# The Nature-Based Classification of Crimes: Issues and Clarifications

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## I. INTRODUCTION

The basic approach to teaching and learning Philippine criminal law currently centers upon the provisions of the Revised Penal Code (RPC),[1] which is deeply rooted in tradition, owing to the fact that the RPC has always been widely considered as the principal criminal statute in the country.

Historically, the RPC was developed during a time when acts and omissions declared criminal were largely limited to those considered inherently evil and subject to universal condemnation by society, with much emphasis placed upon the fact that the public is injuriously affected by the corrupt intention or recklessness of the actor.[2] However, as time passed and in order to address the ever changing needs of society, the Philippine legislature continued to enact penal laws which either introduced amendments to the RPC or provided for entirely new types of crimes. And while some of these laws kept within the traditional confines of covering

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1. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).
2. U.S. v. Go Chico, 14 Phil. 128 (1909). *See also* REVISED PENAL CODE, art. 3.

innately malevolent acts or omissions, many statutes were also enacted to cover acts or omissions which, when considered in and of themselves, are concededly not evil, but are nevertheless so defined and punished by law due to their injurious effect upon the public welfare.[3]

This gradual and continuing expansion in the scope and coverage of substantive criminal law is obviously meant to secure a more orderly regulation of societal affairs within the Philippine setting. Accordingly, there is a need to revisit the underlying concepts and principles permeating the study of Philippine substantive penal law, particularly in light of the ever increasing number of special penal legislations being enacted by Congress.

The Philippines has always been considered a civil law jurisdiction because its legal system is governed primarily by what is codified in statutes enacted by legislative fiat. Though the Philippines is concededly not a common law country, its peculiar national legal system has blended both civil and common law principles.[4] Thus, while considerations of equity invariably yield to statutory law, equity still applies to fill in the "open spaces in the law"[5] because "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the law."[6] With the current developments in Philippine penal legislation, the proper classification of crimes based on whether they are *mala in se* (inherently evil or wrongful from their very nature) or *mala prohibita* (wrong merely because they are prohibited by statute),[7] using both statutory and equity considerations should merit further and prominent attention, especially as it would materially affect available legal remedies in terms of viable defenses and mitigating circumstances.

The law has long divided crimes into acts wrong in themselves called acts *mala in se* and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*.[8] There are, of course, crimes the nature of which are either expressly provided for or otherwise

3. *See* People v. Lacerna, 278 SCRA 561 (1997); Lozano v. Martinez, 146 SCRA 323, 338 (1986); Lee v. Rodil, 175 SCRA 100 (1989). *See also* 1 RAMON C. AQUINO, THE REVISED PENAL CODE 52-54 (1987).

4. MELQUIADES GAMBOA, AN INTRODUCTION TO PHILIPPINE LAW 59 (1969).

5. Reyes v. Lim, 408 SCRA 560, 566 (2003) (citing 1 ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 43 (1990)); JUSTICE BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 113 (1921).

6. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 9 (1950).

7. *See* 1 LUIS B. REYES, REVISED PENAL CODE 56-57 (17th ed. 2008).

8. Dunlao, Sr. v. CA, 260 SCRA 788, 793 (1996) (citing 1 CESAR SANGCO, CRIMINAL LAW 90 (1979)).

obviously indicated by statute;[9] in which case, due deference should be accorded to the legislature's determination of their respective classifications. However, a great number of penal statutes do not expressly point out the particular class to which the acts or omissions they so prohibit belong to, limiting themselves merely to defining and penalizing the same, thereby leaving the matter of proper classification ultimately to the courts. Considering, however, the significant amount of time involved in going through the various stages in the criminal proceedings prior to a final court decision, there exists a very real concern that individuals — either as accused or as complainants — may find themselves aggrieved pending criminal proceedings should the initial and interim determination made by law enforcement or prosecution turn out to be erroneous.

Preliminarily, it should be stressed that all crimes — regardless of their nature — basically require voluntariness as a primordial requisite for incurring criminal liability. Voluntariness denotes the doing of an act by design or intention, without being constrained or otherwise impelled by outside interference or coercion.[10] The conditions which constitute voluntariness are freedom of action, intelligence and intent to perform a particular act. With the complete absence of any of these conditions, no criminal liability would arise.[11] Thus, as early as 1905, in *U.S. v. Odicta*,[12] the Supreme Court had recognized somnambulism or sleepwalking, if sufficiently proven, as a viable defense even though it is not expressly provided by statute as an exempting circumstance, "because a somnambulist does not act voluntarily and therefore his acts do not constitute a crime." This recognition was later on reiterated in *People v. Gimena*,[13] with the clarification that somnambulism "does not constitute a defense other than that embraced in a plea of insanity."[14]

Criminal law traditionally requires the presence of a voluntary act as a necessary condition for criminal liability and punishment[15] because people should only be subject to sanctions when each, compatible with like

9. *See* An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes [Death Penalty Law of 1993], Republic Act No. 7659 (1993). *See also* REVISED PENAL CODE.

10. *See* BLACK'S LAW DICTIONARY 1605-16 (8th ed. 2004).

11. Ortega v. People, 562 SCRA 450, 471-72 (2008) (citing 1 REYES, *supra* note 7, at 204). *See also* Guevarra v. Almodovar, 169 SCRA 476, 482 (1989).

