every human activity. So those who view with apprehension the ever increasing number of lawyers should not be alarmed, because not all of those who have been admitted to the bar are to practice law. They may venture into diverse fields of human endeavor and their legal background is a good foundation which enable them to perform more efficiently and successfully their duties and functions. In fact, a lawyer is better prepared to assume greater and more complicated responsibilities."

As to the role of women in politics, Mr. Justice Padilla observes that, because of their special and unique position in our families, the cells that compose the nation, they can exert a great deal of influence to realize and achieve the goal we are all trying to reach—a Government that interferes and rules less and steps in only to adjust differences that cannot be settled between the contending parties; a Government that makes an equal distribution among the people of benefits derived from the common contribution of its citizenry; a Government that is run thriftily and not extravagantly; a Government that redresses grievances, compromises neither with crime nor with wrong, punishes crimes and rights wrongs; a Government in fine, that functions and is run for the good of all the people and not for the advantage and benefit of a favored few.

Mr. Justice Padilla is against any re-election of Presidents. He admired and supported the late Juan Sumulong, president of the Democrata party, in the latter's fight against the late President Quezon's bid for re-election.[19] He also feels that the power of the President to suspend the privilege of the writ of *habeas corpus* without congressional concurrence and the grant to the same of the so-called "emergency powers" are sources of many difficulties in the government. With respect to the rule-making power, he believes that such power is inherently judicial and Congress should not have the power to alter, repeal or modify the rules promulgated by the Supreme Court.

ARTURO E. BALBASTRO
PERPETUA R. MANOTOK

THE LEGAL PHILOSOPHY OF JUSTICE MONTEMAYOR

If justice mere such that it could be administered by the simple application of fixed and unchanging principles, valid for all times everywhere, there would perhaps be no room for the play of opinions, for the show of diverse personalities, for so-called judicial statesmanship. But the nature of our institutions calls for the administration of justice

[19] Speech delivered by Mr. Justice Padilla at the 79th birthday anniversary of the late Don Juan Sumulong on December 27, 1953.

through law. And the law, while not absolutely nebulous, is elastic and admits of a variety of interpretations, depending upon the idiosyncracies and predilections of judges, influenced no doubt by the unconscious and subconscious persuasions that beat upon the mind and the personality of the man.

In the decisions of Mr. Justice Montemayor, a simple cog in that complex machinery that administers justice, we see reflected his own personality. His decisions serve, in an inevitable way, as the mirror of the man.

Mr. Justice Montemayor was born in Alaminos, Pangasinan, on July 27, 1890, and received his first schooling in the local Spanish schools. After finishing his secondary course as valedictorian in the Manila High School, he enrolled in the state university which in 1915 conferred on him the degree of Bachelor of Laws. In the same year, he took the bar and passed it. His college life in the University of the Philippines had all the indicia of his future success. In the annual oratorical contest of the College of Law in 1914, he won the first prize with his piece entitled "A Tribute to Napoleon Bonaparte."

His government career began when he was appointed as the first law clerk in the Bureau of Lands in September 1915 after having obtained the highest rating in the civil service examination for law clerk. A little later, he became the chief of the law division of the same bureau. In 1919, he was transferred to the Bureau of Justice where he became assistant attorney. After four years of service, the Department of Justice sent him to the United States as a government pensionado. In 1924, he received his master of laws degree from the Harvard Law School. He is the first Filipino to receive that degree from Harvard. In the same year, he came back to the Philippines and resumed his work in the Bureau of Justice.

He first sat on the bench in 1927 as judge of the Court of First Instance of the then fourth judicial district which comprised La Union, Baguio and Mountain Province. In 1936, he was transferred to the Court of First Instance of Manila. Two years later, he became an associate justice of the Court of Appeals to which he was reappointed as presiding justice upon its re-creation in November 1946. He was elevated to the Supreme Court associate justiceship in August 1948.

