

THE RIGHT OF POLITICAL OPPOSITION

To students of democratic governments the elections last November is one of special interest for the main issue raised by the opposition party temporarily led by Senator Claro M. Recto, was, to borrow his words, the issue of dictatorship of the President. More especially Senator Recto accused the President of attempting to stifle and suppress opposition to, and even mere criticism of his administration, contrary to the constitutional guarantee of free political opposition implicit in our scheme of government.¹ The warning sounded by Senator Recto is not however, one that is raised for the first time. For from the very inception of the present administration fears were already expressed in many quarters—if vaguely—of the seeming intolerance of the present administration to criticism and dissent. Fears which were inspired by efforts and practices of the government tending to undermine criticism and dissent, such as for instance, the subtle muzzling of the press through the employment of newsmen to government posts.

Previous administrations may have been accused and rightly, of almost all sorts of iniquity. But throughout, the freedom of political opposition was somehow kept inviolate. Indeed, there is practically unanimous agreement that if the last change in administration can be attributed to a single factor, that factor was the zealous maintenance of an atmosphere of free political dissent which enabled the opposition to expose the ills which plagued the previous administration and thereby to arouse a relentless demand for a change.

In the light of this experience the fact that threats of encroachment upon our system of free political opposition has been unequivocally and indeed, continually sounded,² is clearly a situation of grave concern for all who are sincere in their desire for the maintenance of our democratic processes. It is of course not unlikely, that the warning sounded is a false alarm,—a mere slogan or the convenient bogey of a subtle and even more dangerous evil seeking to entrench itself behind the catchword of a principle. But still it is well to bear in mind always that we can never be too zealous in the protection of our democratic institutions—that no encroachment of them however small must be brooked if we are to preserve them intact, that only uncompromising loyalty can preserve them from the constant danger of disintegrating erosion. Thus an inquiry into the nature and scope of the right of political opposition in the light of these considerations is once more opportune, if not imperative.

¹ "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." PHIL. CONST. Art. III, § 1. par. (8).

² The latest to date is the speech delivered by Congressman Diosdado Macapagal on January 21, 1955, at the regular Saturday convocation of the College of Law of the University of the Philippines, editorialized by the Manila Chronicle, issue of January 23, 1955.

The framers who contrived and drafted the constitution, trained and imbued as they were in the art of American statecraft, designed our government in the best traditions of the American model. Hence the two party system and its necessary corollary of free political opposition was brought and intended to lie at its very base.³ And the traditional theory was that "the government, by which is meant the party who has present power, is to be watched and checked by an opposition which will succeed, when it can demonstrate that those who hold office for the moment are not acting for the public weal and that it is likely to do better."⁴ This presupposes that the opposition will not be hampered especially by those in power in their effort to demonstrate their claim for that surely would reduce the opposition to impotence, if not destroy it altogether. Indeed, even a cursory review of the deliberations of the Constitutional Convention will reveal that if there was a principle on which the framers were universally agreed it was the necessity of erecting the government upon the foundation of free speech. Great was their faith in the power of the spoken word proceeding freely from an unfettered mind in securing for the body politic the ideal of a government of laws and not of men. For they believed that the "ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market."⁵ They knew that if men were set free from the restraints of prince or priest, and given an opportunity to decide their own fate, "they would almost automatically come to an understanding of their true needs, and the needs of one were the needs of all."⁶

This is clearly a recognition of the respect due to the dignity and worth of the individual—whether that be thought of as inherent and inalienable because God-given,⁷ or simply as a necessary postulate of a free society which professes to regard individuals not simply as means but as ends in themselves. It is moreover, a recognition of the utility of the principle—of free trade in ideas—as a "bloodless measure of social forces . . . a relief from the paralyzing terror of

³ This conclusion may be inferred from certain provisions of the Constitution such as for instance Art. VI, § 11, which defines the membership of the electoral tribunal of each house of Congress, and also § 12 of the same article which defines the membership of the commission of appointments of each house. The very organization of each house of Congress also contemplate the two-party system. To date, for instance, the Senate is faced with the dilemma of whom to have appointed as minority floor leader in view of the fact that no Liberal was elected to the Senate during the last elections. Senator Recto who ran on the opposition ticket retained his status as a Nacionalista member.

⁴ Hand, L., *Democracy: Its Presumptions and Realities*, PERSPECTIVES, No. 4, at 6 (1953).

⁵ Justice Holmes, dissenting in *Abrams v. United States*, 250 U.S. 616, 630 (1919).

⁶ Hand, L., *op. cit. supra* note 4, at 8.

