PHILIPPINE LAW JOURNAL

Vol. XVII OCTOBER, 1937 No. 4

UNFETTERING THE JUDICIARY

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The question involved in the stand of President Quezon on the judiciary is as old as humanity itself. It is the eternal conflict between form and substances, between the letter and the spirit, between technicality and justice. There come to one's mind the most stinging attacks of the Lord Jesus against the Pharisees for insisting on the outward forms of the law while they ignored mercy and faith and righteousness. Then there is Saint Paul's advice that one should follow not the letter but the spirit of the Scriptures, "for the letter killeth, but the spirit giveth life." Shakespeare in his works wielded his trenchant satire upon the technicalities of the law, as when he spoke sarcastically of the "nice, sharp quillets of the law." There is, therefore, in the present controversy started by the utterances of President Quezon something of the age-old struggle which has divided men into two classes—those who have a strict and narrow view of things and those who have a liberal and broad perspective. And this conflict will endure so long as there are these two types of mentality.

In this article, the writer wishes to offer as a humble contribution to the current discussion the following proposition: That President Quezon's attitude, instead of weakening, will strengthen the judiciary, and moreover, it will enrich the Philippine legal system. When the President of the Philippines insists on natural justice as against legal technicalities, he thereby releases the judiciary from the fetters of strict law. Thus, true justice is dispensed by our courts which rise above being mere agents and minions of the legislature. Moreover, our courts are in this manner placed in a better position to protect the citizen against any harsh and unjust enforcement of the law by executive officials of the government. By giving life to the law because of a sweeping outlook, our courts will in very truth become a co-equal branch of the government, achieving their independence both from the legislative and the executive departments.

Judge-Made Law.

It is known that there are three sources of the law: (1) positive law, emanating from the legislature; (2) customary law, emanating from the people; and (3) judge-made law, emanating from the courts. Judicial decisions are by far the best and most desirable source of the law, because the principles evolved by the judiciary grow out of actual controversies, and in each case the sense of justice deeply felt by the judge when he is faced by a real conflict between the claims of the parties is a solid guaranty of a just solution. The spark of conflicting interests kindles the conscience of the judge. On the other hand, customs formed by the lapse of time become obsolete because of changing social conditions. Besides, custom is insignificant in the Philippines as a source of law, because the Civil Code states that custom is followed only when there is no law applicable. Legislation is often a mere abstraction or speculative process in the mind of the drafters of the law; and too often laws are not carefully pondered upon in the midst of popular excitement, or because of the compelling pressure of legislative business.

It is, of course, true that theoretically the courts merely interpret the law. But in the exercise of that function, the judiciary often actually legislates whenever the statute is susceptible of more than one meaning, or is conflicting, or is silent. In fact, the Spanish Civil Code holds responsible any judge who "refuses to render judgment on the pretext of the silence, obscurity or insufficiency of the laws" (Art. 6). In all cases where the courts settle a doubtful point of law, they virtually strike a new juridical path by declaring a new rule of law and thus perform the sovereign legislative power, even though they may disavow such task or authority. As Mr. Justice Holmes has said: "When there is doubt, the simple test of logic does not suffice, and, even if it is disguised and unconscious, the judges are called on to exercise the sovereign prerogative of choice."

General Principles of Law.

How, then, should this judicial power of announcing a new principle in case of doubt be employed? The Spanish Civil Code provides that the court must first apply the custom of the place, and "in default thereof, the general principles of law" (Art. 6). According to Sanchez Roman, the "general principles of law" referred to in this provision include natural law,

the science of law, and the opinions of jurists. Under the Spanish regime, the phrase "general principles of law" is a rich and abundant source of judicial pronouncement, for according to Valverde (cited approvingly by Sanchez Roman) these terms signify "principles of justice above the contingency and variableness of facts" as well as axioms which "make up a higher law than legislation." The words "general principles of law" have acquired a still larger meaning in the Philippines since American occupation because in addition to the scope just mentioned, the phrase has brought in judicial precedents which are given great weight and authority, in accordance with the Anglo-American practice.

