

## PRESIDENTIAL MISGOVERNMENT AND SOME OF ITS REMEDIES

Only a few months ago, in the midst of an impassioned electoral campaign, the ugly charge of dictatorship was hurled in the direction of our incumbent President. In the very words of the accuser, the President "has proclaimed himself a dictator within the Nacionalista Party, which is only one step from becoming a dictator."<sup>1</sup> To some this was just another political bugbear. To others this claim only leaned on slender reed, considering that our Constitution guarantees a regime of justice, liberty, and democracy and that the President rules under a charter that is significantly characterized as a "good Filipino constitution."<sup>2</sup>

But mere declarations of principles can not disprove the proposition that dictatorship is possible under a constitutional government.<sup>3</sup> The words used in the Constitution, however popular and welcome, are not, to paraphrase Justice Holmes, crystal nor transparent nor unchanged; they are merely the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which they are used.<sup>4</sup>

For we have under our Constitution a strong Executive. His powers are vast and unusual. As stated by one writer:

"... the concentration of executive and administrative powers in our President is something unique in the Constitution of the Philippines. In the sense that it makes him an all-powerful head of state by constitutional provisions, it gives him practically dictatorial powers for the duration of his term of office. Nowhere under the American flag is there any executive head with an equal measure of authority."<sup>5</sup>

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<sup>1</sup> This accusation came from Sen. Claro M. Recto, a statesman and a jurist of note. See *The Manila Times*, Sept. 6, 1955, p. 1, col. 6.

Reminiscent of the late Pres. Franklin D. Roosevelt's attempt in the 1938 elections to "purge" the United States Congress of Democratic members who had not gone along with his administration, Pres. Ramon Magsaysay, during the election campaign this year, openly opposed Sen. Recto and appealed to the electorate against him, mainly because Sen. Recto's general attitude on public affairs, especially on foreign policy, has generally been out of line with the President's. Hence, the charge as above quoted.

On another occasion, Sen. Recto declared: "All these—his suppression of opposition, his denial of one's right to speak out his mind, his attempt to control legislative power and party machinery—unerringly point to one thing, the thing that Mr. Magsaysay wants above all else, that which constitutes his one obsession, and that is to be the sole repository of the powers of government, to become the nation's dictator!" See *The Manila Times*, Nov. 3, 1955, p. 1, col. 3.

<sup>2</sup> MALCOLM, G. A., *FIRST MALAYAN REPUBLIC* 201 (1951).

<sup>3</sup> For instance, consider the fact that although in the Soviet Constitution of 1936 the guarantee of good government and of the basic rights of citizenship is broad on its face, yet the Government of the Soviet Union has grown into an extreme totalitarian machinery.

<sup>4</sup> *Towne v. Eisner*, 245 U.S. 418, 425 (1917).

In the President, as Justice Malcolm<sup>6</sup> tersely puts it, "is centralized, *with a minimum of safeguards*, national authority. He determines general policies, he dominates the administration."<sup>7</sup> He controls foreign relations. He guides legislation." Although his duties are set forth by the Constitution, his activities in practice are not delimited by the letter of that instrument. It is said that they are determined rather by his personality, the weight of his influence, the strength of his leadership in Congress, the circumstances of war and peace, his capacity for managing men, and the effectiveness of the party forces which support him.<sup>8</sup>

The discretion of the President in the exercise of his political and executive powers is subject to no other agency of our Government.<sup>9</sup> As the Supreme Court had unhesitatingly conceded, the President, in the exercise of these duties, "is alone accountable to his country in his political character and to his own conscience."<sup>10</sup> In view of the deeply revered principle of separation of powers,<sup>11</sup> no

<sup>6</sup> Sinco, V. G., *The Authority Of The President Over Local Officials*, 30 PHIL. L.J. 355, 359 (1955). See also MALCOLM, *op. cit. supra* note 2, at 204-5; 2 ARUBGO, J. M., *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 719-21 (1937), Rivera, J. F., *The Power of the President of the Philippines over Local Governments and Local Officials*, 30 Phil. L.J., 751-69 (1955).

"During the debate on the Executive Power, it was the almost unanimous opinion that we had invested the Executive with rather extraordinary prerogatives. There is much truth in this assertion. . . ." From the Valedictory Address of Hon. Claro M. Recto, President of the Constitutional Convention, delivered in the Hall of the House of Representatives on Feb. 8, 1935. See reprint in 2 ARUBGO, *id.*, at 1066.

<sup>7</sup> *Op. cit. supra* note 2, at 207. (Italics supplied).

<sup>8</sup> The scope of the Executive power was underscored by the Supreme Court in the cases of Villena v. The Sec. of Interior, 67 Phil. 451 (1939), and of Planas v. Gil, 67 Phil. 62 (1939). *But see* Lacson v. Roque, 49 O.G. 93 (1953); Jover v. Borra, 49 O.G. 2765 (1953); and Rodriguez v. Del Rosario, 49 O.G. 5427 (1953).

