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NOTE

THE PROPOSED CODE OF CRIMES AND THE PHILOSOPHY OF SOCIAL DEFENSE*

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IN 1884, an English jury had occasion to listen to a narrative of horror which perhaps remains as one of the most enlightening cases in the world annals of Criminal Law. Three able-bodied seamen and a seventeen-year old English boy were shipwrecked 1,600 miles from the Cape of Good Hope. They were compelled to put out into the open sea in a lifeboat. They had no water and no food except two tins of turnips. On the fourth day, they caught a small turtle. This was the only food they had for twenty days. On the eighteenth day, when they had been seven days without food and five without water, two of the seamen, Dudley and Stephens, suggested to the third — who did not agree with them, however — that someone should be sacrificed to save the rest. On the nineteenth day, Dudley proposed that lots should be drawn to determine who should be put to death. Finally, on the twentieth day, without drawing lots, Dudley, with the assent of Stephens, went to the boy, told him that his time had come, put a knife into this throat and killed

* In view of the recent moves to replace the present Revised Penal Code with the proposed Code of Crimes drafted by the Code Commission, and the possibility that it may yet see the light of statutory existence, it becomes necessary to once more focus attention on the Code of Crimes. Labeled by its proponents as a piece of dynamic and progressive codification and a major landmark in Philippine Criminal Law, and by its critics as nothing more than a code of ethics or of conduct, it likewise becomes necessary to devote attention to its basic philosophy, inasmuch as it finds both its justification and its basis in this philosophy. We believe that the proposed Code of Crimes stands or falls with its underlying philosophy.

This article is an attempt to present this philosophy and some of its basic features. It raises some questions which the writer believes are relevant to any discussion of the Code of Crimes, and which deserve more than a passing consideration and reflection.

The Code Commission was created by Executive Order No. 48, dated March 20, 1947, by the late President Manuel Roxas. At the time the proposed Code of Crimes was drafted, the members of the Commission were as follows: Chairman — Jorge Bocobo; Members — Guillermo Guevara, Pedro Ylagan, Francisco Capistrano, and Arturo Tolentino. It took the Commission a period of one year and ten months (from June, 1948 to March, 1950) to prepare the draft of the Code.

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him. The boy had been lying at the bottom of the boat, quite helpless, extremely weakened by famine and drinking sea water, and was unable to offer any resistance. The three men fed upon the body and blood of the boy for four days. On the fourth day after the deed had been done, the three seamen were picked up by a passing vessel. Dudley and Stephens were indicted for murder. The jury found that if the men had not fed upon the body of the boy, they probably would not have survived, and that the boy, being much weaker than they, was likely to have died before them. Dudley and Stephens were sentenced to death, but the Crown later commuted this to six months' imprisonment.[1]

One will note that this is an English case, tried before a common law court. The nature of the court and the system of law do not matter here. We may look upon the act as a heinous crime by most ethical or moral standards. We may condemn the persons who committed the act. But in back of our minds, we shall always be reminded that theirs was an act committed under great stress, and we shall always wonder if we might not have done the same had we been the actors in the story.

What strikes us particularly is not the moral tenor of the act committed in this case, but rather, the reasons for the act. One may come up with the explanation that the instinct for self-preservation is an important factor, or that hunger and thirst can so dull a man's reason as to virtually coerce him to do such an act. Whatever explanation one may come up with, he will always remember that the actors in this case would not have done what they did in the normal course of events. This brings us, therefore, to the question: Is such a criminal to be punished for his act or should we appreciate more fully the circumstances surrounding the act? The Crown apparently felt that the circumstances were more important, for it commuted their death sentence to six months' imprisonment.

One will not have to look very far for Philippine incidents of similar, if not equal, import. Some years back, a young boy strangled his younger brother to death because his brother was hungry and the boy had nothing with which to feed him. The newspaper reader was struck with sympathy for the boy and felt a little horror at the act committed. Pity is the immediate reaction. The crime, it is true, was an appalling one. But was it really a crime? Many people will say that it was. Others will say that it was simply a manifestation of brotherly love — he did not want his brother to suffer. Here again, there is a tendency to look at the circumstances which spawn a crime.

[1] *The Queen v. Dudley and Stephens*, cited by Edward H. Levi in his Preface to ADLER and WOLFF, PHILOSOPHY OF LAW AND JURISPRUDENCE, vi-vii (1961).

If an insane person kills another, less attention is paid to the actual fact of the commission of the crime than to the insanity of the person who committed it. We say — A, being insane, was not in his right mind in killing B, the victim. There is no rationality to the thing. He was entirely without a motivation. He just did it. And we are at a loss, looking for the non-existent answer to the question "why?".

