COMMENTS

THE ANG CASE AND THE PARDONING POWER REVISITED

> The moment a man is sentenced to die for these offenses that strike at the very existence of human society, religion, humanity, family influence, female weakness, personal importunity, pious fraud, and counterfeit benevolence all join in a holy league to swindle a pardon from the Executive. The murderer is pumped and purged into a saint, or certified into an idiot.—JOHN QUINCY ADAMS*

Time out of mind, in one of the earliest books of English law where the monarchical concept of pardon was first conceived, it was not the business of the King to pardon murder convicts.[1] The attractive English conception of pardon was transplanted into the American soil but its monarchical quality had fallen by the wayside and took on a new direction.[2] Under the positive functions of a republican government as it stands today, the power is regarded as a very positive adjunct of the law enforcing machinery. Doubts in its exercise are always ultimately resolved in favor of public welfare. Thus, in February 1953, U. S. President Dwight D. Eisenhower did not hesitate to deny an application for executive clemency filed by the Rosenbergs. Julius and Ethel Rosenberg were convicted and sentenced to death by the Federal District Court of New York City in 1951 for passing atomic secrets to some U.S.S.R. agents. President Eisenhower, after seriously going over the matter with adamantine caution, firmly emphasized:

> "I have made a careful examination of this case and I am satisfied that the two individuals have been accorded their full measure of justice. There has been neither evidence nor have there been mitigating circumstances which would justify altering this decision, and I have determined that it is my duty, in the interest of the people of the United States, not to set aside the verdict of their representatives."[3]

Indeed, the beautiful connotation of pardon as a benign expression of the sovereign will has always been associated with the majestic role of justice in England and America. In our country, however, recent events reveal a serious misconception of this power tending to reduce the efficient dispensation of criminal justice to a minimum.

Last Independence Day, His Excellency, the President of the Philippines granted a conditional pardon[4] to one Ang Cho Kio, a 30-year old Chinese cold-blooded killer who hijacked a Philippine Air Lines plane on December 30,

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* 5 ADAMS, MEMOIRS 168 (July 17, 1820); WHITE, THE JEFFERSONIAN 202-203 (1951).

1 2 BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 539 (1879), Statute 18, Ric. 11, St. 2 Ch. 1.; 2 Edw. III c. 2 and 14 Edw. III, c. 15.

2 CORWIN, THE PRESIDENT: OFFICE AND POWERS 168 (1952).

3 Ibid., at 416.

4 Malacanang made it clear that the unexpired portion of Ang's term would be remitted on condition that he voluntarily leave the country upon release and would never return. Should he refuse to accept this condition, he should continue serving his sentence and upon its expiration, would be deported from the country as an undesirable alien. The Manila Daily Bulletin, July 8, 1950, p. 1, col. 8.

1952.[5] Late that night, when the plane was airborne from Laoag, Ilocos Norte, with 21 passengers, Ang ordered the pilot at gun point to fly to Red China. Upon the latter's refusal, Ang shot him to death. A crew member who came to the pilot's aid was likewise shot to death. Ang was convicted by the Courts of First Instance of Manila, Rizal and Mountain Province for a string of major crimes, to wit: murder, frustrated murder, frustrated homicide, grave coercion with murder, illegal possession of explosive and ammunitions, and illegal possession of firearms. For these crimes, he was given an aggregate sentence of 28 to 46 years and a definite sentence of life imprisonment, and was further ordered to indemnify the heirs of the pilot in the amount of ₱6,000.[6] When the pardon was granted, Ang had served 6 years of his sentence only.[7]

The enormity of these crimes, their wholesale disregard of human lives, marked them as among the most flagrant criminal exhibitions on record.[8] The unusual circumstances[9] under which the pardon was granted immediately provoked the passions of the people and stirred sharp and severe criticism from various quarters. One of the more widely circulated Manila dailies, roused surely by the virulent impact of the pardon, obliged itself with the crucial questions: "What justification is there for pardoning Ang, who terrorized a planeload of people, shot a pilot dead, and was desperate enough to commit mass murder? Is the power of pardon so absolute that it does not have to be justified or explained?"[10]

Some legal experts at once cited American jurisprudence to justify the Presidential pardon, among them, U.S. Justice Wayne's dictum in the case of *Ex Parte Grossman*[11] that

> "Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford remedy it has always been thought essential in popular governments as well as in monarchies to vest in some other authority than the courts power to ameliorate or avoid particular criminal judgments... Whoever is to make it useful must have full discretion to exercise it"

and Justice Holmes' dictum in the case of *Biddle v. Perovich*[12] to the effect that

> "A pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the Constitutional echeme. When granted, it is the determination of the ultimate au-

5 When Ang boarded the plane he had been wanted by Philippine authorities for several crimes, including wounding a girl friend at the Chinese High School. He come to the Philippines from Hongkong in 1947 as an alien non-immigrant classified as a student. Manila Daily Bulletin, July 8, 1959, p. 11, col. 8. Id. July 13, 1959, p. 1, col. 6.