<sup>9</sup> BEARD, C. A., *AMERICAN GOVERNMENT AND POLITICS* 189 (4th ed. 1925). Furthermore: "As a political leader he may use his exalted position to appeal to the nation or to sectional, class, or group interest; he may use his veto power against laws passed by Congress; he may agitate by means of his messages; and he may bring pressure to bear in Congress and within his party through the discriminating use of the federal patronage. Owing to his preeminence he can exert a tremendous influence on public opinion by the distribution through his message and interviews of selected facts, alleged facts, and theories of government and policy. . . ." (At 189-90).

<sup>10</sup> SINCO, V. G., *PHILIPPINE POLITICAL LAW* 241 (10th ed. 1954).

<sup>11</sup> Forbes, et al. v. Chuoco Tiaco and Crossfield, 16 Phil. 534, 574 (1910), *aff'd*, Chuoco Tiaco v. Forbes, 228 U.S. 549 (1913).

<sup>12</sup> See, e.g., Alejandrino v. Quezon, 46 Phil. 83 (1924); Abueva, et al. v. Wood, et al., 45 Phil. 612 (1924); United States v. Guarin, 30 Phil. 85 (1915); United States v. Court of First Instance, 24 Phil. 321 (1913); Severino v. Governor General, 16 Phil. 366 (1910); United States v. Bull, 15 Phil. 7 (1910); Lo Po v. McCoy, 8 Phil. 343 (1907); Barcelon v. Baker, 5 Phil. 87 (1905); and *In re Patterson*, 1 Phil. 93 (1902).

See also Rev. Adm. Code, § 17.

other department of the Government has the power to control or interfere with his official acts, or impair his independence. Since the duties of the President must necessarily be exercised without any obstruction or hindrance, he is not subject to arrest or imprisonment during his term of office nor may he be ordered to appear before any court or official.<sup>12</sup>

It is true that before our President enters on the execution of his office, he is required solemnly to swear or affirm that he "will faithfully and conscientiously fulfill (his) duties as President of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate (himself) to the service of the Nation."<sup>13</sup> No doubt this is a salutary pledge, but mere affirmations do not help much. Let us, at this juncture, turn to consider some of the instances where presidential misconduct and misrule may amount to palpable infractions of the Constitution, his solemn oath to the contrary notwithstanding.

The President has the power to suspend the privileges of the writ of habeas corpus in cases of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it.<sup>14</sup> It has been held by the Supreme Court that upon the President rests the exclusive competence of determining whether or not such a state of affairs exists as to warrant the suspension of the privileges of the writ.<sup>15</sup> Here, such flexible and hazy concepts as "imminent danger" and "public safety" may be dragged into doubly uncertain application. Grave affronts upon individual liberties may ensue when a power-mad Executive makes arbitrary use of this power. Questionable arrests may easily become the practice of a President bent on waging his personal and political enmities.<sup>16</sup> The admitted

<sup>12</sup> SINCO, *op. cit. supra* note 9, at 241. Of course he can be impeached in accordance with Art. IX of the Constitution. But more on impeachment at the latter part of this paper.

BEARD, *op. cit. supra* note 8, at 206 has this to say about the President of the United States: "No tribunal in the land has any jurisdiction over him for any offense. He cannot be arrested for any crime, no matter how serious—even murder. (Burgess, *Political Science and Constitutional Law*, Vol. II, p. 246). He may be impeached, but until judgment has been pronounced against him, he cannot be in any way restrained in his liberty."

<sup>13</sup> PHIL. CONST. Art. VII, § 7.

<sup>14</sup> PHIL. CONST. Art. VII, § 10(2). In another segment of the Constitution (Art. III, § 1[14]) it is likewise provided that "the privileges of the writ of habeas corpus shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist."

The privileges of the writ has been suspended twice in our country: On Jan. 31, 1905, Gov. Gen. Luke E. Wright, acting under the Philippine Bill of 1902, § 5, suspended the writ in the provinces of Cavite and Batangas (Exec. Order No. 6). Last Oct. 22, 1950, Pres. Elpidio Quirino suspended the writ throughout the country (Proc. No. 210, 46 O.G. 4682 [1950]).

<sup>15</sup> *Montenegro v. Castañeda*, 48 O.G. 3392 (1952); *Barcelon v. Baker*, 5 Phil. 87 (1905).

<sup>16</sup> Consider also the fact that as yet, there is no settled determination in our jurisdiction of the question as to whether or not the suspension of the writ likewise sus-

necessity of prompt action by the President in cases of public danger<sup>17</sup> may only afford the President an intractable excuse for a clearly unwarranted suspension of the writ. Concerning the consistent refusal of the Supreme Court to review the findings of the Executive on the matter, a writer<sup>18</sup> has observed thus:

"The cause of liberty would have been better served had the judiciary reserved to itself the power to inquire as to whether or not conditions exist warranting the suspension of the writ . . . It would easily happen that a dictatorial minded President may seize upon minor or intermittent disorder for the suspension of the privilege . . . The temptation to weaken, if not nullify, the Opposition may not be easily resisted . . . To avoid the possibility of an abuse of the power of suspension, there should be Congressional concurrence."<sup>19</sup>

The President can likewise become a "constitutional dictator"<sup>20</sup> in times of national emergency, when Congress, by enacting the so-called Emergency Powers Acts pursuant to the Constitution,<sup>21</sup> entrusts broad and extraordinary powers to the President. We were witnesses to this situation during the last World War and even for a number of years after peace had already been restored. Our government was largely operated and financed by presidential executive orders. Individual rights and properties suffered.<sup>22</sup> Occasions for

pendents the right to bail (Art. III, § 1[16] of the Constitution). The Supreme Court was not able to reach a decision on this matter in the Oct. 11, 1951 cases of *Nava v. Gatnaitan* (G.R. No. L-4855), *Hernandez v. Montesa* (G.R. No. L-4964), and *Angeles v. Abaya* (G.R. No. L-5102).

