of *People v. Bautro,*[45] where the defendant participated personally in the massacre of a great number of victims, Justice Jugo, acting for the Supreme Court, failed to reverse the action of the lower court granting in favor of the accused the mitigating circumstance of lack of education.

The stand of Justice Jugo in regard to the defense of duress in treason cases is more edifying:

> "Duress as a valid defense should be based on real, imminent, or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful, or remote fear. A person should not commit a very serious crime on account of a flimsy fear." [46]

TEODORO Q. PEÑA

THE JURISTIC THINKING OF THE HONORABLE CESAR BENGZON — JUSTICE *

"The philosophy of every man betrays his occupation."[1] What has been said of Justice Cardozo of the U.S. Supreme Court may also be said of Justice Bengzon. As it was to Cardozo, the law is a holy grail to Justice Cezar Bengzon.

Although Law was not his first love, it was his last.

Born in Camiling, Tarlac, on May 29, 1896, to Don Vicente Bengzon and Doña Paz Cabrera, both scions of prominent families in that town, Cesar Bengzon displayed such industry and exceptional ability while yet in the grade school in Bautista, Pangasinan, that early prophesied his future ascendancy to national eminence. In the Ateneo de Manila, where he finished his high school and took his A.B. degree, he left an impressive scholastic record by consistently winning honors and medals for excellence in oratory and debate and in recognition of his excellent scholastic standing. At this point in his life he fell in love with Soledad Romulo.[2] That love made him change his early cherished plans of entering the medical school to take up the cause of law.

The love-struck youth applied himself earnestly to his studies in the College of Law, University of the Philippines, so that he was con-

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[45] G.R. No. L-4260, Jan. 21, 1952.

[46] *People v. Quiboy,* G.R. No. L-2343, Jan. 10, 1951.

* Acknowledgment is hereby given to Miss Dolores Garcia who furnished the materials for the biographical sketch.

[2] Soledad Romulo, sister of Ambassador Carlos P. Romulo, is now the wife of Justice Bengzon and the mother of his four children. Justice Bengzon has so dedicated himself to his task that he refused to have the case of his son reconsidered when his son missed the passing mark in the bar examinations. He has also avoided making friends and refrained from attending social gatherings. He said that that a justice must not only be impartial but must appear to be so.

[1] LEVY, CARDOZO AND FRONTIERS OF LEGAL THINKING, p. 22.

sistently at the head of the class. He graduated with highest honors as the valedictorian of his class. In the bar examinations of 1920, he placed second. His scholastic records may be summed up as the triumph of intellect, integrity and industry.

Cesar Bengzon started his career in the public service early in life. In 1919, while still an undergraduate, the Honorable Quintin Paredes, then Attorney-General and his professor in the College of Law, U.P., appointed him law clerk in the Bureau of Justice. Since then, he steadily rose from the ranks. He was never to experience the private practice of law.[3] In the early part of 1920, he tendered his resignation as law clerk for insufficiency of compensation, but his exceptional merits having been brought to the attention of the Honorable Victorino Mapa, then Secretary of Justice, he was appointed special attorney in the same bureau. A few months later, he was made assistant attorney therein. In 1931, he was appointed Solicitor-General and upon the reorganization of the insular government early in January, 1933, he was re-appointed Solicitor-General and head of the Bureau of Justice. When the Court of Appeals was created in 1936, he was one of the original ten justices appointed. He was the youngest member of that tribunal. In fact, he was underaged, being then only 39 when the required age was 40. Finally, on September 15, 1945, he was appointed to the Supreme Court by President Osmeña. He now ranks third in seniority in the court.

Since his appointment to the Supreme Court, Mr. Justice Bengzon has penned more than three hundred majority opinions and about thirty concurring and/or dissenting opinions. A greater part of these written opinions have no value to us in our attempt to gain insight into his character and juristic thinking, but they do show how well he has heeded the plea "for more concise opinions."[4] These are the "facts-law-judg-

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[3] However, Bengzon taught in the law schools from 1921 to 1932. He resumed teaching in 1945. He was formerly Dean of the College of Law of the University of Manila.

[4] This is the title of an article in the Volume of the Ameircan Judicature Society, Vol. 1, p. 89. Part of the Article is a memorial of the American Bar Association addressed to all the Courts in the United States asking for more concise opinions.

(Some of the recommendations were: "(a) A conscious effort at the shortening of opinions and the recognition of brevity as a cardinal virtue second only to clearness; (b) an avoidance of multiplied citations and of elaborate discussions of well-settled legal principles and of lengthy extracts from textbooks and earlier opinions; (c) the presentation of so much, and no more, of the facts as are necessary to present the precise question at issue; (d) a reduction of the number of reasoned opinions and a corresponding increase in the number of memorandum or per curiam decisions, with a brief statement when necessary, of the points decided and the ruling authorities." We can see the influence of that memorial in Justice Bengzon in this statement of his in the case of *Vera v. Avelino*, L-543, August 31, 1946: "At this point we could pretend to erudition by tracing the origin, development and various applications of the theory of separation of powers, transcribing herein whole paragraphs from adjudicated cases to swell the pages of judicial output. Yet the temptation must be resisted, and the parties spared a stiff dose of jurisprudential lore about a principle, which after all, is the first fundamental imparted to every student of Constitutional law.")

ment" cases, which but for the constitutional requirement that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based,"[5] should have been dispatched with the terse: "Judgment affirmed."

There are, however, the inevitable controversies where the law can not be applied with mathematical precision, cases where th best of legal minds must disagree. There are those cases whether of first impression or not, where the legal reasoning must proceed with much reliance upon the resources of illustrations and analogies, history and precedents, distinctions and considerations of policies involved. And these are excellent sources of legal literature, for the substance of disputed ideas must gather "the strength that is born of form"[6] if they are to be submitted to the "free trade of ideas" for their acceptance in "the competition of the market."

In such cases, the court sheds its mystical unity. The justices assert their individuality. Their personalities rise sharply against a background of competing ideas and novel situations. Those cases, like facets of a precious gem, have reflected with brilliance the varying aspects of Justice Bengzon's personality and juristic thinking.

A. *The Court of Appeals and Judges of Lower Courts*

It is only natural for Justice Bengzon to appreciate the role of the Court of Appeals in the judicial system. It is appreciation born of confidence and confidence born of experience. Thus in the case of *Lim v. Calaguas*:[7]

> "In disputes of this nature the pivotal inquiry is: Do the circumstances show beyond doubt that the parties made a contract different from the express terms of the document they signed? Is the evidence clear, convincing and satisfactory that the deal was a mortgage instead of a sale with *pacto de retro?* The query necessarily invites calibration of the whole 'evidence,' considering mainly the credibility of witnesses, their relation to each other and to the whole and the probabilities of the situation. Consequently the question must be deemed factual, for the Appeals' Court to solve.
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> "To the argument, if advanced, that the Philippine Reports abound with litigations in which this Court has passed upon identical issues, the answer is that those litigations have not passed thru the intermediate court to whose findings of facts we have given final character by our new rules and rulings designed to speed up the adjudication of causes thru a division of labor. Those rulings should not be emasculated thru finely drawn distinctions, stemming maybe from well-intentioned purposes to revise; on the contrary, they should be given such meaning and operation as will further expedite judicial business, this court meticulously avoiding duplication of work.
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> "No cause for worry, to be sure. The knowledge that theirs is

[5] Art. VIII, Sec. 12, Constitution of the Philippines.
[6] Cardozo, *Law and Literature.*
[7] G.R. No. L-2031, May 30, 1949.

the final word will inevitably confirm and strengthen in the members of the appellate tribunal that sobering sense of responsibility so essential to the search for truth in the dispensation of justice.

"In conclusion, the Court of Appeals having declared that according to the evidence the instrument reflects the true agreement and intention of the parties, we will not examine the same evidence nor declare that it does not."

