

THE ANTI-SUBVERSION ACT

A notable piece of legislation passed by the last Congress is the Anti-Subversion Act.¹ The Act marks a direct, open attack on Communist subversion in the Philippines. It was passed avowedly to meet the new and subtle challenge posed by the Communist shift of strategy from the armed to the legal or parliamentary struggle.²

Section 2 of the Act contains a legislative declaration³ that the Communist Party of the Philippines is "an organized conspiracy to overthrow the Government of the Republic of the Philippines for the purpose of establishing in the Philippines a totalitarian regime and

1 Republic Act No. 1700 passed by the last Congress on June 20, 1957. A copy of the Act is printed elsewhere in this issue.

In the United States, the two most important statutes on the subject of internal security are the Internal Security Act of 1950, 50 U.S.C.A. S. 782; 64 Stat. 989, and the Communist Control Act of 1954, 50 U.S.C.A. S. 841, 68 Stat. 775. The Internal Security Act requires "Communist-action front, and-infiltrated organization" to register and authorizes the Attorney General to initiate proceedings before a Subversive Activities Control Board to compel an organization believed to be "communist-action, —front, or-infiltrated organization" to register as such. When such organization is registered, the following disqualifications follow: (1) No member with knowledge of the registration can hold non-elective Gov't. employment or employment in a defense facility (Section 5 (a)); (2) no member can obtain or use a passport (section 6 (a)); (3) the organization's mail and broadcasts must be identified as originating with a Communist Organization (section 10); (4) Alien members are excludable, deportable, and ineligible for naturalization (Sections 22 and 25); (5) Tax deductions and exemptions are withdrawn (Section 11); and (6) certain members are subject to denaturalization (Section 25).

The Communist Control Act of 1954 specified the Communist Party of the United States as a prescribed organization. The Communist Party is divested of "whatever rights, privileges, and immunities which have heretofore been granted to said party or any subsidiary organization by reasons of the laws of the U.S. or any political subdivision thereof...." (Section 3) while the Party members are subjected to the "provisions and penalties of the Internal Security Act of 1950, as amended, as members of a 'Communist-action organization' (Section 4).

The Anti-Subversion Act and the Communist Control Act of 1954 are similar in that both single out specifically the Communist Party. The Communist Control Act of 1954, however, does not make the existence of the Party unlawful. (Comment, 64 Yale L.J. 712, (1955) Note 28 at p. 715). The Anti-Subversion Act, on the other hand, categorically outlaws the Communist Party of the Philippines (See note 13, *infra*).

2 See the REPORT ON THE RED THREAT prepared and published by the Committee on Anti-Filipino Activities of the House of Representatives, (1957). (Hereinafter cited as Report) A marked change of strategy was necessitated by the capture of top field leaders like Taruc, Capadocia, Balgos, Pomeroy, etc., and influential Politburo leaders like Lava, Baking, etc., brought about by intensive military operation and as a result of the suspension of the writ of habeas corpus by the late President Elpidio Quirino.

3 This legislative finding may become determinative when the constitutionality of the Act is raised. Its existence may become very important to satisfy due process by showing both a need for the legislation and the reasonableness of the remedy adapted by Congress (see, eg., Olson v. Nebraska, 313 U.S. 236 (1941); Nebbia v. New York, 291 U.S. 502 (1934)).

place the Government under the control and domination of an alien power." The Communist Party and "any other organization having the same purposes and their successors" are declared "illegal and outlawed."

Section 4 of the Act punishes any person who "knowingly, wilfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines and/or its successors or of any subversive association as defined in Section 2" A conviction under this provision carries the penalty of *arresto mayor* and the further penalty of permanent disqualification to hold any elective or appointive public office and a similar disqualification to vote.⁴

Furthermore, the Act punishes any one who "conspires with any other person to overthrow the Government of the Republic of the Philippines or the government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means for the purpose of placing "such Government or political subdivision under the control and domination of any alien power"⁵

The Anti-Subversion Act draws its justification from the real and clear existence of the Communist danger to national security.⁶ Extensive investigation conducted by the Committee on Anti-Filipino Activities (CAFA) of the House of Representatives revealed the wide extent and destructive nature of this danger.⁷ The conclusion reached by the Committee's study is summarized in the preamble of the Act. It recites that the Communist Party of the Philippines, "alho purportedly a political party, is in fact an organized conspiracy to overthrow the Philippine Government by force violence, deceit, subversion and other illegal means, for the purpose of establishing in the Philippines a totalitarian regime subject to alien domination."⁸

Congress, in the exercise of the basic right of the state of self-preservation, is without doubt competent to pass remedial legislation

4 An alien convicted under the Act is immediately deportable after the service of the sentence. A party member who is an officer or a ranking leader of the Party, or who takes up arms against the Government, is punishable by prison mayor to death with all the accessory penalties provided for by the Revised Penal Code. (Section 4).