<sup>17</sup> See Speech of Delegate Jose P. Laurel, Chairman of the Committee on Bill of Rights, Nov. 18, 1934, reprinted in 2 ARUBGO, *op. cit. supra* note 5, at 1041, 1051.

<sup>18</sup> Fernando, E. M., *Another Year of Constitutional Law: 1952*, 28 PHIL. L.J. 1, 24-5 (1953).

<sup>19</sup> Mr. Salvador Araneta, a Delegate to the Constitutional Convention, favored the conferment of the power to suspend the writ upon the National Assembly or even upon the President provided it be with the consent of the majority of the members of the Supreme Court. He believed that in that way, the possibility of abuse would be reduced, if not removed, and the protection of the life and liberty of individuals would correspondingly be greater. See 1 ARUBGO, J. M., *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 430-3 (1936).

<sup>20</sup> ROSSITER, C. L., *CONSTITUTIONAL DICTATORSHIP* 290 *et seq.* (1948).

<sup>21</sup> Art. VI, § 26 provides: "In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy."

Com. Acts Nos. 494, 496, 498-500, 620, and 671 (all Emergency Powers Acts) were enacted by the Congress on the occasion of the outbreak of the Second World War.

<sup>22</sup> "The right to choose one's employment, and the exercise thereof, the freedom of physical movement, the right of association, the landlord's right to fix the rent on his property, and the proprietor's right to the exclusive enjoyment and use of his factory, industry, transportation company, business and other property suffered severe restrictions from presidential executive orders. . . ." Armovitz, R. A., *Emergency Powers*, 29 PHIL. L.J. 686, 722 (1954).

presidential misrule and abuse of his extraordinary powers in this situation are ripe. Let Rossiter speak:

"It is obvious that individual abuses of public power are more likely to occur under conditions of crisis and in the prosecution of extraordinary duties than in normal times and in pursuit of normal duties. Even the best of public officials . . . may not be able to avoid needless injury to the rights and lives and property of loyal citizens, while the worst will make use of their unwanted authority in such a manner as to defeat the very purposes for which this institution of constitutional dictatorship is called into action. This abuse of executive emergency powers is often paralleled in the matter of delegated legislative power . . ." <sup>22a</sup>

Where the statute granting emergency powers is not only broad in scope, but likewise fails to fix in express terms the period of its duration, the mischief of abusing and over-exercising said powers is not difficult to imagine. Recall that one of our past Presidents, acting under Commonwealth Act No. 671, issued Executive Orders appropriating funds to be used for certain public works and for relief <sup>23</sup> despite the fact that about seven years had already passed since the World War ended and that Congress was already normally functioning and legislating on every conceivable field. Such action by the President only led to "confusion and overlapping, if not conflict." <sup>24</sup> By so acting, the President encroached upon the power of Congress to appropriate funds.<sup>25</sup>

Easily, the Jacksonian principle of handing out the spoils to the victors may find its deplorable application in connection with the appointing power of the President.<sup>26</sup> Practice and experience bear this out. The merit system embodied by the constitutional provision on civil service <sup>27</sup> is not applicable to positions which are "policy-

<sup>22a</sup> *Op. cit. supra* note 20, at 296-7.

<sup>23</sup> Exec. Orders No. 545-6.

<sup>24</sup> Fortunately, the Supreme Court, in the case of *Rodriguez and Tañada v. Gella* (49 O.G. 465 [1953]), declared that, Com. Act No. 671 having ceased to be operative, the questioned Executive Orders (*supra* note 23) were issued without legal basis. The failure of the Supreme Court to reach a decision in the First Emergency Powers Cases (*Araneta v. Dinglasan* and four other companion cases, 45 O.G. 4412 [1949]) as to the validity of the particular Executive Orders challenged therein, only gave the President more time to run the Government with his directives. However, had the President dared defy the *Gella* ruling and persisted in having his orders carried out, it may be wondered if the other departments of the Government could have done anything to remedy the dire consequences of the situation.

<sup>25</sup> PHIL. CONST. Art. VI, § 23(2) provides: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

Our past Presidents, acting under Com. Act No. 671, reorganized, created and abolished bureaus and offices; established a government bank; declared debt moratorium; amended, suspended, repealed and revived statutes; reorganized the courts; and controlled prices. For a documentation of the corresponding Executive Orders, see *Armovit, R.*, *supra* note 22, at 719.

<sup>26</sup> See PHIL. CONST. Art. II, § 10(3), (4) and (7); Art. VIII, § 5; Art. X, § 1; Art. XI, § 1. Also, Rev. Adm. Code, § 65.

