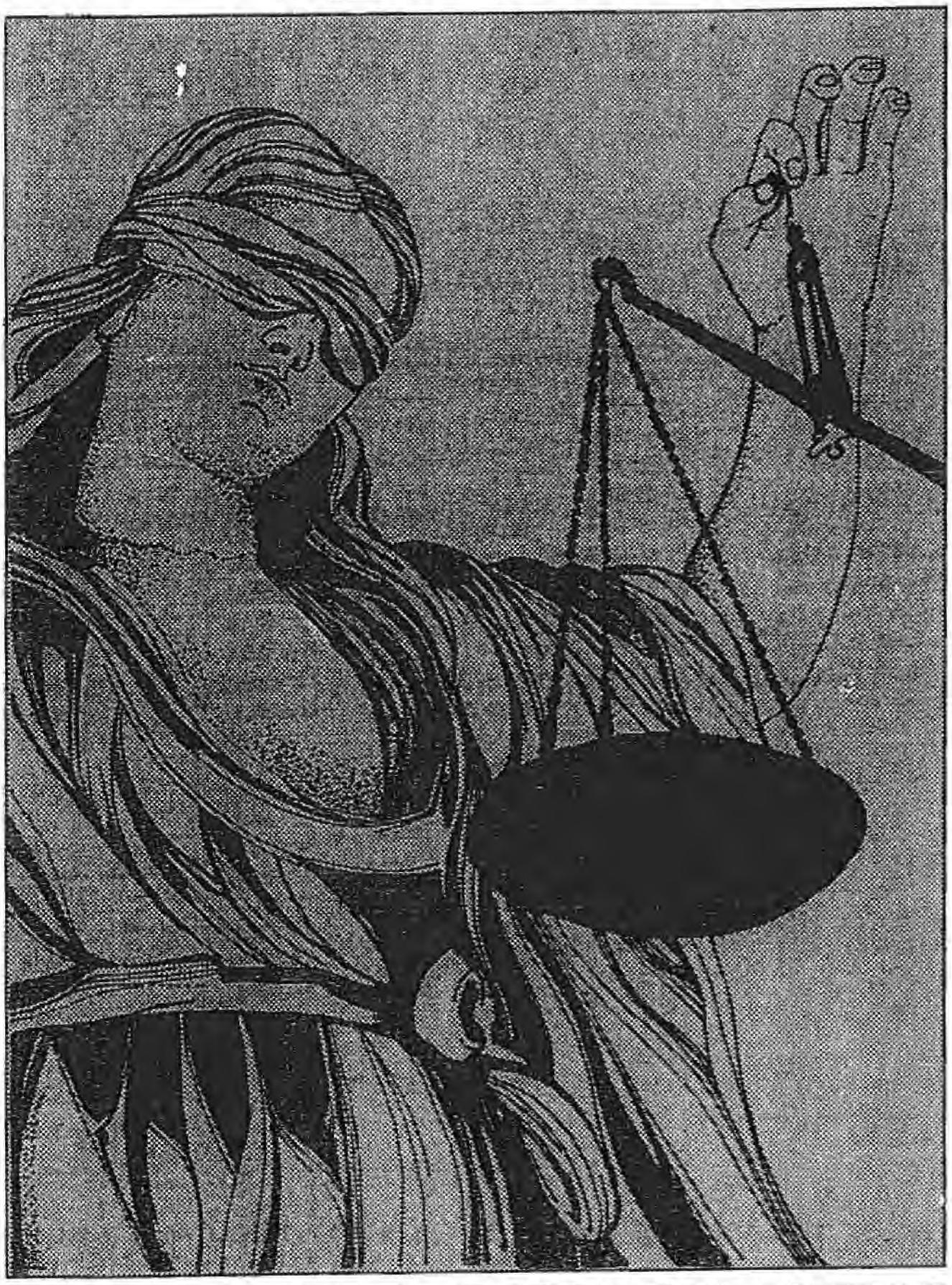
LAW JOURNAL

ID-DRITT



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VOL: VII MAR 1976

ID-DRITT

LAW JOURNAL

organu uffiċjali ta' l-għaqda studenti tal-liġi
official organ of the university law society

Printed at the M.U.P. — 1976

Nota Editorjali: Marzu, 1976

"Ir-riċerka bħala metodu ta' studju f'università qegħda ssir bżonnjuża mhux biss għall-għalliem, iżda wkoll għall-istudent." Wieħed ma jistax ma jaqbilx ma' dan il-kliem ta' l-editur ta' l-ewwel ħarġa tal-'Journal of Educational Affairs' maħruġ mill-Kunsill Rappresentattiv ta' l-Istudenti ta' l-Università tagħna. Hija ħaġa li qed jaraha kulħadd li l-Università qegħda tiſhem dejjem iktar li l-għan soċjali tagħha hu li tipproduċi u tippublika xogħol ta' riċerka.

Jeżistu ħafna modi ta' kif il-Fakultà tal-Liġi tista' tagħti sehemha f'dan il-qasam. F'dawn l-aħħar snin, gruppi ta' studenti ġabru u indiċjaw ġurisprudenza, maltija u estera, dwar materji legali differenti. Sa issa dan ix-xogħol sar mingħajr organizzazzjoni soda, u forsi mhux dejjem laħaq l-istess livell. Huwa possibbli, però, li din l-inizjativa tingħata tali sura li tgħin ħafna lill-avukati fil-bżonnijiet professjonali ta' kuljum. Għalliema u studenti jistgħu flimkien jistabbilixxu fond permanenti ta' xogħol ta' riċerka f'ġurisprudenza maltija u estera, indiċjata u aġġornata sew, għall-użu ta' l-avukati prattikanti. Hekk, nghidu aħna, avukat bi problema legali quddiem il-qrati, li jrid malajr awtorità ta' ġudikat jew awtur, ikun f'pożizzjoni li jieħu mill-Università "dossier" dwar il-problema kollha. Servizz bħal dan igħin lill-avukat, u jrawwem l-istudent f'dak il-kuntatt bżonnjuż mas-sentenzi, li huma l-pern ta' kull edukazzjoni legali.

Ir-riċerka, li lilha huwa ddedikat dan il-ġurnal, hija l-unika spjegazzjoni fid-dinja tal-lum għall-esistenza ta' l-Università in ġenerali, u tal-Fakultà tagħna in partikolari.

CHARLES DEBATTISTA

*Kull 'transfer' għandu jiġi mwaħħal max-xewka ta' kull ktieb.

Editorial Note: March, 1976

'Research work as a method is becoming an imperative not only for the university teacher, but also for the student.' One would find it hard to disagree with the editor of the first issue of the Journal of Educational Affairs, published by the Students' Representative Council of our University. It would be a fair observation, I think, to say that the University is approaching an increasing awareness of its social mission as reservoir and vehicle of research.

The Faculty of Law can participate in this awareness in more ways than one. For some years now, various groups of students have been collecting and indexing judgements, local and foreign, on various legal topics. The process has so far been rather haphazard, and, perhaps, of varying standard. This initiative could, I believe, be organized in such a way as truly to relate research to social needs. Staff and students could build up a permanent pool of research work in local and foreign judgements, fully indexed and updated, for the use of practising lawyers. Thus a lawyer faced with a knotty problem in court, and desperate for a precedent or some authority from comparative law, could, at relatively short notice, contact the University for a ready 'dossier' on the problem. The operation of such a service would save much time and worry for the practitioner, and would truly prepare the student for practice, by bringing him to grips with judgements, the main bloodstream of any legal education.

Research, to which this journal is dedicated, is essential for the continued justification of the existence of the University in general, and of our Faculty in particular.

CHARLES DEBATTISTA

*The enclosed transfer is to be affixed along the spines of the corresponding volumes.

CONTENTS

FACTORS ASSOCIATED WITH JUVENILE DELINQUENCY

TONIO AZZOPARDI

INTRODUCTION

It is a known fact that all over the world juvenile delinquency is on the increase. It is a scourge of which society has been forced to become aware by bitter experience. The threat which it presents to each and every member of society should serve to remind us of the importance of criminological research which is being carried out in this field. The Committee of Ministers of the Council of Europe has expressed the wish that the European Committee on Crime Problems should continue its work in the field of juvenile delinquency.

Today society is producing young people who emerge into adulthood better educated and more capable of standing on their own two feet than ever before. In this article I shall deal mainly with the casualties of the social system, but we must not forget its successes.

It is important to explain at the outset why the modern tendency in criminological research is to speak of 'factors associated with delinquency' rather than 'causes of crime'. (The words 'delinquency' and 'crime' are here used indiscriminately). The reason is that it is very difficult to establish a cause of something, especially to determine with certainty whether that cause is operating. One must keep in mind that this field deals with a social science (as opposed to a natural science), and as such does not allow of a hundred per cent certainty. A scientific experiment can be repeated at will, but the psychology of human beings is dynamic. It is possible to say that if factors, x, y, z operate on individual A, then in all probability he will resort to certain types of offences, but you cannot say beyond any doubt that if he is affected by these factors he will become a criminal. Human behaviour cannot be measured. It is possible to venture an opinion on the behaviour which is likely in a given case, but it is impossible to make particular inferences with absolute certainty. It matters greatly at what time a

factor acts, how intensely, and for how long. The relationship between the various factors in a particular case may be of the utmost significance. It is impossible to find any factor which always results in crime or which is always to be found in the criminal background. Dr. Grunhut points out that: 'the course of such studies as the ambitious concept of 'cause' have given way to the modest term of 'factor'.[1] Another eminent criminologist, Professor Leon Radzinowicz asserts: 'I am strongly convinced that the unilateral approach, the attempt to explain all crime in terms of a single theory, should be abandoned altogether with such expressions as crime causation. The most we can do is to throw light on factors or circumstances associated with various kinds of crime'.[2]

Therefore, since I am assuming free will and an element of mystery or at least uncertainty in human nature, I prefer not to talk of causes of crime or delinquency, but of factors associated with delinquency. Moreover, I propose to restrict myself to juvenile delinquency, though the same might also apply to adult offenders.

It is relevant to say a few words on the principle of 'multiple causation'. Dr. Grunhut comments as follows: 'A study of composite syndromes of configurations and characteristic patterns of life has more and more superseded the search for alleged single factors of crime'.[3]

The principle of multiple causation argues that crime, whether an act of an individual or a social mass phenomenon, is never due to any single cause, but can only be explained by a coincidence of personal and social factors. In a now-famous study 'The Young Delinquent', Cyril Burt pointed out no less than one hundred and seventy distinct conditions, every one of which was considered as conducive to delinquency.[4] Mabel Elliott and Francis Merril make this very interesting statement which portrays a typical combination:

'Elaborate investigations of delinquents give us conclusive evidence that there is no single predisposing factor leading inevi-

[1] Grunhut, 'The Sociological Approach to the Study of Crime' (unpublished paper), quoted in Lord Pakenham, *Causes of Crime* (1958) Weidenfeld and Nicolson, p. 42.

[2] *Ideology and Crime* (1966) Heinemann, p. 99.

[3] Grunhut, op. cit. p. 41.

[4] Unlike most countries, no statistics on juvenile delinquency are available for Malta; the whole matter is shrouded in an aura of secrecy. This is indeed a pity because I believe that progress in this field can only be achieved by regular detailed statistical surveys.

tably to delinquent behaviour. On the other hand, the delinquent child is generally a child handicapped not by one or two, but usually by seven or eight counts. We are safe in concluding that almost any child can overcome one or two handicaps, such as the death of one parent or poverty and poor health. However, if the child has a drunken unemployed father and an immoral mother, is mentally deficient, is taken out of school at an early age and put to work in a factory, and lives in a crowded home in a bad neighbourhood, nearly every factor in his environment may seem to militate against him'.[5]

Likewise, a history of poverty and overcrowding coupled with lowly status could produce a kind of family life which lacks effective supervision and control of children. This, in turn, could lead to the growth of gangs and other delinquent groups in search of excitement and willing to indulge in various kinds of hooliganism and other kinds of delinquent behaviour.

Two Elements

For the sake of correctness and convenience, the factors which form the subject-matter of my article are divided into: (a) personal factors or natural endowment, and (b) environmental factors. The idea of these two elements is universally accepted. Thus, Stephen Hurwitz, a Danish criminologist writes: 'The development and the shaping of criminal behaviour are due to an interaction between inheritance (endowment) and environment. The mutual strength of the two factors ranges over all degrees from person to person and from situation to situation'.[6] However, it should be pointed out that 'the complex interaction between person and situation hardly permits a separation of the two elements, but in trying to analyse the causes of delinquency it is a useful simplification to think of these aspects one by one'.[7] Although criminologists agree on the existence of these two elements, there is a conflict of opinion over which element prevails: the sociologist seeks explanations of behaviour in terms of the situation in which a person is placed, while the psychologist is more interested in the variations of personality which make individuals respond differently, In a questionnaire, the Chief Police Officers (United Kingdom), with the persistent offender mainly in mind, submitted the view that 'basi-

[5] Elliott M. and Merril F., *Social Disorganisation.*
[6] Hurwitz S., 'Criminology' quoted in Lord Parkenham *Causes of Crime*, p. 41.
[7] West D.J. *The Young Offender*, (1967) Cox and Wyman, p. 51.

cally all crime is due to natural endowment'. On the other hand, the Magistrates' Association said: 'We think that criminality is the result of environment rather than heredity'.[8]

Personal Factors

By 'personal factors' I mean the endowment with which the young delinquent begins life, including the large hereditary element. In the first place, forensic psychiatrists and legislators agree that crimes committed by youths are very often the result of their immature age and their spirit of adventure, which is common to all youths. This is an obvious factor which is self-explanatory.

Among the personal factors one can easily mark out the urge among youths to associate in cliques. These days the group scene dominates most youngsters' social lives from the age of twelve. Fortunately in Malta this urge has not yet reached the alarming proportions it has reached in some countries. Slum neighbourhoods certainly encourage juvenile gangs, which may be the breeding place of the young offender. In fact, 'the gang provides a reservoir of technical knowledge 'how to procure junk, open merchandise cars, snatch purses, fleece a storekeeper, empty slot-machines...'[9] It instils 'attitudes of irresponsibility, independence and indifference to law'.[10]

When we come to analyse the types of delinquents, some may be brought back into the fold becoming law-abiding citizens, while others are lost forever, ending up as hardened criminals. Such persons are usually aggressive, arrogant and selfish, and they possess a superiority complex. Therefore, negative qualities inherent in man will often result in delinquency. It would perhaps be more correct to say that these qualities are negative if they are uncontrolled: 'I want, therefore I take,' is their motto. The average delinquent thus shows a marked indifference to the rights of others.

An interesting factor which commonly induces crime is dullness of intelligence; ironically this same factor may be preventive in its action. Thus, dullness of intelligence may induce crime by adding to that feeling of inferiority and frustration, yet without doubt this same dullness of intelligence may make an individual easier for authority to dominate; at the same time he is the type to be easily led by bad companies.

[8] Answers to a questionnaire quoted in Lord Parkenham *Causes of Crime*, pp. 46-47.
[9] Thrasher F.M., *The Gang* (1927) Chicago University Press.
[10] Ibid.

Finally, psychologists tell us that children who are wayward, bad-tempered, lacking in self-discipline, untruthful and lazy *might* also end up as delinquents. However, in these cases there is only the possibility.

Environmental Factors

We now come to the second type of factors – environmental factors. Many of our young delinquents are really victims of circumstances rather than there being in them an extra measure of criminal inclination. This theory was first advocated by Bernard Shaw who said that evil is the product of circumstances, especially the circumstance of poverty. It is not altogether unreasonable to say that poverty is the main factor associated with delinquency, since it breeds crime. As John Barron Mays writes: 'Criminal statistics suggest that crime is closely associated with lower-class neighbourhoods. It has a strong subcultural basis and is a reaction on the part of depressed groups against social and economic frustrations imposed on them by more successful and more powerful classes'.[11]

All this explains why theft seems to be the most common form of juvenile offence in Malta. Certain poor families live together as a community in slum areas without any opportunity to encounter persons who can improve their character. In such surroundings it is not surprising that we should find a number of habitual delinquents.

Delinquency can also be seen as a result of lack of opportunities.[12] The only sensible way of prevention is then to give opportunities to the deprived youths. But to accomplish this in a slum area means of course that major social changes have to be undertaken. The New York Project submits that the solution lies in 'expanding opportunities for conformity for young people in the lower strata of society'.[13]

Very often the factor of poverty is accompanied by that of unemployment. Temporary unemployment, and hence temporary shortage of the cash needed to maintain an accustomed style of life, increases the likelihood of criminal behaviour. In a survey of four thousand borstal youths, Norwood East found that at the actual times when their last offences were committed, the incidence of

[11] Mays J.B., *Crime and its treatment* (1970) Longman, p. 130. The same view is also shared by Barbara Wootton.
[12] This is the approach followed by Ohlin and Cloward in *Delinquency and Opportunity* and a New York study called *Mobilization for Youth*.
[13] Ibid.

unemployment was very high.[14] The clear inference was that these young men were much more prone to commit offences during periods of unemployment than at other times.

Many youths consider weekly visits to the cinema, dances, drinking and smoking as a necessity. However, since they cannot afford such commodities they steal in order to indulge in their craze. Ironically, the very pleasures in which they indulge further exploit their character. They fall to the unexpected temptation to become possessed of things at an age when the instinct of acquisition presents its greatest strength. We have all met cases of unemployed youths wanting to keep up with their friends in dress and cigarettes.

Unsatisfactory Home Conditions

Now we come to the major factor associated with juvenile delinquency – unsatisfactory home conditions. Under this heading we include a multitude of sins: wrongful upbringing, lack of maternal affection, bad housing, family conflicts, etc. If the children feel they are not loved by their parents and that they are unwanted or neglected, they are frustrated and they bear a grudge against society. Indeed, John Barron Mays maintains that: 'the quality of home life and family relationships seem to be crucial in deciding whether or not a child becomes delinquent'.[15]

When psychiatrists tell us that the first five years of a child's life are intimately linked with the development of the individual character and personality, one cannot over-emphasize the importance of good parenthood, a wholesome family environment and a sound education.

In 'The Young Delinquent', Sir Cyril Burt says:

> 'Most recent investigators seem to agree that in the causation of juvenile delinquency, the domestic factors – i.e. the psychological conditions obtaining in the family and the home – are more important than social, economic or pathological factors, or the direct inheritance of criminal propensities'.[16]

Thus, John Mack in a survey of juvenile delinquency carried out in the U.K. described the main problem revealed by delinquency as 'family disorganization, the failure of families, and particularly of parents, to give their children the two things they most need, as-

[14] East N., *The Adolescent Criminal.*

[15] *Crime and its treatment*, p.131.

[16] *The Young Delinquent* (1943) University of London Press.

surance of continuing love and moral discipline made acceptable by love'.[17]

Some criminologists have advanced the view that the fact that the mother takes on a job might be a factor affecting delinquency.

At times we are faced with a very serious problem when we come to tackle a fact-situation where there are unsatisfactory home conditions. The problem is the following: when the parents themselves are in need of probation, how can one expect the children to be brought up in a healthy moral environment? Take the case of a child whose father returns home always drunk and whose mother lives a permissive life; here the remedy would be to remove the child from the custody of the parents altogether. What are we to expect if the parents are always at loggerheads or if the children are unwanted? Not all children get their share of sense of security. The parents quarrel, separate, die, bring home a step-father or step-mother, often with the most disastrous results to the children. The child's mind would be oppressed by anxieties and disturbances which get him or her into trouble. The child misses the consistent upbringing and the sensible supervision which should be found in the home. Therefore, very often, juvenile delinquency is also due to incompetent and unwise parents.

Problem parents are not only negligent or reckless parents, but also those who spoil a child at one moment and repress him harshly at the next. In addition, there are those parents who are overprotective and unduly anxious and from whose constrictive embraces the child sometimes breaks with uncontrollable violence. Very often there is the feeling that many of the young people appearing before the Courts would never have done so bad had they been luckier in their parents.

Overcrowding at home and lack of parental affection cause the youth to seek an outlet to his spitit of adventure outside the home in the company of friends. It is here usually that he first encounters delinquents who unhesitatingly teach him the path to crime. It is easy for him to learn from them ways and means to break the law without being caught. Where the young person perceives or experiences more in favour of crime than against it is very likely that he will become delinquent.

The Screen

A very serious factor associated with delinquency is the show-

[17] Quoted in Lord Parkenham, *Causes of Crime*, p. 49.

g and glorification of violence and sex in the cinema and in ms on television. According to Edwin Sutherland and Donald ressey, television is being denounced because of the continued rection of attention to crime, especially violent crime, and the ntinued presence of sex imagery.[18] Larsen in 'Violence and ass Media' summarises the contentions of many concerned mem-ers of society thus:

(a) The menu offered by television is saturated with violent ontent, including incidents of persons intentionally doing injury) each other. A Commission reported that between the ages of ve and fourteen the average American child witnesses the violent estruction of 13,000 human beings on television alone.

(b) More and more people have already access to the medium. Children sixteen years of age have spent as much time watching elevision as they have spent in school.

(c) For most persons, but particularly for the poor, television is erceived as the most credible and believable source of informa-ion concerning the world as it really is.[19]

Television programmes teach children certain criminal tech-iques. But the major effect of crime dramatization is perhaps the reation and perpetuation of an attitude of indifference to ordinary criminal offences among persons who are not the direct victims of hem. Because the impression is created that crime is frequent and usual, the viewing public becomes indifferent to sensational, violent crimes and even less concerned with ordinary offences. Thus dramatization of crime appears to minimize public indigna-tion when crimes are committed and, perhaps, to contribute in-directly to high crime rates. Tendencies towards delinquency which have been derived from other sources may be reinforced by crime films shown at the cinema and on television, and in some cases specific techniques are thus learned.

We now come to the problem of news media and crime. The news media are giving too much publicity to delinquents and criminals. Youths who have an inferiority complex might feel so humiliated that they might try to make up for their frustration by doing some-thing bold and startling. They might feel satisfied when they make the headlines, even if ultimately they are caught. American news-papers and television news programmes have been severely criti-cized for the part they play in relation to crime. The following

[18] Sutherland E. and Cressey D., *Criminology* (1974) Lippincott, p. 248.
[19] Quoted ibid.

charges are made against them:

(i) They promote crime by constantly advertising it and exaggerating its incidence.

(ii) They interfere with justice by 'trial by news media', by distortion of news, and by providing advance information to the public, including the criminals, regarding the plans of the police and prosecution.

(iii) They ordinarily promote indifference to crime, but on occasion create public panic, both of which make consistent and rational preventive law enforcement and judicial correctional procedure very difficult.[20]

Edwin Sutherland and Donald Cressey do not criticize the desirability of publishing crime news, but rather its amount and style. Fortunately, both in Malta and in England, newspapers and television publish crime news in the form of brief factual statements.

Religion and Education

We are witnessing a decline in the practice of religion and in moral standards against a background of material improvement. It does not seem to be the case that improvement in material conditions, desirable as it is, necessarily results in an improvement in human behaviour. Martin Neumeyer comments: 'There is considerable difference of opinion on the relation of religion and church attendance to the prevention of delinquency. No positive conclusion may be drawn with respect to the correlation of religion with delinquency, because of few authentic studies on this subject. When religious ideals are firmly believed in and religious observances are adhered to, they can be effective means of controlling human behaviour'.[21]

Delinquency is prevented first and foremost by educating youths. In our modern world, youth clubs perform a very important function, that of keeping our younger generation occupied. In addition to honest and profitable recreation, youth clubs offer help and guidance. Leadership is essential in the sense that youths who are easily led will be able to follow persons who can improve their character.

Some people adopt a pessimistic attitude towards the prevention of delinquency: they say that precipitants of delinquency are

[20] Ibid., p. 245.

[21] Neumeyer M., *Juvenile Delinquency in Modern Society* (1955) Van Nostrand, p. 236.

ound to exist in any environment and that however much the andards of society are raised, there will always be a group upon nich the precipitating factors will act.

Note on Drink

Drink, it seems, has suddenly become the fashionable scene for oung people. In England, doctors, social workers and youth eaders fear that alcohol is rapidly overtaking drugs as a teenage anger – a cheaper way of getting away from it all. Drinking, like rugs and sex, is very much a group activity in England. Blum in Mind-Altering Drug' remarks: 'On the basis of available informa-ion it is plausible to assume that alcohol does play an important nd damaging role in the lives of offenders, particularly chronic ıebriates, and in the production of crime'.[22]

'he Welfare State

The fairly recent advent of the Welfare State has also been men-ioned as a possible factor associated with delinquency. To the .ged poor who genuinely desire to earn a living for themselves and o whom national assistance is a last resort, unemployment benefit ınd old age pensions are like a godsend in their struggle fot survi-val. However, with others, especially young people who are born nto the Welfare State, the effect is totally different. The amenities ›rovided by the State from their earliest days have had the effect ›f ruining their character. Such people fail to realize that national assistance is no substitute for personal courage to face life, hrift and self-discipline. They do not understand the true prin-ciples at the basis of the Welfare State. They do not realize that :hese amenities are paid for by other people. The Welfare State ıas led young people into expecting something for nothing and also to a decline in parental responsibility. This tendency is found particularly in youths who avoid honest work and live by their wits.[23]

Disrespect for the Law

Disrespect for the law almost invariably features in the charac-ter of delinquents. The attitude of youth towards law observance and enforcement reflects the community attitude. If there is res-

[22] Ibid. p. 165.

[23] This opinion is also shared by Frank J. Powell in 'The Magistrate and the Psychiatrist' a contribution in Sir Norwood East *The Roots of Crime*, Butterworth, p. 149.

pect for law, children naturally develop the same attitude. If parents and other adults indulge in minor infractions and wink at similar activities of their friends, children are quick to sense the spirit.[24]

Is Delinquency a Disease?

It is usually quite reasonable to regard the acts of delinquents as symptomatic of mental disorder or disease. However, the reason (according to Desmond Curran) is not that criminal behaviour is always a psychiatric case, i.e. a manifestation of disease, but that delinquents show other symptoms in addition to their criminal behaviour.[25]

The vast majority of criminals should not be regarded primarily as medical problems at all, though a small minority are in fact medical cases. We can also discern an overlap group to which medicine and psychiatry can contribute.

All psychiatrists agree that psychopathic personality is a factor associated with delinquency though they differ on the extent.[26] The term is used to refer to persons who are regarded as emotionally abnormal; the patient tends to burst into violent and antisocial behaviour. Some psychiatrists have classified psychopathic personalities in three groups – the egocentric, the inadequate and the vagabond. In addition to the psychopathic personality, there are other personality deviations which are classified diseases, like mental defect (mental retardation) and psychoses. Psychiatrists today speak of 'maladjustment' with its numerous subdivisions.

Lady Barbara Wootton argues that 'the presence of a psychiatric syndrome or of a disturbance of part-functions does not, of itself, necessarily explain, still less does it necessarily excuse, disregard of social norms. Even at the level of mere explanation, the link between the two needs to be demonstrated ... We do not assume, and we are not entitled to assume without evidence, that these morbid conditions have anything to do with their standards of social behaviour'.[27] Therefore, while mental disorder might be a factor associated with delinquency, it cannot be said that all

[24] See Neumeyer M., *Juvenile Delinquency in Modern Society* (1955), p. 300.
[25] 'A Psychiatric Approach to the Offender' a contribution in *The Roots of Crime* by Sir Norwood East, p. 41.
[26] Sutherland and Cressey, *Criminology*, p. 151.
[27] Wootton B., *Social Science and Social Pathology* (1967) Allen & Unwin p. 239.

delinquents suffer from a mental disease; each case must be examined on its own merits.

In particular cases the mental aspect of the problem could assume a very important role in determining the delinquent behaviour. Thus, for example, a sense of inferiority could lead to crime: in the first place you could have cases of physical inferiority, for instance, young people who have some physical defect often resort to crime in a search for compensation. Secondly, according to Dr. Stewart and Dr. Carlton, mental inferiority may lead to crime in a number of different ways: a boy may be easily led, or he may develop an inferiority complex. Thirdly, there is emotional instability: Dr. Stott says that the rule is that boys take to delinquency to escape from an emotionally intolerable life. On the other hand, Dr. Roper argues that there is a possibility that the association between mental abnormality and crime has been overstressed, largely because the psychiatrists see the mentally abnormal.[28]

Conclusion

Once we have located these factors associated with delinquency we can do something about 'the problem' in the form of treatment or prevention. Once we know what these factors are, the obvious thing to do is to begin to develop techniques for the prevention and reduction of acts of delinquency. For instance, I have indicated earlier that poverty is considered by most criminologists to be the main factor associated with delinquency. Now, if the scourge of poverty were to be alleviated there might not be a cessation of delinquent manifestations (because we would be left with the possibility of a host of other factors operating simultaneously) but it would definitely amount to a step in the right direction.