What drives a normal person to commit a crime? This is the question which modern-day sociologists, psychologists and criminologists are trying to find the answer to. They do not ask the questions — "Was he guilty or not?" — "What circumstances aggravate, mitigate, or exempt him from criminal liability? — for such questions are farthest from the mind of the social scientist. Their main concern is the mechanical or psychological impulse which drove the person to commit the crime. The aggravation or mitigation or exemption lies less in the statutes than in an honest inquiry aimed at dissecting the moral, mental and physical make-up of a person.

In the face of this pressing inquiry, legal scientists and lawmakers are faced with the problem of updating our Criminal Law. The proposed Code of Crimes is one such attempt to keep the law in pace with the times. It is an honest attempt, but like many attempts to look progressive, it is at the same time both realistic and unrealistic. There is no contradiction here. It is realistic in its philosophical attitudes, but unrealistic in its content. The proposed Code is ostensibly based on a basic philosophy of social defense. It is the object of this article to present the essential features of this philosophy. Exposition is the object of the writer. It is left to the reader to attempt an honest evaluation of the proposed Code.

Social Defense and the Code of Crimes

The Code Commission, in its statement of basic principles,[2] explains the basic philosophy of the proposed Code of Crimes in the following manner:

[2] CODE OF CRIMES, 2-3 (1958 ed.) [Hereinafter cited as CODE].

The main criterion of the present penal code is that the basis of criminal liability is human free will and the purpose of penalty is retribution. To the classicist, and specifically the framers of the Spanish Penal Code of 1870, man is essentially a moral creature with an absolutely free will to choose between good and evil. They assert that man should only be adjudged and held accountable for wrongful acts, so long as that free will remains unimpaired. In working out this theory, the Penal Code of 1870 placed more stress upon the effect or result of the felonious act than upon the man — the criminal himself, and endeavored to establish a mechanical and direct proportion between crime and penalty. Eventually, however, the classical method of considering the offender as an abstract being, and of prefixing for him, through a series of hard and fast rules, a great multitude of penalties with scant regard to the human element, found stubborn and severe critics....

The new system of thought radically deviates from the classical school in the conception of crime and the criminal. To the positivist, free will is a myth, a figment of the imagination or at least, a debatable matter. The positivists hold that man is subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong in spite of or contrary to his volition. It is for this reason that the central idea of all positivist thinking is the defense of the community from anti-social activities, whether actual or potential, against a morbid type of man who is called a "socially dangerous person." To forestall the social danger and to achieve social defense, the positivist philosophy has thus chosen a different path. Premised upon the proposition that man is primary, while the deed is only secondary, the new school takes the view that crime is essentially a social and natural phenomenon, and as such, it cannot be treated and checked by the application of abstract principles of law and jurisprudence nor by the imposition of a punishment, fixed and determined *a priori;* but rather through the enforcement of individual measures in each particular case after a thorough personal and individual investigation conducted by a competent body of psychiatrists and social scientists.[3]

How is one to illustrate these two conflicting schools of thought in the field of Criminal Law?

Under the classical school, if A murders B, such a crime committed by A is looked upon as the result of his own moral choice. A is considered as a free being. If he chooses to commit a crime,

[3] *Ibid.*

that is his own concern. The fact of murder remains, and such fact is punishable under the law, so long as its elements are proven. Each man knows the law. He knows that if he murders another, he will be punished for it. The Penal Code has, in turn, laid down the system of penalties applicable to such a case.

Taking the same example and applying it to the positivist school, what would take place? A has murdered B. The next step is to ask "why?". Why did A kill B? Is anything wrong with A? What can be done to reform him? A thereupon becomes a subject of inquiry. The main emphasis is on the person of the murderer as seen in the light of social circumstances. It is true A has committed a crime, but unlike the classicists, the positivists will pay less attention to the fact of the crime than to the reason for its being.

The proposed Code of Crimes is an attempt at leaving the hard and fast notions and rules of the classicists without fully embarking on the same philosophico-legal boat as the positivists. Thus, "the Commission retains the principle of moral blame or free will in every act or ommission, but at the same time the man or actor is considered as more important than the act itself... The Commission has, on the one hand, declared that crime is an intentional or voluntary act repressed by law and on the other hand, has recognized the existence of a 'certain morbid predisposition, congenital or acquired by habit, which by destroying or ennervating the inhibitory controls, favors the inclination to commit a crime.' "[4]

In consonance with this theory, the proposed Code has done away with the use of the such terms as "penalties," "punishment," and has substituted the words "repressions" and "repressed" instead. Article 34 provides that "the repressions provided in this Code are applied for social defense, to forestall social danger, to rehabilitate, cure or educate the person concerned, and to warn such other members of society as may be possible transgressors of the criminal law."

