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UNDERSTANDING OUR CONSTITUTION

On February 2, 1988, our new Constitution will have marked its first year of existence. Now is an appropriate time to assess its significance and impact on the development of our country's democratic institutions.

Ever since the election of Senators and Representatives, and with the convening of the First Congress since the February Revolution, we have been witness to several disagreements between the Executive and Legislative branches of government. We can go at length in listing the various exchanges between the Legislative and the Executive branch, but we will concentrate only on the recent conflict on the issue anent the Commission on Appointments. This conflict highlights the principle of checks and balances and separation of powers so vividly that it provides us with a test case of how our Constitution has worked so far in our effort to restore democracy in our country.

This appointments controversy centers on the coverage of Section 16, Article VII of the 1987 Constitution, which provides for the appointments which are subject to confirmation by the Commission on Appointments. Congress contends that, under the 1987 Constitution, the Legislative branch can, by law, determine which appointments will require confirmation by the Commission of Appointments. On the other hand, the Executive branch contends that the appointments which require confirmation by the Commission on Appointments are limited to those positions expressly provided for by the Constitution. Congress then passed a law which reflected its position that all appointments require confirmation. The President, in keeping with the position upheld by the Executive branch, vetoed the bill. Some say that we are now headed for a collision course, but, a person with a little understanding of Constitutional government would conclude that this conflict is merely an exercise of the principles of checks and balances and separation of powers, the fundamental principles underlying the structure of government laid out by the Constitution. Under this structure, we should not forget that there is a third branch of government – the Judiciary – which will eventually play a major role in this conflict. Even if Congress overrides the veto by the President and a law is passed, the constitutionality of such a law will still be subject to judicial review. It is the inevitable conclusion that the Supreme Court will be the final arbiter of this conflict between the Legislative and Executive branches of government.

Based on said anlysis, this present clash seems so simple that one wonders why there is so much controversy about it. All we really have are two branches of government in conflict. This conflict will then be resolved by a third branch of government. There is, however, a disturbing development. Certain legislators have proposed, as a possible solution to this conflict, the amendment of the provision of the Constitution (i.e. Section 16, Article VII, 1987 Constitution) dealing with the appointments issue ("Senate Mulls Charter Change", Manila Bulletin, February 1, 1988). These solons are of the belief that when there is an ambiguity in the Constitution it would be proper to resort to the amendatory process provided by Article XVII of the Constitution. In their desire to ensure that all appointments pass through the Commission on Appointments, these legislators are losing sight of the real nature and purpose of the Constitution. As was conceived by

Locke, a Constitution is the social contract among the people to place in the hands of a few the powers of government. As the basic law of the land, the Constitution must have some sense of permanency. Although changes in the fundamental law are allowed under the article on Amendments and Revisions, these legislators must realize that the amendatory process was provided for by the Constitution in order that it may be changed in response to fundamental changes in society. History teaches us that ny society, including ours, will undergo change, and as society changes so should its laws and institutions. When the time comes that we are confronted with such change, then we should seriously consider the need to amend or revise our Constitution. Until that time arrives, however, we should not advocate frequent and untried changes in our Constitution. It is not suggested that we never change our Constitution; it is merely advised that those who would exercise the amendatory right restrain themselves in its exercise and limit its use only in instances when changes in our society dictate a corresponding change in our Constitution.

Clearly, the appointments issue does not involve a fundamental change in soceity. The legislators should quickly perceive that the present controversy is but a simple case of apportionment of power among two co-equal branches of government. The legislators should not advocate a departure from the constitutional provisions just because adherence to it might cause a dilution of their powers. Under the principle of separation of powers, there is a built-in process for the resolution of conflicts between the different branches of government. As explained above, when the Executive and Legislative branches are in disagreement as to the proper application of the Constitution, the final arbiter is the Judicial branch, specifically the Supreme Court. Should the Supreme Court uphold the view espoused by the Legislative branch, then the Executive branch should submit to such pronouncement. If, however, the Supreme Court were to decide otherwise, then the legislature should accord it the deference that it is due.

The occasion for the calling of an amendment to the Constitution will probably come in our time, but the appointments issue should not be considered a matter appropriate for the calling of an amendment to our fundamental law. Instead of deliberating on what must be changed in our infant Constitution, it would be wiser for the Congress to deliberate on those provisions of the Constitution which are executory and to this date have not been acted upon. While some legislators call for an amendment of certain constitutional provisions, let us, in turn, remind them that there are other matters of top priority which the Constitution has made it their duty to legislate on. We must realize that the deficiencies in our governmental structure result, not always due to strick adherence to the principles embodied in fundamental law but also because of a departure therefrom. This realization marks the beginning of our understanding of our Constitution.