<sup>27</sup> Art. XII.

determining, primarily confidential or highly technical in nature." Here, presidential patronage can attain rank proportions, regardless of the inherent legal qualifications and capabilities of his appointees.<sup>28</sup> And where appointments by the President could be made without the intervention of the Commission on Appointments,<sup>29</sup> arbitrary designations of presidential "drum-beaters" and friends are likely. Our present Executive, not to mention his predecessors, is not altogether free from charges of nepotism and favoritism.<sup>30</sup>

Public offices may literally be bartered or traded. A President desirous of carrying or keeping the good graces of the Members of Congress and of minimizing opposition to his pet legislative measures may employ his appointing power to advantage by satisfying importunate Senators and Representatives. Congressmen who wish to rake votes in their provinces almost always recommend to the President the appointment of some of their influential constituents; if these legislators fail to support his policies and projects, he has only to turn a deaf ear to their pleas for patronage.

The value of the constitutional provision requiring the consent of the Commission on Appointments to certain presidential nominees<sup>31</sup> is rendered almost worthless when the office of the President and Congress are controlled by one political party. In this case, consent by the Commission is apt to be reduced to a mere idle formality,

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<sup>28</sup> Consider the fact that while the President may make unlawful appointments, he could not possibly be prosecuted under Art. 244 of the Rev. Penal Code which provides that "Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualification therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding 1,000 pesos."

Protests have arisen in some quarters against the current practice of the incumbent President in filling top civilian offices with army officers in the active service. To quote one of the serious objectors to this presidential actuation: ". . . . We have many civilians, some of them retired army officers . . . whose appointment would not violate the principle of separating the civilian from military service. . . ."

"The truth is that some army circles would like the defenders of the supremacy of civilian authority in a Republican government to sacrifice the principles for the sake of what they call the need for army men. Yet these men would not have the army appointees sacrifice either to longevity pay and pensions, all of which are not principles but pure privileges.

"The principle involved is not only one of supremacy of civilian authority. It is also one of the separation of both services. And these principles have not been violated once or twice in cases of real necessity. Their violation has become almost a pattern or a policy." See Rocas, J. R., *This Is My Own*, The Manila Times, Oct. 10, 1955, p. 13, col. 3.

<sup>29</sup> See enumeration of these positions in GARCIA, G., *PHILIPPINE POLITICAL LAW PRINCIPLES AND PROBLEMS* 523-4 (rev. ed.).

<sup>30</sup> Only recently, a Congressman from Pangasinan Province came out with a list of the relatives of the President who reportedly had obtained appointments, promotions, and concessions in the government service since the latter assumed office in Malacañang Palace. See The Manila Times, Nov. 24, 1955, p. 2, cols. 1-3.

<sup>31</sup> For an enumeration of the officers appointed by the President with the consent of the Commission on Appointments, consult GARCIA, *op. cit.* *supra* note 29, at 524-5.

and consequently, appointments could be made at the pleasure and whim of the President and his political party.<sup>32</sup>

Rejections by the Commission on Appointments ordinarily result from its belief that the nominees are not suitable for the office. Upon rejection, therefore, the usual constitutional practice is for the President to appoint new men.<sup>33</sup> Where the President, despite the Commission's disapproval, waits until Congress adjourns and re-nominates the same individual, his action is said to be "clearly violative of such constitutional practice."<sup>34</sup>

On the other hand, refusal of the President to exercise his appointing power in cases where appointments are due, is plain official nonfeasance, which is no less an obtrusive manner of disregarding legal duties. He may indefinitely refrain from filling vacant offices notwithstanding the fact that these offices may be vital to the public service and welfare.<sup>35</sup> And yet, the President can not be compelled by mandamus to perform this clear duty.

<sup>32</sup> In the United States Federal Government, senatorial scrutiny of presidential appointments "has not proved effectual for securing the proper constitution of the public service. Indeed, the 'courtesy of the Senate,'—the so-called 'courtesy' by which Senators allow appointments in the several states to be regulated by the preference of the Senators of the predominant party from the states concerned, has frequently threatened to add to the improper motives of the Executive the equally improper motives of the Senate." WILSON, W.. THE STATE 375-6 (Elliot ed. 1918).

<sup>33</sup> FERNANDO, E. M., PHILIPPINE POLITICAL LAW 621-2 (2d ed. 1951).

<sup>34</sup> *Id.*, at 622. While it is true that the President may validly extend an *ad interim* appointment in favor of a person whose nomination has already been rejected by the Commission on Appointments, yet, such a presidential practice, if unreasonably pursued, may lead to its abuse. See GARCIA, *op. cit. supra* note 29, at 809-10.

<sup>35</sup> Let us quote the following *Editorial* entitled "CIR needs a judge, too": "Of a piece with this column's suggestion that the President appoint the nine judges of the newly-organized court of agrarian relations is that he should also take steps to fill the last vacancy in the court of industrial relations, where the backlog of cases, despite the prodigious work of the four judges, remains out of hand.