6 Manila Daily Bulletin, July 8, 1959, p. 1, col. 8; Manila Times, July 12, 1959, p. 4, col. 1.

7 Ang served his sentence on March 14, 1954. The Manila Times, July 12, 1959 p 4 col. 1

8 Manila Daily Bulletin, July 14, 1959, p. 8, col. 1.

9 Ang was among the 11 Chinese, 9 of whom were life termers, recommended by the Board of Pardons and Parole for conditional pardon. Of the 11, he was singled out and granted pardon despite the fact that in this group, he had the longest sentence. Manila Daily Bulletin, July 14, 1959, p. 11, col. 6.

Ang's name was not included among the 114 prisoners whose names were published last July 4, 1959 as having been granted pardon by the President. Manila Daily Bulletin, July 14, 1959, p. 8 col. 1.

10 The Manila Times, July 12, 1959, p. 4, col. 1.

11 267 U. S. 87 (1924).

12 274 U. S. 480 (1927).

thority that public welfare will be better served by inflicting less than what the judgment fixed."[13]

Despite the laudable enthusiasm accorded the *Ang* case by some legal quarters, many vital points therein still remain unclarified. The present inquiry proposes to (1) examine the extent of the applicability of the foregoing dicta to the *Ang* case, and (2) consider the *raison d' etre* of the pardoning power in our Constitutional system, its origin, nature and limits and consequently to dispel the common misconception that the power is absolute. To arrive at these matters more clearly, we would do well to review the more significant incidents of the *Ang* case.

REASON GIVEN FOR *ANG* PARDON; BLUE RIBBON INQUIRY.

The reasons given both by Malacañang and the Board of Pardons and Parole for extending executive clemency to Ang are;

(1) Ang has served a "substantial" portion of his sentence on February 26, 1953 and the board recommended his pardon conditioned on his deportation, last January 22, 1959;

(2) If deported, Ang would no longer be a menace to Philippine society;

(3) Ang's deportation would help relieve congestion at the national penitentiary;

(4) By pardoning Ang, the government would be relieved of the burden of his support while in prison; and

(5) Ang's prison record was "excellent."[14]

Malacañang Press Secretary Jose C. Nable added in a press statement that "President Garcia granted conditional pardon to Ang Cho Kio on a long standing recommendation of the Board." It was further explained that a long standing policy followed by the Board influenced mainly the granting of executive clemency to Ang. Considering, however, the length and severity of Ang's sentence, it is highly doubtful if he would have merited pardon, the alleged standing policy referred to notwithstanding. As cogently explained by a Department of Justice official:

> "Life term is supposed to be 30 years of imprisonment. But as soon as the prisoner has served six years of good conduct, his entire sentence is readjusted and reduced to a maximum of 17 years and a minimum of 14 years. If the prisoner shows good conduct, he could be eligible for parole after serving half of the minimum of the revised term of 14 years. This would be seven years before a prisoner could be eligible for parole. To be eligible for pardon, he should have served one half of the intermediate term or about nine years. Ang, according to this computation, did not even qualify for parole."[15]

The findings of the Senate Blue Ribbon Committee which conducted an extensive inquiry into the *Ang* pardon case revealed that the members of the Board of Pardons and Parole "failed, or neglected, wittingly or unwittingly to study conscientiously" the criminal records of Ang. The Board did not have before it the criminal charges and the condemnatory decisions rendered by the Courts of First Instance of Manila, Rizal and Mountain Province. The

13 The Manila Daily Bulletin, July 14, 1959, p. 1, col. 1.

14 The Manila Daily Bulletin, July 14, 1959, p. 7, col. 6.

15 Ibid., p. 11, col. 6.

Chairman of the Board and a priest member[16] flatly stated, however, that the Board was aware of Ang's individual records when it endorsed the petition for pardon. President Garcia likewise admitted ignorance of the material facts of the *Ang* case, but while he agreed to send back "several" hundred recommendations for pardon to the Board for further study, he refused to reconsider Ang's pardon. Evidence had been introduced than an alleged abortive clandestine deal was linked to Ang's pardon and that political intervention was exercised.[17] The records also showed that Ang was supposed to have been behind several prison killings and misdemeanors including the slugging of a fellow prisoner, refusal to work and bribery.[18]