M. Ransson has said that: "A true magistrate, guided solely by his duty and his conscience, his learning and his reason, hears philosophically and without bitterness that his judgment has not been sustained; he knows that the higher court is there to this end, and that better informed, it has believed itself bound to modify his decision." Aware that the judge after having done his best, may yet "maintain in his inmost soul the impression that perhaps and in spite of everything he was right,"[8] Justice Bengzon makes it easy for the judge to philosophize. In overruling a lower court's decision, he often takes time out to understand and explain the possible sources of error in the judgment. Thus in the case of *Hidalgo Enterprises, Inc. v. Balandan et al.*,[9] he said:

"In fairness to the Court of Appeals it should be stated that the above volume of the Corpus Juris Secundum was published in 1950, whereas its decision was promulgated on September 30, 1949."

and in the case of *Gonzalez v. Asia Life Insurance Co.*,[10] he made use of a footnote to his statement:

"In the face of our rulings, the lower court's following a contrary doctrine must be held erroneous"

to explain that the lower court's decision was rendered before the publication of the views of the Supreme Court. In the case of *People v. Barrioquinto*,[11] the kind understanding with which he sought to explain the judge's error in the appreciation of the evidence for the accused is noteworthy.

"Unfortunately for Barrioquinto that decision was rendered January 21, 1949, almost a year after he had been convicted in the lower court. We say unfortunately because as we read the record and analyze the reasoning of the appealed decision, we get the general impression that the guerrilla story was discounted by His Honor mainly upon the ground that the accused maintained inconsistent theories and did not from the beginning openly and sincerely confess to having snuffed out the life of Simeon Bernardo for being a Japanese spy and collaborator.

"Suspecting that the amnesty theory was defendant's eleventh-hour effort to evade punishment, His Honor naturally appraised the defendant's evidence with critical eyes, readily perceiving areas of ab-

[8] Cardozo, B., *Law and Literature*.
[9] G.R. No. L-3422, June 13, 1952.
[10] G.R. No. L-5188, Oct. 29, 1952.
[11] G.R. No. L-2267, June 30, 1951.

solute inconsistency and indications of falsity where others could have found plausible explanations."

In *Cruz v. Dinglasan*,[12] he explained the apparent conflicting acts of two judges. He said:

"Petitioner's grievance seems to be planted mainly on the proposition that after Judge Rodas had determined that the jeep was not the stolen jeep, other judges may not thereafter declare that it was.

"On this phase of the controversy, it should be noted that in issuing search warrants, judges act in accordance with the evidence presented to them. The proofs submitted to Judge Rodas were not probably as strong as the evidence introduced before Judge Dinglasan . . ."

In their errors, Bengzon is understanding. In their commendable actuations, he is appreciative. So in the case of *People v. Maniego*[13] he said:

"It must be admitted that there were minor flaws in the statements of Maria Eser. She was not a perfect witness. But truthful eye-witnesses do not sometimes make perfect witnesses. Their degree of education, their mental conditions, the solemnity of court proceedings often account for many defective answers. But judges are trained to make allowances. They pay more attention to the sincerity of the witness, and her willingness to tell the whole story.

"In this connection, we may advert to appellant's criticism of the judge who made it of record that Maria Eser and Milagros Magno were in tears while on the witness stand. There is nothing improper in the action; on the contrary, it was the correct thing to do, so appellate courts may behold, upon review, as good a picture as is possible of the incidents of the trial. The defense should not object; it is thereby afforded the opportunity to counteract whatever prejudicial effects the constancia might produce. It might for instance show, if it can, that the weeping was a little trick or was due to extraneous causes."

And again in the case of *Esguerra v. Court of First Instance of Manila*:[14]

"Indeed, had the respondent judge denied postponement and dismissed the information for insufficiency of evidence, it would have permitted the case to go by default, and would deserve the same criticism levelled at judges granting suits for annulment of marriage upon defendant's absence or even connivance."

B. *Law and Experience*

In the novel case of *Felipe v. Leuterio*,[15] we see Justice Bengzon, the bemedalled winner of many an oratorical contest and debate in his

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[12] G.R. No. L-1545, April 19, 1949.

[13] G.R. No. L-2253, May 31, 1949.

[14] G.R. No. L-7691, July 31, 1954.

[15] G.R. No. L-4606, May 30, 1952. This case is so novel that Justice Bengzon said: "Incidentally, these school activities have been imported from the United States. We found in American jurisprudence no litigation questioning the determination of the board of judges."

school days, transforming the tenets of sportsmanship which he has mastered through experience into a rule of law. One senses the nostalgic mood of past recollections in his:

> "For more than thirty years oratorical tilts have been held periodically by schools and colleges in these islands. Intercollegiate competitions are of more recent origin. Members of this court have taken part in them either as contestants in their school days,[16] or as members of the board of judges afterwards. They know some (few) verdicts did not reflect the audience's preference and that errors have sometimes been ascribed to the award of the judges. Yet no party ever presumed to invoke judicial intervention; for it is the unwritten law in such contests that the board's decision is final and unappealable.
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> "Like the ancient tournaments of the Sword, these tournaments of the Word apply the highest tenets of sportsmanship: finality of the referee's verdict. No alibis, no murmur of protest. The participants are supposed to join the competition to contribute to its success by striving their utmost: the prizes are secondary.
>
> "No right to the prizes may be asserted by the contestants, because theirs was merely a privilege to compete for the prize, and that privilege does not ripen into a demandable right unless and until they were proclaimed winners of the competition by the appointed arbiters or referees or judges."

And for a glimpse of his understanding of human nature, listen to him in the case of *People v. Godinez*:[17]

> "Those who refused to cooperate, in the face of danger, were patriotic citizens; but it does not follow that the faint-hearted who gave in, were traitors.
>
> "And if he ever made the remarks, it was probably as one of these arm-chair strategists dishing out war opinions on the basis of doctored news fed by the propaganda machine to local newspaper and broadcasting stations. The man was sadly in error; he underestimated the publicity corps of the Japanese Army; but should he be jailed for it?"

As one who has watched with concern the mounting number of appealed cases that are now clogging the appellate courts, Justice Bengzon could not help commending a litigant thus:

> "Aware of such decision (Firmeze v. David, L-5832), and expressly referring to it, the defendant-appellees in short statement declared they "see no further necessity of submitting" their brief. With commendable sincerity, they made no attempt at distinction. If all litigants displayed the same attitude, much of the litigation now clogging our dockets could be promptly disposed or in the interest of speedy administration."[18]

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[16] In the original, Justice Bengzon placed a footnote at this point which footnote reads: "In the college of Law U.P. annual oratorical contest, first prize was awarded to Justice Montemayor in 1914 and to Justice Labrador in 1916."

[17] G.R. No. L-895, Dec. 31, 1947.

[18] *Lagumen v. Abasolo, et a.*, G.R. No. L-5891, Feb. 26, 1954.

C. *Dissents: Form and Substance*

In the number of his dissents, Justice Bengzon is not a "great dissenter." But in the tradition of the great dissent which in the words of Chief Justice Hughes "is an appeal to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed,"[19] Bengzon is a "great dissenter." He has seen the intelligence of a future day correct an error which he believed the Court made in the case of *Santiago v. Valenzuela.*[20] In that case, an appeal made out of time was allowed by the majority. He wrote a vigorous dissenting opinion where he argued for adherence to the principle of stare decisis as the "foundation rock of the administration of justice." In the later case of *Miranda v. Guanzon*[21] the Supreme Court impliedly overruled its decision in the *Valenzuela* case by reverting to the doctrine that the period for appeal is jurisdictional.[22]

It is also in the case of *Santiago v. Valenzuela*[23] that gives us an insight into his philosophy of the dissenting and/or concurring opinions. As an introduction to his dissenting opinion, he said:

> "I have smothered more than once a prankish itch to dissent even from minor rulings or incidental issues, or "to bring coal to Newcastle" with concurring opinions, that, contributing nothing substantial to the court's deliverance will only serve to increase the bulk of the already bulky volumes of reported decisions. Vanity (I suspect) urged me to have my say, if only to assert individuality and independence of criterion. But those times I yielded to the sober second thought that, generally, the more the eyes, the clearer the view.
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> "There are occasions though, when keeping one's peace may border on dereliction of duty. This is one of them. With all respect for the majority opinion, I must register a dissenting vote."

