

EDITORIAL:

A Word More on *Moncado v. People's Court, Et Al.**

A good number of the members of the legal profession was shocked by the recent holding of the Supreme Court considering to be admissible things illegally seized. To those who disagree, the Court disregarded elementary principles of law and ancient foundations of thought. It is, we grant, not an easy task to divine just where the decision should fall. The critics of the judgment are led by no less than three dissenting Justices who wrote scathing denunciations of the majority.

Two schools of thought oppose each other in respect to whether things illegally seized are admissible in evidence.⁽¹⁾ Each school has the support of a host of respectable authorities, creating a condition where choice must be attended with the pains of wavering loyalties. The Supreme Court, in *People v. Carlos* ⁽²⁾ faced with such a momentous decision, shirked the responsibility of choice. For a good deal of time, the profession could only

guess how the Court would act.⁽³⁾ Before the Philippines became independent, it was taken for granted that the Court would adopt the traditions of the Supreme Court of the United States.⁽⁴⁾ But since that time, this last foundation of a prophecy no longer could sustain us. The recent case of *Alvero v. Dizon* ⁽⁵⁾ did not dispel all misgivings.

In a large measure, much of our present confusion is due to our habits of mind acquired for more than half a century. We still believe, as did our forbears in the nineteenth century across the seas, that the end of the law is logic and analysis, and nothing more. We think, if we may borrow a stock illustration of Roscoe Pound that the judicial process is to be a "sort of slot machine proceeding in which the facts were put in, the court pulled a logical lever, and pulled out the predetermined result."⁽⁶⁾ If the law were so certain, there would be no reason calling it a jealous mistress; nor do we believe

(1) Wigmore on Evidence, Second Edition, Sections 2183, 2184.

(2) 47 Phil. 626.

(3) See "Are Things Illegally Seized Admissible in Evidence?" 19 PHILIPPINE LAW JOURNAL, No. 3, p. 117.

(4) See right of review of the United States Supreme Court in Section 7, (6) of the Tydings-McDuffie Act.

(5) G. R. No. L-342.

(6) "A Generation of Improvement of the Administration of Justice," 22 New York University Law Quarterly Review, pp. 369, 370-371.

there would be so many worshipping at her shrine. We hazard a statement that this cast of mind has been largely moulded by our reverential adherence to Spanish commentators whose end of analysis now belongs to a passing age. Those who have sat in many a courtroom and observed the everyday working ideal of the lawyer are familiar with this mode of thought. How vain must this ideal be to those growing number who believe with Holmes that the life of the law has not been logic but experience?

Logic or analysis, however, is not altogether without its merits.⁽⁷⁾ It furnishes, at least, to the lawyer and the layman a feeling of security and stability of the law. If one knows his major premise and can supply the appropriate minor premise, the conclusion must, of course, be certain. But where one is confronted with a case of competing grounds, logic, it must be clear, is not of much use. The utility of logic is exhausted with determining the conclusions, by all means already apparent, from the competing grounds. Which of two or more competing grounds should one choose? By what standards should he be governed in making his choice? What ideals should he look to for guidance? These are questions that

assail one and for which logic has no answer. This key which served him faithfully in some instances now forsakes the lover of certainty. He seems cast upon a vast uncharted ocean of the law and knows not where to sail. But yet must he sail. The result when embodied in a judgment is summed up by Holmes in a classic of the law. "Behind the logical form lies a judgment as to the relative worth and importance of competing legislative grounds, often an inarticulate and unconscious judgment, it is true, and yet the very root and nerve of the whole proceeding."⁽⁸⁾ It would even seem that logic is used not so much in deducing a conclusion as in clothing one already determined.⁽⁹⁾

The choice of ground brings us before the panorama of the varying concepts of the law. We have grown up so deeply in the thought there is only one definition of law that to say there are a number of definitions jolts the learning of a lifetime.⁽¹⁰⁾ "Poincare has said that "nearly every sociological thesis proposes a new method which, however, its author is careful not to apply, so that sociology is the science with the greatest number of methods and the least results." The same gibe may, perhaps, be flung at modern jurisprudence.⁽¹¹⁾

(7) See Benjamin N. Cardozo, *The Nature of the Judicial Process*, Yale University Press, 1946, pp. 9-50.

(8) Holmes, "The Path of the Law," 10 *Harvard Law Review*, p. 465.

(9) John Dewey, "Logical Method and Law," 10 *Cornell Law Quarterly*, p. 17.

(10) Nathan Isaacs, "The Schools of Jurisprudence," 31 *Harvard Law Review*, p. 373

(11) G. W. Paton, *A Textbook of Jurisprudence*, Clarendon Press, 1946, p. 3.