FERNANDO I. COJUANGCO

IMPLICATIONS OF THE 1987 CONSTITUTION ON THE RIGHTS OF THE ACCUSED

JUSTICE JOSE Y. FERIA*

In this paper I shall limit myself to the new provisions in the 1987 Constitution which amend or modify the old provisions affecting the rights of the accused.

I

ON WARRANTS OF ARREST AND SEARCH WARRANTS

Sec. 2, Article III of the 1987 Constitution provides as follows:

> Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Sec. 3, Article IV of the 1973 Constitution (adopted in the Freedom Constitution) provided as follows:

> Sec. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

Sec. (3) Article III of the 1935 Constitution provides as follows:

> Sec. (3). The rights of the people to be secure in their persons, houses, papers, and affects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

The 1973 Constitution amended the 1935 constitutional provision on unreasonable searches and seizures by authorizing not only the judge but "such other responsible officer authorized by law" to determine the existence of pro-

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bable cause for the issuance of a search warrant or warrant of arrest. This amendment was the basis for the ASSO (Arrest and Seizure Order), the PCO (Presidenttial Commitment Order) and the PDA (Presidential Detention Action) under the previous administration.

I remember that when this particular amendment, though couched in different words, was first introduced in a session of the 1971 Constitution Convention, it was disapproved in a roll-call vote. A recess was called. After a recess of several hours, the amendment was reintroduced in its present form and approved.

The 1987 Constitution deleted this objectional provision and requires that the existence of probable cause should be determined personally by the judge.

Under the 1985 Rules on Criminal Procedure, a Regional Trial Court may issue a warrant for the arrest of the accused upon the filing of an information (Sec. 6(a) of Rule 112). In such cases, the Regional Trial Judge relies on the preliminary investigation conducted by the fiscal in determining the existence of probable cause. However, the Judge is not bound to do so and he may conduct a hearing to determine if a probable cause really exists for the issuance of the warrant of arrest.[1] The investigating fiscal has no authority to issue a warrant of arrest.[2]

Regional Trial Judges are no longer authorized to conduct preliminary investigations. Neither are the Metropolitan Trial Judges of the National Capital Region so authorized under Sec. 37 of BP 129. However, they cannot be deprived of their constitutional authority to determine the existence of probable cause for the issuance of a warrant of arrest or search warrant.[3]

A question has been raised in view of the amendment introduced by the 1987 Constitution in the section above-quoted that the existence of probable cause should be "determined *personally* by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce x x x." Does this mean that the judge may no longer rely on the preliminary investigation conducted by the fiscal in issuing a warrant of arrest? It is submitted that an affirmative answer would result in unnecessary delay and that the ruling in the *Amarga* and *Placer* cases is still applicable. The record of the Constitutional Commission does not disclose any intention to change this ruling.

In the case of a Municipal Trial Court, if the Judge conducting the preliminary examination is satisfied, after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest.[4] This may be done during or after the conclusion of the preliminary investigation.

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[1] Amarga v. Abbas, 98 Phil. 739; Placer v. Villanueva, 126 SCRA 463.
[2] Sayo v. Chief of Police, 80 Phil. 859; Collector of Customs v. Villaluz, 71 SCRA 356.
[3] Collector of Customs v. Villaluz, supra.
[4] Sec. 6 (b) of Rule 112, 1985 Rules on Criminal Procedure.

Sec. 3, Rule 112 of the 1964 Rules of Court authorized the municipal mayor, in case of temporary absence of the inferior court judge, to conduct a preliminary examination and issue a warrant of arrest. This provisions has been deleted in the 1985 Rules on Criminal Procedure, because criminal prosecution should be free from any faint of political influence. However, Sec. 143 of B.P. Blg. 337, the Local Government Code which took effect on Feb. 10, 1983, contains a similar provision authorizing the mayor, in case of temporary absence of the municipal judge, to conduct a preliminary examination and issue a warrant of arrest. While such a provision may possibly be justified under the 1973 Constitution, it is clearly unconstitutional under the 1987 Constribution.

