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INVOLUNTARY CONFESSIONS: THEORY OF CONFIRMATION BY SUBSEQUENT FACTS†

*Conrado V. Sanchez**

PREFATORY STATEMENTS

CONFESSION law,[1] perhaps more than any other branch of the law of evidence,[2] is pervaded by inextricable confusion.[3] This unsettled state traces its root chiefly to the lack of uniformity among courts in the application of the many competing tests[4] for the admission or exclusion of confessions in evidence. Indeed, not only do courts espouse diametrically opposed doctrines,[5] but also the same court at times makes irreconcilable pronouncements on similar or analogous sets of facts and circumstances.[6]

Despite these judicial fluctuation, however, there hardly seems to be any controversy as to the basic principle upon which a confession may be excluded — untrustworthiness.[7] Thus, confessions extracted by compul-

† This paper was presented at the Seminar on the Protection of Human Rights in Criminal Law and Procedure held at Baguio, February 17-March 1, 1959. The Philippine Panel, thru Mr. Justice Conrado V. Sanchez, submitted the following principles:

(1) No oral extra-judicial confession or admission shall be admissible in evidence when made to a person in authority or to his agents.

(2) A written confession or admission of a person charged, or who may thereafter be charged, with an offense, shall not be admissible in evidence except when the same was witnessed by counsel, relative or friend of his choice, or made before a judge.

(3) Involuntary confession or admission shall not be admitted in evidence.

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[1] In this jurisdiction, RULE 123 § 14.

[2] In this jurisdiction, RULE 123.

[3] See Sherwood, C. J. in State v. Patterson, 73 Mo. 705.

[4] For the tests, see 3 WIGMORE, EVIDENCE (3rd ed.) §§ 824-826.

[5] See **ibid.**

[6] 3 WIGMORE, **op. cit. supra** note 4, at § 866.

[7] Berry v. State, 4 Okla. Crim. Rep. 202, 111 P. 676 (1910); Anno: 18 LRA (NS) 722 **et seq.**, s. 50 LRA (NS) 1078.

sion[8] or improper inducements[9] are invariably denied admission upon this ground. Of course, the circumstances which render a confession untrustworthy as well as the degree of unreliability sufficient in any given case to warrant exclusion, is often subjected to different and even inconsistent practical tests[10] at the hands of various courts.

CONFIRMATION BY SUBSEQUENT FACTS — CONCEPT

As a corollary to this principle of trustworthiness, the theory of "Confirmation by Subsequent Facts" has gained some foothold in the law. In a nutshell, this theory holds that when, in consequence of a confession otherwise inadmissible, search is made and facts are discovered which confirm it in material points, the confession, in whole or in part, may be accepted.[11] The obvious philosophy behind this rule is simply that the discovery of confirmatory facts cleanses the confession of its inherent infirmity of untrustworthiness, which the law fears and upon which the exclusion thereof is predicated. Otherwise stated, the rationale for its inadmissibility is nil and the confession is, therefore, once again entitled to judicial sanction.

THEORIES OF ADMISSIBILITY

Characteristic of the absence of unanimity in confession law, this doctrine has similarly not been accorded consistent treatment by various courts. Three principal schools of thought on the admissibility of confessions confirmed by subsequent facts have thus far prevailed. They are:

First — That only so much of the confession as relates strictly to the fact discovered is receivable. In other words, only the parts of the confession that are confirmed by the facts discovered are admissible;[12]

Second — That no part of the confession should be admitted, except the fact of discovery by reason of the information of the accused, that is, only the fact of discovery and the fact of information;[13] and

Third — That if the involuntary confession is confirmed on material points by facts subsequently discovered in its consequence, the whole confession should be received.[14]

[8] In this jurisdiction: U.S. v. Lozada, 4 Phil. 266 (1906); U.S. v. Felipe, 5 Phil. 333 (1905); U.S. v. Baluyot, 1 Phil. 451 (1902); see Act No. 619 § 4. In the United States: Wood v. United States, 75 App. DC 274, 128 F2d 265 (1942); see Rule 505, MODEL CODE OF EVIDENCE.