Justice Cardozo has said of his dissents:

> "More truly characteristic of dissent is a dignity, an elevation, mood and thought and phrase. Deep conviction and warm feeling are saying their last say with the knowledge that the cause is lost. The

[19] Quoted in SINCO, V. G., PHILIPPINE POLITICAL LAW, 334 (1954).
[20] G.R. No. L-670, April 30, 1947.
[21] G.R. No. L-4992, October 27, 1952.
[22] Even in the earlier case of *Medran v. Court of Appeals*, promulgated on March 26, 1949, the Supreme Court said: "If as found the appeal was untimely and the decision of the Mindoro court has become final, the Court of Appeals *ipso facto* had no jurisdiction, except to dismiss the appeal. The Resolution of the Court of Appeals upholding its own jurisdiction did not operate to give it jurisdiction, any more than a court's decision holding it has jurisdiction over political controversies would give it jurisdiction. Neither can a court's resolution upholding its own jurisdiction operate to preclude investigation by a higher court of that jurisdiction, by certiorari or prohibition."

In the resolution of the Supreme Court in the case of *Testate Estate of the deceased Serapio Corpus, Artemio Rodrigo v. Isabel Seridon*, G.R. No. L-7896, July 29, 1954, the Supreme Court expressly overruled the *Santiago v. Valenzuela* case and reiterated the doctrine in *Miranda v. Guanzon, supra.*
[23] *Supra*, note 20, also 44 O.G. (9) 3291 (1947).

voice of the majority may be that of force triumphant, content with the plaudits of the hour, and recking little of the morrow. The dissenter speaks to the future, and his voice is pitched to a key that will carry through the years. . . . The prophet and the martyr do not see the hooting throng. Their eyes are fixed on the eternities."[24]

In Justice Bengzon's rare dissent on questions of law, one senses that dignity, that elevation, of mood and thought and phrase. Read for example this dissent in the case of *Abad Santos v. The Auditor-General and the GSIS*.[25] In that case, the Supreme Court was passing upon the claim of the widower of the late Chief Justice Jose Abad Santos to the government service insurance policy of her martyr-husband.

Justice Bengzon wrote:

"I concur in the decision insofar as it finds the appeal to be meritorious. However, I regret my inability to vote for disbursement of the whole amount of the policy. Not because I believe the family of the deceased has been adequately compensated for the loss of their precious head but because the law which I swore to uphold regardless of preference or inclination, only permits the return of the premiums paid. The deceased himself, olympically seated among the immortals, would surely frown upon mortals at the judgment seat he once presided, straining a principle or blinking a statute, even if their labors meant thousands of pesos for those nearest to this heart. For if to him their interests did not outweigh the demands of national honor and official integrity, I am sure those same interests will not dim his vision of the only award possible under the laws of the Republic. I refuse to join those who imagine he had feet of clay. He was made of sterner stuff."

Note the deep conviction and warm feeling, expressed with all eloquence of a lost cause in the case of *Moncado v. People's Court*:[26]

"Sanctity of the home is a by-word anywhere, anytime. The house of man was the first house of God.

"In Rome the citizen's dwelling was a safe asylum. Invasion was anathema. Down through the centuries respect for man's abode has remained a heritage of civilization.

"In England, the poorest man could in his cottage, defy all the forces of the Crown. . . . His home was indeed his castle.

"Therefore, it is submitted, with all due respect, that we are not at liberty now to select between two conflicting theories. The selection has been made by the Constitutional Convention when it impliedly chose to abide by the Federal decisions, upholding to the limit the inviolability of man's domicile. Home! The tie that binds, the affection that gives life, the pause that soothes, all nestle there in an atmosphere of security. Remove that security and you destroy the home.

"Under the new ruling the 'king's forces' may now 'cross the threshold of the ruined tenement' seize the skeleton from the family closet and rattle it in public, in court, to the vexation or shame of the

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[24] CARDOZO, LAW AND LITERATURE.
[25] G.R. No. L-376, Sept. 1, 1947; 450 O.G. (3) 1216 (1949).
[26] 45 O.G. (7) 2850 (1948).

unhappy occupants. That those forces may be jailed for trespass, is little consolation. That those forces may be pardoned by the king, their master suggests fearful possibilities. The sanctuary, the castle, are gone with the wind."

Justice Cardozo in his essay "*Law and Literature*" speaks of "a faint and gentle sarcasm which is sometimes the refuge of the spokesman of a minority expressing his dissent."[27] It finds example in this dissent of Bengzon in *People v. Neri*[28]:

"I can't find it in me to jail herein defendant for having refused to take a beating at the hands of a vindictive old man. Age may have its privileges; but youth certainly has its own rights."

Compare it with his not-so-faint-and-gentle sarcasm in *Araneta v. Dinglasan*: [29]

"The majority feels it has to decide the question whether the President still has emergency powers, but unable to determine which of the above five cases the issue may properly be decided, it is best to shoot at five birds in a group: firing at one after another may mean as many misses.

"It does not matter that the first two cases has been submitted and voted before the submission of the last three. Neither does it matter that, of these last, two should be thrown out in accordance with our previous rulings. The target must be large."

But it is not only in his dissent that Justice Bengzon has found it necessary to resort to sarcasm. There is no sarcasm in his majority opinion in the *Vera v. Avelino*[30] case:

". . . There is the word "deference" to be sure. But deference is a compliment spontaneously to be paid — never a tribute to be demanded.

And if we should (without intending any disparagement) compare the Constitution's enactment to a drama on the stage or in actual life, we would realize that intelligent spectators or readers ofen know as much, if not more, about the real meaning, effects or tendencies of the event, or incidents thereof as some of the actors themselves, who sometimes become so absorbed in fulfilling their emotional roles that they fail to watch the other scenes or to meditate on the larger aspects of the whole performance, or what is worse, become so infatuated with their lines as to construe the entire story according to their prejudices or frustrations. Perspective and disinterestedness help certainly a lot in examining actions and occurrences.

"Come to think of it, under the theory thus proposed, Marshall and Holmes (names venerated by those who have devoted a sizable portion of their professional lives to analyzing or solving constitutional problems and developments) were not so authoritative after all in ex-

[27] CARDOZO, *op. cit.*

[28] G.R. No. L-271, Dec. 3, 1946.

[29] G.R. No. L-2044, Aug. 26, 1949. This case was decided together with the cases of *Araneta v. Angeles*, G.R. No. L-2756; *Rodriguez v. Treasurer of the Philippines*, G.R. No. L-3054; *Guerrero v. Commissioner of the Customs and Administrator of Sugar Quota Office*, G.R. No. L-3055; and *Barredo v. Commission on Elections, Auditor General and Treasurer of the Philippines*, G.R. No. L-3056.

[30] G.R. No. L-543, Aug. 31, 1946.

pounding the United States Constitution — because they were not members of the Federal Convention that framed it!"[31]

It is in the case of *Hidalgo Enterprises, Inc. v. Balandan et al.*[32] that Justice Bengzon's style bordered on what Cardozo classifies as the "type tonsorial or agglutinative."[33] After extensive citations from American authorities, Bengzon declared that water is not an attractive nuisance. In the spirit of the scientific seeker of truth, he examined the precedents and found assurance in number. To sum up his researches, he said: The great majority of American decisions says no (To the question: Is a body of water an attractive nuisance?). He looked into the reasons and found them sound. The issue has not been decided here. In fact, the Court of Appeals held that the water tank was an attractive nuisance. But to him, to elaborate on what the American courts have said on the matter would be "bringing coal to Newcastle." It is not for him to pretend to erudition.

