AN INQUIRY INTO THE EFFECTS OF THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS UPON THE CONSTITUTIONAL RIGHTS OF AN ACCUSED PERSON EXCEPT THE RIGHT TO BAIL

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From the oral argument of the Judge Advocate in the bail cases [1] it may be gathered that the prosecution stands for the proposition that individual liberty must give way to national security during critical days. Thinking itself in a situation comparable to the Lincolnian era, it must have felt that the plea could be made in the form of the convenient dilemma: whether "a government must of necessity be too strong for the liberties of its own people or too weak to maintain its own existence." [2] In its effort to clear the chosen Presidential line of action of all possible obstructions, the query was posed before the high court, offering as its best argument the paralyzing effect that would be caused upon the executive power to suspend the privilege of *habeas corpus,* verily stultifying and rendering nugatory the Chief Magistrate's prerogative, if the accused were allowed bail by the court. The defense, on the other hand, invoked the immutability and supremacy of the Constitution in that rights expressly conferred could not be suspended by sheer implication, that the purpose of the powers conferred by the Constitution is to preserve the existing Constitutional system, not to subvert it.[3]

The failure of the high court to settle the controversy [4] left gaping a question of great significance in constitutional law. Not only is the right to bail now imperiled by the repercussive effects of such suspension but all the constitutional rights of an accused person suffered an exposure to the same menace.

The importance of these rights may be better realized if we take heed of Montesquieu's witticism that "a nation may lose its liberties in a day and not miss them in a century." Such rights are not mere franchises or privileges revocable at will and enjoyed only on sufferance of the law enforcement agencies.[5] And while the guaran-

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[1] *Nava v. Gatmaitan,* G.R. No. L-4855; *Hernandez v. Montesa,* G.R. No. L-4964; *Angeles v. Agaya,* G.R. No. L-5102, October 11, 1951.

[2] RANDALL, CONSTITUTIONAL PROBLEMS UNDER LINCOLN, p. 2. See also West *Virginia State Board of Education v. Barnette,* 319 U.S. 624.

[3] Memorandum of Dr. Jose P. Laurel in *Hernandez v. Montesa, supra.*

[4] The necessary vote of six was not had, the Justices voting 5 to 4 in favor of granting bail. The deadlock is still unbroken.

[5] *People v. Saludez,* 45 O.G. No. 5, p. 328.

tees in the Bill of Rights are all worthy of vigilant care and attention, the rights of an accused person, considering his "cornered" plight, deserves, during these uncertain times, greater surveillance and sentinel work. The rights of an accused person are his implements to freedom and the denial of any of them could well mean denial to freedom.

I. NO PERSON SHALL BE HELD TO ANSWER FOR A CRIMINAL OFFENSE WITHOUT DUE PROCESS OF LAW

Due process in criminal proceedings is, like due process in civil proceedings, a requirement that the judiciary will observe that fundamental fairness essential to the very concept of justice.[6] More specifically, due process has been observed if the accused has been heard in a court of competent jurisdiction, proceeded against under an orderly process, punished only after inquiry and investigation upon notice to him with an opportunity to be heard, and judgment within the authority of a valid law.[7]

The suspension of the writ affects this right, or rather, could affect this right (if the Supreme Court finally decides to deny the right to bail) if after the filing of the information, the accused is still to be regarded as under the control of the executive authorities and therefore remains covered by the suspension of the writ.[8] If it were so, courts would be in the absurd situation of vainly rendering judgement over a person beyond their control. And in the last analysis the suspension will operate as a judgement of conviction, in violation of the constitutional mandate that no person shall be held to answer for a criminal offense without due process of law.

Furthermore, the executive authorities are in a position to refrain from filing an information and thereby keep undisturbed the immunity they enjoy by reason of the suspension of the privilege of habeas corpus. By preventing the court from taking action, the executive authorities are actually depriving the accused of liberty without due process, for due process necessitates judicial action. Such

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[6] TAÑADA AÑD FERNANDO, CONSTITUTION OF THE PHILIPPINES, ANNOTATED (1949 ed.), p. 405-406.

[7] *People v. Castillo*, 42 O.G. 1940.

[8] According to Justice Tuason, who voted in favor of granting bail, 'all persons detained for investigation by the executive department are under executive control. It is here where the Constitution tells the courts to keep their hands off unless the cause of the detention be for an offense other than rebellion or insurrection, which is another matter." But . . . "when formal complaint is presented, the court steps in, and the executive steps out. The detention ceases to be executive and becomes a judicial concern . . ."

a bewildering result could not have been intended by the framers of our fundamental law.

