

# THE CONSTITUTION AND THE ADMINISTRATION OF JUSTICE\*

By LORENZO M. TAÑADA \*\*

I never realized before we started celebrating the fortieth anniversary of our alma mater that there are so many good lawyers in the Philippines. In fact, I think we can find among our alumni the best lawyers and the best legal minds in the Philippines.

It is, therefore, with considerable trepidation that I address myself to you on the subject which was assigned to me, namely, the administration of justice in our country. So many of you actually contribute to that administration, on the bench and before the bar, that I fear I shall have nothing to say that you do not already know.

I do not propose therefore to tempt fortune by entering into a discussion of the details of the administration of justice. By and large, I believe, the judicial department of our government enjoys the faith and confidence of our people to a greater degree than its two coequal departments, the executive and the legislative.

There are, of course, defects in our judicial system, for instance, the subordination of the lower courts to the department of justice. There are also, it must be admitted, human failings to be reckoned with: lazy judges, political justices, venal officers of the law. But in my opinion, the main problem of the administration of justice here and now is broader than these administrative defects and human failings. The course of recent events has confronted us with a fundamental problem, the classic dilemma which was propounded by Abraham Lincoln in the historic question: "Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?"

This, I suggest, is the core of our difficulties in the administration of justice today. It is the most urgent challenge to the efficacy of our democratic institutions. On our answer to it will depend much of our future development as a genuine Republic, with a living tradition of human freedom.

The factual background of the problem is familiar to us all. We all know that humanity is once again divided into hostile camps. The world is half slave, and half free, and we are told that sooner or later, and perhaps sooner rather than later, the issue must be settled in blood. We all know also that the great majority of the

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\*\* LL.B., U.P., '24, LL.M., Harvard Law School, '27, Professor of Law and Senator of the Philippines.

Filipino people have cast their lot with the free world; we know, that, whether we like it or not, we shall be drawn inevitably into any future war. In fact, we know, that we are already at war, and at war on two fronts. Filipinos are fighting on the international front in Korea; and Filipinos are fighting on the national front in the great reaches of Luzon. Our Republic and our Constitution are under attack, an attack pursued and pressed with tenacity, courage, and cunning by a great number of our countrymen, Filipinos who have been given cause to lose faith in the reality and validity of our democratic institutions.

In these circumstances, the President of the Philippines has seen fit to exercise his constitutional prerogative of suspending the privilege of the writ of habeas corpus. The right hand of justice has been shackled; its great and historic sword has been dulled. We are all lawyers, and we do not have to be told the gravity of the President's decision, which can be justified only by the gravity of the crisis which it seeks to face and overcome. Whether the President should or should not have such a power is a question that has already been answered with finality by the Constitutional Convention. The only question that remains is whether that power has been rightly exercised, whether the circumstances in which we find ourselves justify that exercise.

We are told that the answer is yes; that we are faced with a gigantic conspiracy, an armed Communist conspiracy that has openly taken to the field against our Republic and against our Constitution. We are told that we cannot meet the challenge of the Communists promptly and effectively if we persist in maintaining the normal processes of the administration of justice. We are reminded that, in the crisis of war, the greatest democracies of the world, the United States of America and the United Kingdom of Great Britain and Northern Ireland, were compelled to save democracy by suspending democracy in the fields of industry. And we are told that the crisis which we face in the Huk rebellion is, for us, no less a crisis than that which afflicted the democratic western powers in their war with the Axis. We are told, in short, that our government must be strong and ruthless if it is to survive.

I believe I have given a fair summary of the arguments in justification of the President's action. I think they are good arguments; I think they are so good that, as I have said, they confront us with the classic dilemma of free peoples. It has often happened that men who do not believe in democracy have used the democratic freedoms to destroy democracy and freedom. They have used, or abused, the right of free speech in order to advocate the overthrow of the very institutions that guarantee the freedom of speech. They have used, or abused, the right of free assembly in order to organize aggression upon the very institutions that guarantee the freedom of assembly.