We cannot only consider a list of possible deleterious factors and find out to what extent they are productive of crime, and then set about removing them; it is also necessary to consider the assets of the particular individual. Looking into the factors associated with delinquency, we are neither working out an addition, nor even an addition and subtraction, but a complex and changing equation with many variables.

I propose to conclude this article by indicating the utility of this study of 'factors associated with juvenile delinquency'. Dr. Grunhut comments that 'the study of factors associated with crime

[28] Vide Pakenham, *Causes of Crime* pp. 82-84.

has been turned into a rational instrument of crime prediction'.[29] John Barron Mays argues that 'the rationale of prediction is clear enough. If we could only spot children with delinquent proclivities before they commit their offences, we might conceivably save them from ever falling foul of the law, perhaps by giving them and their parents additional support and by providing facilities lacking in the environment.[30] With that objective in mind, I have submitted – wherever I thought possible – a remedy by way of preventive methods. My feelings are that not until we know how things happen can we prevent or assist their happening. It is to make things happen, or to prevent their happening, that all our endeavours are directed.

[29] Unpublished paper quoted in Pakenham, *Causes of Crime*, p. 42.
[30] Mays J.B., *Crime and its treatment* (1970), pp. 116-117.

THE AMERICAN CONSTITUTION

*Democratic 'checks and balances'**

AUSTIN G. BENCINI

IN July 1976, the United States of America will be celebrating the bicentenary of the adoption of the Declaration of Independence and, naturally, a whole nation will be nostalgically reviewing the many landmarks which colour and give meaning to the two hundred years of United States history. As usually happens on such occasions, special attention will be devoted to the very origins of the United States and, no doubt, also to the day when the thirteen rebellious formet British colonial settlements took the plunge and decided to draft a constitution that would unite this nation, still in its early stages of existence, as well as to its eventual development into the really democratic and, at the same time, practical instrument of government which America has today.

The thirteen states had already been eleven years independent when delegates representing these States met in Philadelphia in 1787, giving life to the Convention whose task was that of correcting the shortcomings of the articles of confederation which had been existing since the Declaration of Independence.

It was generally felt that the Articles of Confederation gave too much importance to the states, with the consequence that the union would practically be non-existent, especially when the main factor which had kept them together, the common struggle against the British, no longer existed once they had freed themselves from British domination; hence, the need was felt for a fundamental law that would unite the states into one country, a union whereby each state would have its main interests protected, but which would make their interest converge in the government of the United States of America.

The delegates, after many compromises, managed to draft a constitution, federal in nature, providing for a Presidential Executive system, with a legislature, composed of two houses, and a federal judiciary, composing the three main organs of central federal authority, with each state having its own elected legislature and go-

* This Article states the position as at the 20th September 1974.

vernor.

The 'Founding Fathers' of the American Constitution had one major problem to solve, namely, that of trying to constitute an efficient political system with the necessary constitutional safeguards to prevent it from endangering the liberties which the Americans had acquired at such a high cost of human lives. It is this aspect of the United States Constitution which I intend to analyse and I am going to do so for two reasons: the first being that this is the fundamental characteristic of the constitution; secondly, that the American Constitution happens to be the first constitution to be drafted to meet these specific requirements.

Thus, the 'Founding Fathers' decided to build the Constitution on the so-called doctrines of the 'separation of powers' and that of the constitutional 'checks and balances'. These two doctrines propounded by such eminent writers as Montesquieu, Locke and Adams were contained in a formula through which the relations of the Executive, Legislature and Judiciary, according to the first doctrine, would avoid the concentration of too much power in the hands of one organ, by giving each organ a definite clear cut sphere for which it, and only it, would be responsible. On the other hand, according to the doctrine of the 'checks and balances', each organ should have enough means to control the others, should one of them abuse its powers. We shall now pass on to analyse how the 'Founding Fathers' dealt with the problem.

At the Convention, after much debate, it was decided that the National Executive should be in the hands of one man, namely, the United States President. His powers are not clearly defined in the Constitution, but as Article 2, section 1 states, his main function is that of Chief Executive of the United States Government. His powers are, indeed, separated, for he is independent from Congress, in the sense that his stay at the White House is not directly dependent on Congress, as the President is elected on a nationwide basis for a period of four years.

Originally, the President would be re-elected indefinitely but this situation was changed by the 22nd Amendment which limited the President's stay at the White House to two terms.

The President, as head of the Executive, cannot legislate, and this factor has given rise to a very complicated state of affairs where, on account of the 'checks' of the Legislature on the President, a continual struggle arises between these two organs.

In these last 30 years, that is before Watergate, the President had managed to take the initiative by exploiting his constitutional role as chief policy maker. In fact, it is interesting to note that

from the Constitutional point of view, the President's Position has not changed, no matter how his power happened to be influenced by the political climate of the day: he always embodies the unity of the United States: as Commander-in-Chief of the Armed Forces, he can ignite an atomic holocaust. Yet, despite his tremendous power, the Constitution makes of the Chief Executive a very poor man as he depends totally on Congress for his finances, whilst his measures require their approval by Congress for them to become law.

The President's predicament was reflected very clearly by President Kennedy when, although enjoying a Democratic majority in Congress, he complained that his majority which existed on paper, rarely materialised in reality, for although the Democrats out numbered the Republicans by 263 members to 214 in the House of Representatives and by 64 to 35 in the Senate, as Kennedy himself pointed out 'some Democrats have voted Republican for 25 years and that makes it very difficult to secure the enactment of any controversial legislation.' One can imagine the problems which a President faces when faced by a hostile Congress, as often is the case.

This situation is indeed strange, to say the least, to any one who is used to the rigid party politics and party discipline generally followed in a parliamentary democracy, but the American party structure is weakened by many factors, one of which is the fact that United States Congress is federally based, with the consequence that the party members prefer satisfying a highly demanding constituency than a party whip; after all, the party system was not envisaged by the 'Founding Fathers'.

We have considered how the President can find in Congress a check to his powers. We shall now consider how a strong President not weakened by Vietnam Wars and Watergate scandals can fulfill his role also as leader of the Legislature.

Art. II Section III of the Constitution states that the President: 'shall, from time to time, give to Congress information of the state of the Union and recommend such measures as he shall judge necessary and expedient'. Here, we have the national Leader addressing himself to Congress, but this does not necessarily mean that every legislative proposal recommended by him to Congress originates in the mind of the President or even within the confines of the White House. Most proposals, in fact, come from agencies of government and from interest groups. What the President does is to determine priorities and to focus attention and pressure on the high priority measures.

Then, we have the powerful weapon of the Presidential veto. Now, although the veto is, indeed, a significant constitutional lever in the President's hands, it is, however, of a negative character. The President, according to the Constitution, has 10 days in which to return a Bill to Congress with his objections pointed out. Congress, however, can override the Presidential veto, if it can muster a two-thirds majority; infact, herein lies the efficacy of his 'check', for the President, normally can rally one-third of Congress to defeat the counter measure of Congress. Indeed, the fact that Congress possesses a sufficient democratic overall majority to defeat a Presidential veto, as was recently seen in the vital Turkish arms deal, is sufficient proof to show the hard times the Chief Executive can go through.

The President has also the power to call special sessions of Congress. This power has been used, on occasion, to meet particular emergencies; it has often been used as a political weapon to focus attention on Presidential programmes.

In the system of 'checks and balances' the President's main contact is with the Legislature, but we must not forget that the President also nominates judges who have to be approved by Congress. As yet, the President's main influence and his main headaches are mainly found in Congress, a Congress that had been relegated for a long time to the background of the United States politics by the emergence of the so-called 'Imperial Presidency' but Congress is trying to recover a lot of the ground it has lost, now that the Executive has lost most of its credibility and its political support.

Now we shall analyse how Congress can utilise its checks on the President to assert its newly found authority. In the constitutional convention, the 'Founding Fathers' were presented with two plans of how to constitute the national legislature. One was the so-called 'Virginia Plan' which provided for a bicameral legislature with population representation in both Houses; whilst the other was the 'New Jersey Plan' which provided for a unicameral body with equal representation of the states. The result of this controversy was a compromise, namely, to create a bicameral Congress, with a House of Representatives based on population and a Senate based upon equal state representation – two from each state. Thus, the equal representation of the states in the United States Senate illustrates the practical application of the fedetal principle of the Constitution; the population representation in the House of Representatives reflects the centralising ideology of the 'Founding Fathers' of the Constitution and their recognition of the democratic spirit.

Congress's main function, of course, is that of legislating as well as that of levying taxes and making appropriations. The Constitution allows Congress to recommend constitutional amendments by a two-thirds majority in each House; at the request of two-thirds of the states, Congress 'shall call a convention for proposing amendments'. Furthermore, Congress has authority to supervise the administration, a function which, incidentally, is not explicitly granted by the Constitution, but can be implied from the impeachment authority, senatorial power and the need to investigate the implementation of legislation. Congress also has the responsibility in the judicial sphere as, for example, the approval or otherwise of judicial appointments and the establishment of Federal Courts (other than the Federal Supreme Court).

A vital role in the 'checks and balances' of the Legislature on the Executive is played by the Committees of Congress. They play such a significant role that a further illustration of their structure, especially since they are so different from the Committee structure in our Parliamentary system, is, in my opinion, vital to understand Executive-Legislative relations.

The Committee stage in a Parliamentary system of the Westminster model does not play such a vital role in the legislative process for the simple reason that the political parties are strong and unified and exercise a considerable whip-hand in Parliament. Thus, the Standing Committees are large; they lack a continuing jurisdiction over specific substantive areas and furthermore, have a fluctuating membership. This weakness is reflected by the fact that the Committees are not sources of power but vehicles for detailed work.

By contrast, the Congressional Committees are not so strongly dominated by party considerations. In fact, it has been suggested that the Committee structure is one of the reasons why the parties in the United States are not so powerful as one would think them to be. The Congressional Committee is a strong, proud and independent unit; the senior members of Committees have often served 20 years or more, long enough, that is, to have become experts in the field. They are capable, therefore, of tackling the increasing complexities of modern legislation and of holding their own in any encounter with officials of the Executive Departments. The Committees are very touchy on their jurisdictional prerogatives. The power of the Congressional Committee mainly lies in the fact that it has the faculty of determining what Bills will be reported out and which will be delayed or even 'buried' in obscurity; furthermore, Congressional rules and traditions offer only the narrowest of opportunities for a Congressional majority to 'disinter' a Bill that

has been buried in Committee.

As already pointed out above, party allegiances are very often put aside and party lines are often crossed, for the legislator may have to lobby for important state interests which may not be convergent with his leader's position. Another factor which contributes to the power of the Committees is the so-called minority system through which the powerful post of the Committee Chairman is elected. This system frequently promotes to the chairmanship a man who is out of step with the opinion of his party with respect to the issues under his jurisdiction, yet the seniority tradition protects him from the loss of his post, however heretical his views may be. However, there is a strong drive, especially among young democrats, to change the seniority system.

It is amazing how much the American legislative process and the relations between the Executive and the Legislature depend on the Committee Chairman: his position is a very powerful one. He has the sole power to call meetings in some Committees and, in all of them, he can call, or refuse to call, additional meetings beyond those scheduled, and can determine the schedule of hearings. This powerful gentleman with, at least, the tacit connivance of some members, can prevent another member from gaining a vote on a Bill; but his strongest advantage on the Committee lies in the fact that he is a very experienced person who has more information and understanding about the measures coming before the Committee than anyone else. This advantage is not only pressed home against his Committee members, but also in dealing with administrative officials; his knowledge and experience force administrative officials to respect his views. A disadvantage in this structure arises when the post of Chairman is occupied by a weak legislator and this is, indeed, no small eventuality owing to the above mentioned seniority system, for this could create a dangerous power vacuum, with no member able to lead the Committee, for he would lack the prerogative of the Chairman.

It is of vital importance to understand the way Committees function, because they are of great importance in the Executive-Legislative relations which are being analysed in the light of their respective 'checks and balances'. Thus, one of the most substantial and detailed legislative supervisions of Executive agencies is the area of fiscal control, the central processes of which are the authorisation for the expenditure of funds, the appropriation of funds and the audit or review of their actual expenditure. At the Congressional level, the primary units for fiscal supervision are the Appropriation Committees.

Another device used by Congress to check the Executive is the so-called Committee investigations which have come into the limelight since the Second World War, especially after the so-called Army-McCarthy Hearings in 1954. Most of the investigations have a distinctive and legitimate legislative purpose; however, some Congressional investigations provide a means by which the Committees can supervise Executive agencies, examining their implementation of delegated power in particular circumstances. Unfortunately, this 'check' on the Executive sometimes acquires a partisan flavour, especially when elections are approaching, particularly when Congress is controlled by the opposite party, but these enquiries are, on the whole, very positive. Their value has been demonstrated during the Watergate Scandal and its aftermath. First of all, we have the Senate Watergate Committee chaired by Senator Erwin, that played a prominant part in the investigations; then, we had the judiciary Committee voting that proceedings be commenced against President Nixon in the House of Representatives, and even more recently, we have a Committee investigating C.I.A. activities, an enquiry surrounded by controversy. It can be easily seen that this is a major weapon in the system of the 'checks and balances' in the United States system.

Perhaps the most direct and visible control over Administrative organisation and procedure has been the so-called 'legislative veto'. A case that could be cited in the field of executive re-organisation, is the 1932 Re-organisation law, in which Congress required that a President's re-organisation plans be submitted to Congress 60 days before going into effect, subject to disapproval by either House.

Another important method of control is the legislature's approval of appointment. The United State's Senate gives its advice and consent to thousands of appointments, most of them routine. The Senators' interest in the average appointment is limited to preserving their control over patronage through the technique of 'senatorial courtesy'. Occasionally, with respect to more important appointments, senators question the competence or suitability of a nominee or point out possible conflicts of interest resulting from his appointment.

The ultimate and most important 'check' of the Legislature over the Executive is its constitutional power to impeach the Chief Executive, the President, should he over-reach his constitutional powers or in the case of misconduct.

As already mentioned above, one of the most important 'checks' which the Legislature has over the Executive is that Congress

controls the finances so badly needed by the Executive. This does not only help Congress to keep an eye on the executive, but it enables it also to shate in the country's policy making and, at this particular historical moment, this weapon could prove to be the decisive one in the Legislature's comeback. One of the most glaring examples is the recent Trade Reform Act, where Congress, mainly through the amendments proposed by Senator Jackson, amended the Soviet-American Trade Agreement to such an extent that the deal had to be called off, for it proved unacceptable to the Soviet Union. Congress again 'checked' the Presidential foreign policy by refusing him the necessary funds to supply Turkey with arms.

It seems clear that the United States is facing a constitutional crisis, as, prior to Watergate and Vietnam, the United States President was the chief policy maker; but the consequent loss of confidence in the White House, following Vietnam but particularly Watergate, has encouraged Congress (especially after the two-thirds majority obtained by the Democrats recently) to regain the previously lost ground, and the so-called 'Imperial Presidency' is definitely no longer applicable, at any rate, for the time being.

Yet the situation, constitutionally speaking, is awkward. Senator Javits reflected the situation admirably when he said that 'we have half the authority and now we are called on to have half the responsibility', but the Senator expressed his doubts whether Congress would live up to this responsibility, as it is not really built to lead and take policy initiative in foreign affairs. It can investigate, it can use its financial power and it can restrain the Presidency from over-reaching itself, but it is top-heavy for policy making. The point is proved by the fact that there are five Congressional Committees which influence foreign policy, one of the spheres most hotly contested between the Executive and the Legislature.

Having analysed the ways in which the doctrine of the 'separation of powers' and of the 'check and balances' operate between the Executive and the Legislature, it is now appropriate to see how the Judiciary fits into the picture. Some of the 'Founding Fathers' felt that a strong Legislature would call for the combined powers of the executive and of the judiciary to control it. Fortunately, this proposal was not accepted as the Presidency would always have at its disposal the 'power of veto' and it was felt that the Judiciary had to be independent in order to fulfill its function properly.

In fact, in comparison with the Executive and the Legislature, the Federal Judiciary is considerably free from any 'checks' which would endanger its independence; the few 'checks' to which the Federal Judiciary is subject are: the Judges are nominated by the

President whilst they are subject to approval by Congress, which has also the responsibility of establishing Federal Courts, except the supreme Court. The latter Court, however, is not empowered by the American Constitution with any powerful 'checks' which it could utilise over the other two organs: in other words, it is not empowered by the Constitution to declare legislative acts or executive measures as unconstitutional in the way that, say, the Maltese Constitutional Court is.

The Supreme Court took its function as guardian and interpreter of the Constitution on its own initiative, as a consequence of the celebrated case 'Marbury vs. Madison'. Nor does the Constitution authorise the Supreme Court to negative acts of the state legislature, a power which it acquired through the Federal Judiciary Act of 1789. In 1914 the Appellate Jurisdiction of the Supreme Court was enlarged to permit it to pass on state acts which state Courts had condemned as against the Federal Constitution.

Thus, the Supreme Court, through its many Constitutional decisions, in practice, has proved to be a guarantee of American democracy through its power to review and interpret it and not through constitutional 'checks' on the Executive and on the Legislative organs. The Courr takes special care to enforce the Civil Rights provisions which were incorporated in the Constitution in the form of amendment.

Let us now consider a few cases which illustrate the Supreme Court's function as a democratic 'check'.

The decisions of the Supreme Court can have a very important effect even in the structure of the two organs. One such case concerns the question of 'malapportionment'. On March 26, 1962, the Court delivered a controversial decision of far-reaching implication in a Tennessee case (Baker v. Carr) involving appointment of the state legislature. Its background was the malapportionment of state legislatures, ensuing in a general inflated over-representation of rural and small town voters at the expense of large cities and their suburbs. The implication of this fact is of considerable importance, in view of the fact that the unrepresentative state legislatures have the responsibility for apportioning Congressional districts in their state, with the consequence that this rural dominance is reflected in Congress also. The results of this malapportionment speak for themselves: before 'Baker v. Carr', in 27 states there had been no redistricting for at least 25 years. It was estimated that in 24 states a majority in the state legislature could elected by less than 40 per cent of the population; in other states, the percentage was considerably less.

Hence, in 'Baker v. Carr' a number of Tenneessee voters lodged a complaint against the denial of the guarantee of the Fourteenth Amendment to 'equal protection of the law'. Now, the Court's decision set at rest a single question: that the right to equal protection under apportionment laws is within the reach of judicial protection under the Fourteenth Amendment. The Court, however, did not enter into the complicated electoral details of the matter, or into which factors could warrant exception to it or whether this standard should apply to both Houses of Legislature.

The first clear indication of the Supreme Court's approach towards apportionment standards came in March 1963 when it invalidated the Georgia County Unit system used in Primary Elections. Justice Douglas said: 'The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg address to the Fifteenth, Seventeenth and Nineteenth Amendment can mean only one thing: One man, one vote'. The Court thus, started to eliminate apportionment which gave too little consideration to population.

Another important function of the Court is the protection of minorities and to see that their constitutional rights are duly safeguarded; this is, especially so, in the case of black discrimination, which, especially in the South, is so very difficult to eradicate. An important constitutional decision was reached in the case of Brown v. Board of Education of Topeka (1954). The Supreme Court ruled in this case that segregation is discriminatory. The Court reasoned 'does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factor may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.' The Court further found that the 'policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn.' The Court also declared that 'separate educational facilities are inherently unequal' and the negro children were held to be deprived thereby 'of the equal protection of the laws guaranteed by the Fourteenth Amendment.'

As the Mitchells say in their book 'A Biography of the Constitution of the United States': 'the Supreme Court ban on segregation in public schools marked the beginning of a new phase in the progress of American democracy: the legal removal of racial barriers in many other areas of our society.'

The Supreme Court does not hesitate to declare executive measures to be unconstitutional whatever their political importance.

One of the best cases to prove this is that of 'Schechter v. United States' (1935). The period was that of the 'Great Depression', where the United States, still in the depth of the depression, elected Franklin D. Rossevelt to lead the country in the task of the great economic recovery. Roosevelt immediately showed that he intended taking the bull by the horns: he started, through determined legislative and executive actions, to issue a stream of laws and orders from the White House with the intention of setting the economic recovery on its way. Amongst the measures taken was the National Industrial Recovery Act which went against the economic policy of the day by allowing businessmen to associate together; the Act also provided that competition should be dampened by punishing so-called 'price cutters', 'wage-cutters' and anyone giving special service and privileges to favoured customers. The Code eventually became law following approval by Roosevelt and everybody in the governed group was bound to conform with it or be subject to be fined for breach thereof.

In 'Schechter v. United States' Schechter was accused by the Code authority of infringing the Code. When the case reached the Supreme Court, two points were considered, namely, whether the activities of the live poultry industry of New York City, which was subject to the Code, was involved in inter-state commerce, for, if it were, it would fall under the jurisdiction of Congress; the second concerned the delegation of legislative power to the President who, by approving the Code, gave it the force of Law.

The Court's decision in both cases went against the United States Government, whilst on the second point the Court declared that Congress had not been sufficiently specific in directing how the power delegated to the president was to be exercised by him. Congress could not give up its legislative role transferring to the President 'an unfettered discretion to make whatever laws he thinks may be needed'. The statute 'instead of prescribing rules of conduct... authorises the making of codes to prescribe them'. The Supreme Court held that the act as it stood was unconstitutional in that Congress in failing to specify the requisite guide lines to an administrative agency, through the President, gave altogether too much liberty. This decision made the National Industrial Recovery Act ineffective, with the result that Roosevelt's measures were weakened. Although he expressed the desire to re-organise the Supreme Court, so as to make it more receptive to his needs, he refrained from doing so.

The Supreme Court, through a series of constitutional decisions, has been a highly responsible protector and interpreter of the

Constitution, always ready to safeguard the Rule of Law and to eliminate arbitrariness so far as it lay in its power. The prestige of the Federal Judiciary was enhanced through its part in dealing with the Watergate Scandal. Always probing for the truth, the Federal Judiciary refused to allow the truth to be concealed under the term 'Executive Privilege' and, hence, ordered President Nixon to hand to the Court the Watergate tapes.

American citizens can, indeed look at the American Constitution with its democratic safeguards as one of the most noteworthy Amecan achievements. The fact that public opinion, Congress and the Federal Courts forced the President to climb down and, eventually, to resign shows that the Constitutional system, with its democratic 'checks and balances' under the protection of an independent judiciary ensuring its safeguards and interpretation, proved its efficacy and reliability at the very moment when disillusion with the political system could not be stronger.

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SOME EARLY MALTESE MEDICO-LEGAL DOCUMENTS

PAUL CASSAR

IN 1974 I had the opportunity to study and publish a medico-legal report *(perizja)* by two Maltese physicians appointed as experts by the Bishop's Court at Mdina in 1542. The case dealt with the annulment of marriage of Catherine nee Busuttil with John Azzopardi on the grounds that the latter had a deformed sexual organ which hindered the performance of the conjugal and procreative act.[1] I drew attention to this document because it is the earliest medico-legal report so far discovered in Malta. In my continued search for such documents I have now come across other sixteenth century manuscripts, though of a later date, among the records of the Bishop's Curia of Mdina. The presence of these medico-legal documents in the files of an ecclesiastical tribunal is accounted for by the fact that by 1575 the inhabitants of the Maltese Islands sought to evade the authority of the Grand Master of the Order of St. John, which then ruled over the Islands, by electing to submit themselves either to the jurisdiction of the Bishop or to that of the Inquisitor in both civil and criminal matters.[2]

One of these manuscripts is a medical certificate dated 3rd November 1578 by surgeon Paolo Listen (?) from Valletta stating that in August of that year he had treated a certain Paolo Chiatar (Ciantar) from Luqa for 'a wound on the right side of the head near the sagittal suture'. The treatment lasted twenty-two days and consisted in the prescription of an appropriate diet, the administration of a rhubarb mixture internally and the local application of an ointment.[3]

Another manuscript is a *monitorium* from the Bishop dated 17th June 1578. It concems the application by Brandano Bonnici to the Ecclesiastical Court of Mdina to declare the testament made by his

[1] Cassar, P.A. Medico-Legal Report of the Sixteenth Century from Malta, *Medical History*, 1974, *18*, 354.
[2] Debono, P. *Sommario della storia della legislazione in Malta*, Malta, 1897, p. 338.
[3] CEM, *Acta Originalia*, Ms. 58a, fol. 195, Cathedral Archives, Mdina.

brother Filippo of Gudja null and void. Brandano alleged that Filippo could not have drawn up a valid will as at the time he was 'out of his mind and senses and deprived of speech and therefore the contents of the will could not have been dictated by him'.

The Bishop's Curia, in considering the application, very appropriately sought to obtain proof of Filippo's alleged unsoundness of mind. It, therefore, issued a circular addressed to all the parish priests of the diocese of Malta enjoining anyone who knew of the testator's alleged insanity to inform the court accordingly within fifteen days under penalty of excommunication if they failed to do so. Very disappointingly there are no further records about this case in the court file and we are left in the dark as to what further procedures, if any, were followed in this case and what conclusion was reached with regard to the establishment of the validity or otherwise of Filippo's will. There is no hint that anyone came forward to enlighten the court on the testator's state of mind.[4]

The midwife fell under the jurisdiction, as regards her professional conduct, of both the secular and the ecclesiastical tribunals. The state laws regulated the exercise of midwifery in so far as professional competence and the issue of a warrant to practice were concemed; the church intervened to ascertain that the midwife was familiar with the correct ritual of the administration of baptism 'in cases of necessity'.[5] Failure to comply with the procedure laid down by the church rendered the midwife open to the charge of culpable negligence in the Episcopal Curia. On the 7th December 1598 this court investigated the circumstances surrounding the death of an infant during parturition. Among the witnesses heard by the court was the attending midwife, Bernarda Micallef, who testified that the baby died because of a difficult labour due to the prolapse of the baby's foot but that she obtained the necessary water and baptised the child.[6] Incidentally, Bernarda Micallef, is the first midwife so far known to us by name.

Bodily Harm

It seems that the most common types of bodily harm sustained in squabbles in the mid-seventeenth century in Malta were head wounds produced by hard objects such as stones and sticks. At times they were judged by the attending surgeon to be of a severe kind. Thus on the 26th April 1651 surgeon Domenico Grech declar-

[4] *Ibidem*, fol. 137.
[5] Ms. 643, fol. 589, Malta Public Library, Valletta.
[6] CEM, *Acta Originalia*, Ms. 78b, fol. 457, Cathedral Archives, Mdina.

ed under oath to the Episcopal Court that he had treated a boy for a 'somewhat dangerous head wound caused by a blunt instrument'.[7]

In June 1652 the Rev. Aloysius Tonna of Luqa 'driven by a diabolical spirit, neither fearing God nor justice', struck Giovanni Pensa with a stick causing him several injuries and a great loss of blood. In taking cognizance of this offence on the 14th June the Episcopal Court heard the evidence of Dr. Bartolomeo Magro who certified as follows (translated from Italian): 'I have treated Giovanni Pensa of Luqa for a wound in the head and for a superficial contusion of the bone caused by a hard instrument, the wound being of a type that usually heals save any supervening sinister accident. I have also treated him for a fracture of the radius of the left fore-arm without any solution in the continuity of the overlying soft tissues and skin; this fracture was likewise produced by a blunt instrument and carries no risk of loss of life save any supervening sinister development'.

On the 8th July Dr. Magro re-appeared in court to state that Giovanni Pensa 'was recovering, by the grace of God, and out of danger of death and of crippling'.[8]

Another certificate from the pen of the same Dr. Magro was issued on the 26th July 1652 when Agostino Falzon attacked Paolo Scicluna with a knife during a quarrel (translated from Italian): 'On the 25th of this month I treated Paolo Scicluna for two wounds produced by a cutting and pointed instrument; one of them involves the right arm and is superficial and carries no danger; the other one has penetrated the back near the spinal medulla for which reason I consider it to be dangerous to life'.[9]

I have quoted in full Dr. Magro's testimonies as they are a model of what a medico-legal statement should be – precise in its description of the injuries, clearly and cogently expressed, concise and comprehensive and accurate in its prognosis. There is not one word which is superfluous or ambiguous and no phrase which a twentieth century physician or surgeon would not use except, perhaps, the expression 'by the grace of God'. Dr. Magro may have used this phrase out of deference to the tenets of a church tribunal but he may have done so also in all humility as a genuine acknowledgement of the intervention of Divine help considering that in those days the therapeutic means at his disposal were largely ineffective. In fact the expression occurs also in a *relatio* by surgeon Domenico Grech who, after treating a man with a head injury

[7] *Ibidem*, Ms. 161, fol. 116.
[8] *Ibidem*, Ms. 162, fols. 12 & 313.
[9] *Ibidem*, Ms. 162, fol. 377.

caused by the hurling of a stone on the 14th December 1650, deposed that his patient was 'by the grace of God' out of danger of losing his life.[10] One can almost hear an echo, in this expression, of the saying attributed to the great French surgeon Ambroise Pare (1510-1590), 'I dressed the wound and God healed him'.