During the six and a half years he has served in the highest court of the land, Mr. Justice Montemayor has demonstrated his own notions about the law, its nature, purposes and functions. To him, law, in the first place, is a dogma to be applied in all cases, regardless of the private opinions of judges as to its wisdom, propriety or efficacy to remedy a wrong, calculated to do justice to the particular litigants of a case, as well as to advance the public interests and the common good. It may be harsh, but as long as it remains in the statute books,

it must perforce be followed.[1] It may inconvenience the prompt dispatch of administrative business, but expediency cannot serve a convenient refuge to override the mandates of positive law.[2]

But he does not stop at regarding law as a dogma, for that would in effect make of judges mechanical robots incapable of reasoning and thought. So that in cases where the purported law derogates or contravenes the clear mandates of the Constitution, the hand of judges must move to brush it aside. They must serve as guardians of the Constitution, to see to it that a purported exercise of power must find support in that instrument, or in some valid law passed in harmony with that instrument, and every pretended exercise of power which is within the grant of power must be upheld. Judges must serve to promote certainty in the law, to the end that litigants, both present and future, would not be groping or kept guessing as to what the law is.[3] In *Syquia et al. v. Almeda Lopez*,[4] he could have dismissed the case, the issues during the pendency of the case having become moot, but, for the guidance of judges, litigants, and for all those who might subsequently be concerned, he went on to decide the questions presented in the case to promote certainty in the law.

Courts, in the mind of Justice Montemayor, exist to punish wrongdoers, but they also exist to protect persons unjustly accused of a crime. They act to protect the rights of the defendant accused, and avail to him the guarantees of the law of the land. Courts can be the instruments to preserve the confidence of the public in lawyers and in the courts, by punishing for contempt those whose acts would tend to throw a cloud of suspicion over them, and by doing so, deter others from so doing by a realization that such an act would not escape punishment with immunity.[5] Courts, in his way of thinking, can even serve to foster and promote morality, not merely dispense with justice, by denying to applicants for citizenship naturalization sought, where they are guilty of an act such as cohabiting with a woman without sanction of marriage, which conduct is far from being regarded as proper or irreproachable.[6] While he believes that the primary function of courts is interpretation and application of the law, there are a bewildering number of others besides, depending upon the policy to be pursued and the interests to be safeguarded and advanced.

This leads us to a consideration of his views concerning our system of government. His unflinching belief in the traditional doctrine of sepa-

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[1] See concurring opinion in Manalang v. Quitoriano, G.R. No. L-6898, April 30, 1954; People v. Limaco, G.R. No. L-3070, June 9, 1951.

[2] Silva v. Cabrera, G.R. No. L-3629, March 19, 1951.

[3] Carbungco v. Amparo, G.R. No. L-2245, May 20, 1949.

[4] G.R. No. L-1648, August 17, 1949.

[5] In re Parazo, 45 O.G. 4382 (1948).

[6] Yu Lo v. Republic, G.R. No. L-4725, October 15, 1952.

ration of powers has always animated his decisions to the extent that at every chance he gets, he invokes the theory to support his views.[7] Thus, where the Chief Executive, in issuing a conditional pardon and imposing a condition, does so in the exercise of his constitutional powers, however oppressive or unjust conformity to the conditions may seem, courts must be ever cautious in brushing it aside, where by doing so, they also defy and ignore the weight of legal jurisprudence and authority.[8] In *People v. Limaco*,[9] he reiterates the principle that the wisdom, efficacy or morality of laws are questions that are exclusively within the province of the legislature which enacts them and the Chief Executive who approves or vetoes them. "The only function of the judiciary," he says, "is to interpret the laws and if not in disharmony with the constitution to apply them. . . . They (the members of the judiciary) as citizens or as judges may regard a certain law as harsh, unwise or morally wrong, and may recommend to the authority or department concerned its amendment, modification or repeal, still, as long as said law is in force, they must apply it and give it effect as decreed by the law-making body."

Again in his dissenting and concurring opinion in *Araneta v. Dinglasan*,[10] he says:

> "The Chief Executive, acting as agent of the legislature under his emergency powers, may not go against the wishes of his principal. He can only carry out its wishes and policies, and where his acts and order run counter to those of the legislature or operate on a field already withdrawn, his acts or executive orders must give way and will be declared void and of no effect by the courts."

In *Endencia v. David*,[11] the legislature declared the collection of income tax on the salary of a public official, especially a judge, as not a decrease of his salary, after the Supreme Court in the case of *Perfecto v. Meer*[12] had found and decided otherwise. Declaring the legislative action as a clear encroachment on the province of judicial authority, he said:

> ". . . The legislature, under our form of government, is assigned the task and the power to make and enact law, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the legislative department. If the legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the

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[7] See Endencia v. David, G.R. No. L-6355, August 31, 1953; concurring and dissenting, Infante v. Provincial Warden, F.R. No. L-4164, December 12, 1952; concurring and dissenting, Nacionalista Party v. Angelo Bautista, G.R. No. L-3452, December 7, 1949.