One German barrister, Wolfgang Friedmann, traces out a philosophy vastly similar to the positivist school of Criminal Law. He enumerates three major philosophies of criminal punishment. The first of these is the idea of atonement or expiation. "Suffering punishment, the criminal expiates the sin he has committed." The second is the philosophy of retribution, which "emphasizes the position of the social group against which the criminal offends rather than the criminal himself. By imposing punishment, society exacts retribution, or in the dialectic language of Hegelian philosophy, it

[4] *Ibid.* 4.

'negates' the crime." The third is the philosophy of deterrence, which strongly emphasizes the social objective. "Punishment must be so designed as to deter as far as possible from the commission of similar offences. This again divides itself into two aspects. Appropriate punishment should deter the individual offender from a repetition of this, or similar kinds of, offence. It should also serve as a warning to other members of society. In both respects, deterrence should serve to protect society from crime."[5]

Clarence Darrow perhaps best synthesized the implications of the new thinking in Criminal Law in his summation in the Leopold and Loeb murder trial:[6]

> Crime has its cause. Perhaps all crimes do not have the same cause, but they all have some cause. Scientists are studying it; criminologists are investigating it, but we lawyers go on ... punishing and hanging and thinking that by general terror we can stamp out crime.
>
> If a doctor were called on to treat typhoid fever he would probably try to find out what kind of milk or water the patient drank and perhaps clean out the well so that no one else could get typhoid from the same source. But if a lawyer were called on to treat a typhoid patient he would give him thirty days in jail, and then he would think that nobody else would ever dare to take typhoid. *If the patient got well in fifteen days he would be kept until his time was up; if the disease was worse at the end of thirty days, the patient would be released because his time was out.*

This last statement is the best possibly declaration of the positivist tenets. It seeks to treat a criminal sickness by digging up the roots of the infection, and isolating it. This medical treatment is, for such a point of view, a necessity. Whatever else one may believe after going through the proposed Code, this much is certain — we have come a long way from the days when "an eye for an eye and a tooth for a tooth" or the *lex talionis* was a commonplace in the exaction of punishment for crime.

[5] LAW IN A CHANGING SOCIETY, 151-152 (1964). Friedmann, in his footnotes, refers the reader to Gardiner, The Purposes of Criminal Punishment, 21 M.L.R. 117, 221 (1958) for a recent survey of these theories. With reference to the two aspects of deterrence, he further takes note that these are, in German terminology, called *Generalpravention* and *Spezialpravention*, respectively meaning "deterring others" and "deterring the individual concerned." His statement of the philosophy of deterrence ostensibly does not go so far as to advocate entirely the positivist trend of thought as does Darrow, but neither does it fall back on the classical school. The philosophy of retribution is more properly the realm of the latter school.

[6] Cited in STONE, CLARENCE DARROW FOR THE DEFENSE, 269-270 (1958 ed.); McKERNAN, THE AMAZING CRIME AND TRIAL OF LEOPOLD AND LOEB, 226 (1957). The italicized words in the cited quotation exhibit a trend of thought closely linked with that of the proposed Code of Crimes, particularly the provisions on security measures.

OBJECTIVES OF THE CODE

A fair and objective study of the Code of Crimes requires that due emphasis be given to its fundamental objectives. Philosophies and principles must go together. To attempt to evaluate a philosophy in the light of codal provisions alone is insufficient. Principles or objectives are practical guideposts. A philosophy merely gives credence and unity to them.

The following objectives[7] have been outlined by the Code Commission: (1) A more strict morality; (2) a higher concept of citizenship; (3) more rigid standards of official conduct; (4) the recognition of women's rights; (5) a stronger implementation of social justice; (6) more respect for the Filipino nation; (7) greater recognition of the sacredness of human life and personality; (8) fortifying the constitutional guarantees of individual rights; (9) greater internal and external security of the state; (10) more forceful assurances of public order and safety; (11) stronger protection of family solidarity; (12) more compelling safeguards to children; (13) more resolute shielding of the public economy; (14) more alert vigilance over the public health; (15) stronger guarantees of private property; (16) greater leeway granted to the court in applying the repression; (17) a more effective enforcement of the criminal law.

This is a commendable list of objectives. The provisions which have been adopted in furtherance of these objectives, however, raise problems and questions.

In numerous provisions, the proposed Code seeks to attain a more effective citizen participation in the conduct of our democratic practices and institutions and to foster civic courage. Article 465 (3) provides that any person who deliberately fails or refuses to testify to facts within his knowledge in the investigation of a crime or in the hearing of a criminal case, is guilty of tolerating a crime. It also tries to foster greater national consciousness in others. Article 928 provides that any person who shall maliciously desecrate the memory of Rizal, Burgos, Bonifacio, Mabini, Del Pilar, Luna, and other national heroes, shall be guilty of a misdemeanor; article 929 likewise cautions against the improper use of national heroes' names. In the same breath, however, that the Code attempts to increase constitutional guarantees of individual rights, it also provides in article 933 that any president, director, or principal of any uni-

[7] CODE, 42.

versity, college or school, whether public or private, or any professors, instructors, or teachers thereof, who shall refuse to use textbooks or other books prescribed by the government, shall be guilty of a misdemeanor. This will impress one as "going too far". The government cannot presume to know what is best for students, or for teachers. The prescription of books under its regulatory powers for the public benefit is a good thing, and the protection of young minds is a commendable objective, but, like many other good things, it can be overdone. Prescribed books are not necessarily the most advisable ones. There is even a hint of government censorship here.