D. *The Government and Civil Liberties*

As a reaction against the spread of totalitarian governments, there is a tendency to overemphasize "civil liberties." To some the terms have become "cliches" in their doctrinal thinking that they would rally fanatically in "defense of civil liberty" at every instance that it is invoked. Not with Justice Bengzon. Liberty "is not the ruthless, the unbridled will; it is not freedom to do as one likes."[34] The framework of "civil liberty" is still the society. In his majority opinion in the case of *Espuelas v. People,*[35] he ably discussed the relation of government and the freedom of speech. Thus:

> "Naturally when the people's share in the government was restricted, there was a disposition to punish even mild criticisms of the ruler or the departments of government. But as governments grew to be more representative, the laws of sedition became less drastic and freedom of expression grew apace. Yet malicious endeavors to stir up public strife continue to be prohibited.
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> "Of course such legislation despite its general merit is liable to become a weapon of intolerance constraining the free expression of opinion, or mere agitation for reform. But as long as there is sufficient safeguard by requiring intent on the part of the defendant to

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[31] In an interview, Justice Bengzon stated that these statements were provoked by the claims of the late Justice Perfecto that, as a member of the Constitutional Convention, his interpretation of the Constitution should be given more weight.

[32] G.R. No. L-3422, June 13, 1952.

[33] Cardozo, *supra*, at p. 10. Speaking of the different types of opinions, he said: "As I search the archives of my memory, I seem to descern six types of methods which divide themselves from one another with measurable distinctness. There is the type majesterial or imperative; the type laconic or sententious; the type conversational or homely; the type refined or artifical, smelling of the lamp, verging at times upon preciosity or euphuism; the type demonstrative or persuasive; and finally the type tonsorial or agglutinative, so called from the shears and pastepot which are its implements and emblems."

[34] Judge Learned Hand, quoted in Coronet, Jan., 1955, p. 155.

[35] G.R. No. L-2990, Dec. 17, 1951.

produce illegal action — such legislation aimed at anarchy and radicalism presents largely a *question of policy.* Our legislature has spoken in Art. 142 and the law must be applied.

"Not to be restricted is the privilege of any citizen to criticize his government and government officials and to submit his criticisms to the 'free trade of ideas' and to plead for its acceptance in the 'the competition of the market.' However, let such criticisms be specific and therefore constructive, reasoned or tempered, and not a contemptuous condemnation of the entire government setup. Such wholesale attack is nothing else less than an invitation to disloyalty to the government. In the article now under examination one will find no particular objectionable actuation of the government. It is called dirty, it is called a dictatorship, it is called shameful, but no particular omissions or commissions are set forth. Instead the article drips with malevolence and are towards the constituted authorities. It tries to arouse animosity towards all public servants headed by President Roxas whose pictures this appellant would burn and would teach the younger generations to destroy.

"Analyzed for meaning and weighed in its consequences the article cannot fail to impress thinking persons that it seeks to sow the seeds of sedition and strife. The infuriating language is not a sincere effort to persuade, what with its failure to particularize. When the use of irritating language centers not on persuading the readers but on creating disturbances, the rationale of free speech can not apply and the speaker or writer is removed from the protection of the constitutional guaranty."

Civil libertarians view with concern and apprehension proceedings for contempt of court which arise from the supposed exercise of the constitutional privilege of free speech. Those who would argue from trends can point to the more liberal policies of courts in the United States as argument for a similar attitude here. The idealists may argue that the courts, especially the Supreme Court are beyond the reach and influence of outside opinions. Those of the opposite extreme contend, however, that the courts, including the Supreme Court, are not so perfect as to claim monopoly of wisdom that public discussion of a case *sub judice* is derogatory to the dignity of the court. In the case of *In re Quirino,*[34] Justice Bengzon was able to concretize the necessity and justification for such contempts of court, thus:

"For the first time, this body is called upon to sit in proceedings for contempt committed against it by a judge of a lower court. The situation is novel, but the governing principles are not uncertain, parallel incidents having happened before in other jurisdictions under the American flag.

"It was unusual for a judge, so to talk publicly to defend his decision that had been reversed by a higher tribunal. It was unheard

[34] G.R. No. L-278, May 4, 1946. This case arose in connection with the case of *Teehankee v.. Director of Prisons, et al.* Judge Quirino of the People's Court criticized the Supreme Court for its Resolution of February 16, 1946 overruling a previous order of the fifth division of the People's Court denying Teehankee's petition for bail. This was a per curiam opinion but in an interview with Justice Bengzon, he admitted that he penned it.

of that an inferior judge should so warmly uphold his views in a case. Local judges had heretofore regarded reversals a mere differences of opinion, involving no personal considerations. But the respondent, judge of a court of recent creation, hated the beaten path. He sought to blaze a new trial. He knew — so he asserted — that, as a private citizen, he had the privilege to criticize this Court's pronouncements, in the exercise of his constitutional privilege of free speech.

"Unfortunately he spoke too soon. Our resolution specifically announced the intention of the majority to write and promulgate a more extended decision, and the reservation of the dissenting members to deliver a written opinion. The cause had not finally ended, not only because of that reservation, but also because it was still open to a motion for reconsideration. . . .

". . . There was something yet to be done in the premises and the publication of this criticism, aside from its strongly intemperate language, tended to embarass this Court in the performance of its functions. To be specific: At the time of adopting the resolution, the majority members made up their minds to announce in the extended decision that, as a general rule, in cases of abuse of discretion in the matter of bail, our judgment should be to return the case to the People's Court with a direction for the granting of bail; but in this particular case, in view of the long process which the petitioner has to undergo, the majority thought it conformable to equity and justice that she be bailed immediately. After the criticism has been launched, it became a bit embarrasing for said majority to expound that view in a full-dress opinion, because the public might suspect that they had receded somewhat from their stand, falsely represented as 'robbing' the People's Court of its power to grant bail. Again, the minority members proposed to question our authority directly to grant bail. After Judge Quirino, without waiting for their dissent, had publicly raised the same doubt, said minority felt uneasy to appear as taking the cue from him. And so of other phases of the issue.

"It is this harmful obstruction and hindrance that the judiciary strives to avoid, under penalty of contempt. . . .

"On the other hand, this Court has adopted the healthy principle that in these matters we must be tolerant, the object being correction, not retaliation. Representatives of the Philippine Bar Association and the Lawyer's Guild, appearing as *amici curiae*, pleaded for a liberal attitude, assuring us the publication had not in the least affected the Court's prestige and standing, albeit manifesting anxious concern over individual freedom of speech and of the press. . . ."

Justice Bengzon has no illusions about the men who sit in even the highest tribunal of justice. They are, in spite of everything, still men, only human. They are not above personal embarrassments nor without the vanity to desire the credit for original thoughts.

E. *Judicial Interpretation and Policy Consideration*

To Justice Bengzon law is a dynamic force, it is an integration. The intellect must contain that force to usefulness: by harmonizing both the letter and the spirit of the law. In the interpretation of statutes, to insure such integration, he does not ignore policy considerations and the philosophy of the laws involved. So in the case of *Scottish Union & National Insurance Co. et al. v. Macadaeg*,[17] he said:

> "In addition to the foregoing considerations, R.A. 447 should not be so interpreted as to permit foreign insurers to escape the results of pending actions against them by withdrawing from the Philippines with all the securities they have deposited, provided they get the sanction of the Commissioner. That would be giving the Commissioner discretion to frustrate orders of courts in litigations against foreign insurers and and to liberate the latter from claims of local policyholders, whose interest it is his principal duty to protect, and for whose benefit he is given such broad powers of supervision over insurance companies as are seldom conferred upon parallel administrative agencies. And although this court has refused to heed pleas for preference of resident policyholders in litigations against foreign insurers, it is not disposed to permit any foreign insurer to evade or frustrate efforts to collect from them in our courts."

