equity have never conceived of such idea under any possible circumstance because it will not only strike deep into the very sentiments, trust and confidence between husband and wife, but it will also destroy the economic establishment of the family, that social institution, sacred, inviolable and zealously protected by the provisions of the law.

REFERENCE DIGEST

CRIMINAL LAW: TREASON. Our Philippine law on Treason is provided for in article 114 of the Revised Penal Code. It is of Anglo-American origin. Tracing its history and development, we have to start around the middle of the 14th century in England. The law on treason was first passed in 1351 by the English Parliament. During that time, treason was so vague and indeterminate that men were convicted or acquitted simply by the whims of the King's justices.

Treason as defined in article 114 of the Revised Penal Code is but a portion of the great Treason Act of 1352, which reads in part: ". . . if a man do levy war against our lord the king in his realm, or be adherent to his enemies in his realm, giving them aid or comfort in the realm or elsewhere, and thereof be provably attainted of open deed . . ." Treason is considered the most heinous of all crimes that the state protects itself by putting men to death sometimes even on mere conjecture.

From England, we now sway to the colonial legislation in the United States in tracing the development of the treason law. Taking the colonial period as a whole, in most of the Colonies, the definition of the offense was clearly thought of in terms of the English legislation on the matter. The striking characteristic of all these legislations was the emphasis on the safety of the state and the subordinate role of any concern for individual liberties. When the Federal Convention met in Philadelphia to frame the American Constitution, all the delegates agreed that treason, alone among the myriad crimes which man can commit, must be defined in the Constitution. Accordingly, treason was defined as a "crime against constituted democracy."

For fear that prosecution for treason might be abused, the two-witness rule was adopted. "It seems that the fundamental sense of justice of mankind recognizes the danger of convictions of the innocent as a result of perjury and passion." This two-witness requirement was a familiar precept of the Mosaic law and of the New Testament. In modern legislation, this procedural requirement started as early as 1547.

Under the English legislation, the witnesses may be permitted to testify to the same overt act, or one of them to another overt act of the same treason. Under the American procedural system, however, the two-witness-to-the-same-overt-act rule prevails. The reason behind this is that "because of the nature of the crime of treason and the stigma that is attached not only to the criminal but to his family, it is considered the better policy to allow many to go free than to convict an innocent one."

The elements of the crime of treason are as follows:

First.—Allegiance, permanent or temporary. Under the original provision of article 114 of the Revised Penal Code, citizenship or permanent allegiance is required. However, a third paragraph was added to the article by Executive Order No. 44, dated May 31, 1945, extending the coverage of the law to resident aliens or to those owing temporary allegiance, and, consequently, enjoying temporary protection under our laws.

Second.—Existence of a public enemy to which adherence is avowed, which presupposes the nation at war. This element is a "quality of mind" — the deliberate intent required by article 3 of the Penal Code. According to Mr. Justice Perfecto, in *Laurel v. Misa,* 44 O.G. 1176 (1947), "treason is a war crime. It is not an all-time offense. It cannot be committed in peace time. While there is peace, there are no traitors."

Third.—An overt act by which treason is manifested. Treason may be committed in one or two ways, namely, by levying war or by giving aid and comfort to the enemy.

All these three elements must concur to support conviction. One or two of the required elements will not suffice.

The crime of treason may be committed by levying war against the duly constituted government. It is considered that there is no levying of war unless there is an assemblage of men for the purpose of effecting by force a treasonable design. Mere enlisting of men is not levying war. But meeting of bodies of men and marching them to a general rendezvous is such an assembly as to constitute a levying of war. Treason by levying war seems to be composed of three elements: (1) an actual assemblage; (2) treasonable design; and (3) the use or exhibition of force. It does not matter whether actual violence has flared up or not.

Is treason by levying war an exclusively war crime, like treason by giving aid and comfort and adhering to the enemy? On this, we have divergent views. According to Mr. Justice Perfecto, concurring in the previously cited case of *Laurel v. Misa,* it seems to indicate that this kind of treason is exclusively a war crime. Opposed to this view is that held in the case of *United States v. Lagnason,* 3 Phil. 472 (1940), wherein Messrs. Justice Willard, Johnson, and Cooper maintained that treason by levying war could be committed during peace, when, therefore, there could be no public enemy.

The view maintained in the *Lagnason* case seems to be more in conformity with the history and development of our treason law, as those of the United States and England, which indicate that treason may be committed both in war and in peace time.