12. U.S. v. Odicta, 4 Phil. 308, 313 (1905).

13. People v. Gimena, 55 Phil. 604, 606 (1931).

14. *Id.*

15. David A.J. Richards, *Human Rights and the Moral Foundations of Substantive Criminal Law*, 13 GA. L. REV. 1395, 1428-30 (1979).

treatment for all, has been given a fair chance to avoid such sanctions.[16] The underlying rationale is that persons may only justly be used as an example to others of the moral importance of observing basic decency in relation with other people when they can fairly be regarded as having been accorded the basic respect for their autonomy, as shown by the application of criminal sanctions only after a showing of the exercise or failure to exercise the capacities of choice and deliberation that could fairly have obviated the sanctions. Voluntariness, as in the principles of criminal law and of constitutional justice in punishment, is a minimum requirement, for without it, people would be subject to criminal sanctions for statuses or involuntary fits which bear no marks of personal responsibility.[17] Voluntariness, therefore, is indispensable.[18]

## II. CRIMES *MALA IN SE*

The basic rule is that acts *mala in se* are those which are inherently evil[19] and considered offensive to the universal principles of morality.[20] The evil of such crimes may take various forms. There are those "that are, by their very nature, despicable, either because life was callously taken or the victim was treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being."[21] There are also those in which the abomination lies in the significance and implications of the subject criminal acts in the scheme of the larger socio-political and economic context in which the State finds itself to be struggling to develop and provide for its poor and underprivileged masses.[22] Crimes *mala in se* are

16. *Id.*

17. *Id.*

18. *See* Veroy v. Layague, 210 SCRA 97 (1992).

19. BLACK'S LAW DICTIONARY 959 (Centennial ed.). *See Lozano*, 146 SCRA at 338.

20. JOHN M. SCHEB & JOHN M, SCHEB II, CRIMINAL LAW AND PROCEDURE 8 (2009).

21. Estrada v. Sandiganbayan, 369 SCRA 394, 452 (2001) (citing People v. Echegaray, 267 SCRA 682, 721-22 (1997)).

22. *Estrada*, 369 SCRA at 453. ("Reeling from decades of corrupt tyrannical rule that bankrupted the government and impoverished the population, the Philippine Government must muster the political will to dismantle the culture of corruption, dishonesty, greed and syndicated criminality that so deeply entrenched itself in the structures of society and psyche of the populace. Terribly lacking the money to provide even the most basic services to its people, any form of misappropriation or misapplication of government funds translates to an actual threat to the very existence of government, and in turn, the very survival of the people it governs over. Viewed in this context, no less heinous are the effects and repercussions of crimes like qualified bribery, destructive arson resulting in death, and drug offenses involving government

those acts so serious in their effects on society as to call for the almost unanimous condemnation from its members.[23]

Proceeding from the inherently evil nature of the illegal act or omission, the wholly accepted norm is that a successful indictment for the commission of a crime *mala in se* indispensably requires that the act be committed with malice or deliberate intent, otherwise known as *mens rea*.[24] A person's criminal liability for the commission of an act *mala in se* calls for the concurrence of both the voluntary commission of the wrongful act (*actus reus*) and the presence of malice or criminal intent (*mens rea*). Criminal intent (*mens rea*) is defined as "a guilty mind, a guilty or wrongful purpose or criminal intent."[25] In this jurisdiction, such intent is material in crimes *mala in se*.[26] And as such, it is "essential for criminal liability."[27] Accordingly, the statutory definition of a *mala in se* crime must be able to supply what the *mens rea* of the crime is,[28] with criminal liability generally requiring the concurrence of "an evil-meaning mind and an evil doing hand."

With malice or deliberate intent being the basis of classification, one cardinal principle pertaining to such crimes is expressed in the age-old maxim: *Actus non facit reum nisi mens sit rea* — an act does not make a person guilty unless the mind is guilty. In crimes *mala in se*, there can be no crime when the criminal mind is wanting.[29] With criminal intent being an essential element in crimes *mala in se*, circumstances which indicate good faith or lack of criminal intent on the part of the offender are viable defenses to avoid criminal liability.

It should be clarified that criminal intent, as an indispensable element of crimes *mala in se*, encompasses and necessarily presupposes voluntariness on the part of the offender. The requirement of voluntariness provides that, in order for criminal liability to arise, the offender should have acted with freedom of action, intelligence, and intent to perform the prohibited act.

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officials, employees or officers, that their perpetrators must not be allowed to cause further destruction and damage to society.").

23. EDILBERTO G. SANDOVAL, POINTERS IN CRIMINAL LAW 13 (2004).

24. *See* People v. City Court of Manila, 154 SCRA 160, 182 (1987); Padilla v. Dizon, 158 SCRA 127, 135 (1988).

25. Valenzuela v. People, 525 SCRA 306, 322 (2007) (citing People v. Moreno, 294 SCRA 728, 743 (1998)).

26. *Padilla*, 158 SCRA at 135; *Valenzuela*, 525 SCRA at 322.

27. *Valenzuela*, 525 SCRA at 322; Jariol, Jr. v. Sandiganbayan, 188 SCRA 475, 490 (1990).