[8] Infante v. Provincial Warden, *supra*, note 7.

[9] *Supra*, note 1.

[10] 45 O.G. 4411 (1948).

[11] *Supra*, note 7.

[12] G.R. No. L-2348, February 27, 1950.

courts have, in an actual case ascertained its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decisions. Under such a system, a final court determination of a case based on judicial interpretation of the law or of the Constitution may be undermined or even annulled by subsequent and different interpretation of the law or of the Constitution by the legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental principles of our constitutional system of government particularly those governing separation of powers."

In the case of *Arnault v. Pecson,*[13] he concurred in the majority decision that the petitioner, a prisoner indefinitely committed to prison for contempt by the Senate, be given opportunity to prepare his defense in a tax evasion case, with privilege to visit his house or office under guard. But he dissented insofar as the majority decision permits it to be done without previous consultation with or advice to the Senate. He believes that there must at least be previous consultation with and advice to the Senate, as a matter of courtesy, vehemently denying that such a course of action is subservience.

"My proposal does not mean subservience to the Senate. Courtesy to a co-equal, coordinate and independent branch of the government and respect for and acknowledgment of its jurisdiction is not subservience. It is only giving to that branch of government its due. It is by intruding into and encroaching upon the province and jurisdiction of a coordinate branch of the government that we incite and provoke mutual disrespect and discourtesy. On the other hand, respect and courtesy make for mutuality of the proper feeling and attitude and for harmony."

Mr. Justice Montemayor believes in the inherent goodness of the Executive. He does not presume vindictiveness, disloyalty, nor does he ascribe evil motives or bad intentions to the Executive, even in those times when the Executive seemed to have lost public confidence by abuse of powers which have been stricken down by the courts. He dissented from the majority view in *Infante v. Provincial Warden,*[14] which held that the life of the condition imposed in a conditional pardon extended by the President, where the pardon does not designate the time for observance of the condition, extended only for the period of the penalty imposed, because to hold otherwise would make the pardon an act of oppression or injustice instead of an act of mercy, because in exchange for the remission of a small fraction of the prisoner's penalty, the Chief Executive would "keep hanging over his (prisoner's) head during the rest of his life the threat of recommitment and/or prosecution for any slight misdemeanor . . ."

[13] G.R. No. L-4027, October 2, 1950.
[14] *Supra,* note 7.

He set forth his views thus:

> "To me, the concern of the majority about the threat of recommitment being used by the Chief Executive as the sword of Damocles over petitioner's head for the rest of his life is without foundation. The threat, if there be one, is not being utilized by a heartless and vindictive Chief Executive to harass and annoy a pardonee and make his existence miserable, but it is rather an alternative, undesirable and unpleasant and to be avoided which tends to keep the pardoned convict on the straight and narrow path. . . . To all of us, from the age of criminal responsibility . . . down to the grave, the threat of punishment or suffering for violation of the penal laws or the law of nature, is like the sword of Damocles, ever hanging over our heads. Commit an offense whether deliberate or through negligence and the sword of prosecution descends upon you; disobey the laws of nature, such as gravitation and you may have a fall, bad or even fatal; defy the elements and you perish in them. The threat and prospect in every case is real and ever-present, and yet we never think of regarding that threat as oppressive or unjust. We take it as a matter of course, and as an inscrutable part and element of human institutions and of the scheme of the universe."

A similar conviction can be gleaned from his concurring and dissenting opinion in *Nacionalista Party v. Bautista Angelo,*[15] where the majority denied to the Chief Executive the right to temporarily fill a permanent vacancy on the Commission on Elections by designation, resulting from the retirement of one of its members. To him, the majority starts from the theory that a person so designated, cannot act independently because his tenure being temporary, precarious and at the pleasure of the President, he is, so to speak, under the thumb of the President who may withdraw the designation and put him out the moment the designee act against the interests of the President and his party.

"The flaw in this theory," he explains, "is that it assumes or presupposes the appointing power to be so utterly lacking in mental honesty, fair-dealing and plain decency, and the person designated equally devoid of character, and independence of judgment, but cursed with a mistaken sense of loyalty to the one designating him. I believe that we should not indulge in or entertain such a presumption unless there be valid grounds for the same based on proofs."