Further investigations conducted by the Senate Blue Ribbon Committee revealed that (1) A Chinese kidnapper, Uy Sy, was granted pardon but allowed to stay in the Philippines contrary to the recommendations of the Board;[19] (2) there were instances when convicts from well-to-do or influential families were granted absolute pardon even without serving a minute of their sentence.[20]

From what has been established in the Blue Ribbon Committee investigation, it is apparent that political interference and favoritism meddled considerably into the pardoning process. The responsible officials have been following a haphazard procedure and disposed of long pardon lists as a matter of perfunctory business.[21] The delicate and solemn procedure which characterized the granting of pardon in age old polities has been taken with the least consideration by those entrusted with the duty to safeguard criminal justice. It is therefore hoped that a judicious consideration of the fundamental precepts of the pardoning power would help minimize and obviate evident errors of judgment resulting from the imprudent misuse of the power to the end that it may be restored to its rightful place in our Constitutional scheme.

ORIGIN.

The earliest known way of avoiding the execution of a judgment of conviction was reprieve, milder in form than pardon, whereby the execution was suspended for an interval of time. The laws of ancient Rome featured a form of mercy "dictated by the law of nature, in *favorem prolis.*"[22] For instance,

16 Chairman Enrique Fernandez and Fr. Casimiro Alvarez.

17 Manila Daily Bulletin, July 14, 1959, p. 11, col. 6; Id., July 18, 1959, p. 1, col. 6. Id., July 20, 1959, p. 2, col. 2. Id. July 21, 1959, p. 1, col. 2.

18 Ibid., July 22, 1950, p. 2, col. 5.

19 Manila Daily Bulletin, July 22, 1959, p. 2, col. 5.

20 Among the pardon cases which the Committee described as irrigular are:

(1) A Leyte town mayor who was convicted for 2 cases of homicide to imprisonment terms ranging from 8 to 14 years. The mayor was granted pardon without serving a day in Muntinglupa.

(2) 6 men convicted for theft of rails in Pampanga. On alleged influence of a governor, the 4 principal figures were pardoned, while the 2 are still languishing in jail.

(3) A Chinese convicted to 8 years in prison for violation of the Retail Trade Law. He was granted pardon after 12 days in jail, the executive clemency allegedly done by by-passing the Board of Pardons and Parole. Manila Daily Bulletin, July 23, 1959.

4) 10 other Chinese convicts were granted pardon on condition that they be deported despite the fact that all of them, except one, had been convicted of grave crimes and sentenced to reclusion perpetua. The Manila Daily Bulletin, July 15, 1959, p. 1, col. 2

21 The Manila Daily Bulletin, July 28, 1959, p. 8, col. 1., Ibid., July 29, 1950, p. 8, col 1.

22 2 BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 536 (1870).

a reprieve *ex necesitate legis* was recognized, which suspended the execution of a pregnant woman convicted of a capital offense.[23]

In England, the King's pardon was considered the most amiable prerogative of the crown and so prevailed as far back as the first memorials of laws. Anciently, it was shared with him by the Lords of Marches and others "who had *jura regalia* by grant or prescription", but by the Act of 27 Henry VIII, is now restricted solely to the person of the King in the following language:

> "No person or person of what estate or degree soever they be, shall have power to remit any treasons or felonies whatsoever, nor any accessories to the same nor any outlawsries for such offences whether committed in England or Whales or the marches of the same, but that the King shall have the whole and sole authority therefore united and knit in the imperial crown of his realm as of good right and equity appertaineth."[24]

Under the above set-up, the King, Coke says, is himself the legal prosecutor of every indictment for crime.[25] And, as explained by one able writer, "Law cannot be framed on principles of compassion to guilt; yet justice, by the Constitution of England, is bound to be administered in mercy; this is promised by the King in his coronation oath, and it is that act of his government which is the most personal and most entirely his own. The King himself condems no man; that rugged task he leaves to his Courts of Justice; the great operation of his sceptre is mercy."[26]