[9] In this jurisdiction: U.S. v. Jose, 6 Phil. 211 (1906); see Act No. 619 § 4. In the United States: Anno: 93 L. ed. 119; 18 LRA(NS) 820, s. 50 LRA(NS) 1086; see Rule 505, MODEL CODE OF EVIDENCE.

[10] 3 WIGMORE, **op cit. supra** note 4, at § 822.

[11] **Id.**, at § 856.

[12] State v. Danelly, 116 S. C. 113, 107 S. E. 149 (1921); Pressley v. State, 106 Ala. 44, 20 So. 647 (1896); Yates v. State, 47 Ark. 174, 1 S. W. 65 (1886).

[13] Brister v. State, 211 Miss. 365, 51 So. 2d 759 (1951); Commonwealth v. Phillips, 26 Ky. L. Rep. 543, 82 S. W. 286 (1904).

[14] Riddle v. State, 150 Tex. Cr. 419, 201 S. W. 2d 829 (1947).

The first theory is the rule in several states[15] of the American Union; the second is followed in a majority[16] of the states; while the third is the minority[17] view. Obviously, the first theory is predicated upon the practical view that such portion or portions of a confession confirmed by facts discovered by reason thereof, must be taken to be true.[18] The second theory has been justified upon the hypothesis that the confessor may know the fact of the commission of the crime, yet he may not be the perpetrator thereof.[19] Proponents of the third buttress their position with the argument that confirmation on material points produces ample persuasion of the trustworthiness of the whole; that if one must cease distrusting any part, he should cease distrusting all.[20] Without discussing at length the merits or demerits of each of the foregoing solutions, it might be mentioned here that none of them has received universal and unqualified acceptance. The question may well be regarded as open and unsettled.

THE PROBLEM

The desirability of setting at ease this controversial question of admissibility, thru the adoption of a rational and uniform solution, need not be essayed. Uniformity and consistency have always been among the hallmarks of a good legal system.

The key to the problem, we venture to say, would not be so elusive if our search were to be confined only within the realm of sheer logic and legal legerdemain. But, in the solution of the problem we must also guard against infringing upon the sacred rights, or violating the inherent personality and dignity, of man. This limitation unduly constricts our field of choice and renders our task doubly challenging.

IMPORTANCE OF HUMAN RIGHTS

That the nucleus of all democratic theories is the dignity and worth of the individual is beyond question. This is as it should be, for, as was aptly explained by the Committee on Civil Rights appointed by the then President Truman, "the central theme in our x x x heritage is the importance of the individual person. From the earliest moment of our history we have believed that every human being has an essential dignity and integrity which must be respected and safeguarded. Moreover, we believe that the welfare of the individual is the final goal of group life."

[15] Alabama, Arkansas, North Carolina, Pennsylvania, South Carolina, Texas, Vermont, West Virginia.

[16] Alabama, Georgia, Kentucky, Louisiana, Mississippi, Nevada, Pennsylvania, South Carolina, Tennessee, Texas.

[17] Alabama, Delaware, Kentucky, Texas.

[18] Mr. Leach, Crown Law (3rd ed.) 301, note, cited in 3 WIGMORE, **op. cit. supra** note 4, § 856.

[19] 3 WIGMORE, **op cit. supra** note 4, at § 858.

[20] **Id.**, at § 857.

And, no less emphatic was Mr. Justice Frankfurter when, in *American Communications Association v. Douds*,[21] he asserted that "The cardinal article of faith of our civilization is the inviolable character of the individual. A man can be regarded as an individual and not as a function of the state only if he is protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person." So forceful are the foregoing thoughts that they have been accepted as gospel truths among all liberty-loving men. It is not any wonder then that concern for the guarantee and preservation of the inviolable attributes of man has since transcended national bounds and is now of an international scale.

It is of paramount importance then that any solution to the problem at hand, to be acceptable, must first and above all be one that affords the maximum of protection for the dignity and worth of the individual — the *sine qua non*, we believe, of a healthy democracy.