Do treason by levying war and rebellion have any "proper separation" to distinguish one from the other? According to the author, treason by levying war requires the existence of a foreign enemy while rebellion is defined in terms similar to article 134 of the Revised Penal Code. The two crimes are indeed different. Treason is classified as an offense against the external security of the state while rebellion is a crime against the form of government.

Another way by which treason may also be committed is the giving of aid and comfort to the enemy. This form of treason is exclusively a war crime. This is defined as "an act which strengthens or tends to strengthen the enemies . . . in the conduct of war . . . that is, in law giving of aid and comfort, and an act which weakens or tends to weaken the power of the state and the country to resist or to attack . . ." The case of *People v. Alvaro,* 47 O.G. 5619 (1950), suggests that this kind of treason may be committed by military, economic and political collaboration with or giving aid and comfort to the enemy.

When treason is committed, for example, by killing, arson, or some other overt act, does a complex crime arise under article 48 of the Revised Penal Code? The Supreme Court seems to have answered this question in such a way that a negative answer has become the settled rule. According to the Court, treason is a continuous offense and the enumeration of overt acts are but specifications. Hence, "the different acts committed by the accused are simply treated as so many overt acts manifesting the criminal intention and are, therefore, considered as so many counts against the accused without changing the nature of the offense."

According to the author, this new principle in its actual operation may work prejudice to public justice and be of great advantage to the traitor. Accordingly, two remedies are advanced, one depending upon the prosecution to adopt, and the other upon the court itself to apply. The Supreme Court suggested that the public prosecutor may choose to prosecute independently the different crimes committed instead of prosecuting the lone crime of treason wherein those crimes would be treated as mere counts against the accused or as particulars. If, however, the prosecution elects to prosecute the single crime of treason, the court, on the other hand, must consider the seriousness of the acts committed and impose the penalty accordingly, disregarding the application of article 64 of the Revised Penal Code on the graduation of penalties. (Emiliano R. Navarro, *The Law of Treason in the Philippines,* 30 PHIL. L.J. No. 5, at 719-750 (1950), ₱2.50 at U.P., Diliman, Q.C. This issue also contains: Rivera, *The Power of the President of the Philippines Over Local Governments and Local Officials.*)

LABOR LAW: COLLECTIVE BARGAINING AND CERTIFICATION ELECTIONS. The enactment of Republic Act No. 875, otherwise known as "The Indus-

trial Peace Act," is predicated upon the principle that industrial peace can best be achieved through collective bargaining negotiations between the employer on one hand and the labor union that represents the majority of the employees on the other hand.

In order to achieve the purpose of the Act, the law provides certain media, thru certification proceedings before the Court of Industrial Relations, by which the union that will represent the majority of the employers is determined, and when this representation is resolved, outlines of procedure for the conduct of collective bargaining negotiations are laid down.

According to the authors, a labor contract represents the fruition of collective bargaining processes but this is no guarantee for an industrial peace because many and varied problems arise in the execution of the collective bargaining contract, chief among which, they mentioned, is the determination of the effect to be given to an existing collective bargaining agreement when it is alleged that a majority of the employees desire to be represented by a different union than the one which negotiated with the employer.

The question presented by the authors in their article seems to be molded into this: whether employees, who have selected a labor union as their representative by joining and retaining membership therein, and who have allowed such selected representatives to make an agreemnt which is binding upon the employer, are, in spite of this contract, still entitled to a certification election from the Court of Industrial Relations to the effect that they have selected another union as their bargaining representative in order to avoid the contract which they have previously made.

In the Philippines, we have no settled solution that can be applied to the problem at bar. The Supreme Court, when presented the problem, did not answer the question squarely. We, therefore, still seem to be grasping from nowhere as to what solution is best.

The authors cite some solutions on the matter.

First.—That the employees may shift their allegiance during the term of the agreement but that the contract continues in force, with the new union simply replacing the old. The weakness of this solution is that employees change representatives because they are dissatisfied with the agreements, and it is scarcely to be expected that the newly-designated union will merely act as a successor of the former union, even though the new union has different views at hand.

Second.—That a collective bargaining agreement valid when made is a bar to any new certification election throughout its existence, regardless of the length of its term. In this case, it is true that the union will be given an assured status for a long period but this will seem to be inconsistent with the policy of assuring workers full freedom of choice and this suppression

may tend to unsettled grievances that may erupt into an industrial violence.

Third.—That a contract of two years should bar an election although the customary term of contract in the industry was only one year. This solution seems to lie between the two extremes cited above. The employees under this system are entitled to change their representatives, if they so desire, at reasonable intervals. Stability of industrial relations can still be best served, without reasonably restricting the employees in their rights, by refusing to interfere with bargaining relations secured by collective agreements of two-years' duration.