A more pressing problem, however, is that which has to do with the attainment of a stricter morality. Under the Code, some of the new provisions have to do with peeping, eavesdropping, incest, sodomy, immoral or equivocal language in advertising medicines, misconduct by spouses, acts of grave lust, voluntary acts of lust by a married woman, molesting women in public, gossip publications, baneful teachings on the part of teachers, disobedience or disrespect by children, and cruel treatment of insane persons. The question arises — how far can the government legislate the morality of a people? These provisions are meritorious, and there is little doubt that they will serve their purpose if implemented. The question, however, keeps recurring. The police power of the state may be an extensive thing, but how far can it be justified?

ANATOMY OF THE CODE

The proposed Code of Crimes is a drastic departure from the old Code, both in philosophy and bulk. It has drawn freely from the penal codes of Italy, Switzerland, Argentina, Mexico, Cuba, Uruguay, Colombia, Costa Rica, Chile, Ecuador, Bolivia, Brazil, Paraguay, Peru, Puerto Rico, El Salvador, Venezuela, Spain, France, Russia, ten representative states of the American Union (California, Illinois, Michigan, Missouri, New Mexico, New York, Oklahoma, Oregon, Pennsylvania and Texas) and the United States as a whole. The Commission takes note of the fact that where such provisions have been incorporated, amendment and modification of their content have been effected to suit Philippine conditions or simply to improve the derived provisions in form and substance.[8]

[8] *Ibid.*, 10. It should be noted that one of the sources listed is the State of Illinois. It was this state where the Leopold-Loeb trial took place and Clarence Darrow delivered his famous summation and plea (see supra, note 6).

The proposed Code of Crimes is made up of three books and a total of 950 articles. Book One (General Provisions) encompasses the following matters: (1) Offenses and Circumstances Affecting Criminal Liability; (2) Persons Criminally Liable; (3) Repressions in General; (4) Security Measures; (5) Extinction of Criminal Liability; (6) Civil Liability. Book Two (Crimes and Their Repressions) defines and prescribes the repressions for: (1) Crimes against Life and Limb; (3) Crimes against Liberty; (4) Crimes against the Security of the State; (5) Crimes against Humanity; (6) Crimes against the Public Administration; (7) Crimes against the People's Will; (8) Crimes against the Public Economy; (9) Crimes against the Public Faith; (10) Crimes against the Public Health (11) Crimes against the Family and Good Customs; (12) Crimes against Property; and (13) Crimes against Public Security. Book Three (Misdemeanors) defines the extent of Misdemeanors against: (1) Persons; (2) Public Order and Safety; (3) the Public Administration; (4) the Public Health; (5) Good Customs; and (6) Property, and provides for their repressions.

Philippine Criminal Law has, at this stage, come a long way from the time when the Codigo Penal of 1870 was first introduced here in the Philippines (July 14, 1887). Penal law has since then assumed new color and light. Nowhere, for instance, do we now find any provisions resembling article 11 of the said Code, which provided that: "La circunstancia de ser el reo indigena, mestizo o chino la tendran en cuenta los Jueces y Tribunales para atenuar o agravar las penas, segun el grado de intencion respectivo, la naturaleza del hecho y las condiciones de la persona ofendida, quedando el prudente arbitrio de aquellos."[9]

THE CONCEPT OF REPRESSION

One major feature of the proposed Code is the fact that the words "repression" and "repressed" have been substituted for "punishment" and "punished". Avowedly, this substitution is in consonance with the theory of social defense as the foundation of Criminal Law.

Article 38 enumerates the principal repressions prescribed for crime as follows: (1) Life imprisonment; (2) Heavy imprisonment;

[9] Ministerio de Ultramar, CODIGO PENAL Y LEY PROVISIONAL PARA LA APLICACION DE LAS DISPOSICIONES DEL MISMO EN LAS ISLAS FILIPINAS, 41 (1886).

(3) Medium Imprisonment; (4) Light imprisonment; (5) Confinement; and (6) Fine in a sum which is the equivalent of not less than fifteen days' nor more than six months' earnings. With respect to misdemeanors, the principal repressions prescribed in article 40 are two: (1) Restraint; and (2) Fine not exceeding a sum which is the equivalent of fourteen days' earnings.

Even the most cursory look at these enumerations will immediately bring to mind two considerations: First — what about Capital Punishment? Second — how are fines to be paid, and how much?