It is thus that the attempt on the part of some members of the legal profession, to confine judicial determination within the narrow, suffocating walls of literal or technical interpretation, when these tribunals should enjoy the free and life-giving atmosphere of natural justice, results in the impairment and the weakening of the judiciary, rather than in the cementing of its independence. How much more conducive it would be to the dignity and the prestige of the judiciary if the bar openly came out in favor of the prerogative of the courts to look for underlying principles and apply with considered wisdom the spirit of the law, instead of advocating that judges should merely dole out carbon copies of statutes, thus making the judiciary subservient to the legislature and servile to established precedent! Indeed, Salmond in his "Jurisprudence" (p. 203), has said: "In deciding questions on principle, the courts are in reality searching out the rules and requirements of natural justice and public policy. The measure of the prevalence of such ethical over purely technical considerations is the measure in which case law develops into a rational and tolerable system as opposed to an unreasoned product of authority and routine."

Enriching Our Legal System.

And this must necessarily be so, because legislation, no matter how detailed, can not foresee all possible cases, and because the language used is often, too often, ambiguous. True, the established rule is that where the language of a statute is clear, no interpretation is needed but there are innumerable

cases where the wording is vague or doubtful, and in others where the language is fairly clear, some lawyers try to befuddle its meaning. Hence, Shakespeare rightfully complains:

> "In law, what plea so tainted and corrupt
> But, being seasoned with a gracious voice,
> Obscures the show of evil?"

Hence, there are thousands upon thousands of volumes of reports of decisions, construing and expounding positive law! No wiser statement of the proper role of the judiciary can be found than that enunciated in the Swiss Civil Code—a new and forward-looking legislation—which in article 1 provides: "If no command can be taken from the statute, then the judge shall pronounce in accordance with the customary law, and failing that, according to the rule which *he as a legislator would adopt.*" Verily, in many cases, a judge becomes a law-maker in the application of laws. And it is mainly through the courts that the Philippine legal system can be enriched, and become a valuable contribution to world jurisprudence. It is they that can and should vitalize whatever progressive legislation may be enacted—for social justice, for an orderly administration of public affairs, and for any other constructive policy of the nation.

Socialization of the Law.

More and more, jurists, judges and legislators all over the world are striving for what is called "the socialization of the law." This movement stands for the principle that the whole legal structure—statutory and judge-made—must be reconstructed on the bases of the changed and changing social and economic conditions of modern life. The breath of the new life of society must be breathed into the traditional concepts of the law. This "socialization of the law" would be hard of attainment if our courts did not feel the throb of present-day society—its tremendous struggles for readjustment and the restless longings of the masses for a decent living. And the experience of the past shows that the courts have been a tremendous factor in working out social justices. As Dean Pound says (Spirit of the Common Law, p. 185): "Indeed fundamental changes have been taking place in our legal system almost unnoticed, and shifting was in progress in our case law from the individualist justice of the nineteenth century, which has passed so signifi-

cantly by the name of legal justice, to *the social justice of today* even before the change in our legislative policy become so marked."

Those who maintain that a judge should not and can not go beyond the pale of statutory formulation seems to forget that in the history of Anglo-American law, the courts reached the highest level of power and made the most magnificent offering to the development of jurisprudence when they turned away from the arid desert of written law. Two of these far-reaching developments are (1) the evolution of equity jurisprudence in England and later in America, and (2) the growth of constitutional law in the United States.

Equity Jurisprudence.