This religious slant in court procedure appears also in the series of questions that were sometimes put to the witness to find out whether there were any factors that might affect his credibility. Thus surgeon Joseph Pace of Valletta was asked whether he used to go often to confession and to receive Holy Communion and when he did so the last time. The surgeon replied that he confessed and received Holy Communion every first Sunday (of the month) and that the last time he did so was a month previously.[11]

On the 27th July 1652 Dr. Magro was appointed by the same court on a different type of case. His *relatio,* translated from Italian, runs thus: 'By order of this Episcopal Grand Court I have this morning inspected the cadaver of the late Domenico Tonna whom I found lying on a stretcher in a room of his house at Luqa. From obvious signs which I have seen to-day on the dead body and which I saw yesterday when I visited him in the last hour of his life, I state and hold for certain that he died of a corrosive poison taken by mouth'.[12]

This report raises three important issues: (a) It will be noted that there is no mention that a *post-mortem* examination was carried out and that the diagnosis of poisoning was based solely on the external appearances of the body which, by the way, are not described. We do not know whether necropsies for forensic purposes were ordered in similar cases by this court at this period. It appears, however, that the 'opening' of cadavers formed part of the investigations made by the secular *Corte Capitanale* of Mdina by 1642, the surgeon appointed for this task being usually on the staff of *Santo Spirito* Hospital of Rabat and sometimes of the Holy Infirmary of Valletta.[13] Much later, in 1724, the code of Grand Master Antonio Manoel de Vilhena prohibited the removal and burial of persons dying of sudden or violent deaths before the holding of an inquest by the court. Specific allusion to the performance of necropsies occurs in a decree of the same Grand Master of the 6th June 1729 which laid down the procedure to be followed in the

[10] *Ibidem,* Ms. 160, fol. 221.
[11] *Ibidem,* Ms. 162, fol. 411.
[12] *Ibidem,* Ms. 162, fol. 377.
[13] Archives 1104, fol. 330, Malta Public Library.

case of *post-mortem* investigations on patients dying at the Holy Infirmary of Valletta:[14] (b) The nature of the 'corrosive poison' is not revealed. Presumably it was corrosive sublimate. However that may be, Dr. Magro's *relatio* constitutes the earliest known document recording the death from poisoning in the Maltese Islands, the other known instance belonging to the year 1726:[15] (c) Dr. Magro limits himself to stating that the poison was taken orally and does not hazard an opinion as to whether it was administered accidentally or with suicidal or homicidal intent. The rest of the court records are just as silent on this point.

FINANCIAL ISSUES

The principle that the offender had to pay the medical expenses incurred by the injured party for the treatment of wounds received in a quarrel was being acted upon by 1598. Two cases are on record, on the 23rd July and on the 23rd November of that year, as having been settled out of court though in one of them the surgeon, Antonio Schembri, who had treated the offended party for a head wound, had to appear in court to declare the amount of money received by him for his services and for the cost of medicaments.[16]

On the 17th August 1652 a certain Angiolina Mangion accused Gio Batta Catalano of causing her injuries which deprived her from engaging in her usual occupation of manufacturing stockings. She claimed damages not only for the medical expenses incurred but also for loss of earnings during her illness. She called as witness a surgeon from Valletta, Joseph Pace, who stated in the Episcopal Court that he had treated her for contusions on her neck and other parts of the body; that the treatment lasted nine days; that his fee, which amounted to 18 *tari,* was still unpaid; that the cost of the medicaments prescribed was 6 *tari;* and that he estimated the period of incapacity for work to be ten days.[17] This medico-legal testimony is of particular interest as it is the first document met with so far where the principle of compensation for loss of earnings was mooted in a Maltese law court.

In a *Note on the Economics of Medical Practice in Eighteenth Century Malta,*[18] I dealt with the fees charged by physicians and surgeons who practised in Malta between 1750 and 1798 and with the drawbacks attending the settling of accounts by the patient. I

[14] Cassar, P. Landmarks in the Development of Forensic Medicine in the Maltese Islands, Malta, 1974, p. 6.
[15] Cassar, P., op. cit., p. 21.
[16] CEM, *Acta Originalia,* Ms. 78a, fol. 163 & Ms. 78b, fol. 481.
[17] *Ibidem,* Ms. 162, fol. 411.
[18] *The St. Luke's Hospital Gazette,* 1974, 9, 166.

have since discovered that the collection of the financial rewards by medical practitioners was already a difficult process one hundred years earlier and that claims for fees due were being dealt with by our courts in the previous century.

When applying to the court for the settling of his bills, the practitioner had to declare on oath how many times he had visited the patient and the nature of the treatment carried out by him. He had also to corroborate his statements by the producrion of witnesses. On the 12th January 1661, for instance, Dr. Filippo Doneo sought to recover his fees for attendance on the late Mattiolo Azzopardi from Luqa whom he had treated for 'a most grievous' head wound 'with extraordinary assistance by day and by night' from the 11th to the 23rd July. He had presented a bill for 10 *scudi* for his services but when the court referred the case to the *protomedico* (Chief Government Medical Officer), Dr. Pietro de Franchis, the latter assessed the fee at 8 *scudi* and 4 *tari*.[19]

Dr. Bartolomeo Magro from Qormi also requested payment from the heirs of the same person whom he had likewise treated for his head injury by 'making two circular holes in the bone involved in the wound and an incision.' He claimed one *ounce* for each hole and 6 *tari* for the incision 'in accordance with common usage'. Witness Dr. Laurentius Doneo from Attard testified that Dr. Magro had to make the holes in order to remove 'a fragment of bone that was under the cranium'. In his opinion Dr. Magro deserved 30 *tari* for each hole (5 *scudi* for both), 6 *tari* for the incision and 4 *tari* for every visit as 'Dr. Magro had to travel from Qormi to Luqa purposely' to see this patient. These amounts were confirmed by the *protomedico*.[20]

Sometimes the assessment of fees was made according to the duration of treatment and not to the number of visits. Thus in another case appearing before the Episcopal Court in July 1661 the *protomedico* estimated the remuneration due to Dr. Fabrizio Gauci at 4 *scudi* for the treatment of Domenico Gatt over a period of twenty days.[21]

Medical Fitness for Torture

So far the cases illustrated have a sense of actuality but up to the end of the eighteenth century medical men were called by Maltese courts to give their services in very peculiar and bizarre circumstances. The infliction of torture was until then accepted as a

[19] CEM, *Acta Originalia*, Ms. 181, fols. 5-11.
[20] *Ibidem*, Ms. 181, fol. 343.
[21] *Ibidem*, Ms. 181, fol. 357 & Ms. 182, fol. 139.

legal means of extracting the truth from witnesses and accomplices by our courts. The Code de Vilhena sanctioned the use of torture in 1724 but the Code de Rohan of 1784 restricted it to cases of treason and murder.

The Tribunal of the Inquisition in Malta, like the secular courts, also resorted to torture when witnesses proved reluctant to testify; however, before subjecting the individual to torture, the court obtained the advice of medical practitioners as to whether he was physically fit to undergo this excruciatingly painful procedure.[22] A case in point occurred in 1721 before the Tribunal of the Inquisition when, on the 14th February, Dr. Pietro Paolo Azzopardi and surgeon Paolo Fiteni of Birgu, were appointed to examine a slave who was charged with the crime of treating a sick man by magical means. As he persistently refused to admit his guilt, the tribunal ordered his removal to the 'place of torture'. Here he was examined by the two practitioners mentioned above who found him fit to undergo the *tormentum funis*. The slave was undressed and his limbs tied with ropes to the framework of the rack. While being questioned by the court officials the ropes attached to his limbs were tightened by turning the rollers at each end of the frame. In spite of the pain caused by the stretching of his limbs he continued to protest his innocence.[23]

Torture was done away with in 1798 when Napoleon captured Malta from the Knights of St. John and abolished the Tribunal of the Inquisition.

COMMENT

A systematic and more extensive search in the files of the Bishop's Curia may reveal more of these documents. The few that have been dealt with here were thought worthy of publication because: (a) They shed light on the procedure followed by ecclesiastical tribunals in dealing with civil and criminal charges brought to their cognizance; (b) They show the seriousness with which these tribunals collected information and conducted their investigations to guide them to reach a decision; (c) They illustrate how court officials tried to utilise the medical knowledge of their day in the administration of the law; (d) They demonstrate that the passage of years has brought about no radical change in the role and image of the medico-legal expert except that he is to-day spared from being an accessory to the infliction of legal torture in the search for truth.

[22] Cassar, P. Landmarks etc., p. 12.

[23] Archives of the Inquisition, P. 108, *Processo* No. 6, no pagination, Cathedral Archives, Mdina.

THE TREATMENT OF YOUNG OFFENDERS IN MALTA*

PROPOSALS FOR REFORM

J. J. CREMONA

WHEN the Criminal Code of Malta was promulgated just over a century ago it was hailed as a very enlightened code of laws and so it was indeed. Suffice it to remark that it made no provision for any form of corporal punishment. When the position regarding corporal punishment in Malta in 1854 is compared with the corresponding position in England up to very recently it will be readily admitted that Malta was in this respect well ahead of the times. But although the criminological outlook of the code promised fair for the times, it is a fact that in certain respects, especially with regard to the treatment of young offenders, the present state of our law leaves room for a measure of improvement in the light of new developments in the field of criminal science.

Probably the first question to be posed in connection with the treatment of young offenders is the adequacy of the minimum age of criminal responsibility in the present state of our law. The matter has in recent years received attention in too many foreign legislations not to claim ours as well. In England the suggestion has been strongly put forward of raising the material age from eight to fourteen, if not to fifteen, the school leaving age; but so far it has not been legislatively acted upon. Many other countries, on the other hand, have remedied the matter by legislative action, thus abandoning the general nineteenth century doctrine on the subject. In France and Greece the age of responsibility is at present thirteen, in Italy, Austria, Germany, Norway and Switzerland

*The writer first published this paper in 1956 when he was Assistant Attorney-General and Chairman of the Approved School Board. It is being reprinted here in its original form in view both of its historical interest and of its definite proposals. Some of these proposals have been implimented by, *inter alia*, the Probation of Offenders Act 1957 and the Criminal Code Amendment Act 1956; others, still valid today, however, have not yet been put into practice.

it is fourteen, in Denmark and Sweden fifteen and in Belgium and Spain sixteen.[1] In Malta the material age may well, it is submitted, be raised from nine to fourteen, thus fully covering the period of puberty, often marked by various nervous disorders, and allowing for fuller intellectual and emotional maturity. The idea behind this proposal is indeed not to deprive maladjusted or wayward children of every kind of treatment, but rather to make it possible for society to provide for their readjustment and rehabilitation without the necessity of *criminal* proceedings. 'Criminal procedure', Professor Glanville Williams says, 'is criticised because it involves the application, in theory at least, of a difficult test of responsibility, with a consequent risk of stultification of the whole proceeding, and (more substantially) because the rules of evidence unduly limit the issue'.[2]

Under Maltese law a minor may be brought before a Court of law either on a criminal charge (subject of course to his having attained the age of criminal responsibility) or, if he is under sixteen years, on an application for committal to the Approved School in view of his leading such a life as will, most probably (this is the exact wording of the law, requiring a superhuman effort at an almost metaphysical grading of probability) make him fall into delinquency. Under the Approved School Ordinance (Chapter 75), where any juvenile under sixteen years is convicted by any Court of criminal jurisdiction of an offence punishable with hard labour or imprisonment, the Court may, in lieu of passing sentence of hard labour or imprisonment on him, order him to be sent to an approved school (only one has so far been established) and to be there detained for a period of not less than two nor more than five years, provided that the period for which he is there detained is to expire on his attaining the age of eighteen years or before. The juvenile may also, by order of the Court, be apprenticed to some useful calling or occupation 'with a respectable and trustworthy person', who must undertake to be responsible for him until his attaining the age of eighteen years; in the event that such order cannot for any reason be carried our, the juvenile is to be detained for the time for which he was ordered to be apprenticed. Apart from this, the Court of Magistrates of Judicial Police sitting as a Court

[1] Vide, in respect of various legislations on the subject, the reports sent in for the VI International Congress of Penal Law (Rome, 1953) on *Le problème de l'unification de la peine et des mesures de sûreté*, published by RIDP, Paris, 1953-54.

[2] *Criminal Law (The General Part)*, London, 1953, p. 671.

of criminal judicature may, on the application of the Director of the Approved School, authorised to that effect in writing by the Minister of Education, make any of the abovementioned orders if it is satisfied that a minor under sixteen years is leading such a life as will 'most probably' make him fall into delinquency. Thus a juvenile may be committed to the Approved School either on conviction for a criminal offence or substantially, though the wording of the law is different, on his being found to be in need of care and protection. Incidentally this is clearly inconsistent with subsection (1) of section 2 of the Ordinance itself, which provides that 'the Governor may establish Approved Schools for the reception and custody of juvenile *offenders* in the cases laid down hereunder.' In any event, the proposal to raise the minimum age of criminal responsibility in Malta from nine to fourteen years, far from doing away with the 'care and protection' procedure, would thus, in respect of children up to fourteen years, substantially substitute in appropriate cases such procedure, which is not of a criminal nature, for the purely criminal procedure on a criminal charge.

In the abovementioned Ordinance, enacted in 1921, provision was made for the eventual establishment of more than one approved school. Originally this enactment was entitled the Reformatories Ordinance and dealt with reformatories, which term was made to include a training ship afloat in territorial waters; but by Ordinance No. III of 1944 all references to reformatories in the principal law and other enactments were replaced by references to approved schools. By Government Notice No. 187 of the 5th July 1921 only one institution (then called 'Salvatore Reformatory', now known as the Approved School) was established under the Ordinance. The question may therefore be posed whether the establishment of only one approved school is adequate for the needs of these Islands. Theoretically the question is very easily answered in the negative. There can be no doubt that an efficient and scientific approved school system can only be based on classification and specialisation. While working with Dr Radzinowicz of the Department of Criminal Science, Cambridge University and Dr Hermann Mannheim of London University in the United Kingdom, I was afforded the opportunity of observing this process of classification and specialisation at close quarters. In the United Kingdom approved schools are, as a matter of fact, graded according to the pupils' entrance ages and classified according to the specialised instruction which they provide, the degree of intelligence of the pupils, their religious persuasion and so on. On the basis of this

principle classifying centres have also been established. Indeed it is interesting to note that in our Ordinance provision was originally made for enabling the Governor to make regulations for the classification of approved schools (section 17(a)). This being so, it will be readily realised that in these Islands the difficulties in this connection are altogether of a practical nature. The islands are small and their juvenile delinquent population not so numerous as to make classification into separate approved schools administratively and financially expedient. Even within such limitations, however, the present position is not, perhaps, incapable of improvement. The existing Approved School may perhaps be divided into two separate sections, a junior section and a senior section, with a maximum admission age-limit fixed at the attainment of the age of fourteen and seventeen years respectively and a maximum discharge age-limit fixed at the attainment of the age of sixteen and nineteen years respectively. This arrangement would still make no provision for the more refractory offenders, the special cases that in the United Kingdom would go to a Borstal institution. Again the difficulty about the establishment of such institutions in Malta is not one of principle (for even though critics have not been lacking, there is no gainsaying the fact that the Borstal system has yielded positively good results), but one of practical expediency. The same applies to institutions for mental defectives, which are also lacking.

There are at present no institutions for female juvenile delinquents in Malta. Although it is true that the number of female juveniles brought before the Courts who may need to be placed in such institutions is in actual fact very limited, the deficiency cannot nevertheless be overlooked. In 1954 a female juvenile aged fourteen was sentenced to one year imprisonment and fifteen days detention for several thefts. It appears that no other female juvenile of such tender age had ever been committed to prison within living memory and the occurrence was so distressing that the Governor decided to remit her sentence with a view to her being placed in the Good Shepherd Institute at Balzan, there to remain until her attaining the age of eighteen. The Criminal Code (Amendment) Bill, at present before Parliament, seeks to make provision for the placing of female juvenile offenders under sixteen in Approved Institutions, being institutions approved by the Governor and in respect of which an arrangement has been made between the management and the Government for the reception and custody therein of minor female offenders.

The leading principles in the shaping of a new policy which is

now being generally adopted in the treatment of young offenders are (i) the overriding consideration of the welfare of the young offenders themselves consistently with the interests of society and (ii) the strong desirability of keeping them as much as possible out of prison. This new attitude towards the treatment of young offenders has been determined principally by the realisation that juvenile delinquency is the result of the confluence of several currents and undercurrents in the juvenile's personality and the outcome of various internal and external circumstances often beyond his control. Nevertheless in Malta until now a child of nine years may still, in theory at least, be sent to prison and in certain cases for as long as two years (section 37(2)(a) of the Criminal Code). This relic of a bygone doctrine is, however, being happily done away with by the Criminal Code (Amendment) Bill already referred to. Indeed it is desirable that juveniles up to, it is submitted, sixteen years should not be liable to be sent to prison in any case: incidentally this age coincides with the maximum age limit within the jurisdiction of the Juvenile Courts (sections 2 and 9 of the Juvenile Courts Ordinance (Chapter 71). In England Juvenile Courts cannot sentence to imprisonment and no Court can sentence to imprisonment a juvenile under fifteen. This, however, presupposes the existence of adequate alternative institutions for special cases and thus in respect of these Islands the difficulty already mentioned is encountered once more.

It is true that in practice juveniles, especially those under sixteen, are as a rule sent to prison only in exceptional cases.[3] They are usually dealt with, in respect of a first offence, under the provisions of section 23 of the Criminal Code (providing for conditional discharge) and, in respect of a subsequent offence, by reprimand or admonition or by a fine or, of course in the more serious cases, by committal to the Approved School. It is gratifying to note that by the Criminal Code (Amendment) Bill the scope of conditional discharge is proposed to be appreciably widened by the extension of that benefit to a wider range of first offenders than is at present possible and, under certain circumstances, also to persons previously convicted of a crime. This is admittedly applicable to both juvenile and adult offenders alike, but one important provision which is made specifically applicable to persons under eighteen is the proposed introduction of *absolute* discharge, which

[3] In actual fact imprisoned young persons under twenty years, except those who are specially 'unruly or depraved', are housed in a separate section of the Prison and are accorded special treatment.

as a first step is proposed to be limited only to minors and deaf mutes. This and other innovations proposed by the Bill have the avowed object of 'laying down the foundations of a more rational approach to the problem of the young offender, as a prelude to the early introduction of a system of probation.'

Indeed the probation system has been attended in England by a large measure of success and its introduction in Malta will satisfy a long felt need. Probation treatment is an experiment which is worth trying at least once on *every* juvenile offender, the more so as it is an established fact that juvenile offenders are the subjects that are most likely to respond to it. Probation makes it possible to avoid, at least in the first instance, the drastic measure of removing the juvenile from his own home. So much, of course, depends upon the juvenile himself, but – and this had better be kept in view in the organisation of the system – so much more depends upon his friend the probation officer. Side by side with the introduction of probation, the desirability of affording greater facilities for psychiatric observation of juvenile offenders may well be given consideration.

It has been said above that in practice juveniles, especially those under sixteen, are as a rule sent to prison only in exceptional cases. But a blatant incongruity remains. The law is such that, although a juvenile under sixteen who is guilty of murder may be placed in the Approved School, a juvenile under sixteen who is fined a few shillings *ammenda* for throwing stones *must*, on failing to pay the fine, be sent to prison. A child of eleven years had his one pound fine for theft converted into eight days detention on the 13th January 1950. Of the 21 persons under sixteen admitted to prison since 1950, 14 were cases of conversions of unpaid fines. This is without any doubt most unsatisfactory. Indeed fines imposed on young offenders are a form of treatment more punitive than constructive, more retributive than reformative and such as can hardly be said to accord with the principles of the more modern and more rational treatment of juvenile delinquents. In practice a fine imposed on a juvenile ultimately hits the parent. It is true that in certain cases fines may be imposed directly on the parent or other person charged with the upbringing of the minor, if the offence committed by the minor could have been avoided by his diligence (Sections 36 and 38 of the Criminal Code). But in practice fines fall on the parent even when he is *not* to blame, for very seldom does the parent refuse to pay a fine imposed on his child. The desirability of doing away with pecuniary punishments in respect of juveniles up to at least sixteen years ought, it is submitted, to

be earnestly considered.

Another incongruity is that, although a convicted juvenile under sixteen may and usually does avoid being sent to prison even for serious offences, he *must* nevertheless, if arrested, await his trial in prison.[4] It is true that juveniles are arrested only in exceptional cases and that, even if arrested, they are generally released on bail. But it is worthy of note that, since 1950, fifteen arrested juveniles under sixteen have up to the moment of writing spent varying periods of time in prison prior to their trial. Of these eight were released on bail. Of the rest, three were eventually committed to the Approved School, three were conditionally discharged and one was released by the Court, which had ordered his arrest in connection with false evidence. But whatever the final decision, the harm had been done. Whenever it is found essential that a juvenile be arrested priot to his trial, then, if the establishment of a remand home is considered administratively and financially inexpedient, it is submitted that provision could be made in the law for enabling the juvenile to be placed in a special and separate section of the Approved School. Even though this is not an ideal arrangement, involving as it does the risk of contamination, it is always better than the present one.

Still another incongruity is that, although in respect of convicted persons between sixteen and eighteen years of age the law as it now stands specifically provides for their committal to a House of Correction, nevertheless, in cases where they cannot in the present state of the law be conditionally discharged or dealt with otherise than by punishment restrictive of personal liberty, they *must* be sent to prison simply because no such place as a House of Correction actually exists. For the purpose of criminal responsibility minors are under Maltese law divided into three categories. It is expressly laid down in the Criminal Code that a child under nine is 'exempted from any punishment prescribed by law'. This formula is obviously incomplete and the Criminal Code (Amendment) Bill now seeks to make it abundantly clear that what the child is fundamentally exempted from is criminal responsibility. Exemption from punishment is merely a blatant consequence of exemption from responsibility. A child over nine but under fourteen is also 'exempted from punishment' if he is found to have acted without mischievous discretion, though if the offence (*recte* act) committed by him is a crime he may be 'confined' by order of the Court in an In-

[4] In actual fact 'awaiting trial prisoners' are kept segregated from other prisoners and are accorded special treatment.

dustrial School or in a House of Correction for a stated period, but not beyond the age of sixteen years. Otherwise, if the child is found to have acted with mischievous discretion, he is in some cases, regard being had to the gravity of the offence, liable to varying terms of imprisonment, but the Court may order that such punishment 'be undergone in a House of Correction'.

Under Maltese law the offender reaches the age of complete criminal responsibility when he is eighteen. If he has attained the age of fourteen but is under eighteen, the Court *must* diminish the punishment by one or two degrees and may direct that the punishment 'be undergone in a House of Correction', if the term of such punishment does not extend beyond the offender's eighteenth year. In 1899 the Industrial Schools and Houses of Correction Ordinance (Chapter 46) was enacted whereby the Governor was empowered to appoint one or more suitable places in Malta or in Gozo to be Industrial Schools ('intended for the reception of minors who in the cases prescribed by law are to be received, maintained and trained in an Industrial School') or Houses of Correction ('intended for the reception and detention of persons who in the cases prescribed by law are to undergo punishment restrictive of personal liberty in a House of Correction'). By Government Notice No. 165 of 1905, made under this Ordinance, the Governor eventually appointed a place in Malta (the Salesian School in Sliema) to be an Industrial School, and by Government Notice No. 226 of 1916, regulations were made for its management, but up to this very day no place in any part of these Islands has ever been appointed to be a House of Correction. Now, as already stated, a person of sixteen years or over cannot by law be committed to the Approved School. Thus in respect of juveniles over sixteen but under eighteen, in cases where punishment restrictive of personal liberty is to be applied, there is in the present state of the law no alternative to prison, with the attendant grave danger of contamination.

The reference to a House of Correction in the abovementioned provisions of the Criminal Code has therefore proved to be a sad abortion and as such is proposed by the Criminal Code (Amendment) Bill to be deleted and substituted by a more realistic reference to the Approved School in respect of males under sixteen and to an Approved Institution in respect of females of like age. The gap, however, remains. On a few occasions, notwithstanding the provision of the Approved School Ordinance fixing a maximum admission age-limit, the Courts have committed youngsters over sixteen but under eighteen to the Approved School, but they could not be legally kept there. (Vide Criminal Appeal *The Police v. Joseph*

Galea, 3rd May 1948, reversing a judgment of the Court of Magistrates which had committed a youngster over sixteen to the Approved School). On one occasion a Magistrate adhered to the dead letter of the law by ordering a youngster over sixteen but under eighteen to be sent to a non-existent House of Correction. The youngster appealed against the judgment and was acquitted, the Appeal Court quite rightly refusing to interpret the words House of Correction in the judgment as the 'juvenile section' of the Prisons. (Vide Criminal Appeal *The Police v. Manwel Grixti*, 6th June 1949). In any case, on attaining the age of eighteen, young offenders must unavoidably, in cases where punishment restrictive of personal liberty is to be applied, be sent to prison. This raises the question, already adverted to, of the desirability of establishing a Borstal institution or something approaching it in Malta for persons who have attained the age of sixteen but not of twenty-one, with a maximum discharge age-limit of say twenty-four. In the Malta Prisons Report for the year 1947-48 it was stated that 'every effort is being made to completely segregate the young men's prison and bring it into line with the Borstal institutions in England in so far as the local regulations and laws permit'. But the seed of Borstal, if it germinates at all, can best come to flower away from prison.

One last word about after-care, or rather the very opposite of it. Effective after-care is a necessary complement to practically all institutional training. The after-care worker collects beforehand all relevant information concerning the person to be looked after, he befriends him, helps him to form good associations, gives him good counsel, assists him to find employment and, if necessary, also accommodation. With the finding of employment the lad often settles down. In the United Kingdom the importance of after-care is widely appreciated; in 1949 the Central After-Care Association for England and Wales was created by the merger of three societies. In Malta some measure of after-care in respect of juveniles on their discharge from the Approved School or prison is undertaken by the Directors of the respective institutions, who seek to find employment for them. But not all employers are unprejudiced in this respect and indeed many make it a regular policy to require any applicant for employment to produce his conduct certificate. If he produces it and it is not a clean conduct certificate, too often the employer refuses to 'take the risk'; if he does not produce it, the employer imagines the worst and so refuses even to consider 'the risk'. The conduct certificate system operating in Malta deserves to be briefly described here. Under the Conduct Certificates Ordinance (Chapter 118) the Commissioner of Police is en-

abled to issue conduct certificates in three different forms known as Form A (certifying that no conviction recordable in terms of that Ordinance appears in the registers of the Police Criminal Record Office against the person concerned), Form B (specifying the conviction or convictions recordable in terms of the said Ordinance) and Form C (certifying that from the registers of the Police Criminal Record Office it appears that the person concerned has never been *convicted* of an offence). Form C is thus a *clean* conduct certificate; Form A *implies* that the person concerned has been convicted of one or more offences, but such convictions are not recordable in terms of the Ordinance (i.e. convictions for contraventions generally, or for crimes in respect of which Her Majesty's pardon has been granted or committed by the offender when under eighteen, and convictions the registration whereof is barred by the lapse of a specified period of time under certain conditions or the non-registration whereof is ordered by the Court in certain cases); Form B records such convictions as are recordable in terms of the Ordinance.

Conduct certificates are issued only at the instance of the person to whom the certificate refers or upon an order of any Court of law given either *ex officio* or at the request of an interested party.

Now it is true that a convicted minor, whether committed to the Approved School or not, is statutorily entitled, in view of his age, to a Form A Conduct Certificate; but owing to its vagueness, this particular form is sometimes found in practice to be even more objectionable than a full record of convictions, especially where these are for trivial offences. Thus it often happens that a person who is by law entitled to a Form A Conduct Certificate in fact applies for a full record of his convictions. The position is clearly unsatisfactory. The system hampers to a considerable extent and often utterly frustrates a convicted person's effort at finding employment and rehabilitating himself. Without employment, there is in many cases the practical certainty of relapse: obviously a vicious circle. This is indeed the very opposite of after-care. Admittedly in the Criminal Code (Amendment) Bill it is proposed that a conviction in respect of which an order is made for conditional or absolute discharge will not be regarded as a conviction for the purpose of conduct certificates. But even so, the fact remains that the present system is difficult to defend in the light of both modern developments in criminal science and of the true status of the police as public servants. So far as is known no system of conduct certificates comparable to the above exists in the United Kingdom or the Commonwealth countries and it might well be the case to scrap it.