It is to be noted that in this case, the designee had previously represented the Chief Executive in the impeachment proceedings before Congress and in the emergency powers cases brought before the Supreme Court. That, in themselves, Justice Montemayor said, should not be taken against both the Chief Executive and the designee.

Mr. Justice Montemayor is also a constitutionalist, a faithful adherent to the view that the Constitution, while being a source of powers,

[15] *Ibid.*

is simultaneously a limitation of power. In *Lacson v. Romero*,[16] while he recognized the President's power to remove as flowing from the power to appoint, he nevertheless expressed the belief that the Constitution forbids the removal or any act which may amount to removal, of a civil service employee or official, except for cause as provided by law, and in that sense, qualifies and limits the inherent power of the Chief Executive to remove. The dictates of policy frown upon circumvention through any guise whatever.

"There are hundreds," he observes, "yea, thousands of young ambitious people who enter the civil service not temporarily or as a makeshift, but to make a career out of it. They give the best years of their lives to the service in the hope and expectation that with faithful service, loyalty, and some talent, they may eventually attain the upper reaches and level of official hierarchy." Continuing, he elaborated:

> "To permit circumvention of the constitutional prohibition . . . by allowing removal from office without lawful cause, in the form and guise of transfers from one office to another, without the consent of transferee, would blast the hopes of these young civil service officials and career men and women, destroy their security and tenure of office and make for a subsequent, discontented and inefficient civil service force that sways with every political wind that blows and plays up to whatever political party is in the saddle. That would be far from what the framers of our Constitution contemplated or desired. Neither would that be our concept of a free and efficient government force, possessed of self-respect and resonable ambition."

One of the most striking tendencies of Justice Montemayor, as can be gathered from his decisions, is his unyielding defense of property rights. In *Rural Progress Administration v. Reyes*,[17] the Supreme Court majority believed that a proper case for expropriation of a private lot for distribution to the tenants thereof has been made out, when it decreed the expropriation of a lot with an area of about two hectares. While he professed belief in social justice, he nevertheless also believed that "social justice does not champion division of property or equality of economic status."

"The Constitution," he says, "authorizes the breaking up of landed estates through expropriation. Once broken up into small tracts, the Constitution equally protects the purchaser of the small tract and guarantees that the small parcel he had purchased . . . will not be taken away from him without his consent except for a clearly and purely public purpose."

Protection to property rights, to him, becomes an obsession in the case of public service companies. In *Interprovincial Autobus Co. v.*

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[16] G.R. No. L-3081, October 14, 1949.
[17] G.R. No. L-4703, October 8, 1953.

Clarete,[18] he dissented from the majority view that a new operator, over the objection of the old operators of transportation lines, could be entitled to a certificate of public convenience. He called the majority decision a wide departure from the sound policy embodied in the "prior-operator rule," sanctioning as it does the invasion of territory already secured by prior and old operators, resulting in numerous competition.

"We should not lose sight of the fact," he explained, "that these old operators were pioneers in the field of transportation. They, in a way, blazed the trail in this field of activity, educated the public to travel and created a demand for transportation. They ventured into the new enterprise and into an uncharted region and took chances of losing; they put their capital, oftentimes subscribed by trusting stockholders, in the underground, in the belief and assurance that with the protection and supervision of the Government, they would receive adequate returns for their investment, and that the same government would not allow or tolerate, much less encourage unnecessary and numerous competitors which would result in the loss, not only of reasonable profits, but even of the capital itself."

In the later case of *Raymundo Transportation Co. v. Cervo,*[19] he reiterated his views, unequivocally declaring that he does not, by his stand, advocate monopoly, but that he defends merely the principle of giving preference to the old operators who got into the field first.

> ". . . If additional service on a line are needed by the public, the old operator should be required and be given the opportunity to render such service and increase its units and equipment if necessary. Only when such operator fails or refuses should a new operator be given the certificate to operate and give said needed service."

His opinion in that case was also a dissent, and it was clear that where his colleagues were of the belief that the prior-operator rule could not be invoked, to him the protective principle must still be applied, all in the interests of property rights.