In the case of *Pambujan Sur United Mine Workers v. Samar Mining Co.*,[18] he relied heavily on the careful analysis of the philosophy behind the creation of the Court of Industrial Relations and the policy considerations involved in holding that its jurisdiction should be exclusive of the regular courts. He reasoned thus:

> "Perhaps it is unnecessary to dwell at this time upon the significance and usefulness of collective bargaining agreements and closed-shop stipulations. Nevertheles it may be pointed out that 'it lies at the very heart of "labor-management" relations' and 'the institution seems certain to grow, at least as long as there survivies the political democracy whose achivement it has followed.' Indeed one of the four policies of the Industrial Peace Act recently approved, is to 'advance the settlement of issues between employers and employees thru collective bargaining.'
>
> "And foreseeing the probability that the dispute will produce unrest, paralyzation of industrial production and economic hardship of the community, C.A. 103 has imposed on the disputants certain duties to be observed pro bono publico: during the pendency of the matter before the Industrial Court. For instance, the duty of the employee not to strike or walk out of his employment, and the corresponding obligation of the employer to refrain from employing others and from discharging the employees engaged in fighting his acts or policies. These correlative obligations do not obtain where the debate is staged before ordinary courts.
>
> "Therefore, it would seem that public convenience will best be served by requiring the Industrial Court's intervention in labor-management controversies likely to cause strikes or lock-outs. A unified policy and centralized administration is thereby insured, the more effectively to cope with probable explosive contingencies.
>
> "On the other hand, objectional consequences are apt to follow from a ruling that reserves co-ordinate jurisdiction to the regular courts. The employees who desire to keep, aloft and threatening, labor's pe-

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[17] G.R. No. L-5717, Nov. 19, 1952.
[18] G.R. No. L-5694, May 12, 1954.

culiar weapon (strike), or who contemplate the eventual use thereof, will elect recourse to the judiciary — not to the Industrial Court. The same choice will be made by the employer who plans dismissal of some employees in the heat of the contest. And to complicate the situation, one party (Note that *any party* to the dispute may request the Court's aid) might invoke the intervention of the industrial court to forestall the 'strategic' move or hidden motive of the adversary. Even the Secretary could bring the issues to the Industrial Court.

"The plain propositions are thus made manifest: Congress had the power to give exclusive jurisdiction to the Industrial Court; it is convenient that such jurisdiction be exclusive. And the resultant inference, rational and sound, is that Congress meant it to be exclusive, since the lawmaking body is presumed to have intended to do the right thing."

And in the case of *Olimpia K. Vda. de Dimayuga v. Raymundo,*[39] he examined with critical eyes the wisdom of allowing judgment creditors (landlords) to postpone the execution of judgment for consideration. Arguing from the philosophy of the law involved, he said:

"That the prevailing party may, by inaction, delay the execution of his judgment is certainly undeniable. The question whether, in general, by express contract, for consideration, and without the approval of the court, he may validly agree to postpone such execution for a definite period of time, we are not prepared to answer now. But bearing in mind the philosohpy of the recent law penalizing speculation on rent (C.A. 689) there is room to doubt the advisability of permitting the judgment creditor, by contract to periodically postpone the carrying out of his judgment, in unlawful detainer cases. A smart landowner on hiking the proceeds of his property might get judgment against the hardpressed occupant; but to avoid monetary loss due to vacancy, he foregoes execution from time to time, and then, when a suitable prospect offers to pay increased monthly payments, suddenly waiving the writ, he drives away the unsuspecting tenant, without the benefit of new proceedings, hearings, appeal, etc. Court proceedings should not be used as a means to speculate on the chance getting higher rents.

"On the other hand, it is not hard to imagine landlords resorting to detainer judgments, and then purposely withholding the writ to demand clock-work punctuality in the payment of rents — or else. The situation if tolerated, would mean that the landlord may through technicality, turn the scales of justice into a sword of Democles over the tenant's head and convert the courts into a regular collecting agency. As there is no limit to the number of alias execution available to the judgment creditor, it is easy to imagine how the landlord might employ such writs to collect rents. If the tenant neglects to pay— writ of execution. When he pays—no ouster. Upon new default— alias execution. And so on. A veritable now-you-go-now-you-don't performance, entirely incompatible with the dignity of the courts."

And in the case of *Everett Steamship Corporation v. Chua Hiong and the Public Service Commission,*[40] Justice Bengzon disposed of the ques-

[39] G.R. No. L-62, Feb. 18, 1946.
[40] G.R. No. L-2933, Sept. 26, 1951.

tion of first impression whether or not the Public Service Commission may validly require a common carrier to refund transportation charges collected by it in excess of the rates previously fixed by the Commission, on policy considerations, thus:

> "However, when the Commission is empowered by law to fix the rates of freight which vessels may charge, it is implied that the vessels may not legally demand more than those rates. The petitioner collected more than those rates and profited to the tune of ₱18,064.75. It is of course liable to the maximum fine of ₱200.00 hich the Commission is expressly empowered to impose under section 21. But if that is all the sanction for violation of the rate schedule, a situation would arise placing the Commission in a ridiculous predicament. Surely, after pocketing more than eighteen thousand pesos, the carrier could very well laugh when ordered to pay ₱200.00. Does the law contemplate such untenable position. Certainly not. Section 17 of CA 146 expressly grants the Commission power to enforce compliance with its directives. To insure compliance with its order fixing rates the Commission believes it should have power to direct reparations or the return of the excessible rates collected. It has exercised the power in previous cases. That does not seem to be unreasonable. . . .
>
> "There appears to be no cogent reason to regard this power beyond the scope of the administrative and quasi-judicial function of the Public Service Commission, because the question involved in a proceeding to demand reparations would merely be, whether the charges were excessive, and may properly be handled with its quasi-judicial facilities. . . .

To Justice Bengzon, justice may be tempered by considerations of sympathy or pity, only when the law allows it. When the law is clear in its spirit and its letter, the issue is one for the legislature, being one of policy. One does not easily forget these words in his dissenting opinion in the case of *Mitschiener v. Barrios*:[41]

> "The majority, however, in its sympathy for the tenant, discovering that the latter had paid the back rents . . . and continued to pay the other monthly rents, announces the new doctrine that such payment of the back rents was equivalent to the supersedeas bond, that, consequently, no execution would lie. Sympathy for the needy is all right, if limited by our solemn duty to administer equal justice to the rich the poor, and if we are alert to the possibility, that wearing such colored glasses (of sympathy) we might read into the statute some thing that is not there. Which is precisely what happened to the majority.
>
> "The majority considers its action as pure interpretation, liberal and progressive, approvingly citing the anecdote of the policeman who permitted the anxious father to violate trafic laws in order to obtain some medicine for his ailing baby. The illustration is not happy, I am bound to say. Not because I berate the officer's judicial knowledge,, but because it endorses the principle underlying all dictorial governments, namely, *the end justifies the means*. Had that speeding father collided with a bus and killed all the passengers, he would by the same token, be freed from responsibility. And if he needed the

[41] G.R. No. L-112, Feb. 1, 1946.

money to purchase his baby's medicine, he could likewise, rob and shoot to get it."

Neither can one help noticing the cold objectivity with which he consented to the reduction of the penalty in the case of *People v. de la Cruz*: [42]

> "Under the second theory the inquiry should be: Is five years and five thousand pesos, cruel and unusual for a violation that merely netted a ten-centavos profit to the accused? Many of us do not regard such punishment unusual and cruel, remembering the national policy against profiteering in the matter of foodstuffs affecting the people's health, the need of stopping speculation in such essentials and of safeguarding the public welfare in times of food scarcity of similar stress. In our opinion the damage caused to the state is not measured exclusively by the gains obtained by the accused, inasmuch as one violation would mean others, and the consequential breakdown of the beneficial system of price controls.
>
> "Some of us however are deeply moved by the plight of this modest store-owner with a family to support, who will serve in Muntinlupa a stretch of five years, for having attempted to earn a few extra centavos.
>
> "Fortunately there is an area of compromise, skirting the constitutional issue, yet executing substantial justice. We may decrease the penalty, exercising that discretion vested in the courts by the same statutory enactment."