5 Section 4.

6 The voluminous evidence adduced in the famous Politburo trials and those presented before the CAFA contributed much in the enactment of the Act. The CAFA believes that the Communist menace threatens both our freedom and security. (Report, *supra*).

7 Report, *supra*.

8 This congressional expression appearing only in the preamble probably carries no effect, the preamble not being a definitive part of the Act. (See, *Adler v. Board of Education*, 342 U.S. 485, 496 (1952).

Section 2 of the Communist Control Act of 1954, *supra*, declares that the Communist Party "although purportedly a political party is in fact an instrumentality of a conspiracy to overthrow the Gov't. of the U.S." and finds that its dedication to the violent overthrow of the United States Government and its role as the agent of a hostile foreign power makes its existence a "clear, present and continuing danger to the security of the United States."

directed against recognized danger to national security.⁹ The Act must ultimately rely on this fundamental principle. Referring to this primary power, Chief Justice Vinson averred:

"Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected."¹⁰

The Act's constitutionality would seem vulnerable to attack as an unreasonable restriction of the freedom of speech. Communists have a right to be protected for their political convictions. And protection is never withheld because their ideas are unpopular.¹¹ On the contrary, constitutional guarantee is needed more imperatively for the 'thought that we hate'.¹²

The Act, however, outlaws the Communist party, not Communism.¹³ It stigmatizes the instrument as illegal, not the ideology. "Philosophical communist" or one who believes in the tenets of communism, short of the violent overthrow of the Government, may hold his faith without fear of punishment. The Act should be given this intendment. A contrary view will bring the Act into conflict with freedom of speech as an unlawful invasion into the "realm of thought." Freedom of thought shall always remain unrestricted.¹⁴

But the policy with regard to a person or a group who seeks the overthrow of the government by force is clear. It is within the competence of Congress to conclude as a fact after thorough investigation that the Communist Party aims at the overthrow of the Government by violence.¹⁵ In the case of *People v. Evangelista*¹⁶ the

9 *Dennis v. United States*, 341 U. v. 494, 95 L.Ed. 1137 (1951).

10 *Ibid.* at p. 1152.

11 Brandeis, Concurring in *Whitney v. California*, 274 U.S. 357, 377 (1927).

12 "If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate" Holmes, dissenting in *U.S. v. Schwimmer*, 279 U.v. 644, 654. (1929).

13 Congressman Roces, CAFA Chairman and principal sponsor of the Anti-Subversion Act, stated this aim of the Act in a speech delivered on August 21, 1957 at the Liberal Arts Theater, University of the Philippines.

14 As Justice Jackson pointed out:

"Attempts of the Courts to fathom modern political meditations of an accused would be futile and mischievous as the efforts in the infamous trials of old to fathom religious beliefs.

"Our Constitution explicitly precludes punishment of the malignant mental state alone... only in the darkest periods of human history has any western government concerned itself with mere belief, however eccentric or mischievous, when it has not matured into overt action; and if that practice survives anywhere, it is in the Communist countries whose philosophies we loathe". Concurring opinion in *American Communication Ass'n. v. Douds*, 339 U.S. 382, 437 (1949).

15 In *Communist Party v. Subversive Activities Control Board*, 223 Fed. 2d 531 (1954) *Held*: If it appears that Congress has power over the subject matter of a statute, and if the findings of fact are not baseless but are based upon extensive investigation, the courts are to adopt those findings. *Accord*, *American Communication Ass'n. v. Douds*, 339 U.S. 382 (1949); *Galvan v. Press*, 347 U.S. 522 (1954).

16 57 Phil. 375 (1932) (Conviction of the Crime of illegal association under Art. 188 of the old Penal Code, now Art. 147 of the Revised Penal Code.)

Supreme Court recognized the illegal purpose of the Communist Party of the Philippines. It dismissed the pretense that the Communist Party preached only a social but not an armed revolution. The constitution of the Party itself and the testimony of the accused Communist members belied the claim.