Under Sec. 3, Rule 126 of the 1964 Rules of Court, the determination of the existence of probable cause for the issuance of a search warrant was made by the judge only. This section was amended in the 1985 Rules on Criminal Procedure by inserting after "the judge" the phrase "or such other responsible officer authorized by Law" in accordance with the 1973 Constitution. However, in view of the deletion of this phrase in the 1987 Constitution, it should also be considered deleted from the 1985 Rules.

It is significant to note that while the Supreme Court, in promulgating the 1985 Rules on Criminal Procedure, had to include in Sec. 3 of Rule 126 the phrase "or such other responsible officer authorized by law," it attempted to remedy this defeat by requiring in Sec. 1 of said Rule that the search warrant should still be signed by a judge.

II

ON THE RIGHT TO REMAIN SILENT AND TO COUNSEL

Sec. 20, Art IV of the 1973 Constitution provided as follows:

> SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence.

Sec. 12, Art. III of the 1987 Constitution provides as follows:

> SEC. 12(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof, shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

The following changes should be noted, to wit:

1) The first sentence of the old Constitution, "no person shall be compelled to a witness against himself," has been transposed to Sec. 17 of the new Constitution.

2) The right to counsel is reinforced by the addition of the qualification "competent and independent counsel preferably of his own choice" and the provision that "if the person cannot afford the services of counsel, he must be provided with one."

3) The right to remain silent and to counsel cannot be waived except in writing and in the presence of counsel. This provision constitutionalizes the ruling in the case of People vs. Galit[5] with the additional requirement that the waiver should be in writing. The wisdom of constitutionalizing the *Miranda* doctrine of the United States Supreme Court in 1973 Constitution and the *Galit* doctrine in the new Constitution was ably discussed by Justice Andres R. Narvasa in his learned and exhaustive treatise on "Revisiting the Law on the Right to Silence and to Counsel" delivered at the Fourth Quintin Paredes Lecture. He noted that while the tendency of the United States Supreme Court has been to limit or restrict the application of the Miranda doctrine, our tendency has been to expand it and make any retreat possible only through constitutional amendment.

4) Par. 2 expressly prohibits torture and secret detention places, solitary, incommunicado, or other similar forms of detention.

5) Par. 4 provides for penal and civil sanctions for violations of said Sec. 12 as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

III

ON THE RIGHT TO BAIL AND THE ELIMINATION OF THE DEATH PENALTY

Sec. 18, Art. IV of the 1973 Constitution provided as follows:

> SEC. 18. All persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required."

Secs. 13 and 19, Art. III of the 1987 Constitution provide as follows;

> SEC. 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.
>
> SEC. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty to imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

[5] 135 SCRA 465.

> (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Under the old Constitution, an accused was entitled to bail as a matter of right except in capital offenses when evidence of guilt was strong. In the excepted cases, however, the accused may be admitted to bail as a matter of discretion.[6]

A capital offense was defined as one which, under the law existing at the time of its commission and at the time of the application to be admitted to bail, may be punished with death.[7] Upon the effectivity of the new Constitution, capital offenses no longer exist, until Congress hereafter provides for the imposition of the death penalty in cases involving heinous crimes. The wisdom of the elimination of the death penalty is a much debated question.

Under the new Constitution, an accused is entitled to bail as a matter of right except where he is charged with an offense punishable by reclusion perpetua and the evidence of guilt is strong. It is understood that if and when Congress subsequently provides for the imposition of the death penalty in certain cases, admission to bail is also not a matter of right in such cases when evidence of guilt is strong, but the accused may be admitted to bail as a matter of discretion.

Noteworthy is the new provision in Sec. 13 that "the right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended." The reverses the ruling laid down in the case of Garcia-Padilla vs. Enrile that "the suspension of the privilege of the writ of habeas corpus must, indeed, carry with it the suspension of the right to bail, if the government's campaign to suppress the rebellion is to be enhanced and rendered effective."[8] However, only seven Justices fully concurred in said decision, five concurred in the result and one dissented.

It is also important to note that under the new Constitution, the power of the President to suspend the privilege of the writ of habeas corpus or to declare martial law is limited to cases of invasion or rebellion (imminent danger thereof having been deleted) when the public safety requires it; the period is limited to sixty days; and the proclamation or suspension is subject to revocation by a vote of at least a majority of all members of Congress voting jointly.[9]

Par. 2 of said Sec. 19 is a new provision.

IV

ON THE RIGHT TO FREE ACCESS TO COURTS AND LEGAL ASSISTANCE

Sec. 11 of Art. III provides that "free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty."