In the case of *Losado v. Acenas*,[43] while conceding the existence of possibly equitable pleas, he proceeded to analyze with incisive clarity the basis of the claim. Thus:

> ". . . These are considerations that more properly belong to the legislative department, should an amendment to the law be proposed. They are likewise equitable pleas, which the executive department could properly entertain in connection with petitions for parole or pardon of the prisoners. But they may not authorize the courts to read into the statute additional conditions or situations. The special allowance for loyalty authorized by Article 98 and 158 of the Revised Penal Code refers to those convicts who having evaded the service of their sentences by leaving the penal institution, give themselves up within two days. As these petitioners are not in that class, because they have not escaped, they have no claim to that allowance. For one thing there is no showing that they ever had the opportunity to escape, or that having such opportunity they had the mettle to take advantage of it or to brave the perils in connection with a jailbreak. And there is no assurance that had they successfully run away and regaind their precious liberty they would have, nevertheless, voluntarily exchanged it later with the privations of prison life, impelled by that sense of right and loyalty to the Government, which ought to be rewarded with the special allowance."

[42] G.R. No. L-5790, April 17, 1953.

[43] G.R. No. L-810, March 31, 1947. This case was decided together with the cases of *Goocada v. Acenas*, G.R. No. L-811; *Aguda v. Acenas*, G.R. No. L-812; *Danao v. Acenas*, G.R. No L-813.

And in the case of *Javier v. Lucero,*[44] he sympathized only to philosophize:

> "But the real grievance of petitioner is contained in the last portion of his pleading, which says: 'What Alfredo Javier now tries to avoid is to support a woman who has desperately tried to put him in jail, when she accused him of bigamy.' Such disgust is easily understandable. But compliance with legal or contractual duties is not always pleasant."

It is a rare instance when Justice Bengzon allows himself the luxury of resorting to sympathy as an added consideration. In the case of *People v. Neri,*[45] it was only because he was convinced that the accused was innocent that he argued thus:

> "To sum up, Eugenio Bojeris believed that he could humble his younger opponent and sought him out. He was sadly mistaken. The tragedy is indeed to be deplored. But it is worsening matters to deprive two children of tender age of that protection and care which only their widowed father can give."

And even in labor casese where sympathies and inclinations tend to come into play, Justice Bengzon is careful not to let his reasons be obscured by such considerations. Thus in the case of *Caltex (Phil.) Inc. v. Philippine Labor Organization, Caltex Chapter,*[46] he made the reminder:

> "Wherefore, having previously ruled that the claim for back pay has no legal foundation, and being shown no resultant unfairness, this Court is constrained presently to disapprove the order directing payment to the herein named workers, finding no justification for it, either in law or in equity. Needless to say, courts are not permitted to render judgments solely upon the basis of sympathies and inclinations. Neither are they authorized, in the guise of affording protection to labor ,to distribute charities at the expense of natural or juridical persons, because our constitutional government assures the latter against deprivation of their property except in accordance with the statutes or supplementary equitable principles."

In connection with the power of the Supreme Court to promulgate rules of procedure, Justice Bengzon has consistently maintained the view that the exercise of that power sholud be consistent with judicial fair play. Thus his vigorous dissent in the case of *Mitschiener v. Barrios:*[47]

> "Let it not be argued that this Court has the power to amend the rules, and by majority vote, add thereto new provisions. Because conceding that power, I deny its authority to apply such amended rule to controversies already pending before it, at the time of the amendment. An attempt in that direction would be entirely inconsistent with traditional notions of fair play and substantial justice."

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[44] G.R. No. L-6706, March 29, 1954.
[45] G.R. No. L-271, Dec. 3, 1946.
[46] G.R. No. L-5206, April 29, 1953.
[47] *Supra,* note 41.

This view he reiterated in the case of *Santiago v. Valenzuela*:[48]

> "My concrete proposition is: when a ruling of this Court is overruled and a different view adopted, the new doctrine should not be immediately applicable, should not be applied to parties who had relied on the old doctrine and acted according to it, specially if it concerns procedure, as in this instance. The revised principle should affect future litigants only."

And the prosecution is as much entitled to judicial fair play as the defense. Thus his pointed statements in his dissenting opinion in *People v. Castro*:[49]

> "Without saying so, the decision strikes down Rule 113 section 2 (f) and 10 of the Rules of Court providing that if the defendant does not before pleading, move to quash on the ground that the criminal action or liability has been extinguished "he shall be taken to have waived" such defense. The court confesses, *sotto voce*, that it exceeded its constitutional powers in promulgating such Rule or its pertinent portion, because it takes away a substantial right.
>
> "Willingness to admit error is always praiseworthy but when such acknowledgment is due to short sighted views of jurisdictional posts and boundaries, regrets are surely in order.
>
> "For this record, I must state, it was not my privilege to take part in the preparation and promulgation of the Rules of Court of 1940. None the less it is my duty, as a member of the Court now, to exert effort exploring the nature and extent of Rule 113, with a view to upholding it if legally possible, preserving intact the Court's regulatory powers under the Constitution. On this subject, to give in easily enhances no judicial virtue.
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> "In a few words this decision reaches the conclusion that prescription being a substantial right, it is beyond this Court's power to regulate and debar.
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> "Such a broad statement, sweeps repeated practices, specially in civil cases. However I will answer it as follows: substantial rights may be lost — and have been lost — thru failure to comply with rules of procedure or thru the neglect duly to set them up.
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> "Again the privilege against double jeopardy is a constitutional right even more substantial, but according to our Rules it is waived if not seasonably pleaded. And we said so in repeated decisions listed in footnote (e), wherein we declined to philosophize (along the Moran dicta), that as the first jeopardy meant 'the loss by the State of its right to prosecute and punish' the accused again, 'it is absolutely indisputable that from the moment the state has lost or waived such right, the defendant may at any stage of the proceedings demand and ask that the same be finally dismissed' because 'the State not having then the right to prosecute' a second time 'or to continue holding the defendant subject to its action thru the imposition of the penalty, the court must so declare.'
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> "Need it be stressed that the prosecution had a right to rely on the Rule promulgated by the highest court of the Land? Could it presume to know better?

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[48] G.R. No. L-670, April 30, 1947.
[49] G.R. No. L-6407, July 29, 1954.

"And this leads to the inequitable result of the majority position: Having acted according to Rule 113 and disregarded prescription, the State is left 'holding the bag' when we strike such Rule down. Fairness, I submit, requires that the prosecution should at least be allowed, to prove the interruption of the period which it asserts.

"Or do we advise litigants to stick to the Rules at their own peril?"

F. *Law and Reason*

Law is reasonable and courts are reasonable. So while Justice Bengzon will not read something into the law, he will not read the law as to reduce it into a mere technicality. The ends of law and justice are not subserved by technicalities that do violence to reason. Thus in the case of *People v. Navarro*,[50] where he incidentally made an observation as to the duty of fiscals, he said:

"It must be noted that the section of the rule (Sec. 2(a), Rule 113 permitted a motion to quash on the ground that "the facts charged do not constitute an offense" omits reference to the facts detailed "in the information." Other sections of the same rule would imply that the issue is restricted to those alleged in the information (See sections 9 & 10). Prima facie, the 'facts charged' are those described in the complaint, but they may be amplified or qualified by the people's representative, which admissions could anyway be submitted by him as amendments to the same information. It would seem to be pure technicality to hold that in the consideration of the motion the parties and the judge were precluded from considering facts which the fiscal admitted to be true, simply because they were not described in the complaint. Of course, it may be added that upon similar motions the court and the fiscal are not required to go beyond the averments of the information, nor is the latter to be inveigled into a premature and risky revelation of his evidence. But we see no reason to prohibit the fiscal from making, in all candor, admissions of undeniable facts, because the principle can never be sufficiently reiterated that such official's role is to see that justice is done: not that all accused are convicted, but that the guilty are justly punished. Less reason can there be to prohibit the court from considering those admissions, and deciding accordingly, in the interest of a speedy administration of justice.

