Is The Grant Of Emergency Powers To The President Under Bill No. 2035 Valid?

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> The Constitution is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such doctrine leads directly to anarchy or despotism.—*Ex parte Milligan, 4 Wall. 123.*

AT the base of our inquiry is the doctrine which inhibits delegation of legislative powers. Cognate to Montesquieu's formula of governmental separation of powers (See *Hampton jr. & Co. vs. United States, 276 U. S. 394*), the doctrine of non-delegation, albeit primarily a check against voluntary abdication of responsibility (*Cooley's Constitutional Limitations, 7th ed., p. 163; U. S. vs. Barrias, 11 Phil. 327*), may be said to have arisen out of the same fear of tyranny through undue concentration of powers that the celebrated author entertained when he elaborated on his maxim. Said Montesquieu: "When the legislative and executive powers are united in the same person or body, there can be no liberty, because apprehensions may arise lest the *same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner." Again: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the *judge* would then be the legislator. Were it joined to the executive power, the *judge* might behave with all the violence of an *oppressor.*" (Madison in the Federalist, No. XLVII; Sinco, Cases on Administrative Law, p. 34)

But just as the "practical demands of government preclude a doctrinaire application" of Montesquieu's political formula ("there are vast stretches of ambiguous territory," *Frankfurter and Landis, 37 Harv. Law Rev. 1010;* "we are to understand this in a limited sense," *Story, Constitution, par. 525;* "even the more specific of the great ordinances are found to terminate in a penumbra," *Holmes, J. in Springer vs. Government of the Philippine Islands, 277 U. S. 189*), so also, the same considerations necessitate a recognition of some legislative discretion to delegate powers to a varying extent. (*See New Orleans Waterworks vs. New Orleans. 164 U. S. 471; Gov't. of P. I. vs. Binangonan, 36 Phil. 547; Panama vs. Ryan, 293 U. S. 388*) Votaries of the bill (No. 2035) under consideration would place it among the few permissible delegations; point to Article

VI, section 16, of the Philippine Constitution, and defend its validity on that provision.

The Article provides:

> In times of war or other national emergency, the National Assembly may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy.

Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged (*Schecter Poultry vs. United States, 79 L. ed. 1570*). Emergency, however, is so difficult of precise definition that we will not here dispute its existence, and assume, out of respect to the wisdom, integrity, and patriotism of our lawmakers, that a state of emergency exists or is impending. Our inquiry is thus limited to the following:

(1) Does the provision permit of delegation of power to legislate on matters which the Assembly itself cannot validly legislate upon? (2) Does it allow a delegation without providing for some ascertainable standard by which the delegate is to be guided?

The first question refers to the substance, the second to the manner, of delegation. Our answer to both is *NO*, and since the bill can be sustained only by an affirmative answer, we believe the bill unconstitutional.

Bill No. 2035 is unconstitutional because it seeks to delegate powers not well within legislative competence to delegate, either on account of the Assembly's lack of power to act on some of the matters in the first instance, or because the discretion sought to be granted is not delimited, as to amount to the same thing.

If the National Assembly were to enact a "law" which shall provide in terms without more, that X be transported to the hinterlands, do farm work, in the interest of public welfare, the Assembly would most likely transcend the limits of its powers. The enactment would be bad. It would not be a law at all. (*See Villavicencio vs. Lukban, 39 Phil. 778*) For it is hard to imagine how the constitutional recognition of the social power to require compulsory personal service could negate the inherent right to freedom of abode and the right to protection against involuntary servitude. The power should be exercised, if at all, consistently with the constitutional guarantees and limitations. (*See De Jonge vs. Oregon, 81 L. ed.; Hurtado vs. California, 110 U. S. 516*) Once it be admitted that the latter should give way to the former, then all of our so-called rights and liberties would cease to be fundamental. How easy it is, indeed, for the government to curb the rights to free speech, free press, and free assembly, by just requiring its critics to render personal service in Tawi-tawi or Bataan! This is an extreme case, perhaps, and no such power is here delegated. But the power here granted, albeit limited, is predicated just the same upon absolute superiority of state policy over individual rights, and the assumption of power by the Assembly on the premises.