As has been previously stated, the Code of Crimes is in many ways a compromise. The positivist school learns heavily towards favoring the abolition of capital punishment. Without deviating too much from the established set-up, the Code Commission, while not totally doing away with capital punishment, has done its best to, in effect, discourage it. Under article 39, the death sentence may be imposed in accordance with article 72. The latter provision states that "regardless of the number and nature of aggravating circumstances or even when the the law prescribes death alone, the death sentence shall be imposed only if the court, after observing the provisions of article 73 [which involves a consideration not only of aggravating and mitigating circumstances, but also of the actor's social and family environment, education, previous conduct, habits, economic condition and other personal factors], finds that the offender is unusually dangerous to society and not likely to reform. Otherwise, life imprisonment shall be imposed." There is little doubt that the Code Commission believes that capital punishment should be applied only in very extreme and unsalvageable cases.

It will be noticed that the provisions of article 73 (in brackets) are closely related to this principle of European Criminal Law: "The question of (a man's guilt) is to be determined without reference to his general character. By the systems of Continental Europe, on the contrary, the tribunal not only examines the evidence relating to the offense, but looks at the probabilities arising from the prisoner's previous history and habits of life."[10]

One progressive feature of the Code, and certainly something very greatly to its credit, is the imposition of a system of fines based on daily earnings. Article 42 states that "a fine shall be imposed in a sum equivalent to one or more days' earnings from property, labor, employment, profession, business, industry, or any other

[10] BOUVIER, I LAW DICTIONARY 731 (1914).

source. When the offender has no income, his earnings shall be deemed those which would accrue to him if he were employed according to his condition and aptitude."

This relative element in the imposition of fines has a well-laid basis. Wages are relative, as are the totality of one's earnings. The earnings of an ordinary man for one day's work will mean nothing to a highly-paid executive. If a man earns four pesos a day, and another earns one hundred pesos a day, then there is just that much difference between the two of them. Ten pesos would mean very little to the latter. It would simply be the equivalent of one-tenth of his daily wage. To the former, however, the same sum would mean two-and-a-half days' work. Such relativity in fines is, therefore, one important contribution to Philippine Criminal Law, as far as equity, fairness and realism are concerned.

The use of the word "repression" as a substitute for "punishment" is highly extraordinary and, we think, uncalled for. Parodying Shakespeare, it may be said that any form of consequence involving imprisonment or confinement, a fine or surveillance, will still be "punishment", whether one chooses to use the common and familiar term or "repression" instead. In the ordinary course of events, no subtle distinctions based on any philosophical framework, are preferable or even advisable. We can tell a man until his ears are deaf — "You are being repressed for committing a criminal act" — but he will always take it to mean "punishment" of one type or other. Philosophical niceties are seldom the most pragmatically workable.

Whatever confines human freedom and liberty is a restriction. Punishment is by its very nature a restriction. It may involve confinement, a fine or surveillance, as a general rule, but it may also involve a curtailment of freedom. We do not mean here that every curtailment is a form of punishment. Restriction may come in the guise of punishment, but it may likewise arise from duty. Each right presupposes a duty. If we have a right to own something to the complete exclusion of others, it is because others have a duty to respect that right. The commission of a crime breeds a disruption of human social order. Observance of the rights of others perfects that order.

The Code of Crimes can attempt to change the present conception of criminal consequences. It can only hope for so much. We are as unprepared to follow a theoretico-philosophical distinction as that between "repression" and "punishment" as we are to create distinctions between the three Persons constituting the Blessed Tri-

nity of Catholic doctrine. The Trinity is a mystery. No matter how many persons one takes it to be, he will always end up with one God. In like manner, "punishment" and "repression" are merely two sides of the same philosophical coin. You will always keep coming up with the idea of restriction and consequence. In ordinary everyday language, there can be but one word that will fully and adequately describe it: "punishment".

JUDICIAL AND ADMINISTRATIVE PROBLEMS

Criminal Law involves not only the conviction of offenders after their guilt of a crime or misdemeanor has been established and adjudicated upon by the judge. It goes much further than merely that. If A, for instance, is found guilty of murder and sentenced by the judge to life imprisonment for twenty-five years, the process of his repression(and, we might add, suppression of his criminal activities and tendencies) does not stop there. He will be committed to prison, or perhaps (if sick or insane) to an insane asylum or hospital. These functions are performed by administrative agencies. The proposed Code of Crimes does not seek to make the judge a mere decision-maker on whether to send a person to prison or not. The judge, in the Commission's point of view, should perform a more vital function. Thus, under their system, if a prisoner serves fifteen years in prison, in the event he is released, the court will still have something to do with him. Thus, "a person convicted of a crime is given a relatively short period of imprisonment after which he is subjected to constant observation by means of security measures."[11] The mere fact that judgment has been rendered does not absolve the court from further duties.