28. *Valenzuela*, 525 SCRA at 322-23.

29. *Id.* AQUINO, *supra* note 3, at 39 (citing People v. Pacana, 47 Phil. 48 (1925)). *See also* Lecaroz v. Sandiganbayan, 305 SCRA 396 (1999).

Considering that the act or omission so penalized is itself inherently evil, the intent requirement of voluntariness would necessarily relate to criminal or malicious intent because the prohibited act itself directly produces harm or injury. Hence, the intent to perform the prohibited act in crimes *mala in se* unequivocally means the intent to cause the evil or injury directly associated with the commission thereof, and the doing of an inherently evil act itself reveals, without need of further deductive reasoning, the offender's evil intent to cause the resulting harm or injury. Moreover, the tie which binds criminal intent or *mens rea* together with the prohibited act or *actus reus*, thereby resulting in criminal liability, is supplied by the legal presumption of intentionality arising from proof that the prohibited act had been done or committed by the accused.[30]

Felonies defined and penalized by the RPC are generally considered *mala in se* because malice or *dolo* is a necessary ingredient thereof.[31] "It is from the *actus reus* and the *mens rea*, as they find expression in law, that the felony is produced."[32] Considering that felonies indeed fall under the category of *mala in se* crimes, the RPC aptly provides for exempting circumstances[33] which work to avoid criminal liability based on good faith or lack of criminal intent on the part of the offender. Not only that, the Code likewise recognizes circumstances that diminish criminal intent as factors which mitigate, without altogether obliterating, criminal liability.[34] A prime example of such mitigating circumstances is the lack of intent to commit so grave a wrong in cases of *praeter intentionem*.[35]

## III. CRIMES *MALA PROHIBITA*

Acts *mala in se* are not the only acts which the law can punish. "An act may not be considered by society as inherently wrong or evil, hence not *malum in se*, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as *malum prohibitum*."[36] On grounds of public policy and as compelled by necessity, courts have always recognized the power of the legislature, as "the greater master of things," to forbid

30. *See* Manuel v. People, 476 SCRA 461, 477-79 (2005).

31. People v. Quijada, 259 SCRA 191, 228 (1996); REVISED PENAL CODE, art. 3.

32. *Valenzuela,* 525 SCRA at 322.

33. *See* REVISED PENAL CODE, art. 12.

34. *See* GUILLERMO B. GUEVARA, PENAL SCIENCES AND PHILIPPINE CRIMINAL LAW 106 (1974); REVISED PENAL CODE, art. 4, ¶ 2; ANTONIO L. GREGORIO, FUNDAMENTALS OF CRIMINAL LAW REVIEW 96 (2008).

35. *See* REVISED PENAL CODE, art. 13, ¶ 3; GREGORIO, *supra* note 34, at 96.

36. *Lozano*, 146 SCRA at 338 (on the legality of Batas Pambansa Blg. 22).

certain acts in a limited class of cases and to make their commission criminal without regard to the criminal intent of the doer.[37]

Acts *mala prohibita* are acts or omissions made criminal by statute but which, of themselves, are not criminal.[38] They are violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society.[39] These are offenses only because they are so defined by law; they are wrong simply because the law declares them wrong. In such cases, society has made a collective judgment that a certain conduct, although not contrary to universal principles of morality, is nevertheless incompatible with the public good, or is deemed pernicious and inimical to public welfare.[40] The act or omission, when considered in and by itself, without statutory proscription, is generally not morally repulsive. "The criminal act or omission is not inherently immoral but becomes punishable only because the law says it is forbidden."[41]

In crimes *mala prohibita*, the act or omission standing alone is not inherently evil. Thus, the hornbook rule is that proof of malice or criminal intent (*mens rea*) is not essential.[42] Some cases even hold that criminal intent is presumed.[43] Properly considered, however, the appropriate rule is that criminal intent or *mens rea* is altogether dispensed with, it not being necessary that the offender should have acted with a guilty mind or a wrongful purpose.[44] The fact that the prohibited act is in and of itself not inherently

37. *See* People v. Bayona, 61 Phil. 181, 185 (1935); People v. Ah Chong, 15 Phil. 488, 500 (1910); *Go Chico*, 14 Phil. at 132; and *Lacerna*, 278 SCRA at 581.

38. BLACK'S LAW DICTIONARY 957 (Centennial ed.).

39. SANDOVAL, *supra* note 23, at 13.

40. People v. Reyes, 228 SCRA 13 (1993).

41. Diaz v. Davao Light and Power Co., 520 SCRA 481, 511 (2007).

42. *Id. See also Padilla*, 158 SCRA at 135; Garcia v. Court of Appeals, 484 SCRA 617, 622-23 (2006).

43. *See* Ada v. Virola, 172 SCRA 336 (1989) and *City Court of Manila*, 154 SCRA at 182, where the Court ruled that criminal intent in acts *mala prohibita* is presumed. The author, however, has reservations regarding this pronouncement. Substantial differences exist between the non-necessity of proof of malice or criminal intent on the one hand, and a conclusive presumption of malice, on the other. To say that "proof of malice or criminal intent is not necessary" is to altogether discard the requirement of malice or criminal intent regardless of whether or not it existed, while the statement that such malice or criminal intent is "presumed" necessarily connotes that malice or criminal intent exists. Moreover, considering that acts *mala prohibita* are not inherently evil, it may be argued that the presence of criminal intent or *mens rea* is neither necessary nor essential, because what is merely required is that the criminal act must have been voluntarily done.