⁷ "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." American Declaration of Independence. See also GABRIEL, R. H., *AMERICAN DEMOCRATIC THOUGHT* 14 (1940).

revolution"⁸ and *coup d'etat*, a principle of stability and continuity of a system of government by compromise and accomodation between diverse and conflicting social groups.

The theory also assumes that both groups, though divergent and competing, are nonetheless united in their desire to secure the public good. For only such a unity of ultimate purpose can assure enlightened tolerance even of "opinions that we loathe and believe to be fraught with death."⁹ Enlightened tolerance born of the realization that "time has upset many fighting faiths,"¹⁰ that while the Absolute is mute and no Tables come from Sinai to guide us, while the brazen sky remains unheeding to our prayers,—in a word, while we have no immutable laws to turn to, and yet must continue "to wager (the destiny of the nation and) our salvation upon some prophecy based upon imperfect knowledge"¹¹ it is the wise course to take—no, it is the only course possible—to keep the avenues of investigation and experiment unimpeded and unhampered so that in the open clash of ideas we may arrive at better and more workable truths. This clearly can be achieved only by setting the mind and conscience beyond the reach of government—unrestrained to investigate and experiment, and free to make known the results of its efforts.

Bipartisan democracy also presupposes an individual intelligently alert and capable in public affairs and "with a will directed towards the public good."¹² Hence it is essential that he be fully informed in matters of public concern. And because ours is a society of varied and clashing interests, and our government a system of compromise and accommodation, we cannot allow that his information should come only from one source. Otherwise, how is he to intelligently locate the point of equilibrium—"the only ground on which (opposing) wishes safely can be carried out,"¹³—the point wherein is supposed to lie the greatest good for the greatest number? Clearly then, free political opposition, or more broadly, freedom of expression, is both the precondition and the formula of our government.

Curiously however, the framers of the Constitution were seemingly blind—through inadvertence or deliberate design—to the ways in which the government they had set up was to work. The party system as conceived in America contemplated two more or less permanent and distinct groups. Permanent and distinct because founded on principles, and not as the system has developed here, sometimes on loyalty to personalities, at others, upon sheer personal convenience, and not infrequently, upon the cult of unabashed opportunism. Hence we have in this country the curious spectacle of an opposition party almost always on the verge of disintegration.¹⁴ The framers

⁸ Hand, L., *op. cit. supra* note 4, at 11.

⁹ See *supra* note 5, at 631.

¹⁰ *Id.*, at 630.

¹¹ See note 9 *supra*.

¹² Hand, L., *op. cit. supra* note 4, at 6.

¹³ See note 9 *supra*.

¹⁴ Immediately after the last elections, for instance, many opposition men including even those who were elected, defected to the majority party. In his speech (see note 2) Congressman Macapagal made mention of the fact that he had been constantly wooed by the majority party into its ranks.

too seemingly disregarded the admonition about the corruption influence of power, especially of absolute power, and the susceptibility of office to abuse. Who will doubt now for instance the awful power—legitimate of subtly so—inherent in the office of the President¹⁵ which he can manipulate within and even without the permissible limits of the constitution to perpetuate himself and his party in power, and to harrass, or even to annihilate the opposition by means of varying forms and degrees of bribery and coercion or both? For if we are to review our past experiences in government in order to glean lessons therefrom the most obvious—because terrifying—would be the lesson that against the awful power of the President even our institutional safeguards have been found to be futile and impotent at times—if not all the time. Another obvious—and ironic—lesson is the fact that most aspirants to that office have demonstrated a willingness, an unwilling—willingness to enjoy the powers and privileges of that office to the hilt. Not long ago a local writer¹⁶ set out in search of the answer to the question pertinent in any democratic government: "Is there an honest politician?" The result of his effort was a foregone conclusion and the end of his quest revealed him another Diogenes.

Moreover, the situation is aggravated by the fact that our ideal citizen, that alert and civic spirited individual—the ultimate repository of sovereign power,¹⁷ so the theory goes—is almost always indifferent and apathetic. No disclosures, no scandals, no abuse can seem to stir him from his lethargy. Doubtless, things might become uncomfortable enough to arouse him at times. But, if they are not too irksome, and especially, if he is given reasonable opportunity for personal favors "he is content to abdicate his sovereignty and to be fleeced, if the shepherd will only shear him in his sleep."¹⁸

Can anyone doubt then the overwhelming odds to which the forces of freedom and democracy are always put? Clearly, only abiding loyalty to constitutional principles and traditions, and a heroic patriotism, perhaps, "beyond the ken of ordinary mortals" by the trustees of power will assure their survival. And perhaps also a willing renunciation of our baser origins, and an earnest effort to shake off the brute that constantly lurks underneath our human forms, and almost always controls our passions and our thoughts, and just as often blurs the vision of our ideals, saps our devotion to principles and our yearnings for things of the higher sort.