When the rigid rules of the common law in England as administered by the ordinary or common law courts failed to remedy wrongs, the English people turned to the Chancellor, who as the "keeper of the King's conscience," began to apply natural justice as opposed to the technicalities of common law precedents. There thus developed two systems of rules: common law and equity, the latter correcting the anomalies and inadequacies of the former. The same situation was transported to America. It is true that the two systems have been merged in both countries as well as in the Philippines, and that there are no longer separate courts of law and of equity, but the principles of equity are deeply ingrained in Anglo-American and Philippine jurisprudence, and have not only fostered the healthy growth of the legal system from the rich soil and with the invigorating sunshine of natural justice, but have given the courts an added power and dignity which the common law denied them. What a world of injustices there would be to-day if we did not have the equity doctrines—of equitable title, equitable mortgage, estoppel, unjust enrichment, reformation of instruments, injunction, and specific performance!

Judicial Supremacy.

In the field of American constitutional law, the momentous influence of Chief Justice Marshall constitutes the greatest triumph of the judiciary. Thanks to his bold but far-seeing judicial statesmanship, the distinctively American doctrine of the power of the courts to annul a law passed by the law-making body on the ground of unconstitutionality, has virtually made

the courts supreme in the nation and has become the firmest foundation of the American system of government. It is to be noted that when Marshall announced this principle for the first time in 1903 in the case of Marbury v. Madison, he could not cite any express provision of the American Constitution giving the judiciary such a decisive and final authority. He simply relied on the logic that it being the court's duty to declare what the law is, whenever there is a conflict between the fundamental law and a statute law, the former, which is supreme, must be upheld by the judiciary.

Blending of American and Spanish Law.

If we apply the foregoing reflections to the present stage of development of the Philippine legal system, the need of a liberal trend on the part of the judiciary is accentuated. The two great legal traditions—Roman civil law and English common law—have met on our soil. These systems, as unfolded in Spanish law and in the American law, respectively, are two mighty social forces which are in many respects conflicting. Which branch of the government can best bring unity, order, and consistency to this merger of two different legal system? Which of the three departments is best prepared to fill the gaps, to reconcile divergent rules, to choose the more suitable principles, and to impart a sound and wholesome evolution to our legal system? The legislature has often essayed this task, but experience has shown that the codification of laws can not cover all possible cases. Sanchez Roman's discontent with the Spanish Civil Code is in part due to its helpless inadequacy and utter incompleteness. Moreover, no matter how comprehensive, a code will need the moderating and expounding power of the courts. Can the executive department perform this duty? Yes, to a certain extent, but by the very nature of its function merely to enforce the law, it can not do very much in the way of stimulating an orderly juridical growth. It remains, therefore, for the courts to achieve this end. As Kurkonov (Theory of Law, p. 423) has said:

"In all legislation we find contradictions. They can be dealt with in various ways, and the choice made by judicial usage among the methods has also a certain creative force.

"To bring legislative institutions into a logical whole, to avoid the contradictions which they present and complete their *lacunae*, the tribunal uses general principles of law and supports itself by scientific reasoning."

Not only must the courts reconcile the Spanish law and the American law, but the rules of each system must be adapted to Philippine conditions. This duty can not be undertaken by the judiciary if it is shackled by the chains forged in technical reasoning.

The Constitution of the Philippines.

In another field of legal development, the courts of our country have need of the philosophical, the far-flung view of positive law—in the questions that will be raised, in increasing number and eagerness, with respect to the new Constitution of the Philippines. Speaking of American constitutional law, Dr. Taylor says, (Jurisprudence, p. 513): "Without the adjusting, defining and expanding power of judge-made law, it would have been impossible to adapt our complicated and rigid system of written constitutions to the new and varied conditions that have so rapidly arisen out of an unparalled national development."

Among the serious questions of constitutional law that may be presented before the Philippine courts are: religious education in the public schools, the rules to carry out a declared national policy, the conservation and utilization of natural resources, and laws regulating the relations between capital and labor. A judiciary that is bereft of a broad outlook of social and economic conditions, that turns a deaf ear to the voice of history, that does not look far into the future, would be unfit to grapple with these tremendous problems. Hence, the imperative need of encouraging a consecration of the eternal principles of justice and a devout cultivation of the "socialization of the law."