The major decisions of Justice Montemayor in the field of labor and capital relations serve an interesting study of the consistency of his views. He believes in the first place in protecting and advancing the rights of the laborer, but to the extent only that the employer is not denied the equal protection of his rights. His views, he summarized in the case of *Philippine Long Distance Co. v. PLDT Worker's Union:*[20]

> "The laborer has rights to be protected, there is no doubt. But the employer also has rights to be protected. Both rights are entitled to protection under the law and by the courts. But in our commendable endeavor to protect the rights of laborers, we should not

[18] G.R. No. L-4100, May 15, 1952.
[19] G.R. No. L-3899, May 21, 1952.
[20] G.R. No. L-5147, July 8, 1952.

lean so far backward, if by doing so, we overlook and trample upon, though unwittingly, the rights of the employer who, . . . invokes our protection."

Notwithstanding the fact that he considers the protection of the rights of laborers a commendable endeavor, he believes the employer is also entitled to a certain amount of protection. So that in the case of *J. P. Heilbronn & Co. v. National Labor Union*,[21] he penned the unanimous opinion of the court denying the claim for compensation of the laborers who voluntarily absented themselves from work to attend the hearing of a case in which they sought to prove and establish their demands against the company during the period of such absence from work.

"The age-old rule governing the relations between labor and capital or management and employee is that of a 'fair day's wage for a fair day's labor.' If there is no work performed by the employee there can be no wage or pay unless of course, the laborer was able, willing and ready to work but was illegally locked out, dismissed or suspended. It is hardly fair or just for an employee or laborer to fight or litigate against his employer on the employer's time."

In the *Philippine Long Distance* case, he wrote the dissenting opinion in a six to five decision and took issue with the majority "that an employer may be compelled to continue in its employ a laborer with a serious defect, which is blindness in one eye, whose work is digging holes and ditches on the sides of city streets, with the consequent hazard to life and limb, not only to said laborer due to his failure and inability to fully realize and avoid danger, but also to his fellow-employees and to the public in general whom said laborer with defective vision may involuntarily injure while performing his work, all with the resulting risk to and liability of his employer for payment of damages for all injuries caused."

Again, in the case of *A. L. Ammen Transportation Co. v. Bicol Transportation Employees Mutual Association*,[22] he dissented from the majority decision that under Sec. 10 (b) (3) of Republic Act No. 602,[23] the employer, against its will and in the absence of any contract, agreement or stipulation, may be compelled to render check-off. To him the practice would have been perfectly all right, if there was a stipulation to that effect. In the absence of an agreement, the employer could not be compelled to render check off. Explaining his dissent, he said:

"Labor unions are organized to represent the interests of laborers and employees in order to better obtain concessions from the em-

[21] G.R. No. L-5121, January 30, 1953.

[22] G.R. No. L-4941, July 25, 1952.

[23] Wages, including wages which may be paid retroactively for whatever reason, shall be paid directly to the employee to whom they are due, except: x x x (3) In cases where the right of the employee or his union to check-off has been recognized by the employer or authorized in writing by the individual employees concerned.

ployer through collective bargaining, even through strikes as a last resort. In other words, the union is an instrument or agency used by employees and laborers to fight their battles for higher wages and better working conditions against their employer. . . . To compel the employer to help and strengthen the instrument and agency (the union) used by its adversary (labor) to fight against it (the employer) this without legal or contractual sanction, to me is unjust, unfair and unsportsmanlike. It is even illogical. . . ."

In that same case, he saw nothing wrong in the government's helping labor by enacting legislation in the form of minimum wages, maximum hours of work, workmen's compensation acts, etc. Indeed, in proper cases, he was for granting laborers benefits like vacation and sick leave, overtime pay, payment of wages during a period of unwarranted suspension, back salaries, and fines imposed without just cause.[24] But the several benefits given must all be founded upon a law granting the benefit. In *De la Cruz v. Northern Theatrical Enterprises*,[25] he dismissed the claim of an employee for the recovery of an amount he paid to a lawyer hired by him, because he was forced to defend himself from a criminal prosecution resulting from the performance of an act for the protection of his employer, in the course of duty.

"It is to the interest of the employer to render legal assistance to its employee. But we are not prepared to say and to hold that the giving of said legal assistance to its employees is a legal obligation. While it might yet and possibly be regarded as a moral obligation, it does not at present count with the sanction of man-made laws."