"Even when there were five judges in the court of industrial relations, that court could hardly cope with the case load. Retirement of two judges added to the load, and though one replacement was added last year, matters have not been helped any because cases keep coming in faster than they can be disposed of. The situation is now made worse because the court, when sitting *en banc*, sometimes is split on a 2-2 vote, and has to ask the justice secretary for a court of first instance judge to break the tie. This has involved a lot of waste in time, money, manpower, and prestige: as a result, cases filed long ago still have to be heard or disposed of.

"The President owes it to both labor and management to keep the CIR bench fully staffed so that litigations of long standing can be settled as soon as possible without working havoc on the labor-management structure." The Manila Times, Oct. 21, 1955, p. 4. See also other *Editorial* on the same matter entitled "But make it soon," The Manila Times, Sept. 20, 1955, p. 4.

In case an election for a local office results in a failure to elect, the President may refuse to issue a proclamation calling a special election to fill said office, despite the provision of the Rev. Election Code (Rep. Act No. 180, § 21 [c]) to that effect. Mandamus will not lie to compel him to issue the proclamation, for the same reason that courts will not attempt to control his official acts. (See *Severino v. Governor*

With but a few constitutional limitations, the pardoning power of the President is well-nigh absolute.<sup>36</sup> Culprits duly convicted beyond reasonable doubt upon proper judicial notice and hearing may yet be freed simply because the President happens to be their close friend or that the President has some favor to repay. In none of these cases may the Judiciary nor Congress inquire into the wisdom and propriety of any pardon granted by him.<sup>37</sup> Thus a President who is set on wiping out opposition can easily instruct hardened criminals to carry out his fascistic schemes upon the assurance that in case they get apprehended and convicted, they would not after all serve any sentence. Only a few months ago, reports had it that a political figure in Iloilo was granted an absolute presidential pardon even before the promulgation of the judgment convicting him for malversation of public funds.<sup>38</sup> This was clearly an illegal non-observance of the constitutional mandate which provides that for a pardon to be extended, there must first be conviction.

In the sphere of foreign affairs, the President likewise enjoys the high prerogative of being the sole organ of the nation.<sup>39</sup> The danger that is apparent in this principle has been expressed in this wise:<sup>40</sup>

" . . . The wide latitude of powers conferred on him in this regard may, if not wisely used and exercised, lead into an international friction, which may be fraught with disastrous consequences . . . The President . . . can so act that Congress has no other alternative but to declare war or to recognize the existence of war brought about by executive policy . . . " <sup>41</sup>

General, 16 Phil. 336 [1910]; *Forbes v. Chuoco Tiaco*, 16 Phil. 534 [1910]. *aff'd*, *Chuoco Tiaco v. Forbes*, 228 U.S. 549 [1913]).

<sup>36</sup> PHIL. CONST. Art. VII, § 10(6) provides: "The President shall have the power to grant . . . pardons, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. . . ."

<sup>37</sup> *Pelobello v. Palatino*, 72 Phil. 441 (1941); *Cristobal v. Labrador*, 72 Phil. 34 (1941); *In re Guarin*, 30 Phil. 87 (1915).

<sup>38</sup> See *The Manila Times, Editorial*, Sept. 16, 1955, p. 4.

<sup>39</sup> *Youngtown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *United States v. Curtiss-Wright*, 299 U.S. 304 (1936). Since under the Constitution our President occupies a position similar to that of the President of the United States of America with respect to foreign affairs, the above-stated rule applies to our Executive. *SINCO. op. cit. supra* note 9, at 299, 306.

<sup>40</sup> FERNANDO, *op. cit. supra* note 33, at 648.

<sup>41</sup> Although only Congress may legally declare war (PHIL. CONST. Art. VI, § 25), the President may take action that could make war inevitable.

This situation has not been uncommon in American history. The actions of Pres. Polk in sending American troops in 1846 into territory then in dispute with Mexico; of Pres. McKinley in ordering the battleship *Maine* to Havana harbor in 1898; of Pres. Wilson in handling relations with Berlin after the sinking of the *Lusitania* in 1915; and of Pres. F. D. Roosevelt in ordering American destroyers to escort merchant ships carrying supplies to Britain and other countries which led to armed clashes even before war began—are familiar illustrations. See OGG AND RAY, *INTRODUCTION TO AMERICAN GOVERNMENT* 811 (9th ed. 1948); BEARD, *op. cit. supra* note 8, at 201-2; Baldwin, S. E., *The Share of the President of the United States in a*

The President may embroil the country to war should he offend other hypersensitive countries by arbitrarily refusing or dismissing the latter's diplomatic representatives. Unwarranted and premature exercise of his power of extend recognition to nascent states or governments may only result to our national prejudice, especially where such extension of recognition adversely affects the interests of strong and hostile nations.<sup>42</sup> Precipitate action by the President in expelling aliens<sup>43</sup> may also "result . . . in international friction."<sup>44</sup>

While the President is bound to take care that the laws be faithfully executed,<sup>45</sup> still it is possible that he would yet be the first to disregard this mandate, and flagrantly. An alien, for instance, whose deportation has been officially recommended by the immigration authorities,<sup>46</sup> may yet be allowed to stay here by the President. His motives in this regard are impervious to inquiry. Then again, he is by law authorized to direct the sale or transfer of firearms and ammunition by the Bureau of Constabulary to local authorities,<sup>47</sup> but who could legally show that such a power can not be used for purely partisan purposes?