This would not mean that a Court will not have before it a full record of an accused person's previous convictions for the purpose of applying the provisions of the law relating to recidivists. It would simply mean that a person who has been convicted of a criminal offence, be it serious or trivial, need not be branded in ink as such. Criminal punishment is enough, it need not be thus supplemented. A better understanding of the problems of the delinquent both before and after his conviction will help to fashion a more rational criminal policy in the interests of both the individual who translates his anti-social tendencies into criminal offences and society itself. And this is what is happening in Malta now.

In sum, the following proposals are put forward:

(i) raising the minimum age of criminal responsibility from nine to fourteen years;

(ii) introducing, at least to a minimum extent, the classifying principle in the local approved school system: the existing Approved School may perhaps be divided into two separate sections, viz. a junior section and a senior section, with a maximum admission age-limit fixed at the attainment of the age of fourteen and seventeen years respectively and a maximum discharge age-limit fixed at the attainment of the age of sixteen and nineteen years respectively.

(iii) introducing a system of probation: this is indeed a crying need;

(iv) affording greater facilities for psychiatric observation of young offenders: this is particularly important in connection with (iii) above;

(v) unless administratively or financially inexpedient, establishing an institution for mental defectives and a Borstal institution for persons who have attained the age of sixteen but not of twenty-one years on admission, with a maximum discharge age-limit fixed at the attainment of the age of twenty-four years;

(vi) young offenders under sixteen years should not be sent to prison nor fined in any case;

(vii) young offenders under sixteen years arrested on a criminal charge and not released on bail should not await their trial in prison; if the establishment of a remand home is under local conditions considered to be administratively and financially inexpedient, they should at least await their trial in a special and separate section of the Approved School;

(viii) the present conduct certificates system should be altogether abolished.

PUBLIC INTEREST LAW: ITS PAST AND FUTURE*

CHARLES R. HALPERN

FIVE years ago, the term 'public interest law' had not been coined. Today a public interest bar exists and its role within the legal profession is significant enough to warrant an audit.

Public interest law is the newest addition to those fields of law in which legal services are provided to those who are disadvantaged or whose interests are so diffuse that they are outside the normal marketplace for legal services. These areas of law have in common a need for some kind of subsidy – whether from the government, private philanthropy, or the legal profession itself.

Civil rights law, civil liberties law, and poverty law are now reasonably well understood areas of practice. The constituencies they represent have grown accustomed to seeking redress through the courts and have even developed a rather sophisticated understanding of the potential and the limitations of the judicial process.

The public interest lawyers, on the other hand, define their role more broadly than the poverty lawyers. First, the public interest lawyers believe that the poor are not the only people excluded from the decision-making process on issues of vital importance to them. All people concerned with environmental degradation, with product safety, with consumer protection, whatever their class, are effectively excluded from key decisions affecting those interests.

Second, the public interest lawyers are beginning to move in an area that had only been tangentially touched by the poverty lawyers – that domain where corporate power shapes governmental power, where decisions affecting large numbers of citizens are often quietly made. The public interest lawyers began to bring citizen interests before agencies that had previously dealt only

*The Editor would like to acknowledge the initiative taken by David Scicluna, LL.D. who was instrumental in acquiring this article for publication.

We would also like to thank *JUDICATURE*, by whose courtesy this article is being reprinted here.

with the industries they regulated. For example:

•Should the license of a racist television station in Mississippi be renewed? While this decision vitally affects the interests of many black Mississippians, traditionally it would have been made by the station and the Federal Communications Commission without participation of interested listeners.[1]

•Should truck owners be warned about dangerous wheels installed on General Motors pick-up trucks? This question, which potentially affects all highway users, would have been worked out between GM and the National Highway Safety Bureau without citizen representation.[2]

•Should ineffective drugs be removed from the market and after what procedures? This issue historically had been negotiated between the Federal Food and Drug Administration and the drug industry, but what of the millions of citizens who may buy useless drugs?[3]

History

Because many public interest lawyers came out of government and large corporate law firms, they knew first hand that many courts and administrative agencies resolved important issues of public policy without benefit of adversary presentations. They knew how meticulously the corporate lawyer prepares a case and how he devotes limitless legal resources to highly polished advocacy. They knew how expert witnesses are recruited, screened, prepared, and presented for maximum impact. And they knew the kinds of political pressures which can be marshalled to complement legal arguments. As believers in the adversary process, public interest lawyers thought it important to develop legal counterweights to the corporate bar. Some public interest lawyers established tax-exempt institutes like the Center for Law and Social Policy (CLASP), and sought foundation support for their activity. Others organized conventionally structured partnerships to represent under-represented groups; suspicious of the long-term reliability of foundations, they sought to serve citizen groups, including conservation and consumer groups, who could pay modest fees.

[1] *Office of Communications of United Church of Christ* v. *F.C.C.*, 465 F. 2d 519 (D.C. Cir. 1972).
[2] *NADER* v. *Volpe*, 320 F. Supp. 266 (D.C.D.C. 1970).
[3] *American Public Health Association* v. *Veneman*, 349 F. Supp. 1311 (D.C.D.C. 1972).

The first years were lean for lawyers in both types of public interest firm. Fee-paying clients were slow coming and slow paying. The foundations were skeptical about underwriting unconventional litigation. For its first six months, for example, CLASP was housed, rent-free, in the row-house of one of its four attorneys; the Xerox machine sat on his kitchen table. At several points during this period, it seemed that the venture would have to be abandoned and the four lawyers return to traditional practice.

Slowly, however, the elements of a successful project began to come together. With the support of Arthur Goldberg, then recently returned to private life, CLASP was able to recruit highly respected and concerned trustees. Some of the smaller and more venturesome foundations gave start-up grants. A clinical training program was begun in cooperation with Stanford, UCLA, Michigan, Pennsylvania, and Yale law schools. In the spring of 1970, major litigation successes in the Alaska pipeline case and the DDT litigation helped establish the credibility and impact of the program. A year after it began operation, CLASP received a major grant from the Ford Foundation.

The development of the public interest law movement owes much to the Ford Foundation and a few other foundations. In addition to the Center for Law and Social Policy, the Natural Resources Defense Council, the Environmental Defense Fund, the Citizens Communication Center, Public Advocates, the Center for Law in the Public Interest, and the Institute for Public Interest Representation, have relied heavily on these foundations for their financial support.

Each of these law groups developed a different focus and structure. Some focused on particular subjects, like the Citizens Communication Center on the F.C.C., and the Natural Resources Defense Council on environmental issues. Some emphasized clinical education and law school ties, (Institute for Public Interest Representation and CLASP). Others focused on local issues (Stern Community Law Firm) or state matters (Center for Law in the Public Interest). Some built memberships and filed suits in their own name (Environmental Defense Fund) while others were aligned with existing membership organizations (Sierra Club Legal Defense Fund and Consumers Union Law Firm).

This brief description may give the impression of a massive build-up of powerful citizen advocacy entities – which would be a gross exaggeration. The tangle of alphabetically-abbreviated institutions resemble the New Deal agencies only in their confusing

interrelationships and bewildering acronyms, not in their size, scope, or power. In fact, the public interest bar has never exceeded more than a few dozen lawyers. The most impressive names – Centers, Funds, Councils, and Institutes – were often facades behind which two or three relatively inexperienced lawyers stood.

This limited fire power notwithstanding, the programs challenged were often massive: highway, pipeline, and dam construction; import quotas on basic commodities such as steel and oil; mergers of large banks. In addition, public interest lawyers, trying to maximize the impact of their sparse resources, sought cases involving precedent-setting issues. For example, at the outset, when standing doctrines served to bar the citizen litigant from his day in court, each successful case established an important precedent. Environmental cases had an important impact on the interpretation of the newly-passed National Environmental Policy Act and other environmental legislation.

There were easy victories in the early years. Government agencies and the industries they regulated, unaccustomed to having their actions challenged, did not take the trouble to make a record that would withstand judicial review. The highway builders, the nuclear power promoters, the offshore oil explorers, and the auto industry are now beginning to adapt to a new kind of legal system – one in which their arguments do not always go unopposed. Two examples will suggest some of the impact and problems of the public interest bar:

The Alaska Pipeline.[4] In April 1970, environmental groups obtained a preliminary injunction against the issuance of permits by the Department of the Interior for construction of a trans-Alaska pipeline. Prior to this suit, the Department of the Interior had barely gone through the motions of complying with the newly-passed National Environmental Policy Act, and had ignored the plain language of the Mineral Leasing Act which limited the width of pipeline rights-of-way over public lands.

The Department was accustomed to challenge from the oil industry and other industries with a financial interest in exploiting public lands and other natural resources. However, it was unaccustomed to opposition from environmentalists and interested citizen groups. The grant of a preliminary injunction by the district court threw it back into a re-evaluation of the pipeline's environ-

[4] *Wilderness Society* v. *Morton*, 479 F. 2d 842 (D.C.Cir. 1974).

mental consequences that lasted almost two years.

After the Department of the Interior had satisfied itself that the pipeline plan was environmentally acceptable, the Court of Appeals for the District of Columbia Circuit still held that the issuance of the pipeline permit violated the Mineral Leasing Act. Throughout this litigation, environmental protection groups successfully insisted on close scrutiny of the environmental consequences of the pipeline and demanded that the Department adhere to Congressional mandates.

Ultimately the decision on whether to build the pipeline was remanded to Congress where a tie vote in the Senate was broken by Vice President Agnew's vote favoring construction. Regrettably, while the oil companies lobbied heavily for the bill, the environmentalists were handcuffed by the Internal Revenue Service prohibition on lobbying by tax-exempt organizations.

The DDT Litigation.[5] In 1969, public interest lawyers, marshalling the scientific evidence establishing the hazards of DDT, filed a petition in the Department of Agriculture to institute cancellation proceedings for DDT. At that time, the Department did not even have a procedure for entertaining citizen petitions, and this one was simply left on the desk of the Secretary's secretary. The Secretary assured the petitioning environmentalists that he had the matter under scrutiny and that their input was welcome but unnecessary.

Reviewing this decision, the court of appeals, in a series of opinions, held that the environmentalists had standing to petition the Department of Agriculture and then seek judicial review of the rejection of their petition; and that the evidence presented was sufficient, as a matter of law, to require the Department to institute the administrative procedure which could lead to cancellation. Thereafter, during the course of a seven-month administrative hearing, the Environmental Protection Agency (to which the pesticide regulation responsibility had been shifted from Agriculture) concluded that DDT registrations should be cancelled. In December 1973, four years after the initial petition had been filed by environmentalists, the court of appeals sustained this decision.

Victories out of Court

In both cases cited above, litigation was successful. But in the

[5] *Environmental Defense Fund*, v. *Hardin*, 428 F.2d 1093 (D.C.Cir. 1970): *Environmental Defense Fund* v. *Ruckelshaus*, 439 F.2d 534 (D.C.Cir. 1971).

pipeline case the judicial victory was overturned, and in the DDT matter the cost of victory was extremely high in terms of professional resources. Because litigation is often time-consuming and costly, public interest lawyers have tried to use nonlitigative advocacy methods to further the policy objectives of their clients.

For instance:

•CLASP has tried to open to citizen participation the process by which the State Department formulates positions on international matters which have domestic impact. International environmental agreements, for example, affect the quality of our beaches and the extent of our deep water oil exploration; tariff barriers increase the prices that American consumers pay for imported products. State Department officials formulate positions on such issues in close consultation with representatives of interested industries, but citizens rarely have an opportunity to participate.

CLASP's International Project has succeeded in educating some State Department officials and others in the international law community to the legitimacy of citizen involvement in such decisions. The effectiveness of International Project participation in informal State Department discussions is reinforced by occasional resort to the courts.

•The Environmental Protection Agency has broad discretion, under recent legislative guidelines, in formulating clean air standards for different parts of the country. The Natural Resources Defense Council has established a project to monitor the EPA discharge of these statutory responsibilities and to participate in the formulation of standards. NRDC lawyers have developed expertise in this matter, contacts with technical consultants, and relationships with personnel within EPA in order to help assert the environmentalists' interest in strict enforcement of the legislation.

•Another important technique of public interest law is in-depth investigation of an agency's performance and publication of comprehensive reports on its successes and failures. Ralph Nader's pioneering report on the Federal Trade Commission, for example, revealed cronyism, lethargy, and a total failure by the agency to serve the public interest. The report triggered an ABA investigation and led to the revitalization of the agency under the leadership of Chairman Miles Kirkpatrick.

•Public interest lawyers have created new forums for public policy decision and debate. The Project on Corporate Responsibility was established to develop corporate law doctrine in inno-

vative ways and to seek new ways to attack socially irresponsible corporate policies. The annual ritual of a corporate shareholder's meeting, through the efforts of the Project, became a significant forum for the debate of corporate social responsibility. The Project spotlighted General Motors' policies which adversely affected minority groups, the environment and consumers. It also helped awaken such institutional investors as universities, foundations, and church groups to their social responsibilities as investors, and led directly to the reformulation of investment policies in many such institutions.

Appraisal

An appraisal of the first five years of public interest advocacy reveals mixed results.

First, the public interest lawyers have won important litigation victories. Some, like the DDT litigation, have had important impact on policy; others, like the Alaska pipeline litigation, have proven transitory.

But winning lawsuits, as any lawyer knows, does not mean that the client's objectives are attained. Corporations can always call on more lawyers, more scientists, and more engineers than can citizen groups. They can often end-run the legal process by going to Congress and re-writing the rules. They can manipulate markets to generate scarcity and manipulate the media to create crises. These techniques, which are beyond the reach of the public interest lawyer or his clients, will always limit the value of litigation as a citizen's weapon.

Second, the public interest lawyers have begun to expand consciousness within the bar. The American Bar Association – President Chesterfield Smith has strongly endorsed public interest law and has suggested that lawyers tax themselves to support public interest efforts.

On the other hand, the influential Administrative Conference of the United States, a public body, overwhelmingly represents the corporate bar, government attorneys, and academics. There are only two public interest lawyers among its membership of 91; a recent suggestion that the membership of the conference should include additional public interest lawyers was rejected.

Third, during the past five years, public interest lawyers have helped create a new atmosphere of receptivity to citizen advocacy in many administrative agencies. The Environmental Protection Agency (which has the advantages of enjoying a fresh mandate and

vigorous leadership) is an encouraging example of an agency where dedicated service to the public interest has been the rule, not the exception.

However, success has been limited. The domination of the administrative agencies by the industries they regulate has scarcely been affected. Private law firms successfully influence administrative agency decisions because they have groups of specialists who monitor the decisions of the agency with continual representation of their clients' viewpoints. In contrast, much public interest practice has been more ad hoc than systematic, and continuity of involvement has usually been impossible. Like their clients, public interest lawyers frequently respond to crises rather than develop systematic programs.

A core group of lawyers systematically dealing with similar problems in the same agency would appear to be a minimum requirement for effective citizen representation. This does not mean that the legions of lawyers who represent corporate interests must be duplicated on the public interest side; but there must be sufficient resources to maintain an ongoing presence in the various agencies. Moreover, especially in agencies dealing with complex technological problems, public interest lawyers need access to experts. Corporate lawyers have the benefit of the expertise lodged in their corporate clients; and they have funds to retain 'independent' experts to buttress their clients' opinions. In contrast, public interest lawyers are usually compelled to seek donated services from those experts who are neither paid consultants to corporations nor people hoping to find consultant contracts.

Fourth, the citizen groups represented by public interest lawyers have been educated by their participation in litigation. They have learned that they must develop more coherent strategies and not dissipate their energies by stopping a highway here or a power line crossing there. They have been educated to the power of litigation as a tool, and some groups, such as the Natural Wildlife Federation, have been led to retain a staff of in-house attorneys.

Nevertheless, few citizen groups have the funds, expertise or stability to effectively develop coherent strategies. The environmentalists are relatively fortunate in this regard. Where interests are more diffuse and less urgently felt, or where there are inadequate financial resources, effective citizen organization is much more difficult. What group will develop a strategy to assure effective drug regulation or to promote an adequate public housing subsidy?

Tax Exemption

The efficacy of public interest practice has been limited by the fact that many public interest lawyers are associated with tax exempt programs which prohibit them from representation before legislative bodies. Many public interest cases, like the Alaska pipeline case, can be readily recast and transferred by interested corporations from administrative agencies into legislative forums.

The tax exempt status of many public interest law programs is a continuing source of concern. In the fall of 1970, the Internal Revenue Service unexpectedly issued a ruling effectively suspending the tax exemption of public interest law groups. There was much public debate over this matter, and expressions of congressional concern from all points on the political spectrum, including then-Congressman Gerald Ford. After six weeks of debate, the IRS withdrew its ruling and acknowledged that public interest law was properly viewed as a tax exempt activity.

That, however, did not signal the end of IRS interference. The Center on Corporate Responsibility, an offshoot of the Project on Corporate Responsibility, was virtually destroyed by the IRS' failure to act on their tax exemption application. By the time the district court for the District of Columbia ordered the IRS to grant an exemption, the Center was moribund.

IRS interference with public interest practice is also reflected in its failure to delineate when a public interest law firm can accept a fee. Uncertainty regarding this matter is a serious handicap to some public interest firms, which regard fee awards as an important source of income. In some cases courts have ordered large fee payments to public interest lawyers. But the IRS position has not yet allowed payment of fees to tax-exempt public interest law firms.

The Future

We are entering a new phase in the evolution of a public interest bar. The foundations which have played a major role in its early development will be reassessing their commitments. The ABA, through its new Special Committee on Public Interest Practice, will be evaluating the bar's responsibility for maintaining an adversary process in judicial and administrative proceedings.

Many public interest institutions were candidly begun as experiments, without any expectation of permanence. They must now confront difficult decisions about their futures. In the past year, several lawyers have left public interest practice and returned to

the security afforded by conventional careers.

During the first phase, the public interest lawyers were testing a hypothesis – that public interest representation could improve the quality of decision-making on important issues of public policy. The experiment was not carried out under ideal conditions. There were too few public interest lawyers; their services were often offered to groups ill-prepared to take advantage of them; they were underfinanced, had insufficient technical advice, and were unable to carry their case to the legislatures. Nonetheless, the results of the experiment to date are positive and indicate an important future role for the public interest bar.

As it enters its second phase, this fledgling legal movement must institutionalize past gains, expand opportunities for citizen involvement and abandon its commitment to the adversary process. Abandonment of public interest practice would deprive government agencies of important input which has increased their awareness of public attitudes and raised the quality of their output. It would deprive citizens of an important tool for affecting government and corporate decisions that strongly influence their lives. It would force the legal profession to turn its back on even the pretense that an adversary process is basic to justice and that the ability to pay legal fees is not the key to the courthouse door.

Finances

Continuing subsidy of public interest practice will be necessary, and new sources of funds must be located. Except in rare cases, citizen groups will not be able to draw on their own resources to support public interest litigation. For example, the later phases of the Alaska pipeline litigation involved more than 4,000 hours of lawyer time. Even environmental groups representing a relatively well-heeled constituency can ill afford the cost of such litigation. The private firms engaged in public interest practice have not identified a sufficient client pool to support a substantial number of lawyers doing public interest work and relying on fees.

The San Diego conference recently sponsored by the Ford Foundation focused on the financial future of the public interest bar. At that meeting ABA President Chesterfield Smith, and other bar leaders affirmed the importance of the public interest lawyers' contributions and committed themselves to future efforts to assure the development of public interest practice. The conference urged the establishment of a Council for the Advancement of Public

terest Law to explore alternative funding mechanisms and devel- long-term financial resources.

One important vehicle to be considered by the Council is a Fund r Public Interest Law, endowed primarily by contributions from iaritable foundations and the bar. Rather than a few foundations aking grants to several public interest firms for a year or two at time, the fund could be established under the direction of lea- :rs of the public interest bar and other elements of the legal ofession.

In the past, foundation grants have gone to entities with tax :empt status. The fund would explore a more flexible approach, ich as funding particular projects by individual lawyers or or- anizations, or making loans available to carry the substantial etrial costs of major litigation where there was significant pro- ise of an ultimate benefit.

Any fund proposal will face substantial problems. How should carce resources be allocated among competing claimants? Should ograms serving the poor on civil matters, indigent criminal de- nce work and programs serving conservationist interests have qual priority? Should service or test litigation be favored? Re- olution of such issues would be particularly important because ie fund would become the dominant source of finances in the iblic interest law area. It is important, however, that the fund not ecome the exclusive funding source. Reliance on a single source, o matter how well-intentioned its directors might be, would under- ut the diversity of representation which public interest law is esigned to assure.

In addition to a national fund supported by the organized bar, idividual attorneys practicing in a very lucrative profession might e solicited, although the past history of voluntary contributions y the profession is discouraging. Better still, in jurisdictions ke the District of Columbia, in which there is a unified bar with 3,000 members, dues might be raised to support a local fund for ublic interest practice. The bars of Beverly Hills, Boston, and hiladelphia have already established public interest law firms upported by members' dues.

'RO BONO PROGRAMS

In recent years, some corporate law firms have developed pro ono programs. A few years ago it appeared that these programs ight provide a significant supplement to the efforts of full-time overty lawyers and public interest lawyers. Skeptics, however,

maintained that these programs were largely a public relations device at a time when it was difficult to recruit young attorneys for conventional commercial practice. The conflict-of-interest problem inherent in the corporate lawyers' situation when he represented a citizens group against corporate interests was also thought to pose a significant barrier.

It now appears that the skeptics may have been right. The concept of the pro bono commitment of large firms has not been widely accepted. Indeed, the steam has run out of many of the pro bono programs established in the past few years, as the partners who set up their programs return to their regular corporate clients. With the job market tightening for young lawyers, law school graduates are more willing to accept full-time corporate practice as the least unpalatable career alternative, and enthusiasm for pro bono programs has waned.

Awarding Fees

An important future source of funds for public interest practice could be the award of the attorneys' fees to successful public interest litigants. The concept of awarding attorneys' fees in order to encourage public interest litigation which helps to enforce legislative policies has received explicit Congressional recognition. Title VII of the Civil Rights Act of 1964 provides for the award of fees to successful plaintiffs in employment discrimination cases. Proposed amendments to the Freedom of Information Act now pending in Congress would authorize the award of attorneys' fees to plaintiffs who were forced to undertake the expense of going to court in order to obtain information from the government to which they are entitled. Legislation has been proposed to alter the current statute, [28 U.S.C. section 241], which has been interpreted as barring fee awards against the Federal government. With few exceptions, a plaintiff who successfully sues the Federal government or an officer of the government has not been permitted to recover attorneys fees.

Even without legislative action, the courts have begun to award attorneys fees to successful public interest litigants. In a California lawsuit brought on behalf of poor people displaced by urban renewal, the court awarded a reasonable fee to Public Advocates, the public interest law firm representing the plaintiffs.[6] In the

[6] Hearings before the Subcom. On Employment, Manpower, and Poverty of the Com. on Labor and Public Welfare, U.S. Sen., 91st Cong. 2d sess., 'Tax Exemptions for Charitable Organizations Affecting Poverty Programs.'

Alaska pipeline case the Court of Appeals for the District of Columbia Circuit awarded a fee to the lawyers representing the environmental challengers, to be paid by the oil companies.[7] In a recent decision, the Supreme Court affirmed that such fee awards are within the equitable power of the courts.

The administrative agencies have been much less willing to award attorneys' fees to public interest litigants. The Federal Communications Commission has even prohibited a licensee from paying a citizen group's attorneys' fees as an element in the settlement of a licence renewal challenge.[8] The FCC has recently reaffirmed its opposition to attorney fee awards in administrative proceedings, claiming it lacked statutory authority to require the award of such fee, and that such an award would be against public policy.[9]

While the agencies complain of the courts' failure to give suitable deference to their decisions, they still refuse to build an adversary process into their proceedings to give their rulings credibility. Hopefully, the courts will begin to recognize the principle that an agency decision made without full and robust adversary proceedings is entitled to less weight than a decision reached after an adversary hearing.

The award of attorneys' fees is no panacea and it would be a mistake to rely on its evolution alone for the continued sustenance of the public interest bar. A firm depending wholly on fees would necessarily incline toward more conventional cases where the likelihood of a fee was greater and a lengthy and expensive proceeding less likely. Furthermore, past experience suggests that fee awards to public interest lawyers are likely to be inadequate.

The award of more adequate fees could create new opportunities for a variety of mixed law practices. For example, a firm dedicated to public interest practice might spend some part of its time on conventional legal work, other time on cases where court-awarded attorneys' fees were anticipated, and some part of its time of foundation-subsidized public interest work. Regrettably Internal Revenue Service, in its 1970 ruling, refused to permit tax exempt

[7] *Tenants and Owners in Opposition to Redevelopment, et al.* v. *U.S. Dept. of Housing and Urban Development, et al.*, Civ. No. C-69 324 SAW, dec. Jan. 20, 1974 (N.D.Calif.).

[8] *Wilderness Society* v. *Morton* 495 F.2d 1026 (D.C.Cir. 1974) (cert. pending).

[9] *WSMT, Inc.*, 74-85 (released Feb. 12, 1974).

public interest firms to accept fees except in accordance with IRS rules – rules the IRS has still failed to promulgate. Hence, the opportunities for mixed practice have been severely curtailed.

The public interest lawyers are off to a promising start, but it is only a start. They have shown that broader public involvement can shake the corporate hammerlock on policy decisions, but they have done little more than define the problems with greater clarity and delineate some paths which should be explored in the future. The challenge raised by the public interest bar is simply this: will the bench and bar structure their roles, responsibilities, and institutions to permit the development of public interest representation on a scale proportionate to the bar which represents corporate interest?

THE BAR AND THE BENCH IN THE LIGHT OF CHRIST'S LAW

CARMELO MUSCAT

THE CHRISTIAN PERSPECTIVE OF PROFESSION

'Profession' is usually defined as man's working activity engaging the whole human person in a well-defined role in society. According to J.M. Aubert, professor in the theological faculty at the University of Strasbourg, the generic element, common to all the professions, is the 'global activity to which the person consecrates himself and dedicates his existence, an activity which he views as a call to him, a vocation'.[1] The term 'vocation' is bound to strike a familiar note in the mind and heart of persons who call themselves 'Christian' and honestly strive to live up to all that that name implies. It cannot fail to recall to them the serious biblical exhortation, conveyed to Christians through the words of the Apostle Paul, to consider well and reflect deeply upon their profession, in order to discern and commit themselves faithfully to the activity by which they are called to achieve their fulfilment as men and as Christians through the service of God and their fellow-men. Such a thought-process, engaged in with the seriousness it deserves, inevitably leads to and terminates in the source of the individual Christian's profession or vocation, as defined above, namely, the mystery of God the Father and his love, as revealed and communicated to men in and by the person of his Incarnate Word, Jesus Christ, who being himself 'the image of the invisible God' and the perfect man, fully reveals man to man himself and makes his supreme calling clear.[2]

For very definite reasons this theological truth and mystical reality is frequently invoked to or evoked by Christian members of the medical profession. Christ Jesus is presented as 'the divine healer'; the Gospels record many instances of physical ills miraculously cured by Christ; he himself compared his mission to that of a physician who ministers to the needs of the sick. Frankly, I do not

[1] Jean-Marie Aubert: 'Profession as Function in Society', in *Concilium*, vol. 5 n. 5 (May 1969), p. 5.

[2] Cf. *The Documents of Vatican Council II:* Constitution on 'The Church in the World Today', n. 22.

see why the same theological truth and mystical reality should not be as relevant and meaningful to Christians dedicated to the legal profession. Not less than a divine healer, Jesus Christ is the divine defender of Truth and Justice; the Gospels register numerous examples of legal interpretations masterly pronounced by Christ; he himself implied his mission of advocate (helper and defender), when he promised that after the completion of his mission on earth, his heavenly Father would send another Paraclete (the Greek term equivalent to the Latin 'advocatus'). Moreover, he was looked upon as a 'iustus iudex', as he is called in the Holy Books and yet, by the strangest of ironies – humanly speaking – he was the victim of the grossest travesty of human justice, when he was pronounced innocent and handed over for capital punishment in history's most notorious judicial trial.

I feel justified, therefore in borrowing the following words, addressed by Cardinal Leon Josef Suenens, Archbishop of Malines-Brussels and formerly professor of Theology at Louvain University, to Christian doctors, and proposing to substitute the words 'doctor' by 'lawyer' and 'medicine' by 'law'.

