

**FEATURE:**

**COMMENCEMENT ADDRESS OF  
JUSTICE VICENTE V. MENDOZA\***

**INTRODUCTION**

Dean Carlota, my colleagues in the faculty, dear parents and graduates, my friends:

I confess to being troubled after accepting your invitation to be your guest speaker on this occasion. Not that I did not appreciate the honor implied in your invitation. But I did a cost-benefit analysis, and I worried whether the time spent in preparing a speech would be justified by its reception. I realized that on this occasion, the thoughts of the graduates are on their parents, their girlfriends, and the challenge of the bar exams. What chance would a retired justice like me have against such competitors? However, I derived some comfort from the thought that countless self-appointed moralists like me all over the country would be rising these days on countless platforms to give solicited and unsolicited counsel, and perhaps they would be as uncomfortable and as troubled as I was. On balance, I thought however, that I could reciprocate your kindness in lending me your ears by making my speech short yet long enough, like a bikini, to let me cover the principal point of my message. As you will presently see, I want to illustrate the meaning of a great statement. No, it's not my statement, but that of a great poet, who was also a great lawyer: Wallace Stevens.

I greatly appreciate the opportunity to speak to you today as you conclude your formal study of the law and prepare for the world outside in which you will be put on your mettle. As one who has been there in all years of my professional life, I believe I can tell you something about the constitutional order in the maintenance of which all of us have a vital stake. I want to tell you that the constitutional order is not something that will not break or that can hold anything because it has an unlimited capacity. It is such a fragile and delicate thing that is easy to break but hard to keep.

Twelve years ago, I had an opportunity to tell the graduating class of 1994 of this great college that freedom isn't freedom till it is exercised, as I challenged them to use their freedom in order to deserve them.<sup>1</sup> For freedom can be lost through anarchy

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\* Commencement Address by Justice Vicente V. Mendoza, University of the Philippines College of Law Graduation Ceremonies, Quezon City, April 25, 2006.

<sup>1</sup> Vicente V. Mendoza *The Responsibilities of Freedom* (Graduation exercises of the University of the Philippines College of Law, April 1994).

as through atrophy or by default. Today I should like to elaborate on this theme and say that there can be no freedom without order, just as there can be no order without freedom. Freedom is demanded to maintain the legal order, while order is required for freedom to survive. Freedom and order are not antithetical terms; on the contrary, they are mutually reinforcing. As Wallace Stevens said in his poem, "Connoisseur of Chaos," they are in fact one:

- A. A violent order is a disorder; and
- B. A great disorder is an order. These two things are one. (Pages of illustrations)

Indeed, "these two things are one," but the truth of this statement needs "pages of illustrations" to be understood. I have, therefore, made some effort to write some "pages of illustrations" as my message to you on this occasion.

A regime maintained by force is a violent order, which is actually a disorder, while an assembly of the University Council, animatedly discussing the pros and cons of an issue, the cacophonous voices of the disputants filling even the rafters of the University Theater and disturbing the tranquility that is *Diliman*, is a great disorder, nay even an upheaval. Still, it is an order, no less than the great noise of the marketplace is an order. Indeed, the constitutional order rests on a delicate balance between liberty and authority, very much like the order of the universe as described in the following lines from Shakespeare's *Troilus and Cressida*:

The heavens themselves, this planet, and tis center  
Observe degree, priority, and place  
Insisture, course, proportion, season, form  
Office, and custom, in all line of order...

[When] degree is shaken,  
Which is the ladder of all high designs,  
The enterprise is sick!...  
Take but degree, untune that string,  
And hark what discord follows

Observe how the physical universe behaves. In the law of physics, for every action there is an equal and counter reaction. Now, the trinity of powers in our constitutional order operates in the same way. In the process of making laws, for instance, the three powers of government are governed by the principle of checks and balances. Congress proposes a law by passing a bill and submitting it to the President. The President either approves the bill and signs it into law, or vetoes it and returns it to Congress. Congress may override the President's veto, in which case the bill becomes a law without the President's signature. In any event, if the bill becomes a law, it becomes the duty of the President to execute it, unless the law is declared unconstitutional by the courts, particularly the Supreme Court. The Supreme Court's interpretation of the Constitution is binding on the other departments of the government, but its interpretation of a statute is subject to legislative change. As in the physical universe, the

constellations in the constitutional order are thus in constant motion, constantly interacting with each other. This is their normal operation, this is order.

But what we witness today is the use of excessive force and counterforce that shakes the constitutional order to its very foundations. What is Executive Order 464 but the excessive reaction of the Executive Department to what it perceived to be abuses of legislative investigations allegedly made in aid of legislation. Aggrandizement by one department of the powers of the other departments invites retaliation by the latter. The fact is that in the case involving E.O. 464, both the majority and the opposition were guilty of employing more force and counterforce than the constitutional order would allow.

And now after the decision of the Supreme Court affirming the power of legislative investigations to compel the attendance of executive officials, while upholding the executive privilege to the confidentiality of official information,<sup>2</sup> the ink has hardly dried but already the parties are girding for a great showdown in regard to information that the Senate greatly desires by the Executive seems unwilling to share. For their intransigence and their partisanship, one is tempted to chide the parties: "A plague on both your houses, you Montagues and Capulets of Philippine politics!" As the *Philippine Star* issue of April 21, 2006 observed in its editorial entitled "Restraining Power:"

Executive Order 464 was issued last year amid efforts by the opposition to kick out President Arroyo over allegations of rigging the vote in the May 2004 elections. Malacanang, citing the separation of powers, griped that lawmakers, in grilling members of the executive branch, were engaged in political inquisitions rather than legitimate inquiries in aid of legislation. Lawmakers, for their part, accused Malacanang of gagging executive officials and suppressing the truth.