44. *Moreno*, 294 SCRA at 743; *Valenzuela*, 525 SCRA at 322.

evil clearly indicates that the intentional commission thereof does not necessarily signify intent to cause harm or injury on the part of the offender. Accordingly, evil intent cannot directly be attributed to the offender by virtue of his or her commission of the prohibited act because the act so proscribed is, by itself, not inherently malevolent. Considering that the commission of the prohibited act does not directly demonstrate any malicious intent on the part of the offender, malicious intent is deemed immaterial.

Thus, criminal liability for the commission of an act *mala prohibita* merely requires the offender's voluntary commission of the prohibited act. Based on the premise that crimes *mala prohibita* are mere rules of convenience designed to secure a more orderly regulation of the affairs of society,[45] the inquiry in such cases is limited to the offender's voluntariness and his commission of the prohibited act. "It is hornbook doctrine that the only inquiry is whether the law has been violated."[46] Considering that voluntariness is basic and indispensable,[47] it is still required that the prohibited act was intentional, bearing in mind the subtle distinction between *criminal intent* and *intent to perpetrate the act*.[48] "A person may not have consciously intended to commit a crime; but if he did intend to commit an act, and that act is, by the very nature of things, the crime itself, then he can be held liable for the *malum prohibitum*."[49] "Intent to commit the crime is not necessary, but intent to perpetrate the act prohibited by the special law must be shown,"[50] because it is the voluntary accomplishment of the illegal act or omission (*actus reus*) which would suffice for criminal liability.[51] If, aside from mere intent to perform the act *mala prohibita*, it is further proven that the offender had criminal intent, wrongful purpose, or intent to cause harm or injury in committing the crime, such determination would serve no purpose other than to support the finding that the crime had indeed been voluntarily committed.

Another consideration which supports the rejection of criminal intent as a requirement in crimes *mala prohibita* is that it would ensure the efficacy of the penal law as a deterring influence, particularly in those cases where the pernicious effect is produced with precisely the same force and result

45. SANDOVAL, *supra* note 23, at 13.

46. Ampo v. CA, 482 SCRA 563, 569 (2006) (citing *Dunlao*, 260 SCRA at 788 and Dela Torre v. Commission on Elections, 258 SCRA 483 (1996)).

47. *See Veroy*, 210 SCRA at 106.

48. *See Lacerna*, 278 SCRA at 581; *Bayona*, 61 Phil. at 185; *Go Chico*, 14 Phil. at 132.

49. *Lacerna,* 278 SCRA at 581; *Go Chico*, 14 Phil. at 132.

50. *Lacerna,* 278 SCRA at 581.

51. *See* BLACK'S LAW DICTIONARY 957 (Centennial ed.).

whether the intention of the person performing the act is good or bad.[52] And while the Supreme Court has invariably declared that "[w]hen an act is illegal, the intent of the offender is immaterial,"[53] such a statement is somewhat inaccurate inasmuch as it is criminal intent or *mens rea* — the intent to cause harm or injury — which is not necessary.[54] It should be clarified that, while criminal intent (*mens rea*) or malice is dispensed with in crimes *mala prohibita*, intent to perform the prohibited act as a necessary component of the actor's voluntary accomplishment thereof, is still required.[55]

With regard to the mental state requirement in crimes *mala prohibita*, the appropriate rule is that the existence of intent to commit the act as defined and punished by law is required as a minimum. This must be so because the offender's voluntariness characterized by freedom, intelligence and intent to perform the illegal act, is still material. As a matter of fact, in *mala prohibita* crimes which outlaw mere possession of contraband, the Supreme Court has uniformly required that the accused should have freely or consciously possessed the prohibited article,[56] albeit likewise providing for a disputable presumption as to the accused's knowledge and possession thereof.[57]

All in all, laws defining *mala prohibita* crimes are:

> based on the experience that repressive measures which depend for their efficiency upon proof of the actor's knowledge or of his criminal intent are of little use and rarely accomplish their purposes; besides, the prohibited act is so injurious to the public welfare that, regardless of the person's intent, the crime itself is deemed committed.[58]

With criminal intent altogether dispensed with, the defenses of good faith and lack of criminal intent are unavailing,[59] the issue being whether the

52. *Ampo*, 482 SCRA at 569 (citing *Go Chico*, 14 Phil. at 131); Lim v. People, 340 SCRA 497, 503 (2000)).

53. Tan v. Ballena, 557 SCRA 229, 255 (2008) (citing *Dunlao*, 260 SCRA at 793).

54. *Garcia*, 484 SCRA at 622-23; *Davao Light and Power, Co.*, 520 SCRA at 511.

55. *See* BLACK'S LAW DICTIONARY 957 (Centennial ed.).

56. *See* People v. Tira, 430 SCRA 134 (2004); People v. Lagman, 573 SCRA 224 (2008); Cupcupin v. People, 392 SCRA 203, 218 (2002); People v. Peñaflorida, Jr., 551 SCRA 111, 126 (2008).