Under article 114, on Detentive Security Measures, for instance, it is provided: "Detentive security measures shall be excuted immediately after the service of the principal repression, if any, and shall last until the court has pronounced that the subject is no longer socially dangerous." Thus, after a person has served his term of repression, it shall be for the court, with the aid of agencies set up in the Code, and the findings of social scientists who may study the person convicted and their recommendation to once more exercise its sound judgment. Should this person be subjected to further security measures or not? Has he totally reformed? Is he unusually dangerous? Will it be safe to completely free him? Darrow's statement[12] assumes greater relevance in this regard: "If the patient got well in fifteen days he would be kept until his time was up; if the disease was worse at the end of thirty days, the patient would be released because his time was up." The system of security measures set up is nothing less than an indication of the Code's philosophical foundations. Under the proposed Code, there are four kinds of security measures provided to forestall social danger.[13]

[11] CODE, 7.

The new system proposed would thus mean greater responsibility on the part of the judge. If ever actualized, it will involve a wider exercise of judgment and discretion on his part. More realistically, however, it will mean more work. The problem would therefore arise — are judges, considering the present efficiency of our courts and the clogged dockets that perpetually haunt them, prepared to assume such an added burden of work? Assuming for the moment their soundness of judgment and their ability to use such judgment wisely, can they, in the practical course of events, meet such a load? Until present problems in judicial administration are solved, we believe not. This problem, generally a matter of administrative efficiency within the judiciary, will haunt our courts for a long time to come.

[12] See *supra*, note 6.

[13] *Precautionary Measures* are those applied to persons who show any symptom of habitual rowdyism or ruffianism. Such persons are subject to detentive security measures even if they have not been prosecuted for another specific crime. (Arts. 108 and 114).

Defensive Security Measures consisting of compulsory residence and work in an agricultural settlement or labor establishment are imposed upon: (1) Persons who have been sentenced to medium imprisonment or longer because they are, in the contemplation of law, considered socially dangerous; and (2) Offenders whom the court considers socially dangerous, even though the offense committed entails less than medium imprisonment.

A person is *socially dangerous* (art. 107) when he shows a certain morbid disposition, congenital or acquired by habit, which by destroying or enervating the inhibitory controls, favors the inclination to commit a crime.

Curative Security Measures are applied to: (1) those affected with permanent, temporary or intermittent insanity which affects the normal exercise of the mental faculties in such a way as to produce danger to other persons; (2) those who are habitual drunkards; (3) those who are opium or drug addicts; and (4) those who are suffering from some venereal disease.

All dententive security measures are executed immediately after the service of the principal repression, if any, and shall last until the court has pronounced that the subject is no longer considered socially dangerous. (Art. 114).

Educative Security Measures are applied to children under 18 years of age who may come within the jurisdiction of the juvenile court. (Art. 112 and Chapter 3, Title I of Book One).

There is therefore an amalgam between the theory of retributive justice through the imposition of fixed terms of imprisonment, and the concept of social defense and rehabilitation through the enforcement of security measures. [CODE, 5-6.]

We are well aware that justice and the machinery for its effective application are not meant for the leisure and convenience of the men who occupy such offices; but rather, they are set up for the welfare of the people. There will always be men who believe in the principles of the Code. We do, in fact. But caution and prudence should temper the convictions of men. To stand by one's convictions as long as one believes in them is a good thing. But the courage of one's convictions, if such is to be fortified, should also be a tempered courage — one that can assess a situation and meet it realistically.

We all dream of ideal things. The Code's principles are ideals in themselves. But ideals are often coldly unrealistic and sometimes overly subjective. To catch the flame of an ideal and to make it a living, working thing, is a good aim — but when ideals do not take stock of existing facts, they do not go beyond the frame of the mind into that which is real and concrete.

A machine in the mind of its inventor which will lighten human toil is a good thing, by analogy. But a machine that remains in the stage of conception is useless. It will not hum. It will not echo the purring sounds of progress. Its inventor has to sit down and put the pieces together bit by bit. Only then will it become a living memorial to the fountain that is his mind.

It is true we have to start somewhere. This cannot be denied. But to know where to start and how far to go is of equal importance. The first step should be taken, many may say. True again — but if one steps too far out, one may find himself falling over the precipice, deeper in trouble than ever before.

Friedmann's comments and observations on administrative problems[14] (in relation to Criminal Law and its vital and needed changes) are very relevant to our present considerations:

> In the first place, there must be a degree of coordination between the judicial authorities proper, i.e., the judge..., and the various welfare and administrative authorities, which is still often lacking....
>
> Secondly, the distribution of functions between judicial authorities and various administrative and welfare officers emphasizes the need for adequate training and social and professional status of the latter... The change from a purely repressive to an educative function also emphasizes the need for properly trained officers, whose arduous lot must be balanced by adequate recognition in the social and financial scale.
>
> Lastly, and perhaps most important, the blurring of the borderlines between the criminal and the administrative procedure holds not only benefits, but also dangers for the effect on the individual. The administrative process is, in its essence discretionary, whereas criminal procedure has, at least in the democratic scheme of values, been surrounded with safeguards against arbitrariness.