It is clear, therefore, that even in his zeal to protect property rights, he would not, when public interests dictate, deign to protect the rights of laborers even against the interests of property rights. For in him still lives the democratic spirit. This is very apparent in the case of *Vda. de Roxas v. Roxas*,[26] where, in the course of his dissenting opinion, he had the occasion to say:

"I understand that up to the present, the courts in this jurisdiction are still weighing the testimony of witnesses in the scales of sincerity, truth and honesty, rather than on academic attainments, college degrees and social prominence. Otherwise, a party in court whose witnesses happen to be simple, ignorant but honest farmers and laborers occupying the bottom of the social scale, who have not seen the inside of a barrio school, has absolutely no chance or show against the adverse party who may produce witnesses with college or university degrees and members of the aristocracy whose names appear on the social register."

Unique perhaps are his views on election matters. In *De Leon v. Imperial*,[27] he dissented from a majority decision in a six to five deci-

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[24] See MRR v. Court of Industrial Relations, G.R. No. L-4616, July 31, 1952: Batungbakal v. NDC, G.R. No. L-5G127, May 27, 1953.

[25] G.R. No. L-7089, August 31, 1954.

[26] G.R. No. L-2396, December 11, 1950.

[27] G.R. No. L-3001, February 8, 1953.

sion that the Commission on Elections cannot order the correction of a clerical error or mistake in addition on election returns because the latter is a judicial function. Holding that it was purely an administrative duty in connection with the Commission's power to enforce and administer laws relative to the conduct of elections and its rights and obligations to decide, save those involving the right to vote, all administrative questions affecting elections, as set forth in the Constitution, he was of the belief that the Commission could so order.

> "The ordinary citizen who makes up the bulk of our population, not versed in the law and its intricacies and technicalities, finds it difficult, if not impossible to understand why a candidate for councilor receiving 3060 votes is made to win over another candidate garnering a larger number of votes—3098, just because through a clerical error or a mistake in addition, the votes for the first candidate was made to appear 3160 instead of 3060. Said ordinary citizen's immediate and only reaction would be to wonder and ask why such a thing can happen in a free country, and why the error should not and cannot forthwith be corrected. He is confused, and added to his confusion, he is baffled by the refusal of the majority of this tribunal to correct the mistake, and its insistence in continuing and perpetuating a grievous error,—that of maintaining in the municipal council a candidate not duly elected thereto except through a clerical error or mistake in addition, in place of another candidate receiving a large number of votes and therefore a choice of the electorate."

Again, in *Pimentel v. Festejo,*[28] he dissented from a majority decision holding that for any ballot to be counted for a candidate for mayor, it is indispensable that his name be written by the voter in the proper spaces for mayor, and regards it impossible to count a ballot as a vote for a candidate for mayor when his name is clearly written in the space reserved for another office. Justice Montemayor branded the majority application of the election law as narrow and strict, which would deprive a great majority of qualified voters in participating in the choice of their elective offiicals, the candidate protesting being well-known as a candidate for mayor, and no other candidate for another office has the same name, and that there could be no mistaking the candidate referred to.

> "The ballot is not and was never intended to be a literacy or intelligence test. It is only a means by which the voter expresses his choice or desire, as his participation in popular government. If his intention can be ascertained and known in any reasonable way whatsoever, by an examination of his ballot, and the voter is found to have achieved a substantial compliance with the law, and not seriously violated it, bearing in mind his lack of education, experience and training, said intention should be respected and carried out. . . . Other people intelligent, or guided by educated people commit mistakes . . ."

[28] 46 O.G. 2533 (1949).

But after everything has been said, a great injustice would be done Justice Montemayor if, in the examination of his works, his views on the criminal law were not set forth, for this is the branch of the law where he excels. While his decisions in this field are purely legalistic, for the most part partaking only of the application of specific provisions of the penal law, his abhorrence for crime, plus his predilection to temper justice with mercy, create a delicate pattern which depicts the character of the man.

He believes in imposing the death penalty where the circumstances reveal a manifestation of wanton cruelty and brutality,[29] a gruesomeness in the criminal affair,[30] or where, in its commission, the character of cold-bloodedness and lack of mercy is present,[31] or where the act of the accused was made more condemnable by the fact that, being a friend of the family, he outrages the daughter thereof not content with robbing the family, and "callous to all feelings of decency, friendship and gratitude."[32] On the cruelty, brutality and inhuman treatment by a treason indictee of his victims, he waxed sarcasm by saying: "But evidently, war, confusion and opportunism, can and do produce characters and monsters unknown during peace and normal times."[33] He would even go to the extent of commenting that defendant deserved no compassion or is unworthy of executive clemency.[34] It was perhaps partly due to his conviction that the death penalty is proper in certain crimes that led him once to criticize a trial judge for making unfavorable comments on the death penalty.[35]