57. *Lagman*, 573 SCRA at 233 (citing People v. Torres, 501 SCRA 591 (2006)); *Peñaflorida, Jr.*, 551 SCRA at 126.

58. *See Lacerna*, 278 SCRA at 580-81 (citing AQUINO, *supra* note 3, at 52-54).

59. Palana v. People, 534 SCRA 296, 305-06 (2007) (citing Cueme v. People, 334 SCRA 795, 804 (2000)).

law has been violated,[60] or whether the law has been breached.[61] The act alone, irrespective of motives, constitutes the offense.[62]

## IV. REVISITING THE NATURE-BASED CLASSIFICATION OF CRIMES BASED ON COVERAGE

The generally accepted distinctions between acts *mala in se* and acts *mala prohibita* are: (1) acts *mala in se* require criminal intent on the part of the offender, while in acts *mala prohibita*, the mere commission of the prohibited act, regardless of criminal intent, is sufficient; and (2) acts *mala in se* refer to felonies in the RPC, while acts *mala prohibita* are offenses punished under special laws. The first distinction is substantially correct. However, as aptly observed by Justice Florenz D. Regalado in his concurring and dissenting opinion in the 1996 case of *People v. Quijada*, cited previously, the statement that acts *mala in se* refer to felonies in the RPC, while acts *mala prohibita* are offenses punished under special laws is not accurate.[63]

Proceeding from the RPC's declaration that offenses which are or in the future may be punishable under special laws are not subject to its provisions,[64] criminal acts and omissions were initially classified on the basis of whether they fell under the RPC or special penal laws. Presumably owing to the generally accepted rule that the RPC covers crimes *mala in se*, jurisprudence later on made the further — albeit questionable — declaration that certain acts or omissions were *mala prohibita* merely because they are punished as offenses under special laws.[65] Court rulings even provided for instances where a single incident may give rise to the imposition of penalties twice over based on the fact that the offender's act is covered by both the RPC and a special law, notwithstanding that the accused's overall actuations as penalized by the RPC, appears to necessarily include, or is necessarily included in, the act as penalized by the special law.[66]

Felonies defined and penalized by the RPC are generally considered *mala in se* because malice or *dolo* is a necessary ingredient thereof.[67] However, if a crime were to be classified based on its nature, the mere fact that it is covered by either the RPC or a special penal law does not furnish

60. *See Davao Light and Power Co, Inc.*, 520 SCRA at 511; *Dunlao*, 260 SCRA at 793; *Dela Torre*, 258 SCRA at 483; *Ampo*, 482 SCRA at 569.

61. *Palana*, 534 SCRA at 305-06 (citing *Cueme*, 334 SCRA at 804).

62. SANDOVAL, *supra* note 23, at 13.

63. *Quijada*, 259 SCRA at 252.

64. REVISED PENAL CODE, art. 10.

65. People v. Lo Ho Wing, 193 SCRA 122 (1991); *Ballena*, 557 SCRA at 254.

66. *Quijada*, 259 SCRA at 252.

67. *Id. See also* REVISED PENAL CODE, art. 3.

solid basis. When the acts punished are inherently immoral or inherently wrong, they are *mala in se*,[68] regardless of whether they are provided for by special law.[69] For example, a legislative declaration in a special law characterizing certain crimes as heinous[70] necessarily implies that the said crimes are *malum in se*.[71] Also, to sanction the proposition that the RPC contains crimes *mala in se* to the exclusion of special laws, is to proscribe Congress from subsequently enacting laws which cover *mala in se* crimes that have not theretofore been addressed by the RPC. Such a proposition obviously runs counter to the well-settled doctrine that the legislature cannot, by the enactment of a law, or otherwise, deprive itself, or a subsequent legislature, of the power to pass such laws, under the police power, as may be deemed necessary for the welfare of the State and the people.[72]

Prudence and common sense, therefore, dictate that the classification of crimes based on their nature requires due consideration of both the nature and the importance of the act punished, rather than a mere cursory view of whether or not it is covered by either the RPC or a special penal law. If at all, the coverage of a crime within the RPC would generally point to the act's nature as *mala in se*, particularly because intentional felonies under the RPC require criminal intent or malice as an essential element.[73] Even then, further inquiry is required due to the fact that felonies under the RPC may likewise be committed by means of *culpa* (fault)[74] wherein the requirement of criminal intent or *mens rea* is replaced by imprudence, negligence, lack of foresight, or lack of skill. Verily, in felonies committed by means of fault, there is absence of malicious intent which is an indispensable element of crimes *mala in se*. The Supreme Court, however, has conveniently lumped

68. *See* BLACK'S LAW DICTIONARY 959 (Centennial ed.); *Lozano*, 146 SCRA at 324, 338.

69. *See Estrada*, 369 SCRA at 451 (Mendoza, J., dissenting).

70. *See Echegaray*, 267 SCRA at 715 (citing Justice Kapunan's dissenting opinion in People v. Alicando, 251 SCRA 293 (1995), where the Honorable Justice traced the etymological root of the word "heinous" to the early Spartans' word, "haineus," meaning, hateful and abominable, which, in turn, was from the Greek prefix "haton," denoting acts so hatefully or shockingly evil. Also, under the Death Penalty Law of 1993, certain crimes were characterized as heinous for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society.).