The possibility of presidential lawmaking is not remote since it is a principle that by virtue of his power to take care that the laws be faithfully executed, he may issue executive orders implementing congressional enactments.<sup>48</sup> Notwithstanding the fact that his duty does not go beyond the laws or require him to achieve more than Congress sees fit to leave within his power,<sup>49</sup> yet presidential misfeasance is not unlikely. Consider also the fact that while he may legally be guilty of usurping legislative powers,<sup>50</sup> it is not possible to prosecute him under the provision of the Revised Penal Code which renders punishable the act of usurping legislative powers.<sup>51</sup>

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*Declaration of War*, 12 AM. J. INT'L L. 1-14 (1918); Comments, *The Power of the President to Send Troops to Fight Abroad Without Declaration of War*, 27 PHIL. L.J. 405, 408 n.11 (1952).

<sup>42</sup> See Comments, *The Philippine Recognition of South Vietnam*, 30 PHIL. L.J. 770, 798 (1955).

<sup>43</sup> Rev. Adm. Code, § 69; Com. Act No. 613.

<sup>44</sup> FERNANDO, *op. cit. supra* note 33, at 651.

<sup>45</sup> PHIL. CONST. Art. VII, § 10(1).

<sup>46</sup> Pursuant to Com. Act No. 613, § 37.

<sup>47</sup> Rev. Adm. Code, § 880.

<sup>48</sup> *Matute v. Hernandez*, 66 Phil. 68 (1938).

<sup>49</sup> See Justice Holmes, dissenting in *Myers v. United States*, 272 U.S. 52, 177 (1926).

<sup>50</sup> As was the situation in the case of *Univ. of Sto. Tomas v. Court of Tax Appeals*. 49 O.G. 2245 (1953).

<sup>51</sup> Art. 239 of the Rev. Penal Code provides: "The penalty of *prisión correccional* in its minimum period, temporary disqualification and a fine not exceeding 1,000 pesos shall be imposed upon any public officer who shall encroach upon the powers of the legislative branch of the Government, either by making general rules or regulations beyond the scope of his authority, or by attempting to repeal a law or suspending the execution thereof."

If it should happen that the President is of one party and Congress of another, the veto power<sup>52</sup> of the President may be wielded quite loosely and irresponsibly. It is not doubted that the President has the discretion to veto a bill for any reason that appears to him sufficient.<sup>53</sup> It is precisely in this respect that an indiscriminate use of the veto may cause the stifling of important measures, especially those affecting public matters, conceded to be constitutional and technically correct, but none the less cancelled by the fiat of one man for reasons that appear, in the last analysis, petty if not purely personal.<sup>54</sup> The fact that Congress may override a presidential veto does not mitigate the ill consequences entailed by an unwarranted exercise of the veto power. Enormous public funds and precious time are wasted whenever Congress has to devote a part of its session in reenacting vetoed bills, let alone the difficulty of mustering sufficient votes in both houses to override an unfavorable presidential decision. In the meantime, essential public works and services may remain unattended. What after all has been provided as a check to improper legislation<sup>55</sup> or as a means to protect the President from legislative encroachments<sup>56</sup> may only be utilized as a portentous engine for political agitation.<sup>57</sup>

The foregoing are but a few illustrations where constitutional theory may yet yield to the pressure of actual governmental practice. Under merely the President's power of control and supervision, one writer lists more than seventy specific powers and duties which involve a considerably wide measure of discretion.<sup>58</sup> Undefined executive powers are likewise being wielded day after day. All these can be rich playgrounds for a capricious and absolutistic Chief of State. Every law enacted which grants another power or set of powers to the President equally imports an extension of his opportunities to commit wanton abuses.

<sup>52</sup> PHIL. CONST. Art. VI, § 20.

<sup>53</sup> COOLEY, T. M., THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW 181 (McLaughlin ed. 1898).

<sup>54</sup> Speaking of the American presidential veto power, OGG AND RAY, *op. cit. supra* note 41, at 384-5, have this to say: "The really important matter is the freedom with which presidents . . . 'offset their own judgment against that of Congress, not merely on great questions involving the public welfare, and on disputed constitutional questions, but on trivial matters where on their means of information are not greater or better than those at the command of Congress, and where on their individual judgment does not appear to be superior to that of the average congressman or senator.' . . . The result has been to make the president a far more active and potent factor in legislation than he originally was or was intended to be."

<sup>55</sup> THE FEDERALIST, No. 73 at 458 (Lodge ed.).

<sup>56</sup> See 1 ARUBGO, *op. cit. supra* note 19, at 364.

<sup>57</sup> Congressional freedom in matters of legislation may considerably be impaired in case the President arms himself with another version of his veto power—that of threat of veto. It is not uncommon to see Congress, upon being forewarned of Executive veto, being forced to shelve or abandon vital public measures and projects, especially where there appear good grounds to believe that votes necessary to overcome a veto could not be pooled.