THE SOLUTION

In the question before us, perforce, we are called upon to strike an ideal balance between two interests of indubitable importance to an ideal governmental setup — the suppression of crime and the preservation of the inherent personality and rights of the human person. We are here confronted with two objects of desire both of which we cannot have. Paraphrasing Mr. Justice Holmes in *Olmstead v. United States*,[22] "It is desirable that criminals should be detected, and to that end that all available evidence should be used." It is also desirable that the government should not itselft foster or lend a hand in the perpetration of acts designed to obtain such evidence, if in doing so, human rights and liberties have to be wantonly imperilled or sacrificed. And again, in the words of Mr. Justice Holmes, "We have to choose, and for my part I think it a less evil that some criminals should escape than that the government should play an ignoble part."[23] Echoing this choice, we submit that the only rational and tenable solution to the problem before us is the adoption of the absolute policy that all involuntary confessions, irrespective of whether they have been confirmed by subsequent facts or not, as well as any and all facts dicovered as a result of said involuntary confessions, be sternly condemned as inadmissible in evidence.

PROPOSITIONS IN JUSTIFICATION

Confession Extracted by Compulsion or Improper Inducement Is Wrong Per Se

Man, imbued as he is with the instinct of self-preservation, will normally make no statement to incriminate himself. His first impulse upon

[21] 339 U.S. 382, 421 (1950).
[22] 277 U.S. 438 (1928).
[23] **Id.**

the merest imputation of a crime is to deny guilt and profess his innocence. When he does confess he generally does violence to his inherent nature. A confession is in derogation of the natural order. It is the abnormal product of an abnormal situation. As such, it is justifiably viewed with suspicion. And, when the element of compulsion or improper inducement enters as an ingredient in the manner of its extraction, the confession is stripped of all claim to admissibility and is relegated to the category of a pernicious cancer which calls for suppression.

The means employed for extorting involuntary confessions are many and varied. They range from the simplest insidious psychological exploitation to the most bizzare, atrocious and inhuman of physical tortures. But one thing is certain. The forcible and compulsory extortion of confessions — in whatever guise it may be — is always an outrageous invasion of the indefeasible rights of personal security and liberty. Unjustified intrusion and assault upon the sacred rights of the human being are its very essence. It deserves condemnation.

Viewed from all angles, therefore, the extortion of involuntary confessions is morally and legally wrong *per se*. The discovery of facts confirmatory thereof cannot and does not detract an iota from its essence as such. Correlatively, any and all facts discovered by reason of said confession cannot rise any higher a level than its source.

In this posture, the pointed observations of Mr. Justice Brandeis, in his dissenting opinion in *Olmstead v. United States, supra*, aptly present the situation before us — "When these unlawful acts were committed, they were the crimes only of the officers individually. The government was innocent, in legal contemplation; for no federal official is authorized to commit a crime on its behalf. When the government, having full knowlege, sought, through the Department of Justice, to avail itself of the fruits of these acts in order to accomplish its own ends, it assumed moral responsibility for the officers' crimes. x x x And if this court should permit the government, by means of its officers' crimes to effect its purpose of punishing the defendants, there would seem to be present all the elements of ratification. If so, the government itself would become a law-breaker. x x x Decency, security, and liberty alike demand that government officials shall be subject to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, omnipresent, teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of criminal law the end justifies the means — to declare that the government may commit crimes in order to secure the conviction of a private criminal

— would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face."

Crime must not be left to go unpunished. But to exact the penalty thru the instrumentality of an involuntary confession is an attempt to right a wrong with another wrong.

In the light of what has been said, there is but one course open for us to pursue: If we are to afford the maximum of guarantee and protection to human rights against unjustified intrusions and insidious encroachments, if we are to preserve the inherent inviolability of these sacred rights; if we are to approximate that ideal in a democracy which is the supremacy of human rights — we should be prepared to take a bold step and erect an absolute and unyielding bar to the admission in evidence not only of all forced and involuntary confessions, whether confirmed by subsequent facts or not, but also of any and all facts discovered by reason of said confession.