The late Blackstone had always considered this power as one of the great advantages of monarchy above any other form of government; that there is a magistrate who has it in his power to extend mercy, to soften the rigors of the criminal law in cases which merited an exemption from punishment.[27] And while the King acts in a superior sphere, yet his position supposedly does not appear disagreeable or invidious. The people of his Kingdom look up to him as the fountain of nothing but bounty and grace. His repeated acts of goodness endear the sovereignty to all his subjects and "contribute more than any thing to root in their hearts that filial affection and personal loyalty which are the sure establishment of a prince."[28]

In the face of the complacent warning of Blackstone that in democracies, "this power of pardon can never subsist, for there nothing higher is acknowledged than the magistrate who administers the laws", the Framers of the United States Constitution provided that the President "shall have the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."[29] Their temerity, observed one forward—looking author, was accountable partly to the fact that whereas Blackstone was thinking of pardon as a mere instrument of clemency, and so more or less opposed to the law, the Framers considered it as an instrument of law enforcement.[30] However, in two early cases decided by the

23 2 Ibid.
24 17 ENG. & AM. ENCY. OF LAW 318 (1892).
25 17 Ibid., at 318, 3 Inst. 233.
26 2 BLACKSTONE, supra note 22 at 537.
27 2 Ibid., at 537.
28 2 Ibid., at 538.
29 U. S. CONST. Art. 2. sec. 2, cl. 2.
30 CORWIN, THE PRESIDENT: OFFICE AND POWERS 159 (1937). Id., at 193 1948).

U.S. Supreme Court, which we shall examine closely later, the vast English principles on the use, operation and effect of pardon were unqualifiedly adopted. Justice Wayne for instance wrote in the case of *Ex Parte Wells*:[31]

> "The power granted to the President was the same that had been exercised by the Crown of England... At the time of our separation from Great Britain, that power had been exercised by the King as Chief Executive. Prior to the revolution, the colonies being in effect under the laws of England, were accustomed to the exercise of it in the various forms, as they may be found in the English law books... At the time of the adoption of the constitution, American statemen were conversant with the laws of England and familiar with the prerogatives exercised by the Crown. Hence, when the words to grant pardon were used in the Constitution, they conveyed to the mind the authority exercised by the Crown or the representatives in the colonies..."

UNDER THE PHILIPPINE CONSTITUTION.

The Constitution of the Philippines provides:

> "The President shall have the power to grant reprieves, commutations and pardons, and remit fines and forfeitures, 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. He shall have the power to grant amnesty with the concurrence of the Congress of the Philippines."[32]

The above provision was influenced by the American Federal Constitution and particularly the Jones Law which was in force at the time of the adoption of the Constitution. The pardoning power conferred upon the Chief Executive in the Jones Law runs thus:

> "He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures."[33]

Under the Jones Law, the President could exercise the power of pardon for any reason and at any time—either before or after conviction, before, during or after trial, or before or during his service of sentence.[34] However, it was pointed out in the Constitutional convention that the sub-committee's draft requiring "previous conviction before a person could be pardoned was intended to prevent the recurrence of the evil practices sometimes resorted to by the Chief Executive under the Jones Law of pardoning persons, especially friends and other influential individuals, before conviction."[35] The delegates did not question the priority of the exception clause respecting impeachment cases. It was deeply felt, also, that the exception would check abuses commonly perpetrated by the Chief Executive under the Jones Law

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31 18 How. 307, 311, 15 L Ed. 421. (1856).

In the convention which framed the Constitution, no effort was made to define or change its meaning, although it was limited in cases of impeachment.

To the same effect was Chief Justice Marshall's dictum in U. S. v. Wilson, 7 Pet. 150, 160, 8 L. Ed. 640:

"As this power had been exercised, from time immemorial by the executive of that nation whose language is our language, and to whose judicial institution ours bears a close resemblance, we adopt their principles respecting the operation and effect of pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it."

32 PHIL. CONST. Art. 7 sec. 10, cl. 6.

33 See 1 ARUEGO, THE FRAMING OF THE CONST. 435 (1949).

34 1 Ibid. at 435, 437.