And in the case of *People v. Romero*,[51] he argued with the characteristic vigor of his dissenting opinions, against a strict and technical interpretation of the phrase "otherwise terminated" of section 9, Rule 113, thus:

"We cannot give our assent to the proposition that because defendant moved for dismissal he is precluded setting up such dismissal as bar to a subsequent prosecution. It would be unjust like holding that, because he moved for acquittal and was acquitted, the defendant may not be protected by such previous acquittal. The courts are reasonable. They do not expect the accused to oppose or refrain from demanding his acquittal or dismissal whenever the circumstances allow. Therefore they could not have provided that *if*

[50] G.R. No. L-1 & 2, Dec. 4, 1945.
[51] G.R. No. L-4517-20, July 31, 1951.

he asks for either and his request is granted, he may thereafter be again put in jeopardy for the same offense.

"We believe that the words 'without the express consent of the defendant' in section 9 Rule 113 qualify 'otherwise terminated' and not 'or the case against him dismissed.' If they qualify the latter, there would be no ground to declare that they do not likewise qualify 'convicted or acquitted' and then the Rules would become absurd. Where is the defendant who will not consent to an acquittal?

"We opine that the consent to which the rule applies is approval of a temporary termination of the case like an order remanding it to a lower court or a provisional dismissal. The case against Gandicela was not provisionally dismissed. Former jeopardy may therefore be validly invoked by him."

Justice Bengzon has learned to accept with philosophic calmness the inevitable — that human justice has its limitations. It is only that justice which can be had under our constitutional set-up, which set-up necessarily includes the doctrine of separation of powers. And he has no illusions about the system, as shown in the case of *Vera v. Avelino*[52] where he said:

"Let us not be overly influenced by the plea that for every wrong there is a remedy, and that the judiciary should be ready to afford relief. There are undoubtedly many wrongs the judicature may not correct, for instance, those, involving political questions. . . .

"Let us likewise disabuse our minds from the notion that the judicature is the repository of remedies for all political or social ills. We should not forget that the Constitution has judiciously allocated the powers of government to three distinct and separate compartments; and that judicial interpretation has tended to the preservation of the independence of the three, and jealous regard of the prerogatives of each, knowing full well that one is not the guardian of the others and that, for official wrongdoing, each may be brought to account, either by impeachment, trial or by the ballot box."[53]

His position in the Supreme Court has not made him forget that the judiciary is only one of the three branches of government — which branches are co-equal, co-important and coordinate. Each has its functions, its powers and its prerogatives which the other branches must be careful to respect and not encroach upon. Thus in the case of *Laurel v. Misa*,[54] he said:

". . . We will allow that there may be some dispute as to the wisdom or adequacy of the extension. Yet the point is primarily for the

[52] *Supra*, note 30.

[53] In his dissenting opinion in the case of *Krivenko v. Register of Deeds*, G.R. No. L-630, November 15, 1947, Justice Bengzon reiterated the above views. He said: "There is much to what Mr. Justice Padilla explains regarding any eagerness to solve the constitutional problem. It must be remembered that the other departments of the Government are not prevented from passing on constitutional questions arising in the exercise of their official powers. This tribunal was not established, nor is it expected to play the role of an overseer to supervise the other government departments, with the obligation to seize any opportunity to correct what we may believe to be erroneous application of the constitutional mandate . . ."

[54] G.R. No. L-200, March 28, 1946.

Legislature to decide. The only issue is the power to promulgate rules for the custody and investigation of active collaborationists, and as long as reasons exist in support of the legislative action courts should be careful not to deny it."

As in the case of *Montenegro v. Castañeda*:[55]

> "But even supposing the President's appraisal of the situation is merely prima facie, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our government."

And again in the case of *Vera v. Avelino*:[56]

> ". . . As explained in the Alejandrino case, we could not order one branch of the Legislature to reinstate a member thereof. To do so would be to establish judicial predominance, and to upset the classic pattern of checks and balances wisely woven into our institutional setup."

To elucidate further on that point, he added:

> "Needless to add, any order we may issue in this case, should according to the rules, be enforceable by contempt proceedings. If the respondents should disobey our order, can we punish them for contempt. If we do, are we not thereby destroying the independence, and the equal importance to which legislative bodies are entitled under the constitution?"

But in the same case he made this statement which political cynics might dismiss as mere rhetoric:

> "And should there be further doubt, by all maxims of prudence, let alone comity, we should heed the off-limits sign at the Congressional Hall, and check the impulse to to rush in to set matters aright — firm in the belief that if a political fraud has been accomplished, as petitioners aver, the sovereign people, ultimately the offended party, will render the fitting verdict — at the polling precincts."

So fundamental and so important is the principle of separation of powers and its corollary, the principle of checks and balances, that Justice Bengzon did not overlook it in the *Hernandez v. Montesa*[57] case. He said:

> "The storm center of these litigations has been represented as a clash between individual liberty and governmental security. A third aspect should not be overlooked: curtailment of the powers of adjudication.
>
> "Fundamentally the three great branches of the Government are independent, and none may encroach upon territory of the other except in those few instances especially allowed by the Constitutional structure It should follow as a matter of judicial dialectics that when the line of separation projects into the other's domain, and alternative choices are equally available, the part of wisdom is to follow the course

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[55] G.R. No. L-4221, Aug. 30, 1952.
[56] *Supra*, note 30.
[57] G.R. No. L-4964, Oct. 11, 1951.

that, deflecting the angle of deviation, reduces the encroachment to a minimum consistent with the intention of the framers of the Constitution. Now, the suspension of the writ undeniably effects a temporary invasion of normal judicial territory; yet it is authorized by the Constitution for reason sof paramount necessity. The metaphorical 'fence previously mentioned is constructed on judicial realms. Therefore the courts, in loyalty to the original apportionment, and the basic theories of republican institutions should not enlarge its areas by approving the extention ably but erroneously sponsored by the prosecution. Logical should be the view that when the Executive submitted the information, invited the Court to *look into the* case of the accused here, and thereby waived the suspension of the writ, opening the fictional fence in so far as this particular detainee is concerned. Unless it could be pretended (mistakenly of course) that after this detainee is acquitted by the Court of the charges of rebellion, the Executive may still legally detain him, keep him within the enclosure, on the pretext that the remedy of habeas corpus is not available to secure his release from custody." [58]

Intimately related to the theory of the separation of powers is the question of judicial independence and the question of judicial independence is an issue in the embarrassing question which the Supreme Court has had to decide in the case of *Perfecto v. Meer*,[59] namely: the taxability of the salaries of judges and justices. Commenting on the embarrassing aspect of the case, Justice Bengzon said:

"The death of Mr. Justice Perfecto has freed us from the embarassment of passing upon the claim of a colleague. Still, as the out come indirectly affects all the members of the Court, consideration of the matter is not without its vexing feature. Yet adjudication may not be declined, because, (a) we are not legally disqualified; (b) jurisdiction may not be renounced, as it is the defendant who appeals to this Court, and there is no other tribunal to which the controversy may be referred; (c) supreme courts in the United States have decided similar disputes relating to themselves; (d) the question touches all the members of the judiciary from top to bottom; and (e) the issue involves the rights of other constitutional officers whose compensation is equally protected by the Constitution, for instance, the President, the Auditor General and the members of the Commission on Elections. Anyway the subject has been thoroughly discussed in many American lawsuits and opinions, and we shall hardly

[58] Justice Bengzon, in the same case, discusses the "metaphorical fence" thus: "When normalcy is disturbed and the Executive decrees a suspension of the writ he thereby erects, so to speak, a fence around those detained for rebellion or insurrection, a fence which the judiciary may not penetrate by the writ of *habeas corpus* . . But when the Executive, thru the fiscals, files an information and requests the Courts to punish a particular rebel, the reason for the non-interference ceases, because he thereby takes the prisoner out of the fenced premises and brings him into the Temple of Justice for trial and punishment. Thereby he sets in motion a train of consequences resulting from the rituals of the Temple: the principles regulating criminal procedure, *e.g.*, proceeding to obtain bail or to enforce other rights of the prisoner at the bar. Indeed it would be preposterous and paradoxical for the Executive in so presenting the detainee expressly to stipulate: "Here is the prisoner, judge him; but you may not release him from confinement."