Proposed Solution Provides Invaluable Aid in Eradicating Illegal Police Practices

The correction and eradication of illegal police practices connected with criminal investigation, such as are common in the extraction of involuntary confessions, are admittedly well within the province of police administration. But it need not be an unwarranted intrusion into forbidden domains to adopt the proposed solution. On the contrary, while the remedy indicated may not be the cure-all for the ills in police procedures, it may very well be the scalpel that will at least relieve the police agencies of one of their most malignant abscesses.

The diverse methods by which involuntary confessions are extracted are invariably veiled in guarded secrecy. Choice victim thereof is the timid, lowly, downtrodden and illiterate little man on the street who, because of a deep-seated horror of the police, is easily cowed into submission. Resort to improper practices in extracting confessions is not unusual. Everyone knows that as a fact. But hardly can anyone prove anything. It is because of this circumstance that the task of eradicating them is well-nigh impossible. So deeply rooted in our present-day systems of investigation are the relics of inquisition days that to leave to the police authorities, by themselves alone, the task of yanking them off their moorings is an inadequate if not futile course of action.

Add to this the fact that police agencies — often with concurrent or at least overlapping jurisdictions — are at times engaged in perennial rivalry, not only among themselves but more so among the individual members of each, in the highly competitive enterprise of ferreting out crime, and we have the most fertile ground and ideal atmosphere for the nourishment and growth of said unlawful practices and procedures. For, they very well provide the means with which one may outdo the other.

Everyone is vocal in his condemnation of these evil practices. But, as long as confessions confirmed by subsequent facts are accorded sympathetic consideration by courts, all our vaunted protestations of disapproval are put to naught. For, by admitting said confessions in evidence, we shall have tendered an invitation and offered temptation for the investigating arms of the State to continue resorting to wrongdoings — which they can do with impunity. To accept confessions of the nature in question is to pay a premium for unlawful acts.

Courts of justice are hardly in a position, indeed, to make a frontal attack against the evils heretofore adverted to. Be this as it may, they might at least not lend a helping hand in promoting them any further. On the contrary, they can effectively pave the way for their ultimate annihilation. And this, by removing the motive and the temptation for the commission thereof. Verily, the readiness of courts to give their imprimatur to the fruits of said evils is by far the most compelling inducement which emboldens the unscrupulous criminal investigator to resort to them. Take away that sanction and the entire structure will fall apart. That will herald the day when these acts will be things of the past.

Proposed Solution Will Be Conducive to Police Efficiency and Will Not Obstruct the Enforcement of Criminal Laws

It need not be feared that a move such as is here proposed would pose a serious roadblock to the enforcement of criminal laws.

In the first place, while the apprehension and conviction of criminals are essential to the maintenance of peace and security, the same must always be carried out in a manner such as will not impair the sacred prerogatives of man. For it is still true that the end does not justify the means.

Then, the business of combating crime need not be obstructed by a restriction on the admissibility in evidence of involuntary confessions. Extraction of confessions is not the only means of attaining this end. Indeed, the progress of science has afforded infallible means and methods of crime detection. The most complicated and well-planned of crimes have been solved, with proper scientific procedures, by the mere smudge of a finger, a strand of hair, the minutest smear of blood, the slightest trace of paint. Besides, is it not a stock expression among law-enforcement agencies that there is no perfect crime?

Upon the other hand, the course of action here proposed, far from being a set-back, will be conducive to more efficiency. Experience teaches us that man is ever prone to follow the line of least resistance. The extraction of confessions has always been for all a short-cut to the solution of crimes. Not requiring much effort, seldom unfruitful, susceptible of use with impunity, and receiving the sanction of the courts, it is easily the

handiest and most often availed of stock-in-trade of an enterprising criminal investigator. It is the accomplishment that wins for him supremacy in the competition for crime detection. Disregard all involuntary confessions and you strip the practice of extracting involuntary confessions of all claim of potency. Do this, and the door to greater efficiency in the detection of crimes will be thrown wide open.

