BOOK REVIEWS

THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION. Cesar Adib Majul, University of the Philippines, Quezon City, Philippines, 1957. pp. 212.

A competent study of the ideas of a given historical period frequently yields at least two invaluable results.

First, the events during the period become better understood. Even if the ideas investigated are obsolete from the viewpoint of the present day, they yield light on the various facets of the social life of the period. To the alert historian, they are not only interesting for their own sake as intellectual artifacts of a vanished day but also useful as starting-points for historical reasoning. Considered in their context of facts and events, they reveal the perplexities and problems of the time, as well as the solutions that were attempted to meet its needs. Correlated with present knowledge, they indicate the mistakes and inadequacies of the period and what should have been done to avoid them. In this way, the present enriches its understanding not only from the learning of the past but from its blunders as well.

Second, current ideas inherited from the period under study become clarified. Every concept, no matter how workable, is in its essence vague and uncertain. Relating it to specific historcal events whch gave it birth or particular currency almost always results in lending it a greater definiteness of contour. Its main outlines become illumined. The problems it was designed to solve, the functions assigned to it, the results expected of it and the limitations of its usefulness assume concrete sharpness. Its implications for the present day become more readily ascertainable because the historical setting defines explicitly the purpose for which it was devised or applied. Moreover, tailoring or modification of the concept may be made with greater assurance after due consideration of the difference in circumstances between then and now.

Dr. Majul's treatise on the political and constitutional ideas of the Philippine Revolution achieves a good deal on both counts.

His analysis shows clearly the nature of concepts as instruments of remedial action; it lays bare the intimacy between social problems and the ideas formulated to attempt their solution. Each idea developed or adopted by the Filipino theorists during the last two decades of the nineteenth century has its counterpart in some specific social evil.

The Filipinos of Rizal's time were oppressed and brutalized and so he insisted on the fundamental right of citizens to "freedom" and on the duties of government to assure them of "dignity" and "self respect." The Filipinos were subject to the whims of unlimited official discretion and to the exceases of absolutism for centuries; and so Mabini, in his exposition on the nature of society and the functions of government, maintained the doctrines of popular consent and natural law as limitations on public power and emphasized the primacy of the interest of the governed in the functioning of government. The hopelessness of reform and the excesses of Spanish tyranny, civil and ecclesiastical, gave rise to a revolutionary society, the **Katipunan**, whose existence and separatist aims were justified on the theory of the "Blood Compact." It was maintained that the early Filipinos entered into an agreement with Spain whereby the former former acknowledged the sovereignty of the Spanish king in exchange for the promise of concern for the welfare of the natives; but by its abuses and plain disregard of the natural rights of its native subjects, Spain abrogated the pact and thus gave the Filipinos the right to declare themselves free and independent. The pernicious influence of the friars and the impositions of the Church on civil authority gave reason for Mabini and the del Rosarios to insist upon, and the Malolos Convention to adopt, the principle of separation between church and state as a cornerstone in the constitutional edifice of the First Malayan Republic.

The exposition of Dr. Majul of the precise historical problems which prototypes of current constitutional concepts were designed to solve, cannot but prove invaluable to the lawyer and policy maker who seek greater precision and refinement of the various tools of constitutional and legal thought.

The best example that can be given is the principle of separation between church and the state. The popular impression is that the concept was an importation from American constitutionalism during America's sojourn in the Islands. The concept then is often given the limitations it had and still has, in the American setting. Under this interpretation, the principle is some sort of **laissez faire** policy on religious matters. The role of the government in the preservation of religious freedom is largely negative; its duty as thus contemplated is performed by inaction.

The work of Dr. Majul shows these impressions to be mistaken. First, the coming of the concept to the Philippines, its incorporation into the legal thinking of Filipino constitutionalists, preceded the advent of American imperialism; it was enshrined in the Malolos Constitution before the United States, suddenly discovering that its "Manifest Destiny" dictated expansion into the Pacific, embarked on a conquest of the rising Filipino nation.

Second, the government, under the concept as developed by Filipino legal minds, played a positive role. It was a virtual watchdog, with an active duty to see to it that the wall of separation between the church and state which the Malolos Constitution ordained was kept "high and impregnable".