If it is not within legislative competence to so act in the first instance, we can not see how the delegate can act by authorization. Not having the power over the subject-matter by express or implied constitutional grant, the legislative body may not usurp by indirection. (*Springer vs. Government, supra: See also Monongahela Bridge Co. vs. U. S., 216 U. S. 177*)

Chiefly, however, the bill is objectionable on account of the manifest attempt of the National Assembly to abdicate full and complete legislative power over certain matters without providing for some intelligible principle by which the Executive is to look for some guidance. Discretion here, to borrow the words of Justice Cardozo, "is not canalized within banks that keep it from overflowing." Even a superficial examination of the statute shows clearly enough "the design to allow the President to prescribe laws according to his errant will and then to execute."

The President is empowered "to suppress espionage and other subversive activities." What acts shall be deemed subversive? To what standards, to what principles, is the President to resort, to ascertain whether this activity or that activity is subversive or not? Shall we consider subversive whatever the President chooses to so designate?

The President is empowered "to require all able-bodied citizens not engaged in any useful occupation to perform such services as may be necessary in the public interest." Who shall be considered able-bodied? What occupations shall be considered useful? What services are necessary in the public interest?

Again, the President is authorized "to take over industrial establishments in order to insure continued normal production controlling wages and profits therein." What is a continued normal production? What is the extent of the control over the wages and profits? Does this authority include, on the one hand, the power to deny a living wage or what is known as a living wage? Or does it include, on the other hand, the power to deny a reasonable return for capital invested?

Again, the President is authorized "to regulate rents and the prices of articles or commodities of prime necessity both imported and locally produced or manufactured." What amount of rent, what minimum of prices shall be fixed consistent with due process? Or, shall due process be suspended in the meanwhile? What commodities shall be considered of prime necessity?

Couched in the most general language, all the powers are subject to the same objection. Manifestly, authority is given to the President to declare what is or what is not in the various cases, according to the dictates of his own conscience . and none other. (*Cf. U. S. vs. Ang Tang Ho, 43 Phil. 1*)

Here, indeed, is an abdication or transfer to the Executive of the essential legislative functions with which the Assembly is vested by the Constitution (See Art. VI, sec. 1). This is, to quote the eminent Cardozo again, delegation running riot. "This is not government by law but by caprice. Whimseys may displace deliberate action by chosen representatives and become rules of conduct. To us the outcome seems wholly incompatible with the system under which we are supposed to live." (*Justice McReynolds in Rock Royal Cooperative vs. U. S. 307 U. S. 533*)

Argument to sustain the validity of Bill No. 2035 is premised on the positiveness of Article VI, section 16 of the Constitution. And so, it is urged that the authority granted the Assembly to provide for restrictions "as it may prescribe" implies a discretion to make no restrictive provisions at all. We take this as superficial. For if we follow the argument to

its logical conclusion, we would be making the President, both the executive and the legislative body at the same time, circumventing Montesquieu's doctrine not by interference but by abdication, with the wholesome check-and-balance system of a free, republican government thrown overboard, and our rights and liberties endangered by undue concentration of power in one man.

And it is no valid argument that the man to whom the powers are to be lodged, is one possessed with a notorious devotion to free institutions. For ours, we believe, is still a government of laws and not of men. What is or what should be should never be confused with what can or what may be. "The nature of a trust must be measured by its reasonable possibilities" (*Stuart vs. Palmer, 74 N. Y. 183*).

To be sure, the grant of powers is for a limited period of time and may, even before the end of such period, be revoked by the National Assembly. But the argument based on ultimate legislative omnipotence is more deceiving than convincing. For the inference would be that we shall be governed by a set of principles at peace time, and another set, in times of crisis. For two years, we shall have a virtual dictator in Malacañan, allow ourselves to be regimented for the sake of the "fatherland," with the hope that the period soon expire, and a prayer that the members of the National Assembly (if they have not been regimented in the meanwhile) soon convene and declare that the storm has subsided.

And such time may not come at all.

For what could stop a powerful Executive from imposing his personality upon a complaisant Assembly? What could stop the Assembly from permanently declining to exercise its powers by extended delegations?

We can find nothing more here but an invitation by another Rump Parliament to one with a will to power to follow the footsteps of Cromwell!

This is not, to repeat Justice McReynolds' phrase, "the system under which we are supposed to live." (*Rock Royal vs. U. S., supra*). ". . . The nature and the theory of our institutions of government, the principles upon which they are supposed to rest . . . do not mean to leave room for the play and action of purely personal and arbitrary power. . . For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." (*Justice Matthews in Yick Wo vs. Hopkins, 118 U. S. 356*)