'Which is the more correct?' asked Cardinal Suenens, 'to speak of a Christian who is a doctor, or a doctor who is a Christian? At first sight, the question seems otiose. But the fact is that it puts the question squarely: Is a Christian doctor first a doctor and then a Christian, or is he above all a Christian who practices medicine?' 'We need not hesitate', the Cardinal replied, 'about giving the correct answer. A baptized person, doctor or not, is first of all a Christian. This position is fundamental, and with the Christian doctor his being baptized a Christian is his dominant and substantial quality. Christianity is the first duty of his state in life and all the others have to be harmonized with it. It is the spirit underlying all his professional obligations'.[3]

When he wrote these words, Suenens was not just inverting the terms of the old dichotomy: professional activity – religious faith. On the contrary, he wanted to stress the point that professional activity, far from constituting a sort of sealed 'profane' compartment separated from and unconnected with a person's religious belief and so called religious 'practice', should itself be integrated with the practice of religious belief and transformed into its most convincing and credible evidence.

The clearest and most concise explanation of this fundamental Christian principle was furnished by the Second Vatican Ecumeni-

[3] Cardinal J. Suenens: *Love and Control* (Burns and Oates, London, 1962), pp. 127-128.

cal Council, which exhorted Christians, as citizens of two cities, namely the earthly and the heavenly, to strive to discharge their earthly duties conscientiously and in response to the gospel spirit, reminding them that by the Faith itself they are more than ever obliged to measure up to these duties, professional, domestic social, each according to his proper vocation. The Council branded the rather widespread dichotomy between religious profession and professional activity in the following strong terms:

'Nor, on the contrary, are they less wide of the mark who think that religion consists in acts of worship alone and in the discharge of certain moral obligations, and who imagine they can plunge themselves into earthly affairs in such a way as to imply that these are altogether divorced from the religious life. The split between the faith which many profess and their daily lives deserves to be counted among the more serious errors of our age'.[4]

It is from this premise that the Christian who professes and practices law, whether at the Bar or at the Bench, should begin, in earnest and sincere response to the God-given admonition, to consider well and reflect deeply upon his or her professional activity in the light of Christ's law or, in othet words, in the light of the Mystery of God's love for the salvation of men made known in Christ Jesus, to comprehend the full meaning of the slogan appearing on the cover of this Law Journal, namely how faithful service to the law contributes to the true liberation of man.

I shall attempt in these paragraphs to list and explain, within the limits possible and permitted by the scope of this article, the main theological guide lines along which Christian legal men, whether lawyers or judges, desirous to ponder upon their professional activity in the perspective of Christ and his teaching, are called and expected to discharge the duties of their calling, conscientously and in response to the Gospel Spirit, in order to avoid the fairly common serious errot of splitting their daily lives from the faith which they profess.

THE CHRISTIAN LAWYER

The lawyer's professional activities are concemed, generally speaking, with either civil or criminal cases. The former normally include those suits or actions in which the ownership or possession of property or the exercise of some civil right is claimed or contested. One of the first problems which may confront the lawyer, solicited to plead a civil law-suit, is that of the so called 'un-

[4] *The Documents of Vatican Council II:* Constitution on 'The Church in the World Today', n. 43.

just action'. May he lawfully, that is with good conscience, accept to offer his professional service to a client who requests him to plead on his behalf a civil case which the lawyer knows from the start to be unjust? The answer, dictated by the very justice he professes to serve, as well as by Christian charity, which Christ indicated as the hall-mark of his followers, is an unqualified 'no'. Theologians make it clear that the same unqualified negative answer extends also to the event in which the lawyer is aware that the eventual respondent, undoubtedly on the side of the right, is not in a position to disprove the unjust claim and will consequently lose the case. Honesty demands that the lawyer, requested to introduce an action which, after due investigation, he detects with moral certitude to be unjust, should inform his prospective client accordingly and decline the request. The operative words in the preceding statement are 'with moral certitude'. This means that if it appears to the lawyer that the prospective client's case is only probably just, he may not only accede to the request but, once he has decided to accept it, he can and ought to make use of all lawful means in order to consolidate the claim of his client.

A rather thorny moral problem arises if and when, what initially appeared to be a probably just claim and began consequently to be processed by the lawyer, is seen by the latter, in the course of the judicial process, to be undoubtedly unjust. The solution to this problem put forward by the greatest of all theologians, St. Thomas Aquinas, is the following: 'If in the beginning the lawyer believed the case to be just and afterwards in the procedure it becomes evident that it is unjust, he must not betray the case, in such wise as to help the other side, or to reveal the secrets of his case to the other party. But he can and must abandon the case or induce his client to yield or to compromise without injury to his adversary'.[5] The second alternative proposed in St. Thomas' solution, namely, persuading the client to withdraw the claim and recede from the action or to seek a fair compromise without, however, any prejudice to the certain rights of the other party, seems to be preferable, unless the client persists in his will to proceed with his action, now evidently unjust to his lawyer, in which case the latter has only the first alternative left, which is that of withdrawing from the suit. This mode of conduct was adopted by the Association of the Bar of the City of New York in its 'Canons of Professional Ethics' which, among the causes justifying an attorney or council to withdraw from an undertaking assumed lists the instance 'when a lawyer discovers that his client has no case'.

[5] *Summa Teologicae*, II-II, q. 71, a. 3, ad 2 um.

It may happen that a lawyer regardless of the preceding ethical and moral considerations, decides, for purely profitable motives, aptly described by the greatest Roman poet as 'auri sacra fames et scelerata sitis', decides to plead or to proceed with what he knows with certainty to be an unjust case, or to induce a client to introduce or prosecute an action which he forsees will be surely unsuccessful. Black sheep are found, unfortunately, among the members of all professions and vocations, not excluding the noblest and even the most sacred ones. What evaluation is to be accorded to these and similar modes of conduct in the light of Christ's law and teaching? Christian theologians are unanimous in their interpretation of Christ's teaching on justice and charity that the lawyer who knowingly and deliberately undertakes an unjust case shares with his client the moral obligation of making restitution to all who in consequence suffer unjustly. In like manner, the lawyer, who for his own personal advantage persuades his client to press on with a case which the lawyer knows only too well has no chance of a successful outcome, is obliged in conscience to refund to his client the financial loss incurred as a result of the prosecution of his action, if it is clear that the lawyer's persuasion was the decisive factor in the prosecution of the case. The same obligation binds equally in those instances in which the lawyer deliberately and needlessly protracts a case with the intention of multiplying the costs and enlarging his fee. Rightful cases are sometimes lost in court and clients with just claims sustain financial losses as a result of negligence or carelessness on the part of defence counsels who fail to study the legal points involved and to conduct the action with the attention and diligence duly expected from them. It should be obvious that the lawyer who is conscious of his guilt and of its consequence in this respect should advert also to his moral responsibility of making adequate compensation to his wronged client.

Ethicians and moral theologians do not omit to caution members of the legal profession to be particularly attentive and conscientious in accepting and conducting suits concerning claims for damages to person or to property, in view of the seemingly prevailing notion that no means, not even fraud and perjury, are deemed to be reprehensible in seeking to establish claims for damages from large corporations and companies. An honest lawyer cannot but promptly and decisively deny his services, if and when he is asked to press a claim for damages which he deems to be unfounded and unjust.

Occasionally the question is asked whether a Catholic lawyer may undertake a divorce case. This question will presumably recur

with greater frequency in our country in the wake of the Marriage Act enacted in 1975. Theologians remark that, generally speaking, the question must be answered in the negative. However, they qualify their negative reply in the following manner. If the divorce is sought for a marriage that is invalid before God, such as the civil marriage of a Catholic, the lawyer may accept the case, particularly if the intention of the person seeking the divorce is to rectify the state of his conscience. The same qualification extends also to the case in which the lawyer is given sufficient assurance that the civil divorce is being sought from a valid marriage with the sole purpose of seeking protection from molestation for one of the marriage-partners, neither of whom intends to contract a second marriage, provided that the acceptance of the case by the Catholic lawyer does not cause scandal. It should be remarked that this constitutes the exception rather than the rule, since divorce suits are normally introduced as a preparatory step towards re-marriage. For this reason, a fairly general consensus exists among theologians, in the sense that apart from the cases specified above, the Catholic lawyer must practically always refuse to undertake a petition for divorce even though the petitioners are non-Catholic, since it pertains to the teaching of the Catholic Faith that all valid marriages not only Catholic or sacramental ones, are indissoluble by human authority. I have described the consensus among theologians on this matter as 'fairly general' because some theologians reason that, since what is intrinsically wrong is not precisely the declaration of divorce but the consequent re-marriage, there could be, in particular cases, proportionately grave reasons morally justifying a Catholic lawyer to accept a divorce case with the usual proviso that no scandal is likely.

In our legal system, criminal trials are governed by the principle that the accused is presumed innocent unless and until he is proved with moral certainty to be guilty of the crime of which he is charged by a majority verdict pronounced before the court and founded on the evidence produced and examined during the trial. It follows that when the accused at a criminal trial pleads 'not guilty' to the charge brought against him, he is not deemed to be telling an untruth, even if he has committed in actual fact the criminal act of which he is being charged because his guilt has yet to be demonstated, proved and established beyond positive and reasonable doubt, for his innocent status to be transformed into the status of guilty. Accordingly, the lawyer may not only with a clear conscience undertake the defence of a person accused of a crime which the lawyer knows that person has committed, but he may also and

ought to utilize all objectively honest means to avert from his client, the defendant, the verdict of guilty. Means which are known to be dishonest are unjust and, consequently, morally unlawful. Objectively just and morally lawful means of defence include reference to and highlighting of gaps and inconsistencies in the evidence produced by the prosecution, mention of or emphasis on facts and details that would seem to indicate that the accused could not possibly have been at the place of the crime at the time when the crime was committed, relation of deeds and instances that picture the defendant as a person of integrity not likely to commit the crime of which he stands accused. Moreover, the defence counsel is considered to be acting also within the limits of justice and lawfulness if he tries to invalidate the indictment on legal grounds. From what has been said, it appears sufficiently obvious that the lawyer defending a person accused of crime may neither employ perjury nor suborn witnesses and induce them to lie. At no moment during the trial is the lawyer justified in violating truth. This does not mean, however, that, provided he restricts his words and actions to facts that are objectively true he may not present those facts in such a manner as to raise doubts in the minds of the jurors, which may induce them to give a negative verdict.

The question is sometimes asked: What should the lawyer do if one or more witnesses for the defence, without his knowledge or connivance, commits perjury on the witness stand by giving false testimony in favour of the accused? Is the lawyer obliged to denounce the perjury? May he in any way justly and lawfully take advantage of the falsely sworn statements in his defence plea? To these questions theologians are agreed in replying that, since he was in no way responsible for the false testimony, the lawyer has no obligation to denounce the perjury. They admit, however, that lawyer may find himself in a rather embarassing situation when the time comes for the summing up of the evidence, especially if the false statement is considered of a decisive nature. It is suggested that, while he may not propose the perjured testimony as something which he himself regards as true, the lawyer will not be violating the truth if he merely refers to the fact that such a statement was made and requests the jury to consider whether and how that statement could be reconciled with the charge moved against the accused.

In conclusion of this section it hardly needs to be said that the lawyer is bound to observe the strictest rype of secrecy, namely professional secrecy, regarding knowledge and information entrusted by or acquired from his client in the discharge of his profes-

sional duties. Whether the obligation of professional secrecy in this field is so absolute as to admit of no limits whatsoever in exceptional circumstances seems to be a moot point, which I have neither the time nor the space sufficient to discuss in detail here. Just to illustrate my statement, I refer to the Canons of Professional Ethics adopted by the Association of the Bar of the City of New York: 'The announced intention of a client to commit a crime is not included within the confidence which he (the lawyer) is bound to respect. He may properly make such disclosures as may be necessary to prevent the act or protect those against whom it is threatened'.

With respect to the lawyer's fees, justice requires that they be reasonable. This means that the fee charged for professional service should conform to the standards adopted by men of integrity in the profession. It should go without saying that a client's mere ability to pay does not justify an excessive charge. Christian charity demands that the lawyer should not refuse his professional help at a reduced charge or even gratuitously to persons in need, to the extent that his personal circumstances permit. In this case, especially if the lawyer is assigned by the Court to defend an indigent person, the quality and standard of his service should not be different from or inferior to those employed on behalf of a paying client. In this way the Christian lawyer will be practically harmonizing his professional activity with his Christian profession or vocation.

The Christian Judge

The judicial doctrine derived from classical sources fails to give an exact definition of the Judge, but it limits itself to the description of his office or function. Examining the function of the judge in our time, the eminent Dutch Catholic jurist, Willem Ariens, who until a few years ago held the office of President of the Court of Appeal at Bois-le Duc in the Netherlands, prefaced his study with the following remark:

'Anyone embarking upon the examination of the demands that contemporary society places on the law is bound to proceed on the premise that the workings of the judiciary must continue to provide what has been traditionally expected from it; ensuring, with complete impartiality and with a conscientious application of the existing legal guidelines, that justice is done. These legal guidelines need to be embodied in laws, laws which will have to be applied according to objectives which can be deduced from the drafting of their provisions and the history of their origins. Where this gives

rise to injustice, this must be blamed on the legislator, since it is not in the power of the court to give a ruling which, however unjust, conflicts with the law'.[6]

Certain it is that this function of the judge to apply the law to the facts at issue within the framework of the positive norms established by the legislative Authority is one of tremendous responsibility, when it is considered that on the judgements given by legal men sitting on the Bench depend the property, the liberty and sometimes even the lives of their fellow-citizens. It postulates in the holders of this exalted office a high degree of wisdom, prudence and integrity. History and experience provide ample proof that the welfare of the citizens may remain safeguarded in no small measure by a capable and righteous judiciary, even when incompetence and corruption may have infiltrated the legislative and executive bodies of a country. The admonition of Ben Sirach: 'Seek not to be made a judge, unless you have strength enough to remove iniquities', is as valid and timely today as when it was first written by the inspired sage of ancient Israel in the second century before Christ. Indeed, only those legal man should dare aspire to a judge's cap who are conscious of being gifted with the intellectual and moral qualifications demanded by this high office.

In the face of the marked tendency of contemporary so-called 'permissive' society to disregard or reject objective standards of morality, it is of fundamental importance that Christians invested with the judicial function should be steadfastly mindful of the unchangeable principles of divine law relative to their official conduct. Once the basic obligation of a judge is to pronounce a decision or a sentence conformable to the facts presented and proved in testimony, he is expected to be as impartial and objective in his assessment of the facts as is humanly possible. In this respect the Canons of Judicial Ethics followed by the American Bar Association lay down that the judge 'should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favour, or that he is affected by the kinship, rank, position or influence of any party or other person. He should not be swayed by partisan demands, public clamour or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

It is well known that in trials by jury, the facts of the case and the credibility of the witnesses are expected to be weighed and decided by the jurors and that the official duty of the judge is con-

[6] Willem Ariens: 'The Function of the Judge in our Time', in *Concilium*, vol. 5, n. 5 (May 1969) p. 49.

fined to decide points of law. It cannot be denied, however, that the attitude manifested by the judge throughout the judicial proceedings, and particularly his address to the jury, frequently exert a strong influence on the formation of their verdict. Theologians point out that the sentence, which is the judge's essential responsibility in the performance of his professional activity, must necessarily proceed within the framework of the law, he must in his eager search after the truth endeavour to form a moral conscience through the study of the judicial acts and documents and formulate his decision accordingly.[7]

In the light of these principles, it may prove helpful to consider and discuss briefly the more common conscience problems which confront judges in the performance of their duty, as was done in the previous section with respect to the lawyer's exercise of his professional activity. One of the first questions put forward concerns the moral obligation of the judge in the event in which he is confronted by the jury with the verdict 'not guilty', when from some extra-judicial source or even from personal knowledge he is morally certain that the accused actually committed the crime with which he has been charged, and conversely, when in the face of a verdict 'guilty', the judge knows from similar sources that the defendant is innocent. It is the unanimous teaching of theologians that in the former case, the judge is morally obliged to decide in favour of acquittal, if the evidence alleged in the trial is not sufficient to establish certain proof of guilt. The latter case is solved by theologians in the sense that the judge confronted by an innocent defendant who appears convicted by the available evidence, must do all in his power to arrive at the truth; failing which, if he remains firmly convinced of the innocence of the accused, he should give him the minimum penalty, once it is not in his power to acquit him. Another conscience problem not purely hypothetical, is the following: What should a conscientious judge do, if subsequent events prove that in pronouncing sentence he erred? The first consideration to be remembered here is that infallibility is not a human prerogative, not even on the Bench of Justice. Consequently, if the Judge is conscious of having conscientiously fulfilled his solemn obligation of studying the case carefully and has conducted it with his best ability and diligence, he may rest assured that he has done no formal or culpable wrong. If, on the contrary, he is aware that his erroneous judgement is attributable to negligence on his part in studying the case and devoting to it the necessary time and

[7] Cf. Roberti-Palazzini: *Dictionary of Moral Theology* (Burns and Oates, London, 1962) under the voice JUDGE, p. 668.

:ffort, or to his culpable ignorance he becomes morally bound, as n the case of the lawyer consciously undertaking and prosecuting injust lawsuits, to make restitution to those who have suffered naterial loss as a result of his negligence or incompetence. Of :ourse, the obligation of making restitution is still more evident or stringent, if the material loss is caused not through erroneous udgement but through wilful injustice, motivated by considerations of personal gain. In this connection, theologians investigate the juestion of 'gifts' offered to or accepted by judges. I prefer to use he word 'gifts' in place of the more despicable term 'bribe', which, is is well known, may be of various kinds. It should be quite clear hat if, in consideration of a gift, a judge pronounces judgement in favour of the party that has justice on his side, he should never-:heless, return the gift, because he has sold a decision which he was already bound to render by virtue of his official position. If :he gift induces him to favour the side which is not in the right, he is morally obliged not only to give back the gift but also, unless :his is done by the party he has unjustly favoured, to make amends to the extent of the whole loss incurred by the victim of his injustice. Very wisely it is stated in the Canons of Judicial Ethics of the American Bar Association that the judge 'should not accept any presents or favours from litigants or from lawyers practising before him or from others whose interests are likely to be submitted to him for judgement'.

The last but by no means the least grave problem facing the Christian judge is that of the application of an unjust law. Theologians are agreed that in the face of an unjust law, a judge may not sentence the defendant ro commit an immoral act or inflict on him a severe penalty, even if this entails the loss of his post or other grave consequences. This constitutes one of those grave, painful, at times heroic decisions, foretold by Christ the Lord in the Gospel, which test from its very depth the faith of those who profess themselves Christians. If, however, the principal act which is prescribed or prohibited by the unjust law is not in itself evil, the judge may apply the law which is considered to be unjust. As explained by Judge Ariens, the unjust law should be blamed on the legislator and not on the judge. This does not mean, however, that the judge is absolved of all personal responsibility in its application.

It is envisaged that certain dispositions of the Marriage Act, 1975, enacted recently in our country will present our judges with a number of delicate conscience problems touching matters of Christian religious belief and convictions. May, for example, a Christian judge pronounce null a consummated valid religious and

sacramental marriage, which by divine and Church law constitutes a divinely-joined bond, indissoluble by any human power, on the grounds of sterility in one of the partners, especially if the condition of sterility was unknown to both partners? Or for that matter, may the Catholic judge even take cognizance of nullity cases in marriages celebrated by Catholics in the religious form, when it is the teaching of the Catholic Faith that jurisdiction on the matrimonial causes of Catholics, affecting the marriage itself and nor merely irs civil effects, belongs exclusively to ecclesiastical judges, as declared in the Council of Trent?

It is certain that, whatever his Christian conscience may dictate to the individual judge, his declaration in these and similar cases cannot, be intended by him to mean more than a mere official declaration – and it may be necessary for him to make this explicit and clear – that the State regards the civil effects of that particular marriage as no longer existing.

Conclusion

I would like to close these considerations on the same note on which I opened them and by a reference to the same source, the teaching of Vatican Council II.

'Therefore, let there be no false opposition between professional and social activities on the one part, and religious life on the other. The Christian who neglects his temporal duties neglects his duties towards his neighbour and even God, and jeopardizes his eternal salvation ... In the exercise of all their earthly activities, they (Christians) can thereby gather their humane, domestic professional, social and technical enterprises into one vital synthesis with religious values, under whose supreme direction all things are harmonized unto God's glory'.[8]

Need I add that I have said nothing new or uncommon in these papers?[9] I imagine that those readers who have persevered right up to this concluding paragraph may be telling themselves: 'We know these things; we have known them ever since'. In this case, it would not be out of place to remind them of Christ's remark to a prospective follower, who made the same comment: 'Very well, then; do them, and you will be saved'.

[8] *The Documents of Vatican Council II:* Constitution on 'The Church in the World Today', n. 43.

[9] I am chiefly indebted for this contribution to the studies on this subject by the late Professor Francis J. Connell, former Dean of the School of Theology of the Catholic University of America in his work entitled: *Morals in Politics and Professions* (The Newman Press, Westminster Maryland, 1961).

LAW AND MORALS

ROBERT SOLER

AT first sight it would seem that law and morals have structurally got so little in common that a complete separation of the two is desirable. On the one hand, morality depends for its very existence on the free choice of the individual: on the other hand, law involves the imposition *ab extra* of the norm of a society, even where this goes against the wishes of an individual. Morality is essentially concerned with the subject's free personal choice: whereas law is something external to the subject's wishes, so much so that it requires enforcement.

It would seem therefore to be a contradiction in terms to 'enforce morality': for morality, precisely, depends on the free choice of an individual. If society imposes a given type of moral activity on an individual, that activity will not be moral unless the individual freely and personally makes that action his own through a personal choice. Society can in no case *make* a person's action moral: the *free decision* of the individual makes an action moral. Therefore it would seem that society should refrain from attempring to prescribe certain types of moral action.

In favour of a complete separation of law and morals, it is also argued that the unimpeded exercise of free choice is a value in itself, and that any encroachment on a person's freedom of choice is questionable anyway.

DEFINITION OF THE TERM 'MORALS'

Before we proceed further, I think it is worth noting that in common linguistic usage there is a distinction that comes out in the following two statements:

A bank-manager who discloses his client's secrets acts unethically.

A bank-manager who sleeps with his client's wife acts immorally.

(Analogously in Maltese we would say of the first type of activity 'mhux sew', and would label the second 'immorali').

It is not here our purpose to evaluate this linguistic usage. As a first step it is sufficient to be conscious of this distinction that

is often made. Along the lines of this distinction, 'morality' is identified with sexual ethics, whereas 'ethics' is taken in a more general sense. The result is that when people talk of law and morals, they all too often are uncritically at the back of their minds thinking about sexual ethics, not about ethics in a more general sense.

In this article, I shall not be using the term 'morals' in the restricted sense of 'sexual morality': when I talk of 'morals' I mean ethics in the most general sense, i.e. all those acts in which man freely exercises his responsibility through moral choice.

The Relationship of Law to Morals

Both as a matter of fact and as a matter of principle, law and morals are very closely linked:

(i) At the observational level, it is good to recall that moral issues of all sorts come into the legal system at all levels. Whether we talk of guarantees of a free trial for all, or of equality before the law, or of statutes against racial discrimination or murder, or of laws providing for graded taxation, or of laws allowing those who object in conscience to military service to render some other type of social service to society, we are concerned with issues where the demands of the moral law coincide with norms of the legal system, where law and morality positively meet. As a matter of sheer fact, it is impossible to describe a legal system correctly if one prescinds completely from ethical issues. Morals *de facto* come into all areas of law, and not just the criminal law. And the moral issues that pervade the legal system are not just, not even principally, issues of sexual morality.

(ii) Further, morals come into a system of law as a matter of necessity and in their own right. Law can for some purposes be thought of merely as a system of norms: but it can only be *adequately* explained in terms of its end, which is to serve man, the moral subject par excellence. Law is there not for its own sake but to create for man decent conditions of co-existence. These conditions are constantly judged by man himself to be 'just' or 'unjust'. When man therefore sets up a legal system, he sets it up on the basis of his moral ideal of himself and of his society: and he *judges* the success both of the legal system and of any one particular law in terms of such an ideal. Man thereby constantly refers law, through his judgement, to law's end (that of serving man). Law therefore is necessarily and remains necessarily embedded in man's moral being; it is no more and no less than a help to man's moral existence. Any attempt to exclude morality from the legal

system fails to grasp that law and morals are related as means to end.

The real question is not, therefore, whether morals should come into law at all, but how, to what extent, on what concrete issues.

LAW IS CONCERNED WITH ELIMINATING WRONG AND CREATING THE POSSIBILITY OF ASSOCIATING WITH OTHER MEN

There is of course, at this stage, an important modification that must be made. Nobody can envisage or defend legislation of all possible ethical standards. Law is not there to substitute morality. To this extent I would agree with Hart and others that where possible one should allow the moral decision to be taken freely and without the coercion of the law.

But then there are situations where we have clear evidence that men regularly act and are acting unjustly towards each other, that they thoughtlessly and repeatedly hurt one another. What do we then, as men, do in such a situation? Apart from exploiting the possibilities inherent in education, can we just stand there and do nothing?

According to Professor Cotta of the University of Rome, at this stage the law must intervene to 'eliminate wrong'. This is the most original, the most basic, characteristic of law, law's *Urphänomen*.[1] What does Cotta mean by the term 'eliminate wrong'? He means the following: men spontaneously form friendships and express their love towards the people they like. Their ability to love all spontaneously and generously is, however, limited. Now if X and Y cannot be friends, must they be enemies? Is there no remedy, no middle way? There is: for law gives man the possibility of associating with others. If X cannot be on friendly terms with Y, at least he can be Y's associate. They can expect of each other regularity, loyalty and foreseeable conduct – and all this can find expression in a bilateral contract. What they demand of each other is a minimum of truth and reasonable conduct, some minimum imposed by the society they live in.

What, therefore, says Cotta, distinguishes law from, say, politics or ethics, is the determination positively to work out the minimum standard of ethics which is essential to guarantee that men who are not friends can at least be associates. Law does not come up to the exalted standards of ethics, but it draws on ethics in asking all men to be associates to all men; characteristic of law

[1] 'Filosofia della politica e filosofia del diritto' in *'Primo Simposio di Filosofia della Politica: Tradizione e Novità della Filosofia della Politica'* Ed. Laterza 1970, pages 69-79.

is that it refuses to tolerate infringement of the regulations designed to create sociability. Law therefore is universal, in that my associate is any person, irrespective of colour, race or nationality. Cotta adds that the more a person is a stranger, the more (paradoxically) I am interested in making him an associate, through legal rules, with a view to at least avoiding his enmity. The aim of law is not therefore and cannot be as sublime as that of morals: nor can law force me to perform a moral act, for *I* must choose the moral act for it to become moral. But law can lead me on to see that a certain type of action is moral and therefore can pre-dispose me for the right moral choice.

The aim of law is, on Cotta's view, universal like that of ethics: the logic of law is centrifugal, it constantly breaks the small walls of friendship to create the larger bastions of association – association cannot be seen as a substitute to morality but it is certainly not totally divorced from morality! International law is the best evidence of the centrifugal logic of law: it shows that even the boundaries of the state are insufficient. Men are forced constantly to widen their horizon, to open themselves to others at least so as to make life liveable and to prevent possible wrongs to themselves and to others.

The Question of Concrete Issues

Having said, then, that law participates in ethics and has its particular moral objective in life, and yet that it does not aim at instituting a reign of ethics, the question arises: when it comes to concrete issues, which criteria shall we adopt to decide which moral issues should be legislated upon and which not? Clearly it is not enough to say that law aims at the avoidance of wrong and at creating the presuppositions of universal association between men. We must look further and formulate more precise questions so as to throw light on the concrete issue that we might have in mind to legislate upon.

I am afraid that at this stage I can only state the self-evident and say that this is the most difficult point when talking of law and morals, the point where the decision must be taken whether a concrete issue should be made a matter of law or not.

Nevertheless it is imperative to suggest a few, at least tentative guide-lines that may further our reflection. In deciding whether to legislate on a particular issue or not, I would envisage the following type of question:

– is this concrete law being proposed enforceable and will it enjoy the respect of at least a large section of society?

– will this law foster in men respect and love of one another or will it tend to turn men in egoistically on themselves? (a question of this sort might be relevant to issues of taxation, to questions of race-discrimination, etc.)

– does this law completely crush individual privacy, the right to think and have private notes, etc.? (a question of this sort might be relevant to the issue of extending police powers to search a person's home)

– would this law impose liability for actions for which the defendant is not, or is largely not, responsible? (a question relevant to criminal statutes in preparation)

– does this law, which deprives X of some of his liberty, protect a more important right of Y? (a question of this sort is relevant wherever there is a conflict of subjective rights)

In the series of tentative questions I have listed, only the first question is a general one and could have relevance for the whole area of law. The othet questions are more limited in scope. They refet to concrete issues and are posited in a particular area of law. Within each area of law, such particular and more precise questions can better clarify the issue as to whether to legislate or not. Clearly even if, in instituting laws regarding taxation and in drawing up a criminal statute, I might in both cases want to eliminate wrong, I have to ask further concrete questions on each of the two statutes to decide whether to legislate or not.