This modification in the concept is vital and can be explained by circumstances peculiar to the Philippines. In the United States and in Great Britain, the government could play the grand umpire on a policy of disinterestedness because the proliferation of religious sects was such that each becomes a self-appointed guardian of the separation thus ordained and kept a jealous check on any attempt of the others to gain political favor or ascendancy. On the other

hand, there is in the Philippines but one principal church; the religious scene was monopolized by the Roman Catholic Church and dominated by it at the present time. Its immense power, both spiritual and temporal, requires greater vigilance on the part of the government in keeping itself free from ecclesiastical dictation, which frequently comes in subtle forms.

Another circumstance justifying the modification is the fact of intimate connection between the church and the state in the Philippines for over three centuries, with the friars frequently running civil affairs to all practical intent. The habit of hearkening to the advice and importunities of the fathers as to civil matters, has been too much ingrained to be safely discounted; that subservience to priestly authority peculiar to the medieval mind still plagues the Filipino. It seems necessary then that the Filipino government should adhere with greater strictness to the principle, if the purpose of the Constitution to free civil matters from the interference of the religious, is to be fully achieved.

Other political ideas whose historical development was studied in detail include the doctrine of legislative supremacy and the notion of a strong executive. The law student may study the parallelisms between the thinking now and the thinking then on these concepts, with much profit.

And a word of warning: some parts may appear unpleasant, if not shocking, to the few who labor under the delusion, fostered by the ecclesiastics and by the Holy Name societies, that the Spanish era was a Golden Age of the Philippines.

Perfecto V. Fernandez

THE FIFTH AMENDMENT by Erwin Griswold, Harvard University Press, Cambridge, 1955. Pp. 82. $2.00

Lost in the maze of legal legerdemain which charncterizes American congressional investigation, the private citizen cannot help being intrigued by the potency of the Fifth Amendment. In countless occasions, the privilege against self-incrimination has been successfully invoked. And like all constitutional privileges, it has weathered storms of public displeasure. With the advent of communist witch-hunting, the privilege has become the more important and rightly so.

The history of the privilege against self-incrimination is as colorful as the other liberties extracted by the English barons from King John at Runnymede. Though at the inception, the privilege may not have been frequently invoked, it has developed into one of the touchstones of Anglo-American jurisprudence. As a constitutional privilege, it erases from the pages of criminal jurisprudence the traditional primitive methods of extracting confession. Likewise, it distinctively serves as a pillar of the democratic concept respecting the inherent dignity and worth of the individual.

Many, however, do not realize that the efficacy of the Fifth Amendment is threatened. The practice of allowing television and radio coverage in congressional committee hearings as well as the habit of delegating committee power to congressional sub-committees had dented the stability of the privilege. Though a number of congressional investigators have mistakenly conceived congressional hearings to be a due exercise of the judicial power, paradoxically enough, they disregard constitutional safeguards without qualms. Cases have been heard where individuals are deprived the services of counsel and the help of witnesses. In many of the cases, the person so tried are investigated on mere suspicion. The wrong start is followed by trial by newspapers and television where the evidence which will be rejected by a grand jury pass for convincing proof. Then, even though an individual is found not guilty, still he is thrown out of his job without any prospect of employment in the future.

These practices are clearly destructive of liberties. Aside from effectively chipping off piece after piece of constitutional rights, they also create a public atmosphere which generates fear and misconceptions about individuals who are unfortunate congressional victims. The moment the Fifth Amendment is invoked by a witness, the public immediately concludes: the witness is guilty otherwise he would not invoke the privilege. Laboring under this attitude, when may a witness ever be innocent upon proper defense of the privilege of not incriminating oneself? With this public conclusion, the constitutional provision may appear to have been a mistake.

Dean Griswold criticizes the concept of the waiver of the privilege. The Courts have not established clearly a definition when waiver may be successfully concluded. In this absence, congressional committees have taken it upon themselves to advance their own set of criteria when waiver may be presumed. This, along with other defects, deserve the attention of legislators, members of the bar and the citizens as well. Everyone seems to shy away from suggesting remedies for fear of being considered a Red or a fellow-traveler. But reforms, legal or otherwise, will never be instituted if such attitude prevails.