II. RIGHTS OF ACCUSED DURING TRIAL

A. *Right to be presumed innocent*

The suspension of the writ of habeas corpus resulted in the denial of the right to bail because of lack of the necessary majority. How is the right to the presumption of innocence affected? This right implies the corresponding duty on the part of the prosecution to prove the offense charged beyond reasonable doubt. As a matter of fact, the constitutional right to bail is based on the same theory. Since he is presumed innocent, bail can only be denied him in capital offenses and only when the evidence of guilt is strong.[9] With the inability of the Supreme Court to respect the right to bail, the burden of proving that the offense is capital and the evidence thereof strong was therefore lifted from the prosecution. To that extent there is already an impairment of the right to be presumed innocent.[10] It is to be hoped that, at the trial, this right will be fully respected. The hope may prove illusory as through his indefinite detention, the accused may be deprived of the opportunity of meeting the case of the prosecution. To that extent denial of the right to bail because of the suspension of the writ could mean the obliteration of that previous right to presumption of innocence, a right immemorially recognized in our country.[11]

What is worse, it may happen that the accused may never have the occasion to invoke this particular right. If the executive agents refrain from filing an information and keep the detainees indefinitely, such detention would be punishment enough from the point of view of the person who is detained. This is so notwithstanding the fact that the charge may never be proved by the Army. In effect, he is confined because he is presumed guilty. The courts are not there to judge whether the presumption of innocence has been sufficiently overcome. Thus, a virtual usurpation of judicial power takes place.

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[9] "All persons shall before conviction be bailable with sufficient sureties except those charged with capital offenses when the evidence of guilt is strong." Art. III, sec. 1, clause (16). *Montalbo v. Sta. Maria,* 54 Phil. 955; *Ocampo v. Bernabe,* 43 O.G. 1632; *Teehankee v. Rovira,* 42 O.G. 717.

[10] In the Hohfeldian Analysis, a right cannot exist without the imposition of a corresponding duty upon another from whom such right may be demanded.

[11] This right antedates the earliest American laws and is traceable in the Siete Partidas. See *U.S. v. Navarro,* 3 Phil. 143.

B. *Right to be heard by himself or counsel*

This right more appropriately belongs to the discussion under due process. Clause 17 of the Bill of Rights is actually but a specification of the due process clause.

Again this right may be affected by the suspension if the authorities do not or fail to file information formally charging the accused. Inasmuch as courts do not acquire jurisdiction over the matter until a formal and sufficient information is filed, courts cannot "hear" the accused or his counsel. Especially so, if the authorities hold him *incommunicado,* the accused would be denied the very right to petition the court for trial, because courts are powerless to inquire into the propriety of the exercise of that executive prerogative to detain suspected persons.

The filing of an information naturally depends upon the sufficiency of the evidence at hand. Since there can be no hearing without an information, the availability of the right to be heard depends upon the "sufficiency" of such evidence. What is "sufficient" is a matter which largely rests upon individual opinion or more accurately, upon the opinion of the officer filing the information. In the last analysis, the right of the individual to be heard by himself or counsel would depend upon the whim or belief or even on the discretion of one man or a group of men *not vested with judicial power.* Information will not be filed, unless the executive agents are reasonably confident of the conviction of the accused with the evidence held. Thus, if for some reason the authorities are certain of the guilt of the accused but do not possess enough evidence to convict him, information will be held back until more evidence is taken. For if information is filed despite lack of evidence, courts will acquit the accused and thereafter the executive agents may pick him up again,[12] setting at naught even the right against double jeopardy. The two co-ordinate and co-equal departments of the government should not involve themselves in such invasive and aggressive mutuality.

C. *Right to be informed of the nature and cause of the accusation against him*

This right is hardly susceptible of violation inasmuch as even the army authorities concede it. The question that may arise, however, is whether the demands of the right are satisfied in the legal sense.[13] As in the case of the right to be heard, this right is affected if the authorities do not file information.

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[12] See oral argument of Judge Advocate, Col. F. R. Castro in the bail cases, *supra,* p. 18 of t.s.n.