The picture is not a pretty one obviously, and the prospects are not encouraging at all. If these things did not intrude into the in-

¹⁵ See for instance Sinco, V. G., *The Authority of the President Over Local Officials*, 30 PHIL. L.J. 355-69 (1955); Rivera, J. F., *The Power of the President of the Philippines over Local Governments and Local Officials*, 30 PHIL. L.J. 751-69 (1955). Both articles would further strengthen the already vast powers of control which the President, in extra-legal form already has over local elective officials.

¹⁶ Ty, Leon, *Is There An Honest Politician*, Philippines Free Press, Aug. 20, 1954, p. 4.

¹⁷ "The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them." PHIL. CONST. Art. II, § 1.

¹⁸ See note 6 *supra*.

spired reveries of the framers of the Constitution, certainly they are here with us, and plague us, and must give us pause. But is there any solution? What about the Constitution? Or is it true that we have already outgrown the presuppositions of our traditional democracy? Is it true that the old formulas which trace their origins as far back as ancient Greece, have become outworn and cease to function altogether?

All these misgivings and forebodings seem to indicate that we have not grasped the meaning and significance of the Constitution in a society where diversity and conflict and the attendant tendencies that they breed are not only inevitable but normal. Inevitable and normal for life is constant self-assertion. These we cannot bewail or deprecate, but rather, must understand. True we have been accustomed, here and elsewhere, to regard the Constitution as the repository of our rights and liberties, and the courts, as their bastion, impregnable and enduring. True, this proposition has a vibrant ring and easily lends a feeling of assurance and security. Hence it is not surprising if for the most part we have been content merely to articulate the proposition, naively believing that while we can do so no harm can possibly be all on us. But here unfortunately, we are confronted by a situation where both the Constitution and the Courts, under our peculiar governmental set-up are both ineffectual and powerless.

Moreover, we must now realize, as Justices Holmes, Cardozo and other libertarians long ago realized, "that when men have no doubt of their power and want a certain result with all their heart . . . they naturally sweep away all opposition"¹⁹ that may chance to stand in their way. That the Constitution is "not a dyke or dam that will repel the onset of the flood—the rush of an emergent need, (the tide of popular aspirations)—though it may breed a sense of safety till the flood is swept beyond."²⁰ That our traditional liberties "draw at best limited strength from legal guarantees."²¹

In the sordidness of our time and circumstance what then, we may ask again, is the significance of the Constitution if after all it American judge tells us that "the words (of the law)," and the Constitution is law, "are empty vessels into which men can pour anything he wills." The obvious lesson that may be gleaned from this passage is that it is not enough that we write our wishes into law, or even that we set up institutions to aid in securing them—and let it go at that. No, these alone are not sufficient. For the Constitution is not just the written word, nor the judiciary, nor even the whole of the government. Rather, it is the will, the determined will and courage of a people, those who rule, and primarily, those who are ruled, to be free. Their will and courage springing from a spirit imbued in the traditions of freedom. Their passionate and pervading yearning for fulfillment, and their rational conviction that the safer and surer paths to happiness and the better life lie on the higher

¹⁹ See note 9 *supra*.

²⁰ Cardozo, B. N., *Mr. Justice Holmes* in *SELECTED WRITINGS* 83 (1947).

²¹ Justice Frankfurter, concurring in *Dennis v. United States*, 341 U.S. 494 (1951).

plains of freedom and reason. That is the essence of constitutionalism, the myth that surrounds the Constitution, and is its main significance.²²

It may be that time may yet find us untrue to the faith of our fathers, disloyal to the constitution, uncharmed by the beauty and power of its myth. And the palpable and sinister forces which are continually and relentlessly trying to undermine and destroy the constitution may yet prove victorious in the end for the odds are overwhelmingly in their favor.

But the myth of the constitution will not die. It will survive. It will survive the onslaughts of power, the assaults of dictatorship, the inroads of opportunism which even now are conspiring to bring about its overthrow. And the myth will endure, as it endured and gathered strength, defying the march of centuries since its crude beginnings in the feudal days of England and even farther back.

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²² Cardozo, B. N., *Faith in a Doubting World* in *SELECTED WRITINGS*, *supra* note 20. See also Hand, L., *The Spirit of Liberty*, in *KNOFF, THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND* (1953).