To a certain extent, both sides have a point. Officials who have been barred in recent months from facing congressional investigations were mostly those who were expected to shed light on scandals hounding the administration, including allegations of diverting fertilizer funds to the President's war chest during the 2004 campaign. Two military officers face sanctions for testifying on allegations of poll fraud in Lanao, in defiance of a direct order from the commander in chief.

Malacanang, however, also has a point in complaining about the abuse of legislative power for political ends. The nation is behind the search for truth, but it is also sick of politicians who use the session halls of Congress to persecute opponents or simply to gain media mileage.

Yesterday, the Supreme Court, acting on petitions in connection with EO 464, upheld the legislature's power to summon executive officials to congressional hearings in aid of legislation. No executive officials can invoke a standing EO to reject a congressional summons.

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<sup>2</sup> Senate of the Philippines v. Ermita, G.R. Nos. 169777, 169659, 169667, 169834 & 171246 (2006).

But the court also upheld the President's power to invoke executive privilege in barring any member of the executive branch, including military and police officers, from facing any congressional probe. The court also cited constitutional provisions governing the appearance of executive officials in congressional hearings.

This ruling upholds the separation of powers but preserves the system of checks and balances between the legislative and executive branches. That system is supposed to work to advance national interest. What we have seen in recent months is the abuse of the system by both branches to advance personal political agendas. The Supreme Court ruling should be seen by both the legislative and executive branches as a reminder to use powers and privileges with restraint.<sup>3</sup>

Indeed, the constitutional order cannot abide the tit for tat of petty minds, the thoughtlessness and mindlessness of those who would stretch the law to the breaking point to suit purely personal ends, the sordid lack of principle of those who would press a partisan advantage to the bitter end. It cannot survive in an atmosphere of suspicion and distrust, of hate and anger, of apathy and greed. As any moral contrivance, it cannot stand the shocks and abuses to which it is often subjected.

What the constitutional order requires is tolerance, good will, good faith, and above all, moderation, both in the exercise of rights and in the use of power. Instead of constantly trying to find how far rights can go, find ways by which the foundations of the legal order can be strengthened. Instead of looking for loopholes in its fabric, plug them before they are exploited by the unscrupulous. Amend the laws if necessary to prevent their violations, not after they have been violated or circumvented, search for ways of enforcing them, and try to fashion legal doctrines to ensure the sound growth and development of the laws.

You might ask, of what use are the laws if they are that fragile and delicate? The laws ought to protect us and not us the laws. You might even add that if men were angels, we would not need laws. Laws are bad for men.

The fact is that we are neither angels nor bad men. Our situation in fact falls between. Perhaps if there were more angels than bad men, we would need no law, no legal order, no Constitution to save us from ourselves, just as if there were rascals than good men, laws would be required for every activity of national life. As Learned Hand put it, a society which is so riven that the spirit of moderation is gone, no court, no law, no Constitution can save; a society where that spirit flourishes, no court, no law, no Constitution need save.<sup>4</sup> Indeed it has been said that we will be truly civilized after we have reached the point at which the Supreme Court is no longer front-page news. Unfortunately we have not reached that point and will probably not reach it in the next millennium. Meantime, we have to content ourselves with the fact that our society is

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<sup>3</sup> Philippine Star Editorial, Friday, April 21, 2006.

<sup>4</sup> Learned Hand, *The Contribution of an Independent Judiciary*, in *The Spirit of Liberty* 118, 125 (Irving Dilliard, ed. 1958).

neither so craven that it is beyond saving nor so healthy that it need not be saved. So we need a legal order.

In sum, regard the constitutional order and it will work to the public interest. Mistreat it or, worse, abuse it, and it will go awry. As Benjamin Franklin emerged from the Philadelphia Convention, which framed the U.S. Constitution in 1787, he was asked what it was that they had adopted. His reply was: "A republic—if you can keep it."

Keeping the constitutional order requires nurturing it. We fail in that duty when, as announced by the Executive, as a matter of policy, all death sentences will be commuted, which obviously cannot be done, because the power to grant executive clemencies is to be exercised on a case to case basis, not wholesale, with due regard to the merits of a case, and only if there is failure in the system. We also fail in that duty when, after criticizing this action as a mere political move, some members of Congress also praise and join the popular movement to seek the repeal of the death penalty law. One wonders why they did not do this before the hue and cry against the announced policy to grant wholesale commutation of the death sentences, when their function is precisely to review the laws. After all the death penalty is in the statute book because of an act of Congress, Republic Act 7659.

I have likened the constitutional order to the natural order, for so it is. The latter can no more be disturbed than the former without causing calamities and catastrophes. If nature is abused and degraded, the seas will rage, the winds will howl, and the earth will quake. If the constitutional order is shaken, tanks will roll on the streets, angry and strident voices will rend the air, strife and chaos will follow. The mission of law graduates is to build shields against tyranny and against chaos by translating into enduring institutions the ideals of our society stated in the preamble of the Constitution: the ideals of truth, justice, freedom, love, equality, and peace.

This is my message to you today, dear graduates, to illustrate the truth of the statement that:

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B. A great disorder is an order.

These two things are one.

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