[59] G.R. No. L-2348, Feb. 27, 1950.

> do nothing more than to borrow therefrom and to compare their conclusions to local conditions. There shall be little occasion to formulate new propositions, for the situation is not unprecedented."

After discussing the historical development of the three leading cases in the United States, Justice Bengzon said:

> "Carefully analyzing the three cases (Evan, Miles and O'Malley) and piecing them together, the logical conclusion may be reached that although Congress may validly declare by law that salaries of judges *appointed thereafter* shall be taxed as income (O'Malley v. Woodrough) it may not tax the salaries of those judges *already in office* at the time of such declaration because such taxation would diminish their salaries (Evans v. Gore; Miles v. Graham). In this manner the rationalizing principle that will harmonize the allegedly discordant decisions may be condensed."

On the issue of judicial independence and how it is affected by the imposition of taxes on the salaries of judges, Justice Bengzon presented the picture of the improbable but possible situation where the two other branches of the government would conspire against the judiciary. With mathematical computations, he discussed the more-than-personal character of the constitutional privilege thus:

> "Judges would indeed be hapless guardians of the Constitution if they did not perceive and block encroachments upon their prerogatives in whatever form. The undiminishable character of judicial salaries is not a mere privilege of judges — personal and therefore waivable — but a basic limitation upon legislative or executive action imposed in the public interest.
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> "It is hard to see, appellant asserts, how the imposition of the income tax may imperil the independence of the judicial department. The danger may be demonstrated. Supposed there is power to tax the salary of judges, and the judiciary incurs the displeasure of the Legislature and the Executive. In retaliation the income tax law is amended so as to levy a 30% tax on all salaries of government officials on the level of judges. This naturally reduces the salary of the judges by 30%, but they may not grumble because the tax is general on all receiving the same amount of earnings, and affects the Executive and the Legislative branches in equal measure. However, means are provided thereafter in other laws, for the increase of salaries of the Executive and Legislative branches, or their perquisites such as allowances, perdiems, quarters, etc. that actually compensate for the 30% reduction on their salaries. Result: Judges must 'toe the line' or else. Second consequences: Some few judges might falter; the majority will not. But knowing the frailty of human nature, and this chink in the judicial armor, will the parties losing their cases against the Executive or the Congress believe that the judicature has not yielded to their pressure?"

An analytical mind and a critical imagination have been Justice Bengzon's tools in the elusive search for human justice. It is a mind that reasons with infallible logic from established premises to inevitable conclusions. It is an imagination that envisions with comprehensive scope the inferences, implications, effects and situations possible under the premises. It is a mind that is not surprised into offhand conclusions not carried by at-first-blush arguments.

We perceive the working of such a mind in the case of *People v. Tinamisan*[60] thus:

> "The use of explosives in fishing — except when permitted under special circumstances, by the Secretary of Agriculture is prohibited and penalized under Act No. 403 as amended by Act No. 471.
>
> "The possession of dynamite or explosives — without license from the Chief of the constabulary — is prohibited and punished under Act No. 2225 as amended by Act No. 3023.
>
> "One offense is distinct from the other. When a man fished with explosives, he violates the first-mentioned law or the second, or both, or he may commit no offense at all. No offense, if he obtained a license from both the Secretary of Agriculture and the Chief of the Constabulary. He infringes the first (and not the second) if he has no license from the Agriculture Secretary, but he has license from the Chief of Constabulary. He transgresses the second (but not the first) if he holds no license from the Constabulary, but he wields a permit from the Agriculture Secretary. He transgresses both laws, as in this case, when he exhibits no license at all.
>
> "Therefore, one violation does not necessarily include, and is not necessarily included in, the other. The double jeopardy rule does not attach."

It is the critical imagination in this case of *Talisay-Silay Milling Co. v. Talisay Employees and Laborers Union*:[61]

> "It seems to us that the maintenance of the equilibrium is merely a matter of convenience within the judicious recognizance of the employer. It is not to be enforced by government decree, which in these controversies must rest upon the basis of necessity and justice — not benevolence nor generosity — the guiding principle of our labor legislation being to 'give the workingmen a *just* compensation for their labor and adequate income to meet the essential *necessities* of civilized life and at the same time allow the capital a fair return of its investment.' . . .
>
> "Returning to the 'existing equilibrium' idea, there is reason to fear it might ultimately be detrimental to the best interests of labor. For if an employer may not ameliorate the conditions of the inadequately paid laborer without *at the same time* allowing increases to all his employees *from the bottom up*, many a plan to improve the living standard of such underpaid workingmen will not be carried into effect, because the well-meaning employer realizes that under the law (as advocated by herein respondent) a concession to one class *ipso facto* carries the same concession to all other employees or laborers. Again when times of stress supervene and reduction of salaries is started from the top, this 'maintenance of equilibrium' would compel a corresponding reduction of salaries all the way down to the bottom. Inevitable consequence: the low income brackets would be the worst sufferers."

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[60] G.R. No. L-4081, Jan. 29, 1952.
[61] G.R. No. L-5406, May 29, 1953.

And in the case of *Constantino v. Asia Life Insurance Co.*[62] he exposed the fallacy in the argument of the plaintiff with convincing clarity thus:

> "For the plaintiff, it is again argued that in view of the enormous growth of insurance business since the Statham decision, it could now be relaxed and even disregarded. It is stated 'that the relaxation of the rules relating to insurance is in direct proportion to the growth of the business.' If there were only 100 men, for example insured by the Company of a mutual association, the death of one will distribute the insurance proceeds among the remaining 99 policy-holders. Because the loss which each survivor will bear will be relatively be deemed not compensable loss. But if the policy holders of the company or association should be 1,000,000 individuals, it is clear that the death of one of them will not seriously prejudice each of the 999,999 surviving insured. The loss to be borne by each individual will be relatively small.
>
> "The answer to this is that as there are (in the example) one million policy-holders, the 'losses' to be considered will not be the *death of one* but the death of ten thousand, since the proportion of 1 to 100 should be maintained. And certainly such losses for 10,000 deaths will not be 'relatively small.'"

G. *Conclusion*

The motto "Equal justice under law" is proclaimed by the very stones of the U.S. Supreme Court Building. It is engraved in the heart and mind of Mr. Justice Cesar Bengzon of the Philippine Suprème Court. It is to him a theory of government, a philosophy of justice and a concept of judicial duty. Law and justice — they are a seamless weave.

NAPOLEON M. GAMO

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[62] G.R. No. L-1669, Aug. 31, 1950. For another example of Justice Bengzon's thorough analysis, we have this paragraph from the casv of *Vera v. Avelino, supra*, note 30:

> "More about that Angara precedent: The defendant there was only the electoral commission which was 'not a separate department of the government' and exercised powers 'judicial in nature.' Hence, against our authority, there was no objection based on the independence and separation of the three co-equal departments of government. Besides, this court has said no more than that, there being a conflict of jurisdiction between two constitutional bodies, it should not decline to take cognizance of the controversy to determine the "character, scope and extent" of their respective constitutional sphere of action. Here there is no actually no antagonism between the Electoral Tribunal of the Senate and the Senate itself, for it is not suggested that the former has adopted a rule contradicting the Pendatun resolution. Consequently, there is no occasion for our intervention. Such conflict of jurisdiction, plus the participation of the Electoral Tribunal are essential ingredients to make the facts of this case fit the mold of the Angara doctrine."