What is a free people to do when confronted by such unscrupulous and ruthless enemies? Can it preserve its freedom only by abdicating it? Or must it await helplessly the blow of the enemy,

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<sup>1</sup> West Va. Bd. of Education vs. Barnette, 319 U.S. 624.

unable even to defend itself? I believe that all of us, being lawyers know the theoretical solution to the problem. We are familiar with the great decisions which have blazed for our guidance a middle course between impotence and suicide. In the *Barnette* case,<sup>1</sup> the proposition was advanced by Mr. Justice Jackson, that "government of limited power need not be anemic government." On the contrary, he asserted, "the assurance that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it, makes for its better support." To enforce the constitutional rights and privileges, he concluded, "is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end."

The rule declared in this decision may best be summarized in Justice Jackson's own language in the same case. "Observance of the limitation of the Constitution," he stated, "will not weaken government in the field appropriate for its exercise." Let government, in other words, become as strong as possible to preserve its own existence, and as long as it stays within the limits of the Constitution, the liberties of the people are safe. No government is bound to commit suicide; it has the right and the duty to protect itself; but in protecting itself, it cannot be allowed to sacrifice the Constitution and the very freedoms which it is pledged to uphold. For, in the forthright language of Justice Brandeis, applicable as much to the Filipinos as to the Americans whom he addressed, "those who won our independence by revolution were not cowards. They did not exalt political order at the cost of liberty."<sup>2</sup>

Perhaps this is strong language for our times. But the libertarian philosophy which inspired it is essential to the preservation of democracy. It is the philosophy that "the course of government should be controlled by the consensus of the governed," and that "this process of reaching intelligent popular decisions requires free discussion." It is the philosophy that "before utterances can be punished"<sup>3</sup> and before liberties can be curtailed, there must be substantive evil so extremely serious, and a degree of imminence so extremely high, that a clear and present danger to the state arises, with which it must cope in pure self-preservation. It is the philosophy, finally, that the government charged with the execution of the laws, should be the first to obey the laws; and that the government pledged to uphold the Constitution, should be the first to respect and enforce the Constitution and all its rights and guarantees.

The practical application of this rule and this philosophy in our present situation has been exhaustively discussed in other places and in other occasions. I do not intend now to go into the mooted question on the rights and wrongs of the suspension of the writ of habeas corpus. We are all equally lawyers, we are all equally informed of the clear-and-present danger rule; and we can all, in our own cons-

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<sup>2</sup> *Whitney vs. California*, 274 U.S. 357; Justice Brandeis, concurring.

<sup>3</sup> *Whitney vs. California*, 274 U.S. 357; Justice Brandeis, concurring. *Bridges vs. California*, 314 U.S. 252; Justice Black.

ciency, judge whether such a danger exists. What I should like to emphasize now is the more general obligation of the government to be the first to obey the laws and to respect the Constitution, for the disregard of that obligation seems to me to be at the bottom of all our Constitutional problems, and all our anxieties and difficulties in the field of public administration.

Here again, I do not doubt that we can all agree on the major premise, a premise that has been repeatedly declared by the highest courts, and best of all in the following language. "Decency, security, and liberty alike demand," we are told, "that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, the existence of the government will be imperilled if it fails to observe the laws scrupulously. Our government is the omnipresent teacher. For good or ill, it teaches the whole people by its example. If the government becomes a lawbreaker, it breeds contempt, for it invites every man to become a law unto himself; it invites anarchy." To declare that in the administration of (justice) the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution."<sup>4</sup>

Surely these are principles to which none will take exception. Who will deny that the government should set the example in the obedience of the law? Who will deny that the administration should teach the citizenry a lesson in the observance of the Constitution? Yet there are those who deny it, not with their words, but with their deeds. People who write the laws are the first to break them. People sworn to uphold and to defend the Constitution are the first to subvert and circumvent it.