[13] In *Paraiso v. U.S.,* 207 U.S. 368, the United States Supreme Court said that the right to be informed of the nature and cause of the accusation against him

D. *Right to speedy and public trial*

The representative of the government contended in the bail cases that the courts are bound not to antagonize the policy of the Executive and that if bail were allowed, the judiciary would in effect be encroaching upon executive prerogative. Such argument directly involves the impairment of judicial functions and the same line of reasoning could be invoked in support of the contrary: that the Executive cannot deprive courts of their inherent powers. Among the inherent powers of the court is to secure to the accused during trial his constitutional rights. Suppose one of the persons charged with rebellion under a valid information has repeatedly petitioned the court for a speedy trial. The army, not ready for trial, in turn moves for postponement. Ordinarily, the courts would dismiss the case.[14] But because the army may thereafter take back the accused into custody and detain until it is really ready for trial,[15] courts would be reluctant to dismiss the case lest the finality of judicial action suffer an outrageous indignity, and the double jeopardy clause in the Constitution desecrated. Right to speedy trial is thus rendered ineffective, if the contention of the government be upheld.[16]

The right to public trial, like the other rights of the accused during trial, may be denied if the authorities do not file information. Only upon the filing of such information can the courts legally intervene in the case. And without the courts, no trial can be had.[17] The army authorities cannot try the accused by court martial because he is not subject to military law.[18] Only the civil courts can try him

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15 "satisfied by a pleading that leaves no doubt in the mind of any person of rudimentary intelligence as to what the charge is and does not require one that will exclude every misinterpretation capable of occuring to intelligence fired with a desire to pervert."

[14] *Conde v. Rivera,* 45 Phil. 650; *Kalaw v. Apostol,* 64 Phil. 852; and see *People v. Romero,* citing *People v. Galicia,* G.R. L-Nos. 4517-20.

[15] Oral argument of Col. Castro, p. 18 of t.s.n.

[16] By a speedy trial is meant "a trial conducted according to fixed rules, regulations, and proceedings of law, free from vexatious, capricious and oppressive delays manufactured by the ministers of justice." (*Stewart v. State,* 13 Atk. 702; *Nixon v. State,* 2 Smedes & M. (Miss. 497). And if the accused is "denied trial at a reasonably early opportunity, in consequence of such delays or in consequence of the laches and negligence of the prosecuting officers in failing to prepare for trial or to bring it on, he is entitled to be discharged or to have the prosecution quashed." (BLACK, CONSTITUTIONAL LAW, p. 684, 4th ed.).

[17] The country is not yet under martial law. Even if martial law were proclaimed, the civil courts still function in places distant from the battle areas. See Randall, op. cit., p. 63-84. Also, *Ex. Parte Milligan,* 4 Wall. Ex. 2.

[18] See 3 WILLOUGHBY, CONSTITUTION, p. 1541. In *Ruffy v. Chief of Staff,* 43 O.G., 855, our Supreme Court held that such courts martial may be set up by the President and are executive in character, not judicial.

and if they are kept from acquiring jurisdiction over him, there is certainly a consequent deprivation of a trial which is *public*.[19]

III. NO PERSON SHALL BE COMPELLED TO BE A WITNESS AGAINST HIMSELF

The rule in this jurisdiction is that the constitutional protection against self-incrimination proscribes evidence forcibly obtained where such evidence involves the exercise of intelligence and will power but not that involving a purely mechanical act.[20] A confession may be eked out of an accused person but if the same was obtained by means of torture or the "third degree," courts will deny its admissibility. The law seeks to rid civilization of the inhuman inquisitorial practices which for centuries blackened History.[21]

The possibility is not remote that the executive agents in their zealous effort to procure convincing evidence may resort to illegal exaction of evidence. Once such evidence is procured, the executive agents will go to trial and offer the same. The courts will then proceed to inquire into the mode of its taking. But the real danger to this right against self-incrimination becomes apparent if we admit that the executive agents retain control over the accused in spite of the filing of an information. For even if the accused would naturally choose deny a confession forcibly taken from him, the fact that he is still in the custody of those who took it may be a sufficient influence to cause him to admit it in open court as voluntarily made. Fear of the men who forced out the confession may be enough to make him lie, knowing full well that if he displeased his jailers, things could go hard for him in the camp. And these actuations are shielded from judicial inquiry by the suspension of the privilege of habeas corpus. The fact that those acts are illegal does not preclude their being done.

IV. RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT

By cruel and unusual punishment is meant punishment of torture or lingering death. It does not mean death by hanging, electrocution, firing squad, or beheading.[22] Even re-electrocution, after

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[19] The purpose of this right is to secure to the accused the help and countenance of his friends and counsel of those who could assist him in his defense and does not mean an absolute command to have the public witness the trial at all times. Court dignity and public decency may require the exclusion of the public save only the interested parties and counsel. Rule 124, Sec. 2. See 3 Moran (1947 ed.) 47.

[20] *Bermudez v. Castillo*, 64 Phil. 483; *U.S. v. Tan Teng*, 23 Phil. 145.