71. *See Estrada*, 369 SCRA at 451 (Mendoza, J., dissenting).

72. GUEVARA, *supra* note 34, at 23 (citing 16 C.J. 60-61).

73. *See* REVISED PENAL CODE, art. 3.

74. *Id.*

together both intentional and culpable felonies within the ambit of *mala in se* crimes.[75]

A prime example of the confusion wrought by the inaccuracy of stating that *mala in se* refer to felonies in the RPC, while *mala prohibita* refer to offenses punished under special laws, is the Supreme Court's ruling in *Colinares v. CA*,[76] which involves a criminal indictment for violation of the Trust Receipts Law.[77] Parenthetically, the Trust Receipts Law defines what constitutes a trust receipt transaction,[78] and provides that the failure of the entrustee to turn over the proceeds of the sale of the goods covered by the trust receipt to the entruster, or to return said goods if they were not disposed of in accordance with the terms of the trust receipt, shall constitute

75. Loney v. People, 482 SCRA 194, 212 (2006) explains:

> On petitioners' claim that the charge for violation of Article 365 of the RPC "absorbs" the charges for violation of PD 1067, PD 984, and RA 7942, suffice it to say that a *mala in se* felony (such as Reckless Imprudence Resulting in Damage to Property) cannot absorb *mala prohibita* crimes (such as those violating PD 1067, PD 984, and RA 7942). What makes the former a felony is criminal intent (*dolo*) or negligence (*culpa*); what makes the latter crimes are the special laws enacting them.

*Id.*

76. Colinares v. CA, 339 SCRA 609 (2001).

77. Providing for the Regulation of Trust Receipts Transactions [Trust Receipts Law], Presidential Decree No. 115 (1972).

78. *Id.* § 4 provides:

> What constitutes a trust receipt transaction. — A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as the entrustee, whereby the entrustee, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a 'trust receipt' wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt.

*Id.*

estafa under Article 315 (1) of the RPC.[79] In the said case, it was reiterated that:

> Failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as estafa under Article 315 (1) of the RPC, without need of proving intent to defraud....[80]

However, it was held that "[t]he *mala prohibita* nature of the alleged offense notwithstanding, intent as a state of mind was not proved to be present ...."[81] Conceding the soundness of this ruling, it is submitted that the same result would have been more aptly obtained if the offense were characterized as *mala in se*, in which case criminal intent would have been indispensably required, the existence of which would have then been squarely put in issue. Likewise, the *mala prohibita* characterization of the offense under the Trust Receipts Law deserves further revisiting, due, among others, to the fact that the Trust Receipts Law expressly states that the offense is estafa as a felony defined and penalized under the RPC.

## V. THE POSSIBILITY OF SUPPLETORY APPLICATION OF THE NATURE-BASED CLASSIFICATION OF CRIMES TO THE RPC

There is a need to look into the importance of nature-based classification of crimes for purposes of determining whether the provisions, doctrines, principles and concepts under the RPC can be suppletorily applied by virtue of Article 10 thereof[82] to specific criminal conduct covered by special laws,

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79. *Id.* § 13 provides, in relation to the REVISED PENAL CODE, art. 315 ¶ 1 (b):

> Penalty clause. — The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three Hundred and Fifteen, paragraph one (b) of Act Number Three Thousand Eight Hundred and Fifteen, as amended, otherwise known as the RPC. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

80. *Colinares*, 339 SCRA at 619-20 (2001).

81. *Id.*

82. REVISED PENAL CODE, art. 10 provides:

particularly in those instances where the latter neither expressly prohibit nor provide for the RPC's suppletory application.

Where the crime subject of the special law is expressly classified or clearly indicated as *mala in se*, and thus of the same nature as felonies — and in the absence of any express provision in the special law to the contrary — it would be quite sound to suppletorily apply the RPC, particularly when the same is in accord with the doctrine of *pro reo*. Moreover, in cases where the nature of a particular offense is doubtful, the fact that the special law covering the offense allows — whether by express provision or necessary implication — the suppletory application of the RPC, including those provisions relating to modifying circumstances, would indicate a legislative intent to treat the offense as being of the same nature as that of felonies under the RPC. This much has been jurisprudentially settled in *Estrada v. Sandiganbayan*[83] wherein the Supreme Court held that the express application of mitigating and extenuating circumstances in the RPC to prosecutions under a special law would indicate quite clearly that *mens rea* is an indispensable element of the offense covered under the latter since the degree of responsibility of the offender is determined by his criminal intent.

Corollarily, it would indeed be highly illogical to apply the RPC to crimes which are not of the same nature as felonies. Considering that criminal intent is wholly immaterial in acts *mala prohibita*, crimes falling within its class are squarely incongruent with felonies which indispensably requires the presence of malice (*dolo*) or criminal intent. Thus, in addition to the principle that good faith and lack of evil intent provide no defense against a prosecution for crimes *mala prohibita*, the rules on modifying circumstances, degree of participation, and stages of execution provided for under the provisions of the RPC are likewise wholly inapplicable to crimes *mala prohibita*.

## VI. CONCLUSION

From the time the RPC took effect, the legislature has enacted special penal laws which define and penalize acts and omissions which are concededly *mala in se* by nature, notable among which are: (1) *Terrorism* under R.A. No.