(12) "It is not enough for the knight of romance that you agree that his lady is a very nice girl—if you do not admit that she is the best that God ever made or will make you must fight. There is in all men a demand for the superlative, so much so that the poor devil who has no other way of reaching it attains it by getting drunk." Holmes "Natural Law," 32 *Harvard Law Review*, p. 40.

Back of the various definitions is the eternal longing of man to find absolute objectivity of legal thinking. He finds no satisfaction in approximations; he must have the absolute—the Truth, for it is the end.⁽¹²⁾ The struggles he is waging to the present day attest to the vanity of his seeking.

For our purposes, we shall emphasize two discoveries that indicate directions of legal thought. In an address before the University of Calcutta, March, 1865, Henry Sumner Maine said "that the movement of the progressive societies has hitherto been a movement *from Status to Contract*."⁽¹³⁾ This was the idea that permeated legal history during the nineteenth century, emphasizing individual liberty, or *laissez faire*, as the end of law. It was this idea which struck down statutes designed for social or general welfare by curbing the exercise of individual liberty and which brought the Supreme Court of the United States in mortal clash with the late President Roosevelt in 1937.⁽¹⁴⁾

The results of the great fight are summed up as follows: "In politics the black-robed reactionary Justices had won over the master liberal politician of our day. In law the President defeated the recalcitrant Justices in their own Court."⁽¹⁵⁾ But

what is this which in law heralded the victory of the President? The answer is expressed by Cardozo: "It is true, I think, today in every department of the law that the social value of a rule has become a test of growing power and importance. This truth is powerfully driven home to the lawyers of this country in the writings of Dean Pound. 'Perhaps the most significant advance in the modern science of law is the change from the analytical to the functional attitude.'⁽¹⁶⁾ The new direction of legal thinking regards society, not the individual, as the lever of legal action. In rendering service to society, law no longer is static but fluid and changing; its *laissez faire* is surrendering to social welfare or is considered as only one of many interests of society.⁽¹⁷⁾ It is this direction of thought which is giving us today laws on minimum hours of work, minimum wages, house rental, relation between labor and capital, rice tenancy and a host of others. Who will think today that measures of this kind are so many instances of fatal invasions of individual liberty and, therefore, void?⁽¹⁸⁾ "Not only," says Pound, "did our thinking in the last century deceive itself in supposing that it was proceeding solely on the basis of individual liberty and

(13) Jerome Hall, *Readings in Jurisprudence*, The Bobbs-Merrill Company, 1938 pp. 114-115.

(14) The book of Robert H. Jackson, *The Struggle for Judicial Supremacy*, Alfred A. Knopf, 1941, contains an interesting account of the clash and its background.

(15) *Id.*, p. 196.

(16) Cardozo, *supra*, p. 73.

(17) See Pound, *The Spirit of the Common Law*, Marshall Jones Company, 1921, pp. 185-190; "A Survey of Social Interests," 57 *Harvard Law Review*, p. 1.

(18) See *Manila Hotel Company v. Court of Industrial Relations, et al.*, G. R. No. L-1557 on regulations concerning labor and capital.

individual rights deduced therefrom, it deceived itself quite as much in its interpretation of legal development. The conception that pressure of individual interests brought about state and law and fashioned legal institutions has no historical warrant. On the contrary, from the first, the controlling factor is the need of the social group to be secure against these forms of action and courses of conduct which threaten its existence. This paramount social interest is the first interest of any sort to be given legal recognition."⁽¹⁹⁾

We see in *Moncado v. People's Court et al.*, two competing doctrines fighting for recognition. The petitioner advanced social interest in an accused person not being compelled to testify against himself; the respondent in interest in public peace and security. Realistically viewed, the case was a battleground for two opposing ideas, both important and

plausible. Analysis or logic can certainly have little or nothing to do with influencing the prerogative of choice. To those who believe with the majority in its choice of idea how futile must be all the sentimentalism of the minority. An appeal to the days of ancient Rome and the glory of Chatham must sound grotesque and strange.

To those who fear desecration of the home, the Court said the penal law will punish transgressions against it and the Constitution. We find enduring protection, however, in the use of speech, petition and assembly. As long as these rights enjoy a wide latitude of freedom, we have no reasons to fear any excesses of power. The impelling sense of justice and public interest of the people when discovered will find lodgment in the law.⁽²⁰⁾

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(19) Pound, "A Survey of Social Interests," 57 *Harvard Law Review*, No. 1, p. 10.

(20) See *Marsh v. State of Alabama*, 326 U. S. 501, 66 S. Ct. 276, 90 L. ed. 227; *Primicias v. Fugoso*, G. R. No. L-1800, January 27, 1948.