[21] *Villaflor v. Summers*, 45 Phil. 62.

[22] *Weems v. U.S.*, 217 U.S. 349.

the first attempts to execute the penalty had failed, was not considered cruel and unusual.[23]

Legally, it is hard to imagine a situation where this right may be menaced by the suspension of the writ, because "punishment" in the first place cannot be imposed except by virtue of judgment rendered by competent court.[24] But if we consider "punishment" as any deprivation of liberty in a punitive spirit, then indefinite "punishment" may be termed cruel and unusual. Suppose the executive agents believe a certain detainee as guilty of subversive activities but are unable to produce sufficient evidence to convict him. They would not file information for fear that the courts will acquit him. They could just detain him as long as they want until the necessary evidence is obtained. In fact, the representative of the army intimated in his oral argument that they could just as well order the *liquidation* of any suspect. But suppose the detainee is not liquidated and is just detained, indefinitely. The prolonged detention on the belief that the detainee is guilty of the offense charged is already punitive in spirit, and can be considered "punishment." Such punishment is unusual in the sense that it is inflicted by the executive agents without the benefit of court action and it is cruel in the sense that the prisoner is forever engulfed by the constant fear of being liquidated and hopelessly uncertain as to the duration of his confinement. Such a state of mind produces acute mental anguish.

V. RIGHT AGAINST DOUBLE JEOPARDY

The right against double jeopardy [25] may be invoked when the "defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the defendant had pleaded to the charge . . ." [26]

Suppose a detainee is formally charged in court and tried and acquitted on the failure of the prosecution to prove his guilt. And suppose, further, that the executive agents, still certain that the acquitted man is not innocent, and prompted by a sincere desire to purge the country of their menace, takes him back to custody. That person is not only put in double jeopardy, but is actually punished twice for the same alleged offense. As intimated by the Judge Advocate,

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[23] *Louisiana v. Resweber*, 329 U.S. 459.
[24] *U.S. v. Donoso*, 3 Phil. 234; *U.S. v. Montecillo*, 11 Phil. 109.
[25] Article III, Sec. 1, Clause 20.
[26] Rule 113, Sec. 9, Rules of Court.

the army believes it has the right to pick an acquitted man again on the same charge and even on mere suspicion of the same. If a second information is filed, there is no doubt of the propriety of the plea of double jeopardy.[27] What is very doubtful is whether a second information would be filed at all. It is submitted that the view of the Judge Advocate is clearly and palpably destructive of this particular constitutional right and a total disregard of a solemn judicial pronouncement.

In fine, the suspension of the privilege of the writ of *habeas corpus* has worked a corresponding suspension of judicial power to inquire into the legality of detentions effected by the Executive. All the rights of the accused which depend upon court action for their enforcement and efficacy consequently suffer a similar curtailment. That is not however truly a curtailment because the same is legal; the withdrawal from courts of that power is sanctioned by law.[28] But the moment the executive authorities submit the case to the jurisdiction of the courts, the latter must perform their constitutional functions and apply the law.

What must be reckoned with is the susceptibility to abuse of the power virtually reposed by the suspension of the writ in the Executive to keep the courts from acting upon the detention cases under its control. This is the "new prerogative" which operates to withhold the rights of the accused until the information against him is filed. Persons may be detained until the suspension is lifted.

What was in issue in the Hernandez, Nava and Abaya cases was not only the right to bail but all the rights of the accused. It is submitted that the Executive, powerful as he is, does not possess the power to deprive courts of their inherent powers. Courts are the exclusive guardians of those rights and a suspension of them necessarily involves suspension of court powers. Even if martial law were proclaimed, courts would still function in places where they may.[29] The Executive power finds its limitation in the same Constitution which conferred it. Although his power as commander-in-chief of all the armed forces of the country may carry with it all such other powers as may be necessary to subdue the enemy, that

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[27] Requisites of double jeopardy were announced in *People v. Ilagan*, 58 Phil. 851: 1. Valid complaint or information, 2. competent court, 3. Arraignment, 4. accused must have pleaded to the complaint or information.

[28] Article III, Sec. 1, Clause 14. and Article VII, Sec. 10, par. (2) of the Philippine Constitution. Rule 102, Rules of Court.

[29] *Ex parte Milligan*, 4 Wall. 2.

power must bow before the majesty of the Constitution and respect the allotment of powers made by it. The courts in turn may not abdicate their irrevocable trusts, but must uphold the supremacy of the Constitution, which is "unalterable but by the same high power which established it." [30]

[30] TUCKER'S BLACKSTONE, 1:88 note (1803 ed.).