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> Offenses not subject to the provisions of this Code. — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

*Id.*

83. *Estrada*, 369 SCRA at 452.

9372, otherwise known as the "Human Security Act;"[84] (2) *Tampering of Votes* under Section 27 [b] of R.A. No. 6646,[85] otherwise known as "The Electoral Reforms Law of 1987;"[86] and (3) *Plunder* as defined and penalized by R.A. No. 7080,[87] as amended.[88] Likewise, the enactment of R.A. No. 7659[89] declaring certain felonies under the RPC as well as offenses under special laws, as heinous, further supports the proposition that acts *mala in se* may likewise be provided for in special laws. Clearly then, since the inception of the RPC, several special penal laws have been passed, covering a plethora of acts or omissions which may be categorized by nature as either *mala in se* or *mala prohibita*. With the growing number of special penal legislation and considering the peculiar nuances and complexities of the acts or omissions covered thereby, it would seem quite improper to use mere coverage as a sweeping basis for determining the nature of each particular crime.

Not until recently, in 2006, has the soundness of the foregoing observations been expressly and squarely recognized by the Supreme Court. Thus, in *Garcia v. Court of Appeals*,[90] which involved an election offense in violation of Section 27 (b) of R.A. No. 6646, a special law punishing the act of "tampering, increasing, or decreasing votes received by a candidate in any election, as well as the refusal, after proper verification and hearing, to credit the correct votes or deduct such tampered votes," the Supreme Court held that:

> [g]*enerally, mala in se felonies are defined and penalized in the Revised Penal Code. When the acts complained of are inherently immoral, they are deemed mala in se, even if they are punished by a special law.* Accordingly, criminal intent must be clearly established with the other elements of the crime; otherwise, no crime is committed. On the other hand, in crimes that are *mala prohibita*, the criminal acts are not inherently immoral but become punishable only because the law says they are forbidden. With these crimes, the sole issue is

84. *See* An Act to Secure the State and Protect our People from Terrorism [Human Security Act of 2007], Republic Act No. 9372, § 2 (describing Terrorism as a crime against humanity and the law of nations) (2007).

85. An Act Introducing Additional Reforms in The Electoral System and For Other Purposes [The Electoral Reforms Law of 1987], Republic Act No. 6646 (1987).

86. *See Garcia*, 484 SCRA at 617; Domalanta v. Commission on Elections, 334 SCRA 555, 564 (2000).

87. An Act Defining and Penalizing the Crime of Plunder, Republic Act No. 7080 (1991).

88. *Estrada*, 369 SCRA at 453.

89. An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, As Amended, and Other Special Penal Laws, and For Other Purposes, Republic Act No. 7659 (1993).

90. *Garcia*, 484 SCRA 617.

> whether the law has been violated. Criminal intent is not necessary where the acts are prohibited for reasons of public policy ....
>
> *Clearly, the acts prohibited in Section 27(b) are mala in se.* For otherwise, even errors and mistakes committed due to overwork and fatigue would be punishable. Given the volume of votes to be counted and canvassed within a limited amount of time, errors and miscalculations are bound to happen. And it could not be the intent of the law to punish unintentional election canvass errors. However, *intentionally increasing or decreasing the number of votes received by a candidate is inherently immoral, since it is done with malice and intent to injure another.*[91]

Taking its cue from this emerging trend in the country's criminal legislation, the Department of Justice has resolved a number of Petitions based on the premise that special laws may indeed define and penalize acts that are *mala in se* in nature. In *DFA v. Cortez*, which involved a criminal charge for making false statements in passport applications with intent to induce or secure a passport in violation of Section 19 paragraph 1 (b) of R.A. No. 8239, otherwise known as the Philippine Passport Act,[92] the Secretary of Justice ruled that:

> [t]he law places much importance in maintaining inviolate the integrity and authenticity of passports by elevating it as a document superior to all other official documents, especially due to the fact that its is a proclamation of citizenship. It requires nothing short of the highest respect from its holder, so much so that damaging its integrity and validity is expressly stated as a serious crime. *More importantly, as a superior official document and proof of the holder's citizenship, the passport is relied upon not just by the holder, but also by this government as well as by any and all foreign states to which the holder may travel into.* Considering further that our country's struggling economy likewise depends largely upon overseas foreign workers as well as foreign currency remittances from Filipino travelers, immigrants, and migrant workers, this Office is of the considered opinion that *the penal provision under consideration covers a crime 'in which the abomination lies in the significance and implications of the subject criminal acts in the scheme of the larger socio-political and economic context in which the State finds itself to be struggling to develop and provide for its poor and underprivileged masses' and thus may properly be considered mala in se.* In view of the primordial importance of the Philippine Passport and the seriousness of any act done to damage its integrity and validity — both of which are expressed by RA 8239 — this Office is of the considered opinion that the effects of the aforesaid on society appropriately called for the almost unanimous condemnation of its members, as exercised through the will of the Legislature. *Moreover, it cannot be gainsaid that the act of falsification or making false statement for that matter, is morally reprehensible, especially in instances where the truth of the matters for which the statement made is*

91. *Garcia,* 484 SCRA at 623 (emphasis supplied).