We once stated above that in our jurisdiction there is no settled solution to a problem of this nature. The authors suggest that amendments to Republic Act No. 875 be done by expressly providing in the Act the reasonable period within which a collective bargaining agreement may be considered effective and reasonable as to bar a petition for a certification election. (L. Siguion Reyna and Conrado Reyes, *The Existence of a Collective Bargaining Contract as a Bar to a Petition for Certification Election*, 4 F.E.U.L.Q. No. 1, at 22-27 (1956). ₱1.50 at Inst. of Civ. Law, F.E.U., Quezon Blvd., Manila. This issue also contains: Storey, *Legal Education in the United States;* Lavides, *The Legal Profession in the Philippines;* Peña, *Historical Background of the Judicial Power of Review Now Conferred Upon the Land Registration Commission.*)

CONSTITUTIONAL LAW: WRIT OF HABEAS CORPUS. The writ of habeas corpus is aptly considered as a proceeding without which much else would be of no avail. We can find the provisions on the writ of habeas corpus in article III, section 1, paragraph 14 and article VII, section 10, paragraph 2 of the Constitution of the Philippines.

When on October 22, 1950, the privilege of the writ of habeas corpus was suspended in the Philippines, the provisions on the writ became fertile subjects of legal inquiry and researches that the author in his present article was also moved to make this most exhaustively analytical research on the matter. Scholarly recommendations are given to this article for its great help and guidance specially to students who may wish to take up comparative studies on constitutions.

From where were our constitutional provisions on habeas corpus adopted? While no direct evidence has been found particularly showing that our constitutional provisions on the writ were adopted from the Jones Law, the striking similarities of the former to the latter seem to leave no room for doubt that the framers of our Constitution had adopted the provisions as found in the Jones Law.

In our Constitution, as that in the Jones Law, the privilege of the writ of habeas corpus is not expressly granted but the same is guaranteed when its suspension is limited or prohibited except in certain instances, as in the cases of rebellion, insurrection, or invasion when the public safety requires it. The exactitude in the phraseology, the similarity in substance even on points of error and inconsistency, strongly point to an unmistakable conclusion that the provisions as found in our Constitution were based on the corresponding provisions of the Jones Law which, in turn, finds its counterpart in the Philippine Bill of 1902, except in some minor points.

Regarding the exercise of suspending the privilege of the writ of habeas corpus, our Constitution has explicitly provided in precise terms that the President, being the Commander-in-Chief of all the armed forces of the Philippines, may suspend the privilege of the writ of habeas corpus in those cases enumerated in our fundamental law. In the United States, the Federal Constitution does not specify who may suspend the writ so that when Lincoln suspended the privilege of the writ of habeas corpus, such suspension provoked a widespread controversy in the United States, as to whether the President of the United States, acting by himself alone, had the power to suspend the writ. However, in many state constitutions, the agency vested with the power of suspension was specifically designated. Some vest the power on the legislature alone. Some even go to the extent of prohibiting its suspension in any instance. But no state constitution expressly gives the power to the executive.

According to the author, the present provisions on the writ of habeas corpus as found in our Constitution are peculiarly intended for a colony and not for an independent republic. This can be deduced from the fact that after examining the Jones Law, from which our constitutional provisions on the writ of habeas corpus are copied, the Organic Acts of Hawaii and Puerto Rico, both territorial possessions of the United States, we can readily take note of the very similar provisions on the matter. The agency vested with the power of suspension is the Governor-General, who was in turn appointed by the President of the United States with the advice and consent of the Senate. This must be so because the suspension of the writ is intended primarily to protect the security of the State or its government. Therefore, it is understandable that the United States Congress vested the power of suspension in an official or body appointed by the President of the United States so as to protect and secure its sovereignty in a conquered or territorial possession.

The Jones Law provisions on the writ which we later adopted were peculiarly intended for a colony with no definite assurance of independence, but restless for it. What was therefore intended for a territorial possession seems to have been adopted by the framers of our Constitution for an independent and sovereign republic. The author opines that perhaps the

framers of our Constitution were motivated with the realization for a strong executive. (Estelito P. Mendoza, *Presidential Suspension of the Writ of Habeas Corpus in the Philippines: Its Antecedents*, 31 PHIL. L.J. No. 1, at 138-53 (1956). ₱2.50 at U.P., Diliman, Q.C. This issue also contains: Quisumbing, *The Rights of the Accused — Their True Basis.*)