In all his strictness, however, he was still capable of compassion and sympathy. Thus, in *People v. Amit,*[36] he granted defendant the mitigating circumstance of "illness of the offender without however depriving him of consciousness of his acts"[37] where, because of her rather weak character and abnormal behavior, and misfortune, the evidence tended to show a mild behavior disorder. He would even extend the benefits of an amnesty proclamation to a defendant charged with killing upon orders of a comamnder of a guerrilla force on the mere suspicion that the victims were Jap spies.[38] Again in his concurring and dissenting opinion in *People v. Villamora et al.,*[39] he disagreed with the majority for not appreciating in favor of a defendant the mitigating cir-

[29] People v. Cocoy *et al.*, G.R. No. L-6019, December 15, 1953; People v. Delgado, G.R. No. L-1446, March 4, 1949.
[30] People v. Agoy, G.R. No. L-5112, July 1954.
[31] People v. Galapon, G.R. No. L-6657, July 26, 1954.
[32] People v. Bernardino *et al.*, G.R. No. L-5038, November 25, 1952.
[33] People v. Delgado, *supra*, note 29.
[34] People v. Agoy and People v. Galapon, *supra*, note 30 and 31, respectively.
[35] People v. Limaco, *supra*, note 1.
[36] G.R. No. L-2060, February 15, 1949.
[37] Art. 13, par. 9, Revised Penal Code.
[38] People v. Gajo *et al.*, G.R. No. L-2012, June 27, 1949.
[39] G.R. No. L-2054, April 29, 1950.

cumstance of passion and obfuscation or sufficient provocation, where the evidence tended to establish that the killing was committed after an appeal had been made by a lieutenant to his soldiers, calling to the grave insult against the organization and urging them to avenge the outrage and vindicate the honor of their organization — which according to him is a feeling and passion resulting from mass psychology and appeal to their *esprit de corps*, added to the circumstance that the deceased was the one initially at fault.

From a reading of his decisions in criminal law, one is indeed struck with the singular position he takes in weighing the criminal responsibility of peace officers and agents who are charged with the commission of crimes during the performance of their duties. He is all for resolving doubts as to their criminal liability, in their favor, wherever the circumstances presented an opportunity for a theory consistent with innocence. Thus, in *People v. Mamasalaya*,[40] where he wrote the majority opinion acquitting one of the defendants, and in *Calderon v. People*,[41] where he dissented from the majority decision convicting a peace officer of homicide, he took pains to explain the tenability of his stand.

> ". . . Peaceful and law-abiding citizens should be protected. At the same time, we should equally afford protection and give sympathetic consideration to our peace agents and soldiers when they make honest mistakes in the performance of their duties specially when carrying out dangerous missions where their lives are jeopardized and imperilled. For there is nothing more demoralizing to said peace agents and officers, nothing more destructive of their morale than the thought or realization on their part that their government which sends them out on dangerous missions, is heatless and entirely lacking in sympathy, and is quick to punish them mercilessly for any mistake committed, however honest said mistake, and regardless of the difficult conditions and circumstances under which the mistake was committed. With that sword of Damocles ever hanging over their heads, to protect themselves, they would always act half-heartedly, without any initiative and play safe and they would never catch the criminals and dissidents whom they are supposed to apprehend to protect society."

Analogous perhaps, though not identical with the position he takes in the preceding cases is that taken by him in the case of *Viray v. Amnesty Commission*,[42] where he extended the benefits of an amnesty proclamation to the members of the regular armed forces for crimes committed by them, even where the proclamation and the message by the President to the Congress urging approval of the proclamation, purported to apply the amnesty only to members of the guerrilla forces.

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[40] G.R. No. L-4911, February 10, 1953.
[41] G.R. No. L-6189, November 29, 1954.
[42] G.R. No. L-2540, January 28, 1952.

"We see no reason," he said, "why the benefits of the amnesty should be confined to a certain part of the population that heroically operated and fought against the enemy to the exclusion of another portion, which because of its discipline, training and equipment, may have equally fought and operated, perhaps even more effectively, though for a shorter period of time. . . . It is quite unfair and unjust to exclude them."

MANUEL P. DUMATOL

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