To conclude: We do not believe that we are vulnerable to the charge of being irrationally sentimental with criminals in adopting the course of action proposed. We are not here dealing with criminals alone. The forced confessions which we should guard against are extracted from persons accused of crimes — not necessarily criminals. Besides, the victims of forced confessions are often not the die-hard offenders but merely those neophytes in crime still unschooled in the art of evading responsibility. Hardened criminals do not usually yield even to the battering-ram type of investigations. We accept that there is a drawback to our proposal. Some criminals may evade punishment. But, as Alfonso El Sabio well puts it, "Mass vale que quedan sin castigar diez reos presuntos que se castigue uno inocente."

It is with a view to all the foregoing considerations that we maintain that the only acceptable solution to the question here presented is to disregard as inadmissible in evidence all confessions extracted by compulsion or improper inducements and all facts subsequently discovered in pursuance thereon.

VARYING A SHAREHOLDER'S STATUTORY PARTICIPATION IN MANAGEMENT BY THE USE OF NON-STATUTORY DEVICES: IS IT POSSIBLE UNDER OUR CORPORATION STATUTE?†

*Simeon N. Ferrer**

THE exercise by the shareholder of the right to vote is the principal medium by which he is able to participate in the management of the corporate business. In the long history of private corporations, various devices have been developed affecting the shareholder's right to vote or his right to participate in corporate management. Some of these devices are designed to protect or insure the exercise of his right to vote or even to enlarge it. On the other hand, others would have the effect of restricting or even doing away with it entirely. A few of these devices have gained statutory recognition. Some of these are proxy voting, cumulative voting,[2] voting trust agreement,[3] and disfranchisement of shares.[4]

† This article is actually Chapter XII of the doctoral dissertation entitled "A Treatise on the Law of Philippine Private Business Corporations" (twenty chapters) submitted by the author to the University of Pennsylvania Law School. With the aid of Prof. William R. Veto, the dissertation has been updated, revised, and adapted for use as a local textbook under the title of "Philippine Law on Private Business Corporations" by Ferrer & Veto.

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[1] CORPORATION LAW (Act No. 1459, as amended) §§ 21, 25, 31, 36. For a comprehensive discussion, see BERLE & MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 81-88, 139, 207, 244-245 (1932); Axe, **Corporate Proxies,** 41 & 42 MICH. L. REV. 38, 225 (1942); Dean, **Non-Compliance with Proxy Regulations,** 24 CORNELL L. Q. 483 (1939); Bernstein & Fisher, **The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy,** 7 U. CHI. L. REV. 226 (1936); Comment: **Regulation of Proxies by the Securities and Exchange Commission,** 33 ILL. L. REV. 914 (1939), 13 ST. JOHN'S L. REV. 297 (1939).

[2] CORPORATION LAW § 31. For a comprehensive discussion, see Bowes & De Bow, **Cumulative Voting at Election of Directors of Corporations,** 21 MINN. L. REV. 351 (1937).

[3] CORPORATION LAW § 36. For a comprehensive discussion, see CUSHING, VOTING TRUSTS (1915); Gose, **Legal Characteristics and Consequences of Voting Trust,** 20 WASH. L. REV. 129 (1945); Ballantine, **Voting Trusts, Their Abuses and Regulation,** 21 TEXAS L. REV. 139 (1942); Burke, **Voting Trusts Currently Observed,** 24 MINN. L. REV. 347 (1940); Dougherty & Verry, **The Voting Trust — Its Present Status,** 28 GEO. L. J. 1121 (1940); Wormser, **Legality of Corporate Voting Trusts and Pooling Agreements,** 18 COLUM. L. REV. 123 (1918); Anno: **Validity of Voting Trust or Similar Agreements for Control of Voting Power of Corporate Stock,** 105 ALR 123 (1936).

[4] CORPORATION LAW § 5; cf. Gen. Inv. Co. v. Bethlehem Steel Corp., 87 NJ Eq. 234, 100 A 347 (1917).