92. The Philippine Passport Act [Philippine Passport Act of 1996], Republic Act No. 8239 (1996).

> *required. In fact, even the Revised Penal Code itself penalizes several kinds of falsification.* [93]

Likewise, in *Barrios v. Suarez*, which involved a violation of Section 3, in relation to Section 6, of R.A. No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003,[94] the Secretary of Justice ruled:

> The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because life was callously taken or the *victim is treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being* ...
>
> [C]rimes wherein the abomination lies in the significance and implications of the subject criminal acts *are properly classified as mala in se*. When the acts punished are inherently immoral or inherently wrong, they are *mala in se* and it does not matter that such acts are punished by a special law. *Viewed in this light, the offenses punished under RA No. 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003," may be properly classified as mala in se* because it punishes despicable inhuman acts which are *condemned worldwide as [sic] modern-day form of slavery*. The United Nations Office on Drugs and Crime has even classified human trafficking as a *crime against all humanity* placing it in the *same category as piracy and genocide*. Trafficking in Persons should thus be considered a crime *mala in se*, because it is inherent [sic] evil....[95]

Accordingly, the hornbook distinction that acts *mala in se* refer to felonies in the RPC, while acts *mala prohibita* are offenses punished under special laws, should no longer apply. The true appreciation of the nature of a particular crime, including the proper delineation of which criminal law doctrines and principles are applicable thereto, clearly require more than just looking at whether it is covered by the RPC or special law. If at all, the coverage of a crime within the RPC would generally point to its nature as being *mala in se*, particularly because intentional felonies under the RPC require criminal intent or malice as an essential element.[96] Even then, further inquiry is required due to the fact that felonies under the RPC may likewise be committed by means of *culpa* (fault)[97] wherein the requirement of criminal intent or *mens rea* is replaced by imprudence, negligence, lack of foresight, or lack of skill. Verily, in felonies committed by means of fault,

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93. Department of Justice, I.S. No. 2004-348, Jan. 3, 2008 (emphasis supplied).

94. An Act to Institute Policies to Eliminate Trafficking in Persons Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties For Its Violations, and For Other Purposes [Anti-Trafficking In Persons Act of 2003], Republic Act No. 9208 (2003).

95. Department of Justice, I.S. No. 2005-782, July 7, 2008 (emphasis supplied).

96. *See* REVISED PENAL CODE, art. 3.

97. *Id.*

there is absence of malicious intent which is an indispensable element of crimes *mala in se*.[98]

In the 2008 case of *Ballena,* the Supreme Court affirmed the Court of Appeals' determination that violations under the Social Security System (SSS) Law[99] are *mala prohibita* in nature, to wit:

> As held by the Court of Appeals, the claims of good faith and absence of criminal intent for the petitioners' acknowledged non-remittance of the respondents' contributions deserve scant consideration. *The violations charged in this case pertain to the SSS Law, which is a special law. As such, it belongs to a class of offenses known as mala prohibita.*
>
> *The law has long divided crimes into acts wrong in themselves called acts mala in se; and acts which would not be wrong but for the fact that positive law forbids them, called acts mala prohibita. This distinction is important with reference to the intent with which a wrongful act is done.* The rule on the subject is that in acts *mala in se*, the intent governs; but in acts *mala prohibita*, the only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial.
>
> Thus, *the petitioners' admission in the instant case of their violations of the provisions of the SSS Law is more than enough to establish the existence of probable cause to prosecute them for the same.*[100]

It may be observed that *Ballena* could have obtained the same result with better judicial soundness if it went into the nature of the prohibited acts under the SSS Law instead of perfunctorily referring to the Court of Appeal's absolutist view that crimes under special laws are *mala prohibita.* Although *Ballena* seemingly took a step back from the clear and categorical pronouncement in *Garcia*, its terse discussion on the age-old division of crimes based on their respective nature would show, at the very least, an inclination to look into the nature of the prohibited act itself, instead of just merely relying on whether it is covered by a special law.

*Ballena* may be harmonized with *Garcia* by considering the thesis that *special law amounts to mala prohibita* as simply providing for a general rule, with the exception obtaining in instances where particular provisions of special

98. Incidentally, the Supreme Court's pronouncement in *Garcia* came about a month later than its ruling in *Loney,* wherein it perfunctorily ruled that "the offenses punished by special law are *mal*[*a*] *prohibita* in contrast with those punished by the Revised Penal Code which are *mala in se.*" *Loney,* 482 SCRA at 212.

99. An Act Further Strengthening the Social Security System, thereby Amending for this Purpose, Republic Act No. 1161, As Amended, Otherwise known as the Social Security Law [Social Security Act of 1997], Republic Act No. 8282 (1997).

100. *Ballena*, 557 SCRA at 254-55 (emphasis supplied).

laws would cover inherently immoral acts. Thus, while special laws generally provide for *mala prohibita* offenses, and the RPC generally provides for *mala in se* felonies, inherently immoral acts are deemed *mala in se* even if punished under special law.

*Garcia* and *Ballena* are just two of the whole plethora of case laws which discuss crimes *mala in se* and *mala prohibita.* And while the Supreme Court's detailed reasoning in *Garcia* is sound, it is hoped that there will be a more definitive and encompassing jurisprudential clarification on the matter if only to forestall any confusion on the part of the bench and the bar.