Congress may validly impose punishment upon the members of the Communist Party.¹⁷ Membership in any other organization which advocates the violent overthrow of the government may likewise be subjected to a sanction.¹⁸ And a conspiracy to advocate the overthrow of the government by force and violence may be constitutionally restrained.¹⁹ There seems to be no serious constitutional objection with regard to the reasonableness²⁰ of the remedy adopted by Congress in relation to the interest sought to be protected when it appears that the particular interest, namely, security from violent overthrow of the government, is manifestly "substantial enough interest."²¹

The case of *Dennis v. United States* is instructive with regard to the extent of the power of the Government to deal with revolutionary threats. The convictions of eleven top communists for conspiracy to advocate the overthrow of the government under the Smith Act²² were upheld by the U.S. Supreme Court. The Court held that the power of Congress to protect the Government is beyond question. An attempt to overthrow the Government is a sufficient evil for Congress to prevent. Holding that the Government need not wait "until the *putsch* is about to be executed"²³ the Court says that:

"If the Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course

17 *c. American Communication Ass'n. v. Douds*, 339 U.S. 382 (1949) upholding the validity of Section 9 (h) of the Labor Management Relations Act which requires a labor union to file a non-Communist affidavit as a condition for its use of opportunities afforded by the Act. The Supreme Court maintained that:

"Congress could rationally find that the Communist Party is not like other political parties in its utilization of position of union leadership as means by which to bring about strikes and other destruction of commerce for purposes of political advantage, and that many persons who believe in the overthrow of the government by force and violence are also likely to resort to such tactics when, as officers, they formulate union policy." (p. 391).

18 "Membership in a listed organization found to be within the statute and known by the member to be within the statute is a legislative finding that the member by his membership supports the thing the organization stands for, namely, the overthrow of the government by unlawful means. We cannot say that such a finding is contrary to fact or that 'generality of experience' points to a different conclusion. *Disqualification follows therefore as a reasonable presumption for such membership and support.* (Underscoring supplied) *Adler v. Board of Education*, 342 U.S. 485, 494-495 (1952).

19 *Dennis v. United States*, 341 U.S. 494 (1951).

20 *Nebbia v. New York* 291 U.S. 502 (1934).

21 *Dennis v. United States*, *supra*.

22 54 Stat. 671, which makes unlawful for any person knowingly or willfully to advocate, etc. the desirability, necessity etc., of overthrowing the government in the United States by force or violence or to organize any society of person who teach such overthrow. [Section 2 (a)].

23 341 U.S. at p. 509.

whereby they will strike when the leaders feel the circumstances permit, action by the Government is required."²⁴

Is the Anti-Subversion Act Necessary?

It may be that no serious objection on constitutional terms²⁵ may be attributed to the Act. This question, however, arises: Is the Act necessary?

It is maintained that adequate laws on the statute book exist to protect this country from the dangers posed by organizations with violent purposes. Article 147 of the Revised Penal Code punishes the founders and members of associations totally or partially organized "for the purpose of committing any of the crimes punishable under this Code or for some purpose contrary to public morals." Rebellion²⁶ and sedition²⁷ are punishable crimes. The former is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws "the territory of the Philippine Islands or any part thereof of any body of land, naval or other armed forces..." Seditious is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or other illegal means, among others, these objects: to prevent the Government, or any provincial or municipal government, or any other public officer thereof from freely exercising its or his functions; and, to commit, for any political or social end, any act of hate or revenge against private persons or any social class. Conspiracy to commit either the crime of rebellion²⁸ or sedition²⁹ is also penalized. Likewise, the crime of inciting to sedition³⁰ is recognized and made punishable. Espionage is punishable under Art. 117.³¹

²⁴ 341 U.S. at p. 509.

²⁵ On the duty of the court to consider with utmost caution statute of the class commented on in relation to individual claims, the following words of Justice Jackson are illuminating:

"In weighing claims that any particular activity is above the reach of law, we have a high responsibility to do so in the light of present-day actualities, not nostalgic idealization valid for a simpler age. Our own world, organized for liberty has been forced into a deadly competition with another world, organized for power. We are faced with lawless and ruthless effort to infiltrate and disintegrate our society. In cases involving efforts of Congress to deal with this struggle, we are clearly called upon to apply the long-standing rule that an appointive Judiciary should strike down no Act produced by the democratic processes of our representative system unless unconstitutionality is clear and certain." *American Communication Ass'n. v. Douds supra* at 435 (concurring opinion).

²⁶ Art. 134, Act No. 3815 (The Revised Penal Code; Effective January 1, 1932).

²⁷ Art. 139.

²⁸ Art. 136.

²⁹ Art. 141.

³⁰ Art. 142.

³¹ This article is supplemented by Commonwealth Act No. 616 (June 1, 1941) entitled "An Act to punish espionage and other crimes against national security."

And judicial support is not lacking. In a case³² our Supreme Court affirmed the conviction of the accused who spoke and advocated before a public gathering the overthrow of the government by violence. And in the previously cited case of Evangelista³³ the Court declared the Communist Party of the Philippines an illegal association whose purpose is to overthrow our government by armed revolution.

It is believed that present laws and existing jurisprudence render unnecessary the Anti-Subversion Act. They are adequate to suppress effectually the very danger against which the Act is directed. Have we not done well without the law?

Edgardo J. Angara

³² People v. Nabong, 57 Phil. 455 (1932).

³³ 57 Phil. 375 (1932).