Invocation of the privilege may be prompted by several reasons. Not too few individuals are afraid to be subjected to merciless bullying by investigators, thus they conveniently invoke the privilege. Similarly, many victims of congressional investigations deem it expedient and ethical to save friends from undergoing the same experiences and other legitimate reasons which any innocent man may adduce under stress. Proper respect for this right will not endanger American liberties. The deprivation of the exercise of the privilege through questionable means may ultimately destroy American liberties. This everyone should have in mind. For even a deeply-imbedded heritage of freedom must be perpetuated by the same devotion of the individuals who established the freedoms before us. One cannot miss it by reading this volume.

In the Philippine scene, the importance of a proper understanding of the Fifth Amendment becomes a necessity with the passage of the law outlawing the communist party in the Philip-

pines. It may not take very long when disputes may arise concerning the invocation of the privilege. It may do well for professionals as well as laymen to be very familiar with the proper use of the privilege. With this imperative need, Dean Griswold provides the answer in his tiny volume.

Homobono A. Adaza

FOUNTAIN OF JUSTICE: A STUDY IN THE NATURAL LAW, by Dr. John C. H. Wu, Sheed & Ward, New York, 1955, Pp. 271, Explanations and Acknowledgements, Index. P

However much the author himself may protest it, the book embodies his philosophy of law, if not — one may even go as far to suspect — a declaration of his deep religious convictions. Much as the author has apparently strained to personalize his views, the conclusion from reading the book is inevitable that he belongs to the traditional, if Thomist, school of law. Actually, there is nothing new, revelatory or edifying in the whole volume; rather, Dr. Wu, very scholarly it cannot be denied, has successfully caught in a few well-packed pages the ideas he and many others of the Thomist school have lived by.

That human law, or positive law, if you please, springs from natural law which in turn springs from eternal law — the law of God ("the fountain of justice") seems to be the underlying thought of the book. It affirms the immutability of certain fundamental legal principles which have been written, so goes the stock expression, with the finger of God in the heart of man. It defines the end-goal of all law by Christ's standard: one's love for his neighbor. The book, in fact, is profuse with citations of Christ's teachings, and the student of the law stands to be treated to a most enlightening discussion and elucidation of how said teachings have permeated through our law today. Dr. Wu, whose interest in the common law seems to parallel that of his correspondent-friend Justice Holmes, especially points out the palpable, dominant, and elevating influence of Christianity upon the common law, and somewhat inevitably, upon American law. The decisions and cases the author culled to drive home his point are particularly interesting, as, for instance, his reference to the Rosenberg, the Dennis, the Segregation cases, and others of the same recentness and impact.

Dr. Wu is ecstatic about this Christian influence on Anglo-American law, particularly "that the natural law has received a much warmer reception in America than in any other country in the world." It makes him happy to note what he likes to call the "upward" trend which is precisely the trend towards spiritual and moral values, towards justice in its pristine natural law conception. He seems to feel condescending sympathy for his good friend Justice Holmes because the latter "made a wholesale denial of the natural law." This statement of his furnishes insight into his reverence for Holmes as well as for the saint he worshipped most, St. Thomas: "It is a pity that he (Holmes) never studied St. Thomas."

Even as the book takes a definite, let alone rabidly partisan, stand, it is not rash. It concedes, for instance, the limits of natural law as a source of positive law: "x x x if the law does not require everyone to act as the Good Samaritan, it is not because it is not sufficiently Christian to appreciate the beauty of moral goodness, but rather because it is aware of its own limits, and it has to take account of the frailties of human nature and the actual state of civilization."

"Legal Phariseeism" is vehemently denounced in the book. A clear distinction as well as correlation of law and equity is drawn. The author manages to make several witty remarks by way of elaboration of his thesis. The author's style, while not to be compared with Justice Holmes', is clear and readable enough, but there is, it is unfortunate, too much beating around the same bush, but the reader may yet sift such points as that positive law is suppletory to natural law, or that truth and justice are not identical.

On the whole, the books is one which could be typed as Catholic reading stuff. God, Dr. Wu would like to tell us, is the Jurist of all jurists.

Antonio R. Bautista

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