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[6] Teehankee v. Director of Prisons, 76 Phil. 756; De la Rama v. People's Court, 77 Phil. 461.
[7] Sec. 4 of Rule 114, 1985 Rules on Criminal Procedure.
[8] 121 SCRA 472, 494.
[9] Sec. 18 of Art. VII, 1987 Constitution.

What is of importance to a poor accused is the assurance of adequate legal assistance. Although this right of an accused was not expressly provided for in the old Constitution, it was recognized in actual practice through the legal aid extended by the Integrated Bar of the Philippines and other voluntary bar associations as well as by the government. It is also provided for in Secs. 31 and 32 of Rule 138 on the appointment and compensation of attorneys de officio. What is often lacking, however, is the competence and dedication necessary to make such legal assistance to the poor adequate.

V

ON THE RIGHT TO A SPEEDY TRIAL AND A SPEEDY JUDGMENT

Sec. 16 of Art. III reiterates the provision that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." Sec 14, Par. 2, of said Article reiterates that right of the accused to have a speedy, impartial and public trial.

This right is of particular importance in criminal cases where the accused cannot afford to give bail.

Sec. 2, Rule 119 of the 1985 Rules on Criminal Procedure emphasizes this right by providing that "trial once commenced shall continue from day to day as far as practicable until terminated; x x x"

The right to a speedy judgment is sought to be enforced by the provision in Sec. 15, Par. (1), Art. VIII of the new Constitution which requires all cases or matters filed after its effectivity to be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

The maximum period given the Supreme Court to decide has been increased from eighteen months under the old Constitution to twenty-four months under the new Constitution. The maximum period for other courts remains the same.

The effect of the failure to decide within the maximum period has been changed. Under the old Constitution, "with respect to the Supreme Court and other collegiate appellate courts, when the applicable maximum period shall have lapsed without the rendition of the corresponding decision or resolution because the necessary vote cannot be had, the judgment, order, or resolution appealed from shall be deemed affirmed, except in those cases where a qualified majority is required and in appeals from judgments of conviction in criminal cases."[10]

Under the new Constitution, "despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination without further delay."[11] In other words, the failure to decide within the maximum period does not result in the affirmation of the judgment appealed from, but in administrative sanctions imposed on the Justice or Justices responsible for such failure.

[10] Sec. 11(2) of Art. X, 1973 Constitution.
[11] Sec. 15(4) of Art. VIII, 1987 Constitution.

VI

ON THE MAJORITY REQUIRED TO DECIDE IN THE SUPREME COURT

Sec. 4, Art. VIII of the New Constitution provides as follows:

> SEC. 4. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.
>
> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.
>
> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc; Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

Sec. 2, Art. X of the old Constitution provided as follows:

> SEC. 2. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Association Justices. It may sit *en banc* or in two divisions.
>
> (2) All cases involving the constitutionality of a treaty, executive agreement, or law shall be heard and decided by the Supreme Court *en banc*, and no treaty, executive agreement, or law may be declared unconstitutional without the concurrence of at least ten Members. All other cases, which under its rules are required to be heard *en banc*, shall be decided with the concurrence of at least eight Members.
>
> (3) Cases heard by a division shall be decided with the concurrence of at least five Members, but if such required number is not obtained, the case shall be decided *en banc*: Provided, that no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*.

Under the old Constitution, the concurrence of at least ten Members of the Supreme Court was necessary to declare a treaty, executive agreement, or law unconstitutional. If the necessary vote could not be obtained, the constitutionality of the treaty, executive agreement or law was deemed upheld. All other cases heard *en banc* were decided with the concurrence of at least eight Members, except that, under its rules, the concurrence of at least ten Members was required to impose the death penalty. However, when ten Justices failed to reach a decision as to the propriety of the death penalty, the penalty next lower in degree was

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

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

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

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

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

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

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

March 27, 1987.

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

THE CRUEL, THE DEGRADING, AND THE INHUMAN

JACINTO D. JIMENEZ*

I. HISTORICAL BACKGROUND

A. Early Times

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

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

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

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

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

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

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

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

B. England

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

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[1] Genesis, 21:23-25.
[2] Leviticus, 24: 19-20.
[3] Aristotle, Ethics, pp. 148-149.
[4] Granucci, 'Nor Cruel and Unusual Punishments Inflicted:' The Original Meaning, *California Law Review*, October 1969, Vol. 57, No. 4, pp. 844-845.