<sup>58</sup> See GARCIA, *op. cit. supra* note 29, at 515-23.

This, however, is not to say that we face a constitutional misfortune per se. If the cardinal principle of government of laws and not of men<sup>59</sup> were faithfully adhered to by the President along with the other officials of the Government, the dangers of Caesarism would not be great. But what would be fatal to our democracy is when a contrary principle is reached. What would be intolerable is when a strong Executive on paper does not only evolve into a strong Executive in practice,<sup>60</sup> but an autocratic head in its worst form.<sup>61</sup>

Under the present state of the law, little help from the Judiciary can be relied upon in the aforementioned cases of misgovernment. It was the Supreme Court itself that once declared that courts can not interfere with the official acts of the President, not only because of the principle of separation of powers, but also because the courts are without the machinery or the power to enforce its processes against the Executive.<sup>62</sup>

While impeachment as provided in our Constitution<sup>63</sup> offers a method of punishing misconduct,<sup>64</sup> it is considered as not only "cumbersome and complicated," but also "grossly inadequate in exacting responsibility from the high officials of the government to the Constitution and the state."<sup>65</sup> In the long constitutional history of the United States of America, only one president—Andrew Johnson—was subjected to actual impeachment proceedings in 1868, and then only to be acquitted.<sup>66</sup> Attempts to impeach one of our past Presidents for his alleged transgressions of the Constitution were no more than abortive. Let Dean Sinco<sup>67</sup> pursue the criticism:

" . . . This incident revealed the futility of the impeachment process as provided in the Constitution. It simply goes to show that a judicial function, such as impeachment, cannot be satisfactorily vested in a purely political and partisan body such as the legislature. This is especially true in the Philippines where attachment to the leader of a dominant party

<sup>59</sup> *Villaviciencio v. Lukban*, 39 Phil. 778 (1919); *United States v. Lee*, 106 U.S. 196 (1882).

<sup>60</sup> MALCOLM, *op. cit. supra* note 2, at 204.

<sup>61</sup> "Moreover it must not be forgotten that some, if not most, of the dictatorships in history have been established on the basis of popular support; both Napoleon the Great and Napoleon the Little were made emperors of France by the will of the people, by popular vote . . ." BEARD, *op. cit. supra* note 8, at 32.

It was no less than Plato who believed that "irresponsible power for mortal men always led to grasping and self-interested action, or, as Acton was to rephrase it later, 'all power corrupts and absolute power corrupts absolutely.'" CAIRNS, H., *LEGAL PHILOSOPHY FROM PLATO TO HEGEL* 41 (1949).

<sup>62</sup> *Abueva, et al. v. Wood, et al.*, 45 Phil. 612, 634 (1924).

<sup>63</sup> See Art. IX, §§ 1-4.

<sup>64</sup> COOLBY, *op. cit. supra* note 53, at 177.

<sup>65</sup> SINCO, *op. cit. supra* note 9, at 388.

<sup>66</sup> Commenting on the federal constitutional provision on impeachment, MATHEWS, J. M. *THE AMERICAN CONSTITUTIONAL SYSTEM* 116 (2d rev. ed. 1940), says: "So little has the power of impeachment been used and so cumbrous is it in operation that we may almost agree with Jefferson's characterization of it that it 'is not even a scare-crow.'"

<sup>67</sup> See note 65 *supra*.

takes the form of strong personal loyalty and independent action among party members is rarely manifested. Furthermore, the powers concentrated in the hands of the President are so enormous that whatever acts of misfeasance or malfeasance he might commit are often conveniently overlooked by his partisans in their awareness or even expectation of the President's ability to distribute official rewards or perquisites . . . ."<sup>68</sup>

Impeachment may still gain credit, however, if its exercise be vested, by proper constitutional amendment, in a judicial rather than in a political body.<sup>69</sup> Political leanings may safely be discounted under this method. The Judiciary may safely be relied upon to impartially carry out this function, should it eventually be so commissioned, considering that in many occasions in the past it has unremittingly maintained its integrity and independence.<sup>70</sup>

Another suggested safeguard against the inroads of dictatorship is a return to the original single six-year presidential system.<sup>71</sup> It was the late President Quezon himself who endorsed this view. In his own words:

<sup>68</sup> At this juncture, we may recall the practice during the Spanish regime—the *residencia*—whereby the powerful Spanish governor of the Islands was made to stay here till the succeeding governor had examined all that the former had done. If it was found out that the erstwhile governor had not ruled justly, he was shorn of his possessions and sometimes imprisoned. The inquisitorial character of such a remedy, however, does not seem to fit well our present concept of procedural due process, let alone the ominous possibility that local partisan vindictiveness may only give rise to oppression and miscarriage of justice.

A constitutional shift to a parliamentary form of government whereby the sovereign is envisaged not only as inviolate but also politically infallible, does not seem to afford satisfactory check to misgovernment, but simply transfers opportunities for misrule from the titular head to the real and actual head of the government. And besides, our admittedly political infancy may not well respond to the demands of a cabinet form of government.