Conclusion

In conclusion I would like briefly to re-state the view of law and morals expanded upon above.

As a matter of definition, I defined the term 'morals' in a wide sense and took it to be co-extensive with the term 'ethics'. Contrary to common linguistic usage, the term 'morals' in this article was not restricted to the sphere of sexual morality.

Having so defined the term 'morals', I then touched upon the following four points:

(i) As a matter of pure observation, moral issues come into all areas of law and not just into the criminal law. They pervade the legal system.

(ii) As a matter of principle and in terms of what the legal system is out to achieve, morals cannot be excluded from the law, for law itself is only adequately defined in terms of its end, which is to serve man, who is the moral subject par excellence. Evidence of our constantly referring law to its ethical ideal is talk about justice, which demonstrates our ability to compare what the law

achieves in fact with our ideal of the law as an instrument in the service of man.

(iii) Law however does not aim at instituting a reign of morality in society: it is interested in at least eliminating all forms of wrong that necessarily jar with the ideal of justice, and in instituting a minimum standard of morality that allows all men to be if not friends, then at least associates.

(iv) Where concrete issues upon which to legislate are concerned, different questions are relevant and different considerations will decide whether it is right to legislate on a given issue.

Clearly, from a strictly ethical point of view, law cannot make people moral: all along, the morality of an act depends on its being enforced *ab extra*. And yet law, of its very nature and because of its particular finality, is necessarily concerned with morals. A complete dichotomy of law and morals is unthinkable.

DEĊIŻJONIJIET TAL-QORTI TA' L-APPELL KRIMINALI, 1974

APPELLI SUPERJURI

Seduta tat-28 ta' Jannar, 1974.

No. 1 Reġina vs Emanuel Xerri

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tas-7 ta' Diċembru, 1972, Xerri ġie misjub ħati li fil-lejl bejn l-1 u t-2 ta' April, 1971 seraq min-National Bank of Malta tal-Furjana somma ta' flus ta' aktar minn ħames mitt lira, liema serq kien kwalifikat bil-mezz, bil-valur u bil-lok.

L-appellant sostna li l-unika prova kontra tiegħu hi kostitwita mill-ftaħir fieragħ tiegħu stess ma' nies oħra li hu seraq l-imsemmi Bank. Ġie wkoll sottomess illi l-konfessjoni stragudizzjali ta' l-appellant ma kenitx volontarja għax huwa "pathological liar".

Il-Qorti wriet ruħha soddisfatta li dak li ddikjara l-appellant ma' xi xhieda jinkludi dettalji importanti ta' kif saret is-serqa, u dawn jikkorrispondu sew ma' dak li fil-fatt irriżulta li ġara. Għalhekk mhux kompitu tal-Qorti li tindaħal fil-gosti ta' l-appellant li issa qed jogħġbu jikkanonizza ruħu bħala giddieb.

Għall-motivi premessi, il-Qorti ċaħdet l-appell.

Seduta tal-11 ta' Frar, 1974.

No. 2 Reġina vs Nikola Bonnici

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tal-24 ta' Jannar, 1974, Bonnici instab ħati ta' serq kwalifikat bil-valur, ta' ħwejjeġ li jiswew aktar minn ħamsin lira u mhux aktar minn ħames mitt lira. Il-Qorti kkundannatu għal piena tal-lavuri forzati għal żmien ħames xhur u għall-ħlas tal-perizja, u ordnatu jidher quddiem il-Qorti tal-Maġistrati minħabba l-ksur ta' żewġ ordnijiet għal "conditional discharge" (wara li f'kull każ kien instab ħati ta' serq).

*Din ir-rakkolta hija miġbura minn Tonio Azzopardi, A.A. Mizzi, Tonio Farrugia, Joseph Sciriha u Robert Tufigno, bl-għajnuna ta' Dr. Joe Brincat B.A.(Lond.), B.Sc.(Econ.)(Lond.), LL.D., M.P.

L-appell kien limitat biss għall-piena, in kwantu s-serq sar meta l-appellant kien disokkupat, fil-waqt li wara sab xogħol u b'hekk is-soċjetà reġgħet rebħitu.

Il-Qorti sostniet li bl-imġieba ripetuta tiegħu l-appellant ovvjament wera disprezz għat-trattament già lilu riżervat mill-Qrati u għall-indulġenza tagħhom. Peress li l-Ewwel Qorti f'dan il-każ kienet applikat il-"bare minimum" tal-piena prevista mill-liġi, il-Qorti kienet ta' fehma li l-appellant kien ġa oġġett ta' klemenza anki eċċessiva u l-piena ta' ħabs hija fil-fatt indikata sew fl-interess tiegħu nnifsu kif ukoll dak tal-pubbliku in ġenerali.

Għall-motivi premessi il-Qorti ċaħdet l-appell.

Seduta tas-27 ta' Frar, 1974.

No. 3 Reġina vs Carmelo Schembri

3'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina ta' l-14 ta' Novembru, 1973, l-imsemmi Schembri kien ġie misjub ħati, skond l-ewwel kap ta' truffa kontinwata ta' mhux aktar minn £500, skond it-tielet kap ta' attentat vjolenti għall-pudur, f'liema esekuzzjoni tad-delitt huwa ġie mgħejjun minn persuna oħra (art. 222 u 216(d) Kod. Kriw.), u skond is-seba' kap talli ffalsifika, biddel jew għamel xi tibdil f'passaport li huwa kien jaf li ġie ffalsifikat, imbiddel jew li sar xi tibdil fih. Huwa ġie kkundannat għal piena ta' tmien xhur u għaxart ijiem lavuri forzati, u appella lil din il-Qorti sew kontra dan il-verdett, kemm dwar il-piena.

Il-fatti kienu li l-appellant u ċertu Walter Muscat (koakkużat miegħu), ġiebu avviżi fil-ġurnali biex jintbgħatulhom applikazzjonijiet għal taparsi impieg ma' kumpannija ineżiżtenti. Muscat kien ippoża ta' direttur u l-appellant ippoża ta' tabib u flimkien waqfu klinika provviżorja f'Birkirkara. Żewġ xebbiet applikaw u ħallsu lira kull waħda. Waħda minnhom intbagħtet fil-klinika bil-'call card' mill-imsemmi Muscat fejn ġiet anke sottoposta għal eżami mediku mill-appellant. Fuq oġġezzjoni dwar il-kwalifika medika tiegħu, l-appellant uriha passaport iffalsifikat li juri li kien tabib.

Kwantu għall-verdett, ġiet ikkontestata d-dikjarazzjoni ta' ħtija taħt it-tielet u s-seba' kap ta' l-Att ta' l-Akkuża.

Dwar l-attentat vjolenti għall-pudur, l-appellant ikkontenda li hu nstab ħati ħażin fuq il-fatti għax ma kienx hemm l-aggravanti murija fl-art. 216(d) tal-Kod. Krim. ta' "meta l-ħati, fl-esekuzzjoni tad-delitt, jiġi mgħejjun minn persuna waħda jew iżjed". L-appellant issottomerta li r-referenza għall-għajnuna mhux rapportabbli għall-kompliċità iżda għandha tittieħed fis-sens ta' dak li jingħad fl-Artikolu 275(b) li jikkontempla l-aggravanti tal-vjolenza fis-serq

meta l-ħallelin "jippreżentaw ruħhom iżjed minn tnejn". Il-Qorti sostniet li l-formula tal-art. 216(d) tinftiehem skond dak li l-kliem tagħha stess jimposta, cioè li l-għajnuna tista' tingħata anke minn kompliċi iżda trid tingħata fl-esekuzzjoni tad-delitt.

Fil-każ in eżami, dwar Muscat kien hemm fil-fatt kompliċità fis-sens ta' l-art. 43(d)(e), iżda ma kienx hemm għajnuna fl-esekuzzjoni tad-delitt ta' attentat vjolenti għall-pudur, għall-finijiet tal-art. 216(d) ta' l-istess Kodiċi Kriminali.

Dwar is-seba' kap tal-Att ta' Akkuża, l-appellant issottometta li kien hemm interpretazzjoni ħażina tal-liġi, in kwantu, la darba l-passaport kien skadut, l-Imħallef ta' l-Ewwel Qorti ma setax jiddeċiedi l-ġurati fis-sens li xorta kien passaport għal finijiet ta' l-akkuża. Il-Qorti kienet ukoll tal-fehma li la ma ġietx uffiċjalment kanċellat, passaport skadut, għal dik li hija data, xorta jibqa' passaport, dokument uffiċjali importanti u f'dan il-kontest il-liġi ma tiddistingwix.

Kwantu għall-piena, il-Qorti qalet li l-imġieba ta' l-appellant f'dal-każ ma tissuġġerix mitigazzjoni tlief li jiġi eskluż l-aggravant ta' l-art. 216(d).

Il-piena għalhekk ġiet ridotta għal seba' xhur u ħmistax il-ġurnata lavuri forzati.

Seduta tas-27 ta' Frar, 1974.

No. 4 Reġina vs Walter Muscat

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tat-13 ta' Novembru, 1973, Walter Muscat ġie misjub ħati ta' truffa kontinwata ta' mhux aktar minn £M5 u akkuża oħra ta' kompliċità f'attentat vjolenti għall-pudur ta' xebba, u ta' dan weħel sitt xhur u għaxart ijiem lavuri forzati. (Dwar il-fatti ral-każ ara l-appell Maestà Tagħha r-Reġina vs Carmelo Schembri – koakkużat).

L-appellant issottometta li kien hemm element wieħed nieqes għall-konfigurabilità tar-reat taħt l-artikolu 322 tal-Kod. Krim., cioè li ma sar ebda qliegħ bi ħsara ta' ħaddieħor għax il-lira li thalliet fuq kull suppost kuntratt setgħet tittieħed lura. Il-Qorti sostniet li dan l-ilment kien infondat.

L-appellant issottometta wkoll li kien hemm nuqqas fl-indirizz għax ma ssemmiex il-prinċipju li l-atti tal-kompliċi iridu jkunu effiċjenti. Huwa veru li l-Qorti ma ttratenitx ruħha fid-dettal fuq l-effiċjenza tal-atti, iżda riżulta li hija saħqet fuq il-fatt li trid tiġi attwalment u xjentement mogħtija għajnuna biex jitwettaq id-delitt. Dwar il-kompliċità jew le ta' l-appellant fl-attentat vjolenti għall-pudur fuq xebba, il-Qorti sostniet li f'dik l-intrapriża komuni l-ap-

pellant kien mifthiehem li kellhom isiru eżamijiet mediċi minn sieħbu li kellu jippoża ta' tabib. Għad li l-appellant ma attendiex attwalment għall-eżami mediku fil-kamra fejn kien qed isir, kien żgur preżenti x'imkien fid-dar għax wara l-eżami l-appellant u sieħbu tkellmu quddiem ix-xebba dwar il-ħlas ta' l-imsemmija lira.

Il-Qorti wriet ruħha sodisfatta li fil-kompless il-ġurati kellhom biżżejjed provi biex jiġġustifikawhom jaslu għall-konklużżjoni li għaliha waslu.

Kwantu għall-appell dwar il-piena l-Qorti qalet li d-delitti in kwistjoni ma jimmeritawx indulġenza ulterjuri.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tat-22 ta' Marzu, 1974.

No. 5 Il-Maesta Tagħha r-Reġina vs Carmelo Buhagiar

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tas-6 ta' Novembru, 1973, l-imsemmi Buhagiar ġie kkundannat għal sena lavori forzati u għal multa ta' £M10, talli nstab ħati ta' offiża volontarja fuq il-persuna ta' natura ħafifa fuq l-ewwel kap, talli attakka u għamel resistenza bi vjolenza u b'hekk ta' natura li ma titqiesx vjolenza pubblika kontra persuni inkarigati skond il-liġi minn servizz pubbliku fil-waqt li kienu jaġixxu għall-esekuzzjoni tal-liġi u ta' ordni mogħti skond il-liġi mill-awtorità kompetenti b'dan li dawn l-attakk u resistenza saru minn tlieta min-nies jew aktar fuq it-tieni kap, u talli qal kliem faħxi konsistenti fi kliem jew espressjonijiet ta' dagħa fil-pubbliku fuq ir-raba' kap u fuq ammissjoni tar-reċediva kif dedotta fl-istess Att ta' Akkuża.

Dan l-appell (li ma rrigwardax ir-raba' kap) kien sew mill-verdett kemm mill-piena. Rigward il-verdett, l-appellant sostna li hu nstab ħati ħażin fuq il-fatti in kwantu li (a) dwar l-ewwel kap, kellha tingħatalu l-iskużanti tal-provokazzjoni u (b) dwar it-tieni kap, il-fatti fil-fehma tal-istess appellant kienu aktar konsistenti mad-disposizzjoni ta' l-artikolu 94 milli ma' dik tal-artikolu 95 tal-Kodiċi Kriminali. L-appell kien limitat għall-punt li huwa kien instab ħati ħażin fuq il-fatti f'dan is-sens biss, jiġifieri li l-fatti riżultanti kienu jiġġustifikaw dikjarazzjoni ta' ħtija imma "f'doża anqas" u ma sar ebda ilment riferibilment għall-indirizz jew mod ieħor.

Kwantu għall-aggravju dwar l-ewwel kap, il-Qorti sostniet li l-ġurati kienu ampjament ġustifikati li jaslu għall-konklużżjoni li għaliha waslu.

Kwantu għall-aggravju dwar it-tieni kap, il-Qorti kienet sodisfatta hawn ukoll li l-ġurati kienu ampjament ġustifikati. L-appel-

lant issottometta li l-fatt li huwa ma aċċettax li jiġi arrestat mhuwiex attakk u resistenza, u li ma kienx hemm vjolenza. L-artikolu 95 tal-Kodiċi Kriminali, li taħtu l-appellant instab ħati, ma jsemmix biss vjolenza imma anke, alternattivament, "vie di fatto". Huwa veru li l-fatt biss li wieħed ma jaċċettax li jiġi arrestat fissens ta' resistenza passiva għall-arrest mhux biżżejjed għall-esistenza ta' dan id-delitt, iżda fil-każ in kwistjoni id-dispostament ta' l-appellant mhux biss kien aggressiv ħafna, iżda akkompanjat ukoll minn "vie di fatto" kontra l-Pulizija u mill-intenzjoni meħtieġa biex jiġi effettivament integrat id-delitt dedott.

Kwantu għall-piena, il-fedina penali esibita turi fuq l-erbgħin kundanna ta' varjetà liema bħala, li juru fl-appellant tendenza antisoċjali u perikolożità hekk markati li l-Qorti taħseb li l-piena inflitta kienet fiċ-ċirkostanzi, mill-aktar miti.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tat-22 ta' Marzu, 1974.

No. 6 Il-Maesta Tagħha r-Reġina vs Anthony Peregin

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tas-7 ta' Frar, 1974, Anthony Peregrin ġie kkundannat għall-piena tallavori forzati għal żmien sentejn, talli b'diversi azzjonijiet magħmulin fi żminijiet differenti b'effett ta' riżoluzzjoni waħda u bi ksur ta' l-istess disposizzjoni tal-liġi, biex jissodisfa ż-żina ta' ħaddieħor ħajjar għall-prostituzzjoni persuna ta' taħt l-età u inċita l-korruzzjoni tagħha u għen u ffaċilita din il-prostituzzjoni u korruzzjoni. Id-delitt għamlu bħala drawwa u bi ħsieb ta' qliegħ.

L-appell kien limitat biss għall-piena. L-appellant issottometta li dan il-każ kien biss għall-perijodu ta' xi sitt ijiem u li għaldaqstant il-piena inflitta kienet verament ħarxa, u ġie suġġerit li jitqiegħed taħt "probation". Barra minn dan, it-tfajla kkonċernata kienet diġà f'din il-ħajja qabel u kienet qed tiġġerra minn post għal ieħor ma' l-Għarab.

Il-Qorti però ma qablitx ma' l-idea tal-"probation". L-istess tfajla xehdet bil-ġurament li l-appellant kienet ilha tafu xi sena u tul din is-sena hu laqqagħha diversi drabi ma' rġiel biex ikollha x'taqsam magħhom, dak li hi kienet tagħmel; ta' dan hu kien jitħallas.

L-ewwel Qorti applikat il-minimum preċiż tal-piena. Il-Qorti ma laqgħetx it-talba sabiex l-appellant jitqiegħed taħt "probation" peress li mhux wisq qabel (fid-29 ta' Marzu, 1971) huwa kien ġià, fuq akkuża ta' serq, ġie liberat taħt il-provvedimenti tal-art. 9 tal-Att Nru. XII tal-1957. Peress ukoll li d-delitt in kwistjoni kien dak

ta' delitt hekk moqżież ta' lenoċinju, kif aggravat, il-Qorti ħasbet li ma kienx il-każ li l-piena inflitta tiġi disturbata.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tal-1 ta' April, 1974.

No. 7 Reġina vs Daniel Muscat u Emanuel Zammit

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tad-19 ta' Jannar, 1974, l-imsemmi Daniel Muscat instab ħati skond l-akkuża li fis-7 ta' Frar, 1972 ikkommetta (flimkien ma' Thomas Moran) serq kwalifikat bil-mezz, bil-valur u bil-lok ta' oġġetti, inklużi flus, li jiswew aktar minn £M500 għad-dannu ta' Pawlu u Fawstina miżżewġin Bartolo, u l-imsemmi Emanuel Zammit ħati ta' kompliċità fl-istess serq, jiġifieri talli b'kull mod li jkun xjentement għen u assista lill-awturi tas-serq fl-attijiet li bihom is-serq ġie ppreparat u kkunsmat, ta struzzjonijiet biex is-serq isir, saħħaħ il-volontà tagħhom sabiex jagħmlu d-delitt u weġħedhom li wara l-fatt jassistihom u jieqaf magħhom. Muscat ġie kkundannat għall-piena tal-lavuri forzati għal żmien tlett snin waqt li Emanuel Zammit għall-piena tal-lavuri forzati għal ħames snin.

Muscat u Zammit appellaw kontra d-dikjarazzjonijiet ta' ħtija.

Iż-żewġ appellanti ssottomettew "inter alia" li fl-indirizz ta' l-ewwel grad kien hemm "misdirection" jew interpretazzjoni ħażina fuq punt ta' liġi dwar il-piż tal-prova a karigu tad-difiża. Għalkemm il-Qorti taqbel mad-difiża li xi bran fl-indirizz meta jinqara' isolatament huwa insodisfaċenti, iżda mill-banda l-oħra fl-assjem tiegħu l-indirizz huwa ċar biżżejjed biex juri lill-ġurati li huwa dejjem dmir tal-Prosekuzzjoni li jipprova l-ħtija ta' l-akkużati "beyond reasonable doubt". L-akkużati għalhekk jibqgħu preżunti innoċenti sakemm il-Prosekuzzjoni tipprovahom ħatja skond l-akkuża. Iżda dan ma jfissirx li jekk l-akkużati iqanqlu xi difiża speċjali, bħal f'dal każ meta tqajmet id-difiża ta' l-alibi, l-akkużati m'għandhomx jipprovaw dak li qed isostnu iżda li għandhom jipprovawh biss "on a balance of probability".

L-appellanti ssottomettew ukoll li huma nstabu ħatja ħażin fuq il-fatti. Għalkemm l-appellant Zammit ta x-xhieda tiegħu, il-verdett juri (u skond il-Qorti kien verdett tajjeb) li l-ġurati aktar emmnu lix-xhieda tal-Prosekuzzjoni fosthom dawk in-nies li raw lit-tlett akkużati quddiem il-bieb tad-dejubata u lil Moran ħiereġ mid-dar tagħha b'sorra f'idejh, lix-xhieda ta' P.C. Vella li ra lil Moran u Muscat fiż-Żurrieq u x-xhieda ta' Faustina Bartolo. L-appellant Zammit kellu dritt għas-silenzju tiegħu li minnu ħlief f'xi ċirkostanzi speċjali ma tinħoloq ebda riferenza ta' ħtija. Iżda meta l-ak-

kużat jagħżel li jagħmel xi dikjarazzjoni jew jagħti xhieda, il-ġurati huma intitolati jikkunsidraw xi kredenza jagħtu lil dak li jgħid, u, fil-kontest tiegħu, dak li jħalli barra. Jekk il-ġurati, mill-mod li xehed u min-natura u konsistenza ta' dak li qal, ma tawx kredenza lill-appellant, il-Qorti ma ssibhiex sorprendenti li, fil-kontest kollu tal-każ, waslu għall-konklużżjoni li hu kien qed jaħbilhom xi ħaġa u minn dan flimkien mać-ċirkostanzi l-oħra jaslu fl-assjem kollu tal-provi, inkluża l-istess xhieda tal-appellant li ried jagħtiha minn rajh, għall-konklużżjoni li għaliha l-prosekuzzjoni stiednithom biex jaslu.

Għall-motivi premessi l-Qorti ċaħdet sew l-appell ta' l-imsemmi Daniel Muscat kemm dak ta' l-imsemmi Emanuel Zammit.

Seduta tat-3 ta' Ġunju, 1974.

No. 8 Reġina vs Philip Zarb u Joseph Farrugia

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tat-18 ta' Settembru, 1972, l-imsemmijin Zarb u Farrugia flimkien ma' oħor ġew akkużati ta' serq u ta' tentattiv ta' serq rispettivament. Huma stqarrew il-ħtija tagħhom u l-Qorti lliberathom taħt il-kundizzjoni li ma jagħmlu l-ebda reat ieħor matul iż-żmien ta' dieci snin.

B'sentenza tal-Qorti Kriminali tal-Maġistrati tal-Pulizija Ġudizzjarja tas-7 ta' Frar, 1974, l-istess Zarb u Farrugia, fuq ammissjoni tagħhom stess, instabu ħatja ta' serq ta' handbag li kien fih flus u oġġetti oħra li l-valur tagħhom huwa anqas minn għaxar liri maltin, liema serq huwa aggravat bil-ħin u barra minn dan illi kisru l-kondizzjoni lilhom imposta skond l-Art. 9 ta' l-Att XII tal-1957.

Il-Qorti Kriminali tal-Maġistrati ordnat ukoll, għar-rigward tal-ksur tal-art. 9 ta' l-Att XII tal-1957, li huma jintbagħtu quddiem il-Qorti Kriminali tal-Maestà Tagħha r-Reġina biex tittratta magħhom fuq dik id-dikjarazzjoni ta' ħtija.

Sussegwentement fit-3 ta' April, 1974, Zarb u Farrugia ġew ikkundannati għall-piena tal-lavuri forzati għal żmien sittax-il xahar kull wieħed.

L-appell fuq l-aħħar sentenza kien limitat biss għall-piena inflitta. L-appellanti ssottomettew illi l-fatt li ammettew il-ħtija tagħhom kien juri li ma kienux "hardened criminals" u għalhekk ma kienx imissha ġiet applikata piena daqshekk ħarxa talli kisru l-art. 9.

Il-Qorti sostniet li fil-fehma tagħha l-klemenza li l-ewwel Qorti dienet uriethom qabel ma tatx il-frott mixtieq u kien proprju fit-tul aktar minn sena wara li l-appellanti reġgħu kkommettew serq ieħor

aggravat. Barra minn hekk sostniet illi l-piena applikata hija kważi l-"minimum" applikabbli skond il-liġi billi teċċedih biss bi ftit jiem.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tat-28 ta' Ġunju, 1974.

No. 9 Reġina vs. John Louis magħruf bħala Louis Frendo

L-imsemmi John Louis, magħruf bħala Louis Frendo, nstab ħati taħt l-ewwel kap talli kkorrompa l-minorenni Alfrieda Aquilina, taħt it-tieni kap talli biex jissodisfa żżżina ta' ħaddieħor ħajjarha għall-prostituzzjoni jew eċċita l-korruzzjoni tagħha jew għen jew iffaċilita din il-prostituzzjoni jew korruzzjoni, taħt it-tielet kap talli xjentement għex għal kollox jew f'parti minn fuq il-qliegħ tal-prostituzzjoni tagħha, taħt il-ħames kap talli xjentement kellu għandu oġġetti (ħames contraceptives) li fuqhom ma kienx tħallas dazju, u mhux ħari taħt ir-raba' kap talli żamm lokal jew xi parti minnu li huwa ffrekwentat jew magħdud li huwa ffrekwentat għall-iskop tal-prostituzzjoni jew għal skopijiet oħra immorali. Wara dan, l-imsemmija Alfrieda Aquilina ddikjarat ir-remissjoni tagħha dwar l-ewwel kap b'mod li l-Qorti Kriminali ma pproċedietx oltre fuqu.

Fuq it-tieni u t-tielet kap li taħthom l-akkużat instab ħati, il-Qorti Kriminali, b'sentenza tat-12 ta' Marzu, 1974, kkundannatu għall-piena ta' lavuri forzati għal żmien sena, u fuq il-ħames kap għall-multa ta' £M25 pagabbli f'xahrejn. Dwar l-istess tlett kapi l-imsemmi Frendo appella u talab li titħassar id-dikjarazzjoni ta' ħrija u in subordine li ma tiġix applikata piena restrittiva tal-libertà personali.

Dawn huma l-fatti tal-każ: Alfrieda Aquilina ta' sittax-il sena xehdet li l-appellant kien għajjixha għal tlett ġimgħat fil-flat tiegħu, li hi kienet ħadet il-ħwejjeġ tagħha fil-flat u li hu kellu x'jaqsam magħha. Ressqilha wkoll xi rġiel li kellhom x'jaqsmu magħha, u irċeviet flus minn għandhom li hi għaddiet lill-appellant. Barra minn dan hu kien joħodha bil-karozza tiegħu Bormla u l-Gżira fejn kien ikollha x'taqsam ma' l-irġiel. Imbagħad kien jgħaddi għaliha u kienet itrieħ il-flus li tkun irċeviet u żżomm xi ħaġa għaliha mingħajr ma tgħidlu.

L-appellant ċaħad fix-xhieda tiegħu li kellu x'jaqsam magħha, li ressqilha xi rġiel jew ressaqha lill-irġiel u li qatt ma rċieva xi flus minn għandha. Huwa qal li kien qabbad lill-Alfrieda Aquilina biex maddaflu s-Silver Horse Bar u darba ħaslitlu l-flat tiegħu f'tas-Sliema u kienet f'din l-okkażżjoni li hi ħadet xi ħwejjeġ

magħha biex tbiddel. Meta għamlu perkwiżizzjoni tal-flat, il-Pulizija elevaw il-ħwejjeġ ta' Alfrieda Aquilina u ħames contraceptives ta' l-appellant.

Fl-appell tiegħu, l-appellant iddikjara li instab ħati ħażin fuq il-fatti.

Il-Qorti ddikjarat li dak li trid tagħmel hu li tikkunsidra kollox u tara jekk il-ġurati kellhomx provi biżżejjed quddiemhom biex fuqhom setgħu raġonevolment jaslu għall-konklużżjoni li waslu għaliha fil-verdett tagħhom (Ara *Regina vs. Alfred Muscat*, 20 ta' Awissu, 1968).

L-appellant beda biex issottometta li kontra tiegħu m'hemmx ħlief ix-xhieda ta' l-imsemmija Alfrieda Aquilina li l-kondotta tagħha m'hiex tali li tirrendiha kredibbli. Veru li hi m'hiex xi xempju ta' moriġeratezza imma, għalkemm dan għandu jittieħed in konsiderazzjoni, ma jfissirx li wieħed għandu jiċħad "a priori" dak li tixhed. Kienu ħafna n-nies li ma kienux anġli mexjin fuq l-art iżda meta kien neċessarju qalu s-sewwa. Del resto, lanqas l-appellant stess ma jidher li hu ta' kostumi illibati.

M'hemm ebda formula maġika komprensiva li tindikalna l-kredibilità ta' xhud, iżda hemm ċerti kriterji prattiċi li jassistu lil min għandu jiġġudika. Dawn huma l-versomiljanza u il-konsistenza. Jekk nużaw dawn il-kriterji insibu li l-ġurati kienu ampjament ġustifikati li ma jemmnux it-teżi ta' l-akkużat.