[14] *Op. cit.*, 155.

These problems may perhaps be clarified in this manner — it is feared that too much administrative interference may eventually result in arbitrariness on the part of administrative authorities, for they are often more autocratic than their judicial counterparts; it is likewise feared, that sentencing habitual criminals, for example, to preventive detention, which would include treatment, corrective diagnosis, and training for return to ordinary life, may result in depriving a man of his liberty indefinitely under the guise of protecting society from his abnormal state of mind even if he is, in fact, normal.

What administrative agencies does the proposed Code contemplate? There are at least three: Boards of Labor Assignment (which aim at moral rehabilitation), the Social Welfare Commission (the social workers under which are to be enlisted in the moral and social restoration of the prisoner), and a Council of Aid.

Article 95 provides for the creation of Boards of Labor Assignment, stating that:

> To attain the purpose of rehabilitation, there shall be created one national board of labor assignment and another board of labor assignment for each province and city which shall determine the kind of work or labor that shall be assigned to each prisoner, according to his position and aptitude.
>
> The National Board of Labor Assignment shall be composed of the Director of Prisons, who shall be chairman, a representative of the Department of Education, and a representative of the Social Welfare Commission.
>
> The Provincial Board of Labor Assignment shall be composed of the Judge of the Court of First Instance, who shall be chairman, the Provincial Warden, and the District Health Officer.
>
> The City Board of Labor Assignment shall be composed of the Executive Judge of First Instance, who shall be chairman, the City Warden, and the City Health Officer.

Their help, in the words of the Code Commission, "will be most valuable toward the vocational training and the social and moral reconditioning of the prisoner, thus accelerating his restoration to the normal life of a free man."[15]

The help and cooperation of the social workers under the Social Welfare Commission is likewise sought, and such is intended by the Commission to be manifested in four ways: (1) Membership on the National Board of Labor Assignment; (2) Membership on the Coun-

[15] CODE, 34.

cil of Aid; (3) Supervision of juvenile offenders under the direction of the Juvenile Court; and (4) Guidance over persons under surveillance.[16]

All money collected by the court by way of fines and forfeitures will go, under article 104, to a Fine Fund, to be kept apart and separate from the general funds of the Government, and to be used exclusively for the purposes of the Council of Aid.

The Council of Aid is to be composed of the District Engineer, the District Health Officer and a social worker to be appointed by every Court of First Instance. Its duties, as specified in article 103, are: (1) to afford assistance to released prisoners, helping them, if necessary, to obtain suitable and permanent work; and (2) to afford every possible aid to the families of prisoners. Its expenses shall, furthermore, be defrayed out of the Fine Fund already mentioned.

What the Code of Crimes proposes to create is a creditable setup. It augurs well for the future of prisoners "repressed" for their offenses, and certainly inclines towards more humane treatment of such prisoners and the giving of aid to what may perhaps be destitute families otherwise.

The administrative problems which this writer has cited should not detract from the value and future importance of the Code's contents, if ever they should come into being. What problems may arise with respect to the operation and scope of such agencies should not detract too much from their original worth. Herein lies both their importance and the risks which they involve.

Criminal Law in a Changing Society

The constant flux in social conditions and scientific studies will, with little doubt, leave its mark on the Philippine Criminal Law of the coming decades. The fact that the Code Commission has seen fit to attempt a transition from the classic school of criminal jurisprudence is, in itself, an indication that changes will become necessary in the future. The Code of Crimes reflects this troubled sentiment of our times. It may never become law in the next decade, but certainly, the very fact of its being drafted shows that the life-span of the present Revised Penal Code may be abbreviated in the near future.

The danger in the introduction of changes in our Criminal Law lies, not in the very fact of change itself, but in the degree of change. It is true there may be social conditions which necessitate further

[16] *Ibid.*

revision of our Criminal Law, but it is just as true that miscalculation as to the degree of revision may result in incalculable harm. The best-laid intentions of men may misfire.

The extension of the scientific knowledge of the workings of the human mind, the effect of outside forces on the actions of men, and the impact of social conditions on the degree of obedience to the law and respect for the rights of others, it must be admitted, make necessary a more liberal outlook towards criminals and offenders. A relaxed liberalism, on the other hand, may lead to a situation where it will become of prime necessity to once more resuscitate the control factor in the enforcement of law and the prevention of crime. Even a good thing can be abused.