We are accustomed to hear the complaints of government officials that our people are increasingly lawless; that they do not cooperate with the army and the constabulary; that they help the Huk rebellion; that they do not pay their taxes; that they corrupt the law-enforcement agencies with bribes; that they are constantly conspiring to get around the import control law, the exchange control measures, the price ceilings, and other statutes and regulations promulgated precisely for their common and ultimate welfare. Our people are said to have been corrupted by the war and enemy occupation; we are said to be sunk in moral depravity and the most complete cynicism and apathy.

I cannot hear these accusations without a feeling of indignation. The brutalities of enemy occupation, the scarcities and uncertainties of war, certainly left a scar on the national mind. But, if a great part of our people are indeed demoralized, I declare that we must look elsewhere for the cause. For I still remember, as I am sure that you all remember, the massive and spontaneous enthusiasm of the days of liberation, when all of us, whether soldiers or civilians, without difference of age, class, or party, looked forward with uplifted hearts toward a new era of independence and liberty. Who is there to say that we were demoralized when at last the shadow

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<sup>4</sup> *Olmstead vs. U.S.*, 277 U.S. 438; Justice Brandeis, dissenting.

of the enemy was lifted, and we saw our flag rise alone, in solitary pride to the skies above the Luneta? I say that upon the declaration of our independence, the Filipino people, this new nation, was on the contrary, seized with a sacred emotion of self-dedication to the cause of freedom, to the Republic and the Constitution, to the leaders and the administration that, for the first time in our history, were to hold in their Filipino hands the destinies of the Filipino race. No sacrifice would have been too heavy to ask from our people at that time; no plea for unity would have gone unheeded; no challenge would have been too great.

What has happened since then? Who has killed that spirit? Who has quenched that flame? Who has dragged that enthusiasm and self-dedication to the lowest levels of demoralization, and rebellion? How is it that now the Filipino citizen thinks first of himself, and not of the Republic and the Constitution? Why is it that he subverts and circumvents, defies and breaks, the laws made in his own name? If we are demoralized, who has demoralized us?

It is a tragic thing to confess, that we are the victims of our own leaders, we have been betrayed by those at the helm of our own government! For the government itself, the "omnipresent teacher," the government that "for good or ill teaches the people by its example," was the first to turn its back upon the Constitution and the law. How can justice be administered under such conditions and under such circumstances? How can the law be enforced by those guilty of or participants in illegalities? It is needful for us to remember that "if the government becomes a law-breaker, it breeds contempt, for it invites every man to become a law unto himself, it invites anarchy."<sup>5</sup> Who shall obey the law when the government itself breaks the law? If the government uses temporary police and special agents to win an election and retain power, can it validly complain that its Communist opponents use armed squadrons and a systematic terrorism to achieve the same ends? And if the agencies of the government defy the Constitution with massacres and arbitrary arrests, can the ordinary citizen be expected to support that Constitution, to help those governmental agencies, and to obey the laws that its own government breaks with cynical brazenness?

But the elections are almost forgotten; the abuses of the armed forces are the subject of present reform and correction. Let us take other examples; let us search for other roots of demoralization. Our people are accused of corruption. Let us ask ourselves, who were the first to amass wealth by dealing in surplus properties? Is it the ignorant robber stealing a brace of tires in the dead of the night, at the risk of his own life, more to be blamed than the malefactor of great wealth and high office who steals perhaps an entire depot from the comfort and luxury of his mansion or office? Our people are chided for evading payment of taxes. Let us ask ourselves in all sincerity: How many of the legislators who imposed those taxes have paid them in full? Shall we blame the poor shopkeeper if he follows the example of the so-called leaders of the country? Let us ask and keep on asking: Who are the ten per centers, fifteen per centers, or

<sup>5</sup> *Olmstead vs. U.S.*, 277 U.S. 438; Justice Brandeis, dissenting.

twenty per centers? Is it the common people? Are the common people the one who use official missions abroad to bring in forbidden luxuries for resale at fantastic profits? Since when have the common people joined the diamond smuggling rings in Hong Kong and Bangkok?