Id-difiża ssottomettiet li ma ngħieb ebda xhud li ra lill-Alfrieda Aquilina dieħla ma' l-appellant fil-flat jew flimkien miegħu. Kienet hi li xehdet li hu kellu x'jaqsam magħha u li ressqilha xi rġiel, waqt li hu sostna biss li hi marret taħsillu l-flat darba waħda. Importanti huma l-affarijiet li nstabu fil-flat ta' l-appellant, jiġifieri ħwejjeġ intimi ta' xebba, u mhux ħwejjeġ tal-ħasil, u l-appellant ma tax spjegazzjoni tajba ta' dawn. Infatti ma tantx hu presumibbli li xebba li tmur taħsel flat darba waħda tinsa dawn il-ħwejjeġ warajha u, iktar u iktar, li l-appellant lanqas biss qatt ta kashom. Għalhekk ix-xhieda ta' Alfrieda Aquilina hija aktar kredibbli. Barra minn dan, meta Frendo wieġeb għal mistoqsija li għamillu ġurat waqt li l-imputat kien qed jixhed minn rajh, huwa qal li hu kien jitlaq qabel Alfrieda Aquilina u jgħidilha biex meta tlesti tiġbed il-bieb u tiġi fil-għaxija biex titħallas. It-temp imperfett li użża l-imputat juri ripetitività, jiġifieri li Aquilina kienet tmur għandu ta' sikwit. Inoltri fl-istqarrija tiegħu lill-Pulizija l-imputat kien qal li hu qatt ma ta contraceptives lil Aquilina u minn dawn ma kellux id-dar. Imbagħad bidel dak li kien qal u sostna li l-pilloli kienu bigħuhomlu xi suldati u ried iżommhom għall-użu per-

sonali tiegħu. Lanqas ma kien il-każ li kien qed igħix ma' Alfrieda Aquilina bħala miżżewġin. Huwa kien xehed li affarijiet bħal dawn (li jgħix ma' xebba) huwa ma jagħmilhomx. Huwa kien xehed ukoll li Alfrieda u missier Alfrieda stess kienu esiġew flus minn għandu biex jirrinunzjaw il-kwerela. Iżda mill-provi xejn minn dan ma jirriżulta.

Dwar it-tieni u t-tielet kapi, in vista ta' dak li ġa intqal, m'hemmx għalfejn wieħed jelabora iżjed.

Kwantu għall-ħames kap, intqal mid-difiża li m'hemm assolutament ebda ħjiel ta' prova li l-contraceptives ġew importati f'dawn il-Gżejjer. Jibqa' l-fatt, iżda, li l-istess artikoli esibiti għandhom marka Ngliża u għandhom miktub fuqhom li ġew immanifatturati f' Londra.

Id-difiża qed issostni li l-piena inflitta hija eċċessiva. Iżda l-Qorti hi tal-fehma li dan il-każ sordidu ma jimmeritax indulġenza.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tal-15 ta' Lulju, 1974.

No. 10 Reġina vs Ġanni Buttigieg

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tas-6 ta' Diċembru, 1973 l-imsemmi Buttigieg ġie kkundannat għall-piena ta' ħavuri forzati għal żmien sentejn u għas-sospensjoni tal-liċenzji kollha tas-sewqan għal tlett snin wara li nstab ħati t'offiża volontarja fuq il-persuna ta' natura gravi u ta' sewqan ta' motor bus b'mod perikoluż.

Il-fatti kienu dawn: l-appellant kien qed isuq motorbus u ħassu urtat bil-mod kif Alfred Zammit kien qiegħed isuq il-karozza privata tiegħu fl-istess direzzjoni, kif qabżu b'saħħtu u b'ħoss kbir u kif bi speċi ta' U-turn bruska mbarralu t-triq u, wara li kellu xi jgħid miegħu, gidimlu widintu u qatagħhielu barra b'mod li Zammit tilifha permanentement.

Buttigieg ibbaża l-appell tiegħu (1) fuq l-interpretazzjoni fil-fehma tiegħu skorretta ta' l-artiklu 241(c) tal-Kodiċi Kriminali; (2) li nstab ħati ħażin fuq il-fatti; u (3) li l-piena kienet eċċessiva.

Dwar l-interpretazzjoni ta' l-art. 241(c) il-Qorti qablet ma' l-interpretazzjoni ta' l-ewwel Qorti (li kienet skond il-ġurisprudenza) li l-paragrafu jirreferi biss għall-każ meta persuna tkun taħt l-influwenza immedjata ta' passjoni istantanja wara li tkun ġiet provokata, u mhux kif issottometta Buttigieg għall-każ ukoll meta lil wieħed jitilgħulu mingħajr ma jkun ġie pprovokat.

L-appellant minn dejjem sostna li kien ġie pprovokat u dan jirriżulta mid-dikjarazzjonijiet tiegħu lill-Pulizija u fix-xhieda tiegħu

lill-ġurati. Imma anke jekk il-fatti kienu kif ipprospettahom l-akkużat, xorta waħda l-interpretazzjoni ta' l-art. 241(c) kif moghtija mill-Qorti ma kenitx taghti raġun lill-akkużat.

Dwar il-piena inflitta, il-Qorti kienet tal-fehma li m'hijiex eċċessiva in vista kemm tal-gravità intrinsika tal-każ u kemm tal-fatt li mill-fedina penali tal-appellant (għalkemm fiha ma jidhrux xi reati speċjali) ġa jidher li l-appellant kien involut f'każijiet oħra ta' ġlied.

In kwantu għall-perjodu tas-sospensjoni tal-liċenzji kollha tas-sewqan ta' l-appellant, il-Qorti kienet tal-fehma li hu xieraq li jiġi ridott għal sittax-il xahar, biex meta l-appellant joħroġ mill-ħabs ikun jista' jsib xogħol u jibda jaħdem peress li xogħlu hu dak ta' driver.

Għall-motivi premessi l-Qorti pprovdiet billi rriduċiet il-perjodu tas-sospensjoni tal-liċenzji kollha tas-sewqan ta' l-appellant għal sittax-il xahar u għall-kumplament tiċħad l-appell.

Seduta tal-15 ta' Lulju, 1974.

No. 11 Reġina vs Raphael Fenech sive Fenech de Fremaux

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tal-4 t'April, 1974, Raphael Fenech sive Fenech de Fremaux ġie misjub ħati ta' korruzzjoni kontinwata ta' minorenni, liema delitt sar bi ħsara ta' persuna li m'għalqitx l-eta ta' tnax-il sena u sar minn axxendent mid-demm tal-persuna korrotta u b'abbuż tas-setgħa ta' missier. Huwa ġie kkundannat lavuri forzati għal żmien ta' tlett snin u għat-telfa ta' kull jedd li l-kwalità tiegħu ta' missier tagħtih fuq il-persuna u beni ta' bintu Dorothy Fenech.

L-appellant talab lill-Qorti illi l-imsemmija dikjarazzjoni ta' ħtija tiġi mneħħija għax hu ġie misjub ħati ħażin fuq il-fatti u li kien hemm irregolarità fil-proċeduri li kellha effett fuq il-verdett.

Il-fatti fil-qosor huma li meta l-appellant kien jieħu lil bintu Dorothy fl-abitazzjoni tiegħu hu kien jikkorrompiha u jheddidha biex ma titkellimx. L-appellant allega li t-teżi tad-difiża li martu kienet xhud inveritjera u kapaċi tasal biex tixhed il-falz kontra żewġha biex tivvendika ruħha minnu peress li kienu separati b' sentenza tal-Qorti, u allura setgħet faċilment tammaestra lil bintha b'mod tali li tasal biex tgħid dak li mhux minnu, ma ġietx imqegħda quddiem il-ġurati.

Il-Qorti tal-Appell ma qablitx ma' dan għax l-ewwel Onorabbli Qorti ma naqsitx milli tqiegħed din it-teżi quddiem il-ġurati, però naturalment u korrettament ħalliet il-kwistjoni għall-apprezzament tagħhom bħal kull kwistjoni ta' fatt.

L-appellant ilmenta wkoll li x-xhieda prodotti minnu ġew "som-

mati leġġerment" fl-indirizz u li l-Qorti ma wissitx lill-ġurati dwar il-possibilita li dak li qalet it-tifla jista anke jkun allucinazzjoni jew suġġestjoni minn haddieħor. Il-Qorti ma qablitx ma' l-ewwel ilment u, rigward l-ilment l-ieħor, kuntrarjament għas-sistema Ingliża, fis-sistema tagħna, din mhiex strettament neċessarja b'mod li n-nuqqas tagħha jinvalida l-"conviction".

Rigward il-motiv l-ieħor ta' l-appell, li l-appellant instab ħati ħażin fuq il-fatti, il-Qorti ma qablitx għax it-tifla, anke jekk ma tistax tiġi eskluża ċerta kommunikazzjoni ma' l-omm, xehdet b' mod li jidher suffiċjentement konsistenti, ċirkostanzjat u preċiż għal tifla ta' l-eta tagħha u li l-ġurati sabu rassikuranti.

Għalhekk il-Qorti ma sabitx raġuni biex tirritjeni li l-ġurati ma kellhomx quddiemhom provi biżżejjed biex fuqhom setgħu raġonevolment jaslu għall-konklużżjoni li għaliha waslu.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tas-6 t'Awwissu, 1974.

No. 12 Reġina vs Paul Azzopardi

Dan kien appell ta' Paul Azzopardi minn digriet tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tat-23 t'April, 1974, li bih iddikjarat ammissibbli ċerti deposizzjonijiet u dokumenti li tagħhom kienet ġiet minnha eċċepita l-inammissibilità fl-istadju opportun tal-kawża fl-ismijiet premessi fuq l-akkuża kontra tiegħu t'omicidju volontarju ta' martu.

L-imsemmija Qorti rrilevat li l-provi in kwistjoni jista' jkollhom influwenza fuq il-mertu tal-kawża "salv dejjem l-apprezzament talġurija fuq dawn il-fatti u l-kontroll tal-Qorti dwar ir-rilevanza ta' xi partijiet tad-deposizzjonijiet li jingħataw matul il-proċess, kif ukoll id-direttivi tagħha fl-indirizz lill-ġurati jekk ikun il-każ".

Il-Qorti ta' l-Appell qalet illi *fil-fatt* l-appell kien jirrigwarda l-ammissibilità ta' xhieda tendenti li jippruvaw il-kommissjoni da parti ta' l-akkużat t'atti kriminali differenti minn dawk koperti mill-att tal-akkuża u partikolarment swat u maltrattament tal-mejta Caterina Azzopardi da parti ta' żewġha l-akkużat għal tul ġmielu ta' żmien.

In ġenerali, in kwantu l-provi kollha oġġezzjonati huma intiżi li juru l-allegat swat u trattament ħażin tal-mejta da parti ta' żewġha l-akkużat, dawn huma ammissibbli in kwantu jistgħu jinċidu fuq il-kwistjoni ta' l-intenzjoni akkompanjanti l-att inkriminat, jekk dan jirriżulta li kkommettih l-akkużat. Il-provi jistgħu wkoll iservu biex talvolta jirribattu possibbli difiża tal-akkużat. Anki bħala "evidence of motive" (avolja m'huwiex essenzjali li l-prosekuzzjoni tipprova motivi, naturalment bħala distint mill-intenzjoni) il-prose-

kuzzjoni m'hijiex prekluża milli, fejn ikun il-każ, fuq akkuża bħall-preżenti turi fost il-provi l-oħra "ill-treatment, previous assaults, personal violence, threats and ill-feeling towards the wife" (Wharton's "Criminal Evidence", 12th Edition, 1955, Vol. I, p. 344), li a p. 325 jirriferixxi wkoll għal "long ill-treatment by a husband of his wife". Din tidher ukoll il-prattika lokali.

Dan jingħad naturalment in ġenerali, in kwantu jista' jagħti l-każ li f'deposiżżjoni li bħala prinċipju (fid-dawl tal-premess) tkun ammissibbli, ikun hemm dikjarazzjonijiet li jkunu għal kollox irrilevanti u t'effett preġudizzjali għall-akkużat li bil-bosta jegħleb il-valur evidenzjali tagħhom. Dan però għandu jitħalla għall-apprezzament għaqli tat-"trial judge".

Għall-dawn il-motivi u fid-dawl tal-konsiderazzjonijiet premessi il-Qorti ċaħdet l-appell.

Seduta tal-14 t'Awwissu, 1974.

No. 13 Reġina vs Carmelo Galea

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tal-1 ta' Diċembru, 1972, Carmelo Galea ġie misjub ħati t'omiċidju volontarju, u cioè, talli dolożament, bil-ħsieb li joqtol bniedem jew li jqiegħed ħajtu f'periklu ċar, ikkaġunalu l-mewt, iżda skużabbli minħabba provokazzjoni għax aġixxa taħt l-influwenza immedjata ta' passjoni istantanja li minħabba fiha ma setax iqis il-konsegwenzi ta' l-għemil tiegħu. B'vot unanimu tal-ġurati hu ġie rakkomandat għall-klemenza tal-Qorti minħabba ċirkostanzi sfortunati li ġraw qabel il-mewt tal-vittma u li (l-ġurati aġġungew minħabba ċerti riflessi tad-difiża) ma ġrawx minħabba negliġenza medika. Huwa ġie kkundannat għall-piena ta' priġunerija għal żmien għaxar snin.

L-appellant talab illi l-imsemmi verdett tal-ġurati jiġi mwarrab in kwantu bih ġie misjub ħati t'omiċidju volontarju skużabbli, u minflok, jiġi misjub illi l-fatti kellhom iwasslu għad-delitt t'offiża gravi volontarja segwita mill-mewt li ġiet minħabba kawża aċċidentali sopraġġunta kif provdut fl-artiklu 234(2) tal-Kodiċi Kriminali, illi tiġi konfermata l-provokazzjoni bħala skużanti għat-tenur tal-artiklu 214(c) u illi tiġi applikata dik il-piena minuri li titqies xierqa.

Il-fatti fil-qosor kienu li baħri Bermjan bl-isem ta' Khin Malling Mint mar fil-ħanut ta' l-appellant fejn inqalet tilwima li fiha l-baħri Bermjan u sieħbu tefgħu ħafna fliexken, laqtu lill-appellant u għamlu ħsara mhux żgħira fil-ħanut. L-appellant allura ġera wara l-imsemmi Mint b'sikkina f'idu lejn il-bieb tat-Tarzna u tah daqqa bihą f'ġenbu. Huwa kien fil-periklu tal-mewt, iżda wara operazzjoni delikata, il-kondizzjoni tiegħu wara xi ġranet tjiebet, iżda

mbagħad deherhu xi sintomi li kienu indikattivi ta' polmonite u, għalkemm saritlu l-kura meħtieġa, huwa miet. Skond ir-rapport ta' l-esperti mediċi, Mint miet b'settiċemija minn axxess retrokoliku kawżat minn ferita t'arma ppuntata fuq il-ġenb. Il-kura li rċieva kienet xorta idonea. Huwa miet b'konsegwenza naturali tal-ferita li ġarrab, assolutament bla ma nterveniet ebda negliġenza medika.

L-appellant issottometta li mix-xhieda ta' l-esperti mediċi kienet tidher ċara l-possibilità, li f'ċertu mument dehret li kienet anki probabilità, ta' kawżi intervenjenti li setgħu kkontribwew għallmewt ta' Mint, u li l-ġurati ġew indotti, fl-indirizz ta' l-Imħallef, biex jaċċettaw bħala ċertezza illi l-mewt ġratunikament bħala effett tal-ferita u tal-effetti tagħha meta kollox juri li ma kienx hemm din iċ-ċertezza morali. Fit-tieni lok l-appellant ilmenta li ġiet mogħtija interpretazzjoni skorretta tal-liġi in kwantu li l-konkawża f'omiċidju volontarju ma tiġix kunsidrata bħala figura legali, possibbli għaliex fis-sistema legali tagħna malli jkun hemm il-presenza konċettwali tal-konkawża allura jonqos l-element materjali taddelitt t'omiċidju volontarju u jidħlu figuri oħrajn.

Fit-tielet lok l-appellant ilmenta li l-element intenzjonali meħtieġ għad-delitt li tiegħu nstab ħati ma rriżultax u għalhekk id-deċiżżjoni f'dan ir-rigward makenitx, fil-fehma tiegħu, ġusta.

Fir-raba' lok l-appellant ilmenta mill-piena.

L-appellant tenna li, fil-fehma tiegħu, ma kenitx il-ferita inflitta li kkaġunat il-mewt tal-vittma għax magħha kkonkorrew konkawżi oħra u allura fi kwalunkwe każ ma jistax jingħad li kien l-appellant li kkaġuna l-mewt tal-vittma. Il-Qorti sostniet li fis-sistema tal-liġi tagħna l-konkawża hi biss kontemplata mill-leġiżlatura fl-art. 233 bħala li tnaqqas minn grad sa tnejn il-piena altrimenti prevista għall-offiżi volontarji ta' natura gravi imsemmija fl-artikolu 230 u 232; u fl-artikolu 234(a), bħala li għall-offiża gravi volontarja segwita mill-mewt (meta tinkorri l-konkawża) tattira l-piena tal-lavori forzati jew priġunerija għal żmien minn tlett snin sa disa' snin. Dan m'huwiex każ fejn tista' tinġibed xi analoġija.

Il-Qorti qalet li dan ma jġibx, però, kif ippretenda l-appellant, li fis-sistema tal-liġi tagħna "jekk hemm konkawża allura m'hemmx omiċidju volontarju" fis-sens li kawżi aċċidentali sopraġġunti li jikkonkorru biex jipproduċu l-event letali għandhom jiġu kkunsidrati "bħala li jneħħu għal kollox il-figura ġuridika tal-omiċidju u jgħinu r-riżultat li tidħol floku l-figura minuri t'offiża gravi segwita mill-mewt."

Fejn l-aġent bl-intenzjoni li joqtol persuna jew li jqiegħed ilħajja tagħha f'periklu ċar, iferiha u din bħala riżultat tmut, iżda dan l-event ikun parzjalment dovut, barra milli għall-fatt ta' l-aġent, anki għall-konkors tal-konkawża, intiża naturalment fis-

sens ġuridiku, din ma tistax titqies bħala minoranti tad-delitt ta' omiċidju volontarju għax ma ġietx hekk prevista mill-liġi, u l-figura t'omiċidju volontarju tissusisti, avolja l-mewt kienet parzjalment dovuta, barra milli għall-fatt ta' l-aġent, anki għal dik il-konkawża. Il-ġurati skartaw l-ipotesi minoranti tal-konkawża u sabu li l-mewt ġiet kaġunata mill-fatt tal-appellant. Il-Qorti wara li ħadet in konsiderazzjoni l-fatt li l-esperti mediċi kienu u baqgħu dejjem ċerti fil-konklużżjoni tagħhom li l-imsemmi axxess li ġieb is-settiċemija kien il-konsegwenza naturali tal-ferita bl-arma, waslet għall-konklużżjoni li fil-każ preżenti l-ġurati kellhom biżżejjed provi biex jaslu għad-deċiżżjoni li l-fatt ta' l-appellant ikkaġuna l-mewt.

Dwar li l-appellant ilmenta li l-intenzjoni speċifika meħtieġa mill-liġi, għall-omiċidju volontarju ma kenitx ippruvata, il-Qorti tal-Appell sostniet li fil-kompless ma jistax jingħad li l-ġurati ma kellhomx biżżejjed provi biex fuqhom setgħu raġonevolment jaslu għall-konklużżjoni li għaliha waslu: il-kwalità ta' l-arma adoperata, il-parti tal-ġisem fejn ingħatat id-daqqa u, għad li waħda, il-profondità tagħha, kif ukoll il-ħsara mhux żgħira sofferta mill-appellant fil-ħanut tiegħu (li kien ġdid) u d-daqqa ta' flixkun, huma kollha fatti indikattivi.

Kwantu għall-piena, il-Qorti verament thoss li, meta titqies il-gravità tad-delitt, sia pure in relazzjoni mal-provokazzjoni sofferta, u anke tqis li l-piena inflitta tinkorpora wkoll, in applikazzjoni tal-art. 10 tal-Att XII tal-1957, dik għad-delitt ta' riċettazzjoni li tiegħu l-appellant kien ġie preċedentement misjub ħati u liberat taħt kondizzjoni li bil-preżenti delitt kiser, ma jistax jingħad li l-piena inflitta hija irraġonevoli.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tal-14 t'Awissu, 1974.

No. 14 Reġina vs Francis sive Frank Grech, Joseph Scicluna, Constance Curtis

B'sentenza tat-23 ta' Lulju, 1974, l-imsemmijin Joseph Scicluna u Curtis ġew akkużati ta' serq kontinwat, kwalifikat bil-valur, bil-mezz u bil-lok, t'oġġetti li jiswew aktar minn ħames mitt lira u l-imsemmi Grech ġie akkużat ta' komplicità fl-istess serq billi xewwex lill-awturi u saħħilhom il-volontà tagħhom biex jagħmlu l-imsemmi serq u weġħdhom li wara l-fatt jassistihom.

Fil-kors tal-ġuri wara li l-prosekuzzjoni rriduċiet il-valur ta' l-oġġetti misruqa u ottieniet il-korrezzjoni fl-att t'akkuża, Scicluna u Curtis ammettew il-ħtija tagħhom. Wara li t-tlett akkużati kienu unanimament misjuba ħatja, il-Qorti kkundannat lil Scicluna u Curtis għall-piena tal-lavori forzati għal żmien sena, disa' xhur u ħmistax-

il ġurnata u lil Grech għall-piena tal-lavori forzati għal żmien sentejn. It-tlett akkużati appellaw lill-Qorti tal-Appell, Scicluna u Curtis limitatament għall-piena u Grech sew mill-piena kemm middikjarazzjoni ta' ħtija. Il-fatti fil-qosor huma illi t-tlett akkużati kienu ftehmu f'Londra li jisirqu xi deheb minn knejjes t'Għawdex; dan is-serq sar minn Scicluna u Curtis, li kienu qed joqogħodu f' appartament li silfilhom Grech. Grech issottometta li ma kienx hemm provi biżżejjed biex fuqhom il-ġurati setgħu raġonevolment jaslu għall-verdett ta' komplicità.

Il-Qorti sostniet illi għalkemm huwa veru li Grech ma kienx ma' Scicluna u Curtis fl-ebda ħin tas-serq, mera jitqies il-ftehim ta' Londra li jmorru Għawdex u jisirqu d-deheb mill-knejjes konġuntament mal-fatt li wara marru flimkien Għawdex, u l-istess Grech silef lill-ko-akkużati l-oħra l-imsemmi flat, il-Qorti ma dehrilhiex li dan l-aggravju kien fondat.

Kwantu għall-piena, ġew rilevati l-preċedenti kondotta tajba tal-appellanti, il-fatt li r-refurtiva nstabet, il-fatt li Scicluna u Curtis għamlu żmien il-ħabs "awaiting trial", li Curtis marret tgħix ma' Scicluna għax keċċiha r-raġel u li dan issa kien lest li jerġa' jilqagħha f'daru, u affarijiet oħra.

Il-Qorti dehrilha li r-reat fih innifsu hu ikrah għax kien ippreparat, tramat u prekonċertat minn nies li ġew apposta minn Londra biex jagħmluh u għax, min-natura tagħha stess, knisja ma tistax tagħlaq il-bibien kontra l-ħallelin.

Għall-motivi premessi l-Qorti ċaħdet l-appell ta' kull wieħed u waħda mill-appellanti Grech, Scicluna u Curtis.

Seduta tat-18 ta' Settembru, 1974.

No. 15 Reġina vs Philip Ablett

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tat-12 ta' Settembru, l-imsemmi Ablett, fuq l-ammissjoni tiegħu, ġie kkundannat għall-piena tal-lavori forzati għal żmien seba' xhur għad-delitt ta' serq ta' flus u oġġetti li flimkien għandhom il-valur t'iżjed minn £M50 u inqas minn £M500, kwalifikat bil-mezz, valur u ħin u għal £M20 bħala parti mill-ispejjeż tal-perizja.

Il-Qorti kkunsidrat ir-rikors ta' l-appell ta' Ablett limitatament għall-piena u r-risposta oppożitorja ta' l-Avukat Ġenerali tal-Kuruna. L-aggravju avvanzat fl-appell hu li fiż-żmien meta kkommetta r-reat, l-appellant kellu għoxrin sena biss, għandu tarbija ta' sena u nofs, fiż-żmien ir-reat hu ma kienx qed jaħdem waqt li issa qiegħed jaħdem, u għandu kondotta tajba. Għalhekk ordni ta' "probation" kienet tkun iżjed xierqa.

Iċ-ċirkostanzi tad-delitt ta' serq aggravat huma li bil-lejl ġie

sgassat ħanut il-Furjana u minn hemm ittieħdu b'kollox £M85.81,0. Irriżulta li l-ħġieġa tal-gallerija tal-ħanut kienet ġiet miksura għall-finijiet tal-entrata. L-ebda parti mir-refurtiva ma nstabet jew ġiet restitwita lil sid il-ħanut. Bħala regola l-Qorti tal-Appell ma tiddisturbax bla raġunijiet qawwija d-diskrezzjoni tal-Qorti tal-Maestà Tagħha r-Reġina dwar il-piena, speċjalment meta jirriżulta, kif f' dan il-każ irriżulta, li l-Imħallef ħa in konsiderazzjoni ċ-ċirkostanzi kollha tad-delitt u tal-persuna ħatja.

Għalkemm id-difensur għamel appell abili għas-sostituzzjoni tas-sentenza b'ordni ta' probation, b'dana kollu, wara li qieset bir-reqqa ċ-ċirkostanzi tal-każ, partikolarment dik tal-iskalata tal-gallerija u ta' l-isgass ta' ħanut, il-Qorti ċaħdet l-appell.

Seduta tat-18 ta' Novembru, 1974.

No. 16 Reġina vs Emanuel Ellul

B'sentenza tad-29 ta' Lulju, 1974, Emanuel Ellul kien misjub ħati li flimkien ma' persuna oħra seraq oġġetti li jiswew aktar minn għaxar liri u mhux aktar minn ħamsin lira, liema serq huwa kwalifikat bil-mezz u bil-ħin. Ellul kien ammetta l-ħtija u ġie kkundannat għall-piena tal-lavori forzati għal żmien għaxar xhur u għaxart ijiem.

Il-ko-akkużat li kien ġie kkundannat għall-piena tal-lavori forzati għal żmien seba' xhur u għoxrin ġurnata qagħad għall-imsemmija sentenza, iżda Ellul appella għall-piena li ngħatatlu. Hu ssottometta li din hi l-ewwel "conviction" tiegħu għall-serq u li kellu jingħata każ tal-valur tal-oġġetti misruqa.

Kuntrarjament għal dak li qal l-appellant, il-Qorti ma dehrilhiex li f'dan il-każ il-valur kien insinjifikanti. Skond il-Qorti, dak li kien determinanti għall-finijiet ta' dan l-appell kien pjuttost it-tendenza antisoċjali li fiha, minkejja ċ-chances li ngħatawlu, l-appellant baqa' jippersisti.

Hu veru li din kienet l-ewwel darba li weħel fuq serqa iżda m' hiex l-ewwel darba li ngieb quddiem il-Qorti ta' ġurisdizzjoni Kriminali.

Il-Qorti fiċ-ċirkostanzi ma ratx raġuni għax għandha takkolji l-appell u ma dehrilhiex li "probation order" kien fil-każ partikolari l-aktar miżura adegwata.

Għal dawn il-motivi l-Qorti ċaħdet l-appell.

Seduta tat-22 ta' Novembru, 1974.

No. 17 Reġina vs John Gatt

B'sentenza tal-Qorti Kriminali tal-Maestà Tagħha r-Reġina tad-

29 ta' Marzu, 1973, l-imsemmi Gatt ġie kkundannat għall-lavori forzati għal żmien tmien snin talli nstab ħati ta' serq kwalifikat bil-vjolenza, bil-mezz, bil-lok u bil-valur ta' somma ta' flus li teċċedi ħames mitt lira.

Il-każ kien ta' raid ippjanat fuq Bank l-Imġarr, li fih wieħed mill-kaxxiera tilef ħajtu billi rċeva tir t'arma tan-nar, u nsterqu £M2593. L-appellant ammetta li ħa parti fis-serq u li saq il-karozza misruqa li fiha sar ir-raid u li wara ġiet maħruqa, iżda ċaħad parteċipazzjoni fl-omiċidju.

L-appellant issottometta li l-appell tiegħu jirrigwarda l-ammissibilità tal-konfessjoni kontenuta f'kull wieħed miż-żewġ "statements" tal-appellant, u, in subordine, dak tal-"moral coercion" li taħtha ġie sottomess li huwa aġixxa.