Change should not come about too abruptly. If the transition from an old to a new system is too rapid, the results may not at all justify the change in the first place. Change requires great preparation. One does not give a man a gun if he does not know how to use it. The first step is always to teach him how to use it properly. Criminal Law is a necessity in any social organization. Rousseau's concept of man as being in an original state of innocence certainly cannot be applied to present-day society. The fact of criminal acts is something we must accept. We cannot totally eradicate crime. We can only curb and minimize it. Man is a creature of many moods, a creature of changing passions. Even the most timid and the kindest man will at some time raise his voice in anger. If we ask why he does so, then we find ourselves on the road to finding a solution to his particular illness. When passions run loose, then crime may result. This is the way it is with man. He will be sorry after he has done the deed, because he would not have done it in the first place, but the fact remains that he has committed a crime.

Abnormal and Criminal Psychology have given us insight and information about why men behave the way they do. The most ordinary-looking man may be a potential criminal. Trace it to whatever source you will — a twisted mind, an unhappy childhood, hunger, envy, or even sheer accident — the crime still occurs. What psychology has done is to give us a better appreciation of the man. Perhaps it has made us hate the criminal less. Understanding is the first step in solving the puzzle of crime. We cannot convict a man by his very act alone. That is why even the most obviously criminal person is given the right to a trial, the right to confront the witnesses against him, the right to defend himself in court. Our judicial institutions are there to help us understand the situation better. The judge does not render his decision on the spur of

the moment, or without first hearing the accused, for the latter may have been justified in committing the act (as, for instance, where it was done in self-defense against the unlawful acts of an unjust aggressor without any provocation on his part). If he is, we can say to ourselves that he is not guilty and acquit him. We can consider an act as never having been done, but the result still remains. The judge can acquit the innocent person who was merely defending himself and say, "he is not guilty," but the dead will not rise. The dead will remain dead.

Sociology, too, has done its share in helping men better understand the criminal. It has traced patterns of human behavior in actual given situations, and explained (or at least attempted to explain) the reasons for the actions of men. Like any other social science, however, it can only check its hypotheses against a given set of factors. Abstractions are beyond the scope of the act committed. When the action fails to fit within a given pattern of behavior, then human judgment must once more step in and say that — "this man is guilty (or innocent)".

Human behavior is a mass of complex actions. We can, with the social-psychologists, predict how men will act in certain given situations, but we can never fully guarantee that they will act in such fashion. We can only say (never with absolute certainty) that he will act in such wise. This is the limit of scientific study. Man is too complex a being to catalogue in a book. The very fact of his humanity bears this out. Man is a free being, free to do as he wills, whether such be the result or product of his reasoning faculties or the mere whim and caprice of his impulses and instincts. We do not attempt to explain the unexplainable. We can only accept it, and try to understand it.

Law will always have its place in society. It will remain as long as there is more than one individual alive on this earth. It may be that such a law will merely be the product of physical force (for the legal positivists say that the essence of law is the force behind it); or it may be that such a law will be the tool of the ruling economic class (if we are to accept the economic determinism of the Marxist Socialists); or it may be that such a law attracts and responds to the reason and nature of men. Whatever the conception of the law may be, and whatever be the philosophy which maintains it and gives it the color of reason, law will always be there. It is the warning sign that tells men — "Stop! or you will bear the consequences."

Respect for human life, for property, and for society, are the basic mainsprings of any Criminal Law. When changes in society

occur (whether they be in the temper and morality of men or in the conditions wherein they live), then the law must respond. Acts that are crimes or misdemeanors today may not be crimes tomorrow. If smuggling is rampant now, it may subside tomorrow. If dart-killing is the fad now, tomorrow men will find other means of killing each other.

Change (it should be repeated) should not be abrupt. If the law is behind the times, it would be foolish to fashion a law that will be ahead of its times. Law contemplates society, in the same manner that society has a great need of law as a means of social control. A law that is not in tune with the workings of the society for which it is made is a useless thing. It may serve future generations, but it will not do the present one any good.

A further question must likewise be reiterated. Can law dictate the morality of a people? It cannot. Morality is a very personal thing. When we speak of morality in this context, we mean not the morality of the mob, dictated by public opinion, but the morality of a man as dictated and tested by his own guide — his conscience. What the law can attempt to do — and should do — is to foster the development of morality. But it cannot, and should not, dictate it. Paperwork is a fine thing to look at, but only practice can make it perfect. Law may itself foster the values which a people may hold — it may incline men to respect and reverence their elders; it may help them to follow the footsteps of their national heroes — but it must do so in a positive way, not by a negative approach. Men make heroes. Even the most brilliant genius alive would not be appreciated or admired if men did not see fit to do so. Admiration for an individual is something which only another individual, apart from the subject himself, can give. It is also the same way with law. Law must take into account the subjects for whom it is meant. To guide the actions of men by sheer abstraction is a foolhardy task. Guidance must be fostered and instilled in the minds of men.