No, let us not blame our people if they are demoralized, cynical, discontented; let us not blame our people if they follow the example of their government and their leaders in mocking the Constitution and defeating the regime of law. If the government is a law-breaker, how can it without being partial punish private individuals who do the same? Justice cannot be administered by the unjust, and law cannot be enforced by law-breakers. If the government expects the Constitution to be obeyed, it must be the first to obey it. If the government expects the laws to be followed, it must take the lead. Yet what is the example and the lead that it has given to our people? When an ordinary citizen misappropriates trust funds, he is brought before the courts, convicted, and sent to jail. By whom? By a government that, by its own confession, has misappropriated or misapplied its own trust funds! When a racketeer collects contributions from unrecognized guerrillas, he is exposed and condemned. By whom? By a government that, by its own confession, has misspent the very funds necessary for the redemption of guerrilla notes! The Constitution provides that "all money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only."<sup>6</sup> Yet again by its own confession, the government has spent thirty million pesos of the gasoline tax fund to pay the salaries of government officials, while the special purposes of the fund remain unfulfilled, while highways are abandoned and streets are in disrepair, and the humble *camneros* and *capataces* remain unpaid. How can such a government uphold and defend the Constitution? Recently our government was said to have received a budgetary loan of almost seventy million pesos from the United States. Where is that money? Why should we impose new taxes when we are said to have received such an enormous sum? The fact is that we never got the money; it was already spent, and spent recklessly in advance! This was money delivered in trust by the Government of the United States to the Government of the Philippines to be used for the satisfaction of USAFFE claims. When the time came to return the balance, a balance amounting to about sixty-six million pesos, the government had to confess that it had already spent it; that the money belonging to somebody else, was already gone. There is name for this in the Revised Penal Code; and there is a penalty for it that the government enforces against the ordinary citizen. But governments, it seems, are above the law. The ordinary citizen would have gone to jail for such a crime; the government was able to plead with the United States authorities that it was broke, that it could not return the money even by monthly installments, and that nothing remained but to forgive and forget what had happened by means of a fictitious loan covering the value of the malversation. And this is the government that makes the law, enforces the law, and upholds

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<sup>6</sup> Art. VI, sec. 23, subsec. 1.

the law! Let us repeat, if the government is a law-breaker, it invites anarchy, it invites every man to be a law unto himself. Let us repeat, that justice cannot be administered by the unjust; the law cannot be enforced by the law-breakers; the Constitution cannot be upheld and defended by those who subvert and circumvent it.

In the end, that is an even more fundamental and challenging problem in the administration of justice in our unfortunate Republic, than the classic dilemma of Abraham Lincoln. The wisdom of the courts has suggested a solution to the dilemma of a government too strong for the liberties of the people, or too weak to maintain its own existence. That solution is found in the clear and present danger rule. But there can be no solution to the illegalities of government itself, no cure except self-cure, no remedy except reform, in the fear of a sure and terrible retribution.

I have chosen to speak on this topic before you today because I know that the U. P. Law alumni are in the best possible position to effect that reform. The President of the Philippines is our fellow alumnus. A majority of the Supreme Court is composed of our fellow alumni. We have fellow alumni in the Court of Appeals. We are represented in the cabinet of this administration. We have considerable influence in the Congress of this Republic. We have colleagues and comrades in the armed forces, in the agencies of law enforcement, in the various departments and commissions and government corporation. And we have also, I am sure, that deeply ingrained patriotism, that sincere devotion to the Constitution and the law, that alone can sustain us in the long and weary fight to bring back the government to the ways of the law and the peace. Our generation has a unique responsibility in history. We are the generation of the proclamation of our independence and the establishment of the Republic; we are the generation entrusted with the spirit of the Constitution and the liberties of our race. Let us discharge that trust and responsibility with faith, integrity, and courage. We learned the law here; let us now resolve to teach it to our people by our example. Here we studied the letter of the Constitution; let us resolve to practise and propagate its spirit. I thank you.