the same.

H. Crimes Against Personal Liberty and Security

Article 272 of the RPC which covers Slavery should be given more teeth for the sole reason that cases of slavery is prevalent in the society and the culprits do not even face any charges.⁸⁴ For this reason, we are party to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.⁸⁵ The only way to uphold our pledge under the Convention is for our own local laws dealing with the matter to be made more attuned to the truth that slavery is still prevalent in this country.

Also under this Title, the various provisions relating to minors should be read together with the Child and Youth Welfare Code⁸⁶ and the Special

81. See *People v. Campuhan*, 329 SCRA 270, 281-82 (2000).

82. *People v. Canon*, 385 SCRA 97, 105 (2002).

83. *People v. Morata*, 354 SCRA 259, 275 (2001).

84. See *Human Trafficking and Modern-Day Slavery — Philippines*, available at <http://gvnet.com/humantrafficking/Philippines.htm> (last accessed Sep. 30, 2009).

85. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sep. 7, 1956, 226 U.N.T.S. 3.

86. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).

Protection of Children Against Child Abuse, Exploitation and Discrimination Act.⁸⁷ Article 281 on Other Forms on Trespass has been repealed by the Urban Development and Housing Act of 1992.⁸⁸ Article 288 on Other Similar Coercions and Article 289 on the Formation, Maintenance, and Prohibition of Combination of Capital or Labor through Violence or Threats have been repealed by the provisions of the Labor Code.⁸⁹

I. Crimes Against Property

The provisions on Brigandage in Articles 306 and 307 of the RPC have been modified by the Anti-Piracy and Anti-Highway Robbery Law of 1974.⁹⁰

Article 315 on Swindling (*estafa*) has been modified by P.D. No. 818⁹¹ and Batas Pambansa Blg. 22,⁹² which increased the penalties for *estafa* resulting from bouncing checks. Moreover, P.D. No. 1689⁹³ likewise modified Article 315 increasing the penalty when *estafa* is committed by a syndicate. This law, however, provides for the maximum penalty of death⁹⁴ and must be read in view of the suspension of the death penalty.

87. An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes [Special Protection of Children Against Abuse, Exploitation and Discrimination Act], Republic Act No. 7610 (1992).

88. An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation, and for Other Purposes [Urban Development and Housing Act of 1992], Republic Act No. 7279 (1992).

89. A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE OF THE PHILIPPINES], Presidential Decree No. 442 (1974).

90. Anti-Piracy and Anti-Highway Robbery Law of 1974, Presidential Decree No. 532 (1974).

91. Amending Article 315 of the Revised Penal Code by Increasing the Penalties for *Estafa* Committed by Means of Bouncing Checks, Presidential Decree No. 818 (1975).

92. An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes, Batas Pambansa Blg. 22 (1979).

93. Increasing the Penalty for Certain Forms of Swindling or *Estafa*, Presidential Decree No. 1689 (1980).

94. *Id.* § 1.

The provisions on Arson from Articles 320 to 326 have been amended by P.D. No. 1613 which provides for new rules on arson.⁹⁵

J. Crimes Against Chastity

The Chapter on Rape and Acts of Lasciviousness has been repealed by the Anti-Rape Law of 1997, which reclassified rape as a crime against persons.⁹⁶ Consequently, the provision on Chapter Five of this Title no longer applies to the crime of rape.

K. Crimes Against the Civil Status of Persons

Article 351 of the RPC on Premature Marriages must be given more strength for the sole reason that there are few widows who marry within the 300-day prohibitive period provided by law.

L. Crimes Against Honor

Efforts have been exerted to decriminalize libel⁹⁷ or at least to situate it similarly⁹⁸ to bouncing checks where the alternative and more preferred penalty of fine is encouraged.⁹⁹ This is so because of the seemingly endless conflict between the right to freedom of expression as against the provisions of Article 353 defining the crime of libel. This writer opines that given the fact that our prison wards can no longer accommodate the increasing number of accused that need to be detained, the alternative penalty of fine should likewise be encouraged for this crime. This is also the writer's

95. Amending the Law on Arson, Presidential Decree No. 1613 (1979).

96. An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes [Anti-Rape Law of 1997], Republic Act No. 8353, § 2 (1997).

97. See Statement of the National Union of Journalists of the Philippines, NUJP: Affirmation of Tulfo, et al. Conviction and Libel Case v. Inquirer Journalists Highlights Need to Decriminalize Libel, *available at* <http://groups.google.com.ph/group/nujpnnews/msg/8e1068bcba88c6e5> (last accessed Sep. 30, 2009).

98. See Supreme Court of the Philippines, Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases, Administrative Circular No. 08-2008 (Jan. 25, 2008).

99. See Supreme Court of the Philippines, Penalty for Violation of B.P. Blg. 22, Administrative Circular No. 12-2000 (Nov. 21, 2000); Clarification of Administrative Circular No. 12-2000 on the Penlaty for Violation of Batas Pambansa Blg. 22, Otherwise Known as the Bouncing Check Law, Administrative Circular No. 13-2001 (Feb. 14, 2001).

opinion with respect to Incriminating Innocent Persons under Article 363 and Intriguing Against Honor under Article 364 of the RPC.

M. Quasi-Offenses

It has been settled that these quasi-offenses are not crimes in themselves but merely means in the commission of crimes.¹⁰⁰ Hence, the penalty to be imposed should be just a degree lower than the penalty for the crime actually committed.¹⁰¹

According to Article 9 of the RPC, grave felonies are felonies to which the law attaches the capital punishment or any afflictive penalties. Pursuant to Article 25 of the RPC, the afflictive penalties include *reclusion perpetua*, *reclusion temporal*, *prision correccional*, and *prision mayor*. Article 365 of the RPC provides that if the crime committed is a grave felony, the culprit must suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period. This will seem unfair for the victims of say, homicide, for which the law attaches the penalty of *reclusion temporal*. To punish a person guilty of reckless imprudence resulting in homicide with the maximum penalty of *prision correccional* in its medium period or two years, four months, and one day to four years and two months is greatly disparate from the maximum period for *reclusion temporal* that is 17 years, four months, and one day to 20 years when the only difference is the means of the commission of the crime and does not change the fact that the victim is dead.

This is not to say that the difference between an intentional killing and a negligent one should not be taken into consideration. The writer is merely pointing out the fact that the four-year period fails to live up to the severity of the end of the felony.

V. CONCLUSION

The Philippine Constitution is only 22 years old, and yet the clamor to amend it has become so incessant that there is a move to do so every single year. Perhaps this is because of the insatiable need for power. The Revised Penal Code, on the other hand, is 77 years old, and yet despite the many provisions that have been superseded, amended, repealed, or rendered useless because of the times, there has been no effort to overhaul the same.

100. See *People v. Faller*, 67 Phil. 529 (1939).

101. *Id.*

When a married man physically abuses his wife, the wife may look to the provisions of the Family Code for relief.¹⁰² When a woman, however, is exposed through a scandalous video taken without her consent, she cannot find anything in the RPC that will perfectly give her reprieve.

This having been said, the author believes that the only way we can eradicate crime in the country, in a very substantive way, is not only for the legislators to increase the penalties for the commission of certain crimes but also for them to provide the citizens with a penal code that does not necessarily contain all the offenses humanly imaginable, but that at least no longer contains passé provisions and dead laws.

The enactment of more applicable laws should be the priority of our lawmakers, not the never-ending attempt to extend their terms under the pretext that the Philippine Constitution needs to be changed to adapt to the times.

As has been demonstrated, there are other things that need change more.

102. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209, art. 55 (1) (1987).