Il-Qorti tosserva li fir-rikors ta' l-appell ma ngħad xejn dwar il-kwistjoni tal-"moral coercion"; intqal biss li din id-difiża mà ingħatatx fl-indirizz l-importanza li fiċ-ċirkostanzi kien jixirqilha. Kwantu għall-ammissjonijiet magħmula mill-appellant, dawn kienu tnejn, u saru b'intervall ta' żmien bejniethom: l-ewwel waħda saret bil-miktub quddiem żewġ spetturi u surġent tal-Pulizija u t-tieni waħda saret oralment quddiem il-Kummissarju tal-Pulizija. L-appellant issottometta li l-verdett tal-ġurati jaqbel ma' l-ipotesi li l-ewwel ammissjoni għandha tiġi skartata. Il-Qorti tal-Maestà Tagħha r-Reġina però, dehrilha li mhux bilfors illi l-ġurati waslu għall-verdett li għalih waslu fuq dak l-ipotesi; huwa fatt li l-ġurati apprezzaw il-provi kollha. L-appellant issottometta li kien hemm "inducements" li jinnewtralizzaw il-volontarjetà ta' l-ammissjoni billi l-Ispettur Calleja enfasiżża li "hemm ratal li nafu jrid jinqasam bejn erba'".

Kien hemm erba' kompliċi nvoluti.

Il-Qorti ta' l-Appell ikkomentat ukoll fuq it-tieni "statement" ta' l-appellant minħabba li jekk kien ammissibbli, allura kien biżżejjed biex fuqu seta' raġonevolment jistrieħ il-verdett tal-ġurati. Però, anke t-tieni "statement", li bih l-appellant ammetta l-parteċipazzjoni tiegħu fis-serq iżda mhux fil-qtil, ġie kwerelat kwantu għall-volontarjetà tiegħu mill-appellant fuq il-bażi li minħabba l-intervall qasir bejn iż-żewġ ammissjonijiet l-"inducement" kien għadu jseħħ. Barra minn dan, il-Kummissarju ta "caution" lill-appellant. L-intervall taż-żmien flimkien mal-"caution" kienu tali li iddissipaw l-effett ta' l-ewwel "inducement".

Il-Qorti, għalhekk, kienet tal-fehma li t-tieni "statement" jibqa' jgħodd u hekk iservi ta' bażi sufficjenti għall-verdett li ngħata.

Għall-motivi premessi l-Qorti ċaħdet l-appell.

Seduta tal-10 ta' Jannar, 1974.

No. 1. Il-Pulizija vs. Ġanni Muscat u Alfred Abela.

Il-Qorti rat is-sentenza tal-Qorti tal-Maġistrati tal-Pulizija Ġjudizzjarja tas-16 ta' April, 1973, li biha ddeċidiet billi sabet lill-imputati ħatja talli f'Tal-Balal, limiti tan-Naxxar, fil-5 ta' Diċembru, 1972, għall-ħabta tas-7.30p.m. serqu żewġ ngħaġiet u żewġt iħrief għad-dannu ta' Michael Attard mill-Għargħur, liema serq hu ikkwalifikat bil-mezz, valur, lok, ħin u bix-xorta tal-ħaġa misruqa; lil Muscat talli ukoll iddenunzja reat li kien jaf li ma sarx u bil-qerq ħoloq it-traċċi tar-reat b'mod li setgħu imbdew proċeduri kriminali sabiex jiżguraw li dak ir-reat kien sar. Il-Qorti kienet ikkundannat lil Muscat għall-piena tal-lavuri forzati għal tmintax-il-xahar u ordnat il-konfiska tat-truck nru. 18084 u ssospendietlu l-liċenzja tas-sewqan għall-perjodu ta' ħames snin, u lill-imputat Abela għall-piena ta' lavuri forzati għal żmien tmax-il-xahar.

L-appellant Muscat qal fost ħwejjeġ oħra fl-appell:

(1) li s-serq ma kienx laħaq ġie eżegwit imma kien laħaq biss l-istat ta' tentativ; (2) li r-reċidiva lanqas ma rriżultat; (3) li l-van tiegħu ma ġiex użat biex isir id-delitt u għalhekk ma kienx hemm lok għall-konfiska; (4) li l-piena ta' 18-il-xahar ħabs, unita mal-konfiska tat-truck u l-iskwalifika mis-sewqan għal ħames snin hija wisq sproporzjonata għall-każ li jinvolvi żewġ ngħaġiet. L-appellant Abela talab ukoll li jiġi dikjarat ħati ta' tentativ ta' serq aggravat bin-natura tal-ħaġa misruqa, u mhux ukoll bil-ħin.

Kwantu għall-ewwel punt li jirrigwarda s-serq, li d-difiża sostniet kien biss tentativ, irriżulta li x'ħin inqabdu minn Victor Attard u Nazzareno Camilleri, l-appellanti kienu laħqu ħarġu ż-żewġ nghaġiet u ż-żewġt iħrief mill-kamra fejn kienu, u infatti poġġewhom fi xkora u kienu laħqu mxew biċċa sew bihom, għalkemm ma laħqux barra l-għalqa ta' missier Attard. Meta l-imputati waslu ħdejn ir-ruxtellu tal-għalqa waqqufuhom Attard u Camilleri. Hawnhekk l-imputati telqu jiġru u ħallew in-nghaġiet u l-ħrief warajhom. Skond id-dottrina komunement aċċettata fil-ġurisprudenza lokali rigward id-definizzjoni tal-mument konsumativ tas-serq, l-ablizzjoni laħqet saret u għalhekk ir-reat ta' serq kien ġie kkunsmat u ma kienx hemm biss tentativ.

Dwar il-pieni inflitti, il-Qorti kkunsidrat il-piena ta' kull reat mingħajr rigward għar-reċidiva. L-artikoli 294(a) u (b), 22 u 19 tal-Kodiċi Kriminali jirregolaw il-każ preżenti. Skond l-art. 294(a) meta s-serq ikun aggravat b'waħda biss mill-kwalifiki tal-persuna,

post, ħin, u natura tal-ħaġa misruqa, il-piena hija ta' minn seba' xhur sa sentejn. Skond l-inċiż (b) ta' l-istess artikolu, meta jkun hemm żewġ kwalifiki, kif hemm f'dan il-każ, il-piena lanqas ma tista' tiġi limitata għall-minimum imma, skond l-art. 22, għandha dejjem tinkludi dwar it-terz tad-differenza bejn il-minimum u l-massimum, li f'dan il-każ jammonta għal ħames xhur u għoxrin ġurnata. Għalhekk il-Qorti dehrilha li l-piena ta' ħdax-il-xahar ħabs tkun suffiċjenti.

Rigward ir-rapport falz, wara li pponderat fuq l-art. 19(b), il-Qorti, biex l-akkużat igawdi dak il-beneficċju tal-konkors ta' pieni li l-liġi stess tridu jgawdi biex il-piena finali ma tirriżultax eċċessiva, dehrilha li kieku r-rapport falz kien l-uniku delitt li tiegħu l-appellant kien ħati kienet tagħtih il-piena ta' tlett xhur, u għalhekk żiedet it-terz, cioè xahar, mal-piena ta' ħdax-il-xahar.

Kwantu għar-reċidiva, il-Qorti ma dehrilhiex li għandha żżid il-piena. L-appellant Muscat kien osserva l-kundizzjoni fuqu imposta bis-sentenza tas-6 ta' Marzu, 1967, li ma jikkommettix reat ieħor għal żmien tmintax-il-xahar taħt l-art. 9 ta' l-Att Nru. XII tal-1957. Għalhekk is-sentenza relativa m'għandhiex titqies għall-finijiet tar-reċidiva.

Kwantu għall-appellant Abela, dan ġie kkundannat sena ħabs, serq taż-żewġ ngħaġiet u ħrief biss. Wara li rat li dan qatt ma ikkommetta ebda delitt preċedentement, u anke li hu kien ikkonfessa kollox lill-Pulizija, il-Qorti biddlet il-piena ta' sena ħabs f'liberazzjoni bil-kundizzjoni li ma jagħmilx reat ieħor għal żmien sentejn skond l-art. 9 ta' l-Att Nru. XII tal-1957.

Seduta tal-10 ta' Jannar, 1974.

No. 2. Il-Pulizija vs. Leonardu Grech

B'sentenza tal-Qorti tal-Maġistrati ta' Malta tas-7 ta' Frar, 1973, l-imsemmi Leonardu Grech instab ħati tar-riċettazzjoni ta' "casette-recorder" u ta' ħmistax-il-"tape" tal-valur komplessiv ta' £M27.16 u kkundannaru għall-piena bħala reċidiv f'delitt ta' tlett xhur ħabs.

Fuq talba tal-Qorti, il-Probation Officer ta rapport soċjali dwar l-appellant u qal li mhux qalbu maqtugħa li issa l-appellant, li kellu trobbija mhux mill-aktar fortunati, m'għadux jaħdem fl-ambjent tal-ħwienet tax-xorb, u qiegħed f'impjieg regolari, ikun jista' jirriforma.

Mill-fedina penali ta' Grech irriżulta li l-appellant kien ingħata liberazzjoni kundizzjonali taħt l-art. 9 ta' l-Att Nru. XII tal-1957 u li huwa kien għadda l-perjodu tal-kundizzjoni ta' sitt xhur mingħajr

ma kisirha. F'Marzu ta' l-1972 huwa kien reġa' ngħata l-liberazzjoni kundizzjonali għal sempliċi kontravvenzjoni tat-traffiku. Il-Qorti rat li f'Ġunju, tal-1972, l-appellant kien ġie kkundannat iħallas £M10 multa fuq akkuża ta' pussess ta' xi "contraceptives" mhux sdazjati.

Wara li l-Qorti rat li l-appellant ta l-kunsens tiegħu għar-restituzzjoni tal-"casette" u tat-"tapes," u spjegat lill-appellant l-opportunita li kienet sejra tagħtih b'xewqa li hu jirrifoma ruħu u ma jmurx il-ħabs, u li dan kellu jservih ta' ġid mingħajr ħsara għall-ġustizzja, laqgħet l-appell fuq il-piena u flok ma kkundannatu għall-piena, ordnat li jitqiegħed taħt probation għal żmien sentejn.

Seduta tas-17 ta' Jannar, 1974.

No. 3. Il-Pulizija vs. Louis, Grazio, Emanuel Agius u Emanuel Bugeja.

B'sentenza tat-30 ta' Marzu, 1973, mogħtija mill-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja ta' Malta l-erba' appellanti ġew dikjarati ħatjin kif sejjer jingħad:

(a) It-tlett aħwa Agius: (i) tad-delitt ta' danneġġament volontarju fil-propjeta ta' Joseph Coleiro u Salvu Scicluna fil-valur ta' £M57.83 (art. 339(b) tal-Kod. Krim); (ii) tal-kontravvenzjoni li volontarjament kisru l-bonordni u l-kwiet tal-pubbliku (art. 352(bb)); u (iii) tal-kontravvenzjoni ta' xħit t'oġġetti iebsa u insulti (art. 353(1)(b) u (e));

(b) L-appellant Bugeja ta' l-istess tlett reati b'dan li fil-każ tiegħu l-ewwel reat kien jinvolvi ammont ta' £M16 biss u għalhekk kien jaqa' taħt il-para. (c) ta' l-art. 339 u kollha bl-attenwanti li kienu taħt l-eta ta' 18 il-sena (art. 38).

It-tlett appellanti Agius ġew ikkundannati għal sitt xhur priġunerija u għall-ħlas ta' £M2 kull wieħed għall-ispejjeż ta' perizja. L-appellant Bugeja ġie kkundannat għal xahrejn priġunerija u għall-ħlas ta' £M1.84 għall-perizja.

L-erba' appellaw mis-sentenza u talbu li jiġu liberati minn kull imputazzjoni u piena. Il-motivi t'aggravju mressqa mill-appellanti kienu dawn:

1. Li l-ewwel Qorti tat interpretazzjoni ħażina tal-liġi meta skartat id-difiża ta' l-istat ta' ubbrijakezza (sokor) minnhom sollevata fuq il-bażi li x-xorb li ħadu ma kienx ġie lilhom somministrat b' għemil doluż jew negliġenti ta' ħaddieħor u b'hekk rabtet id-dispożizzjoni ta' l-art. 35(4) tal-Kodiċi li huma ssottomettew għandu applikazzjoni awtonoma, ma' dik tal-paragrafu (a) tat-tieni sub-artikolu ta' dak l-artikolu li mhux biss jirrikjedi li x-xorb ikun ingħata

minn terzi persuni imma jesiġi wkoll element ieħor, cioè li l-akkużat ikun proprju fi stat, minħabba xi xorb, li ma jkunx kapaċi li jifhem li l-att (jew ommissjoni) huwa ħaġa ħażina jew li ma jkunx jaf x'inhu qed jagħmel, mentri l-art. 35(4) irid biss li l-istat ta' sokor jiġi dejjem meħud in konsiderazzjoni biex il-Qorti tara jekk l-akkużat kienx ifforma l-intenzjoni meħtieġa, ġenerika jew speċifika, li mingħajrha ma kienx ikun ħati ta' reat;

2. Li, fil-każ tat-tlett aħwa Agius ma kienx korrett li jiġu agglobati flimkien id-deni tant ta' Scicluna kemm ta' Coleiro fil-konfront tagħhom;

3. Li, fil-każ ta' Bugeja hu jiċħad li għamel xi ħsara;

4. Li, fi kwalunkwe każ il-piena imposta hi wisq ħarxa fiċ-ċirkostanzi kollha tal-każ u speċjalment ta' l-eta u kondotta preċedenti tagħhom. Barra minn dan, l-erba' appellanti, bla preġudizzju taddifiża tagħhom, ħallsu d-danni kollha kaġunati. Fuq kollox, missitt imputati l-oħra, ħamsa ġew liberati minn kollox minħabba nuqqas ta' provi, b'hekk l-appellanti ġew akkollati bid-deni kollha.

Il-każ inqala' nhar il-festa ta' Ħaż-Żabbar f'ħanut tax-xorb, is-"Silver Dollar". Diversi xhieda qalu li raw lit-tlett aħwa jgħollu is-siġġijiet u jgarawhom. Għalhekk il-Qorti setgħet raġonevolment tiġbed il-konklużżjoni li t-tlett aħwa, peress li lkoll bdew jitfgħu flimkien, u b'hekk irrendew ruħhom korrei fil-mument konsumativ tad-delitt tad-danneġġament, għandhom jirrispondu flimkien għallħsara li saret. Il-Qorti naqset l-ammontar tad-danni kawżati millaħwa Agius għal bejn £M10 u £M50, tali jiġifieri li flok ma jaqgħu taħt il-paragrafu (b) ta' l-Art. 339, jaqgħu taħt il-paragrafu (c), komportanti għalhekk reat inferjuri u piena ta' massimu ta' sitt xhur bla minimum, minflok piena ta' minn ħames xhur sa sena. Il-Qorti qablet li s-sub-art.(4) tal-art. 35 m'għandu ebda rabta massub-art.(2). Ir-regola li x-xorb li bniedem ikun ħa minn rajh, anki mhux mogħti lilu b'ħażen jew traskuraġni minn ħaddieħor, anki jekk ma jwasslux għall-inkapaċita li jifhem u li jagixxi volontarjament, basta s'intendi ma jkunx ħadu apposta bħala "Dutch courage" biex jagħmel id-delitt, għandu dejjem jiġi meħud in konsiderazzjoni dwar l-element intenzjonali, ġenerali jew speċifiku, meħtieġ għaddelitt. (Ara s-sentenza tal-Qorti tal-Appell mill-ġuri Reġina vs. Alfred Krauss (12 ta' Diċembru, 1973)).

L-ewwel Qorti qalet fis-sentenza appellata li ma rriżultax grad suffiċjenti t'intossikazzjoni li jeskludi l-intenzjoni. Il-Qorti tal-Appell irriteniet li din il-formula ma kenitx preċiża: dak li għandu jiġi eskluż m'huwiex l-intenzjoni imma d-dubju raġonevoli fuq l-intenzjoni, għax, fis-sistema legali, d-dmir tal-Prosekuzzjoni mhux li tipprova l-mera probabilita tal-ħtija imma li teskludi l-ipotesi,

il-possibilita, ta' l-innoċenza, sew dwar l-element materjali kemm dak intenzjonali. Il-Qorti sostniet li ġie ppruvat suffiċjentement li l-erba' appellanti kienu kapaċi biżżejjed jiffurmaw l-intenzjoni li jagħmlu l-ħsara li indubbjament għamlu.

Il-Qorti ħadet in konsiderazzjoni li ż-żewġ danneġġjati Scicluna u Coleiro rrinunzjaw formalment għall-kwerela wara li l-appellanti ħallsu d-danni. Bl-aġir tal-appellanti ġew milquta żewġ dispożizzjonijiet tal-liġi: waħda li tirrikjedi l-kwerela (cioè d-danneġġament) u l-oħra, cioè l-kontravvenzjoni ta' l-istorbju, prosegwibbli "ex officio", din ta' laħħar tibqa' punibbli għal rasha. Għalhekk waqt li d-disturb magħmul f'post pubbliku baqgħet punibbli, ir-reat prinċipali ta' danneġġament volontarju jibqa' rinunzjabbli mill-persuni leżi u l-azzjoni penali relativa ġiet konsegwentement estinta. L-aħwa Agius jibqgħu punibbli tal-kontravvenzjoni taħt l-art. 353(1)(b) dik cioè ta' min iwaddab oġġetti iebsin kontra xi persuni.

Il-Qorti ddisponiet mill-appell ta' l-erba' appellanti billi kwantu għar-reat ta' danni volontarji, in vista tal-ħlas u rinunzja relativa ta' l-interessati f'dak l-istadju ddikjarat l-azzjoni kriminali estinta u minnu ħelset lill-appellanti. Però, il-Qorti rrespinġiet l-appell ta' l-erba' appellanti dwar il-kontravvenzjoni tad-disturb tal-bon ordni taħt l-art. 352(bb), u rrespinġiet ukoll l-appell tat-tlett appellanti aħwa Agius dwar il-kontravvenzjoni taħt l-art. 353(1)(b), u waqt li in vista tal-premess tneħħiet il-piena tal-prigunerija imposta fis-sentenza appellata, ikkundannat lit-tlett appellanti Agius għall-ammenda ta' £M10 fuq kull waħda miż-żewġ kontravvenzjonijiet li hu kiser, u lill-appellant Bugeja għall-ammenda ta' £M8.

Seduta tas-27 ta' Ġunju, 1974.

No. 4. Il-Pulizija vs. Charlie Debattista.

B'sentenza tat-2 ta' Jannar, 1974, il-Qorti tal-Maġistrati tal-Pulizija Ġudizzjarja ta' Malta kkundannat lill-imsemmi "Charlie" Debattista £M20 multa wara li nstab ħati talli fit-2 t'April, 1973, f'Birżebbuġa Road, Tarxien naqas li jassigura li l-bini ta' l-arkati ikun taħt il-kontroll u superviżjoni ta' bennej, li jassigura li t-tavla tkun tal-wisa' u t-tul meħtieġ, li jipprovdi ripar ta' saħħa adegwata madwar ix-xogħlijiet mnejn wieħed jista' jaqa', u li javża bilmiktub lid-Direttur tax-Xogħol u Emigrazzjoni li ma ħalliex lil żewġ ħaddiema għal aktar minn tlett ijiem milli jaqilgħu il-paga massima mix-xogħol li mhux impjegati fih.

"Charlie" Debattista appella mill-imsemmija sentenza u talab li stante li hu jismu "Carmelo" u mhux "Charlie", jiġi dikjarat li dik is-sentenza ma tirrigwardax lilu u m'għandu jkollha ebda effett fil-

konfront tiegħu.

Minn diversi provi rriżulta li tassew li l-bniedem li deher fiżikament quddiem il-Qorti ta' l-Appell Kriminali bħala l-appellant u li kien ġie kkundannat mill-ewwel Qorti bl-isem ta' "Charlie" Debattista, jismu attwalment "Carmelo" u mhux "Charlie" Debattista. Hu minnu wkoll li l-isem "Carmelo" huwa distint għal kollox minn l-isem "Charles" u mill-veżżeġġativ tiegħu "Charlie". Iżda l-prosekuzzjoni ssottomettiet li peress li l-appellant ma qanqalx kwistjoni fuq ismu fl-ewwel istanza, hu aċċetta li l-proceduri jimxu bl-isem li bih ġie mħarrek u ma jistax jissolleva eċċezzjonijiet firrigward f'dan l-istadju.

Il-Qorti qablet ma' dak li ġie ritenut mill-ġurisprudenza li l-isem ta' persuna akkużata b'reat ma jistax ikun ħlief dak li realment jappartjeni lilha *u bħala materja li tinteressa l-ordni pubbliku ta' pajjiżna* (sottolinear tal-Qorti) ma jistax jiddependi mill-inerzja jew mill-akkwjexxenza tal-privat.

(Ara Appelli Kriminali (1) *Il-Pulizija vs. Raymond Cassar* (Cassar Torreggiani) tad-29/9/1956; (2) *Il-Pulizija vs. Francis Blancho,* (Blanco) ta' l-4/5/1957; (3) *Il-Pulizija vs. Robert Pace Bordin* (Bardon) tat-28/2/1959; (4) *Il-Pulizija vs. Orazio Farrugia* (Grazio) tal-21/11/1959; (5) *Il-Pulizija vs. Charles Bartolo* (Carmelo) tal-25/11/1972 u (6) *Il-Pulizija vs. Charles Carmel Mizzi* (Carmel) tad-9/12/1972).

Għalkemm fl-ewwel ħames każijiet ċitati r-rikors ta' l-appell kien ġie dikjarat irritu u null peress li kien ġie ppreżentat *fl-isem korrett* ta' l-imputat, li ġie ritenut persuna differenti mill-imputat, fl-ewwel erba' każijiet il-Qorti ta' l-Appell ħasbet biex tiddikjara li s-sentenza appellata ma setgħetx tiġi esegwita kontra l-persuna li fl-isem korrett tagħha, dak ir-rikors kien ġie nullament preżentat.

Però fil-każ li l-Qorti kienet qed tittratta, peress li l-avukat difensur ta' "Charlie" Debattista qagħad attent li ma jaqax fid-difett ta' l-irritwalità u ppreżenta r-rikors fl-istess isem kif il-klijent tiegħu kien ġie mħarrek, ir-rikors (a differenza mill-ewwel ħames każijiet fuq ċitati) ma setax jiġi dikjarat null. Jibqa' però konstatat bħala fatt li s-sentenza ngħatat kontra persuna fiżika li jisimha Carmelo u mhux Charlie, u żgur mhux il-każ skond il-ġurisprudenza ċitata li tingħata korrezzjoni ta' l-isem f'dan l-istadju, għax korrezzjoni f'din l-istanza ma tistax issir (ara speċjalment l-appell *Robert Pace Bordin*).

Għal dawn il-motivi l-Qorti tipprovdi billi tiddikjara li s-sentenza appellata tirrigwarda lil "Charlie" Debattista u ma tolqotx lil *Carmelo* Debattista u m'għandha ebda effett legali kontra dan.

eduta ta' l-14 ta' Novembru, 1974.

o. 5. Il-Pulizija vs. Emanuel Camilleri.

B'sentenza tal-Qorti tal-Maġistrati tal-Pulizija Ġjudizzjarja tat-0 ta' Lulju, 1973, Emanuel Camilleri nstab ħati li fix-xhur qabel ulju, f'Bormla ħalla lil martu Rose, u lill-minuri uliedu fil-bżonn inħabba ħajja bla qies jew nuqqas ta' kont għax-xogħol. Huwa ie kkundannat għal tnax-il-ġurnata priġunerija.

Irriżulta li l-appellant ma mantniex lill-martu u lit-tlett uliedu ħalkemm kellu xogħol regolari t-Tarżna u paga ta' xi £M60 jew M70 kull ħmistax. L-appellant qal li hu ma mantniex lill-martu inħabba l-kondotta tagħha.

Din hi żregolatezza fis-sens ta' l-art. 352(x) tal-Kodiċi Krimina-, almenu rigward it-tfal, anki apparti mill-kapriċċi li mart l-appel-ant qalet li għandu, għax il-kontravvenzjoni in kwistjoni hi waħda ontra l-ordni pubbliku li trid li l-kap tal-familja jmantni lill-martu lill-uliedu meta jkollu l-mezzi; u jekk ikollu l-mezzi u ma jieħux siebhom, din iċ-ċirkostanza tikkostitwixxi ħajja bla qies. Il-Qorti kkwotat *Il-Pulizija vs. Giuseppi Briffa* tas-27 t'Ottubru, 1928 XXVII, 2, 667) u rriferiet għall-appelli kriminali segwenti: *Pulizi-a vs. G. Zammit,* 15 t'Ottubru, 1938; *Pulizija vs. M. Spiteri,* 14 ta' rar, 1959 (XLIII, 4, 949).

Peress li l-appellant qal li jidhirlu li m'għandux imantni lill-martu minħabba l-kondotta tagħha, għalkemm il-Qorti ma ddeċidiet tejn fuq dan u ħalliet din id-deċiżżjoni għas-Sedi Ċivili, u għal-temm il-manteniment lill-mara hu dovut għall-vinkolu matrimonja-i, il-Qorti avżat lill-appellant li jekk jerġa' jidher quddiemha u ma kunx ħa passi ċivilment kontra martu, hi ma tkunx iktar disposta iskużah. Ir-raġuni mogħtija minn Camilleri kienet li hi telqet mid-lar bla raġuni tajba, iżda dan żgur li ma japplikax għat-tfal, vittmi nnoċenti tal-ġlied tal-ġenituri.

Il-Qorti laqgħet l-appell mill-piena in kwantu jirrigwarda l-impu-azzjoni riferibilment għall-mara, iżda mhux hekk dwar it-tfal.

Il-Qorti rriformat is-sentenza f'għoxrin lira ammenda.

INDIĊIJIET TA' L-APPELLI ĊIVILI U KUMMERĊJALI, 1974

(ippublikat f'vol. VI, Id-Dritt)

INDIĊI TA' L-ISMIJIET

INDIĊI TAL-MATERJI

INDIĊI TAD-DISPOŻIZZJONIJIET TAL-LIĠI ĊITATI

KAPITLU	ARTIKLU	KAWZA NRU.
7		94
15	961	62
23	360	23
	362	38
	363	38
	446(3)	38
	455	38

		457	38
		471	38
		472	38
		484	49
		506	49
		540	51
		608	38
		1070	2
		1089	40
		1173(2)	152
		1266	145
		1369	106
		2254(a)	12
	68	57	86
	70	32	115
	109	46(1)(2)	44
	117	31	22
Ordinanza XIII ta' 1-1962		45	127

INDIĊIJIET

ta' l-Appelli Superjuri

(Kumpilati minn Tonio Azzopardi)

INDIĊI TA' L-ISMIJIET

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INDIĊIJIET TA' L-APPELLI KRIMINALI, 1974

INDIĊI TAL-MATERJI

INDIĊI TAD-DISPOŻIZZJONIJIET TAL-LIĠI ĊITATI

KAPITLU	ARTIKLU	APPELL NRU.
12	43(d)(e)	3
	94	5
	95	5
	216(d)	3
	230	13
	232	13
	233	13
	234(2)	13
	241(c)	10,13
	275(b)	3
	322	4
Att Nru. XII ta' l-1957	9	6, 8

INDIĊIJIET

ta' l-Appelli Inferjuri

(Kumpilati minn Tonio Azzopardi)

INDIĊI TA' L-ISMIJIET

DATA	ISMIJIET	NRU.
10.1.1974	Il-Pulizija vs. Ganni Muscat u Alfred Abela	1
10.1.1974	Il-Pulizija vs. Leonardu Grech	2
17.1.1974	Il-Pulizija vs. Louis, Grazio, Emanuel Agius u Emanuel Bugeja	3
27.6.1974	Il-Pulizija vs. Charlie Debattista	4
14.11.1974	Il-Pulizija vs. Emanuel Camilleri	5

INDIĊI TAL-MATERJI

MATERJA	APPELL NRU.
AGGRAVANTI f'serq ħin, lok, mezz, xorta tal-ħaġa misruqa	1
AKKUŻAT li ħalla lil martu u t-tfal minuri fil-bżonn minħabba ħajja bla qies jew nuqqas ta' kont fix-xogħol	5

INDIĊI TAD-DISPOŻIZZJONIJIET TAL-LIĠI ĊITATI

KAPITLU	ARTIKLU	APPELL NRU.
12	19	1
	22	1
	35(2)(a)	3
	35(4)	3
	38	3
	294(a)(b)	1
	339(b)(c)	3
	352(bb)	3
	352(x)	5
	353(1)(b) u (e)	3
Att Nru. XII ta' l-1957	9	2

We would like to thank Anthony Mizzi, Maria Cordina, Marthese Pace, Susan Sant Cassia, Maryann Degaetano and Maryann Buhagiar for their help in the publication of this issue.