<sup>69</sup> "The system of vesting the power of impeachment in the legislature, a political rather than a judicial organ, has not been satisfactory. There has been a growing tendency to give this power to the courts. In New York the judges of the highest court are added to the senate as a tribunal for impeachment. In Nebraska impeachment trial is by the courts upon charges prepared and presented by joint action of the two legislative chambers. In some European countries, the highest courts of the states act as tribunals to hear and decide impeachment charges." *SINCO, op. cit. supra* note 9, at 387.

<sup>70</sup> The Judiciary is "independent in the performance of its functions, undeterred by any consideration, free from politics, indifferent to popularity, and unafraid of criticism in the accomplishment of its sworn duty as it sees it and understands it." *People v. Vera*, 65 Phil. 56, 96 (1937).

See also *Endencia v. David*, 49 O.G. 4822 (1953); *Perfecto v. Meer*, G.R. No. L-2348, Feb. 27, 1950; *Vargas v. Rilloraza*, 45 O.G. 3847 (1948); *Fuentes v. Director of Prisons*, 46 Phil. 22 (1924); *Concepcion v. Paredes*, 42 Phil. 327 (1921); *Alrua v. Johnson*, 21 Phil. 308 (1912), *aff'd*, 231 U.S. 106 (1913).

<sup>71</sup> *MALCOLM, op. cit. supra* note 2, at 211. The original form of the Constitution provided for a President elected by a direct vote to serve for a term of six years, with reelection for the following term prohibited. (See Art. VII, §§ 2 and 4 of the Constitution, as originally adopted).

"There is, however, one great danger in having a strong executive department, and that is the danger of dictatorship. And here again this Convention has shown its vision and wisdom when it provided that there shall be no reelection for the position of chief executive. This clause in the Constitution guarantees for the Filipino people the impossibility, or at least the improbability, of ever having here a chief executive that will try to perpetuate himself in power. We are familiar with the history of some of the Central and South American Republics. We know that to a large extent the revolutions which have continually rocked such republics had been due to the fact that their chief executives were permitted to present themselves as candidates for reelection."<sup>72</sup>

Our present Constitution which allows the incumbent President to seek reelection for the next four years<sup>73</sup> has not escaped censure.<sup>74</sup> In the words of Justice Malcolm:

"It is submitted that every logical consideration speaks for the constitutional provision regarding the term of office of the President in its original form. Little of convincing weight can be said in favor of the politically inspired amendment."<sup>75</sup>

The ultimate deterrent, however, to abuses of presidential powers and prerogatives rests on the people in general, and the electorate in particular. To say that a corrupt and wicked Executive could do untold tyrannies with impunity is not to explore the field of mythology. It has been said that the wisdom of man has never conceived of a government with power sufficient to answer its legitimate ends, and at the same time incapable of mischief, and that no political system can be made so perfect that its rulers will always hold it to the true course.<sup>76</sup> Be that as it may, the electorate should use the ballot with care and circumspection, with the interests of the nation remaining foremost in mind. The need for a responsible

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The Constitutional Convention hoped that the prohibition would serve to curtail tendencies of the Executive to perpetuate himself in office and to assume the attributes of a dictator. See 1 ARUEGO, *op. cit. supra* note 19, at 411-13.

<sup>72</sup> Reproduced in FERNANDO, *op. cit. supra* note 33, at 574-5.

<sup>73</sup> See Art. VII, §§ 2 and 4, as amended. The amendment of these provisions was tailored to fit the personal case of Pres. Quezon, the very person who heretofore had lauded the Constitutional Convention for adopting a six-year presidential system without reelection as a good measure of thwarting dictatorial designs.

<sup>74</sup> "It is to be deplored, however, that this step to amend the Constitution was taken in the interest of a single individual, even if that individual were President Quezon about whose qualities as leader and as administrator there is not much difference of opinion. It is not conducive to the cause of democracy to predicate its continued existence and vitality on a single person. The theory of the indispensable man is not in harmony with the democratic creed." FERNANDO, *op. cit. supra* note 33, at 587.

<sup>75</sup> *Op. cit. supra* note 2, at 209.

<sup>76</sup> See Justice Black in *Sharpless v. Mayor of Philadelphia*, 21 Pa. 147, 59 Am. Dec. 759, 765-6 (1953).. Justice Holmes once said that "Constitutional law, like other mortal contrivances, has to take some chances . . ." *Blinn v. Nelson*, 222 U.S. 1, 7 (1911).

and dispassionate electorate is imperative. No doubt our young Republic needs a wise and strong Executive to guide it, but not one who wears the trappings of an autocrat. We should pause and reflect upon the possible reasons why many men in our country today are only too willing to exert prodigious efforts to ascend what Justice Malcolm aptly calls the "Olympic heights to the office of President."<sup>77</sup> Many aspirants could dare risk their health and wealth for an office which even though burdened with tremendous responsibilities, pays but a paltry thirty thousand pesos annually. Certainly, there must be other motives, meritorious or otherwise, aside sheer patriotism. Where the choice of our leader is the result of vigilant and intelligent civic-mindedness, leaving the exercise of presidential powers solely to his own good judgment and conscience could hardly be a perilous concession.

SOTERO B. BALMACEDA

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<sup>77</sup> *Op. cit. supra* note 2, at 207.