35 1 Ibid. at 437.

in protecting political favorites subject to impeachment. On the whole, the unanimous sentiment of the Convention delegates recognized the necessity of the principle of pardon under the Constitution as a safety factor "to correct a blatant error in the administration of justice."[36]

In the *Ang* case, it has been argued that the power to grant pardon is an absolute prerogative of the President, since the Constitution expressly states that the power may be exercised "upon such conditions and with such restrictions and limitations as he may deem proper to impose." A 1915 Supreme Court ruling was cited to support this interpretation:

> "But the power to pardon when exercised by the Chief Executive in favor of persons convicted of public crimes is unlimited, the exercise of that power lying in his absolute and uncontrolled discretion. The reason for its exercise are open to judicial inquiry or review, and indeed it may appear that he may act without any reason or at least without any expressed reason, in support of his action..."[37]

It need only be said here that the above pronouncement was a sweeping affirmation of the American jurisprudence then in existence and was promulgated under the Jones Law. It is more pertinent to observe that our Fundamental Law was a substantial departure from the Jones Law. As previously pointed out, the pervasive spirit of the Framers in putting restrictions on the exercise of the pardoning power was to prevent and prohibit the occurence of previous abuses committed by the Chief Executive under the Jones Law. While it was contemplated to vest solely upon the Chief Executive the exercise of the pardoning power, the power was primarily embodied in the Constitution to assure the skillful regularity in the administration of justice which the Constitution sanctifies, rather than defeat it by patronizing the serious evil practices which the Jones Law entailed.

LIMITATIONS ON THE PARDONING POWER

Our Constitution imposes certain well-defined limitations upon the exercise of the pardoning authority by the President. The limitations are:

(1) The President can pardon offenders only after conviction;

(2) The President cannot pardon a person found guilty of impeachment;[38] and

(3) The President cannot pardon any violation of election laws without the favorable recommendation of the Commission on Elections.[39]

Subject to the above limiations imposed by the Constitution, the pardoning power cannot be restricted or controlled by the Legislature. It must remain where the sovereign authority has placed it, and must be exercised by the highest authority to whom it was entrusted.[40]

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36 I Ibid. at 430, 439.

37 U. S. v. Guarin, 30 Phil. 87 (1915).

38 PHIL. CONST. Art. 7 sec. 10, cl. 6.

39 PHIL. CONST. Art. 10 sec. 2, cl. 2.

40 Cristobal v. Labrador, 71 Phil. 34, 38 (1940).

Congress can neither limit the effect of pardon nor exclude from it any class of offenders. The benign prerogative of mercy cannot be fettered by any legislative restriction. Ex Parte Garland, 4 Wall. 333-399, 71 U. S. 307.

Humanity and sound policy dictate that this prerogative should be fettered as little as possible. STORY, COMMENTARIES ON THE CONST. Sec. 1498.

THE FEDERALIST NO. 74 (Hamilton), 4 Wall. 368 said:

"Humanity and good policy conspire to dictate that the benign prerogative of pardoning should be as little as possible fettered or embrased."

In *Fuller v. State*[41] a statute which rendered the exercise of the pardoning power more convenient and efficient was upheld. It is also constitutional to confer upon a board of pardons the authority to investigate the conduct of a convict whose case is under consideration, with a recommendation as to the advisability of granting a pardon, where the President may accept or reject it according to his own judgment of the facts of the case.[42]

Rich v. Chamberlain,[43] however departed from this rule. The Court therein questioned the existence of an advisory board of pardons which tend to substitute the judgment of the Chief Executive. The erection of a board of pardons, it was pointed out, would invite unworthy applications and offer an opportunity to the convict to press his suit for pardon. It offers a premium to pardon brokers, and "the pardon, in place of remaining a matter of high executive clemency, degenerates into a routine award of a committee, to be obtained and justified by a compliance with fixed rules, and sought as an assertion of a right rather than clemency... In several states, the power is restricted, possibly to cut off any danger of an undue exercise of the power." The Court concluded that the board should never be permitted to exist until the people have signified their willingness that the safeguards placed in their Constitution be removed.

In monarchical England, the King's pardon was clearly circumscribed by law and the British Constitution.[44] The King cannot, by any previous license, prevent the punishment of offenses *malum in se*, *i.e.*, unlawful in itself. A grant of this kind would be against reason and common good. He cannot pardon unless private justice is concerned in the prosecution of offenders. Neither can he pardon a common nuisance while it remains unredressed, because the offense is more of a private injury to the individual. The King's pardon cannot be pleaded to any impeachment. Neither can the King pardon an offense against the penal statute, after the information is brought because the informer has already acquired a private property in his part of the penalty.[45] He cannot release a recognizance to keep the peace because it is for the benefit and safety of all the subjects.[46] Nor does the power to pardon extend to Habeas Corpus cases. Neither can he discharge a private claim of a citizen in an action against another.[47]

Stringent limitations to the power of the King were imposed by statutes. By Statute 13 Richard II, St. 2, C. 1, "no pardon for treason, murder, or rape shall be allowed unless the offense be particularly specified therein." Likewise, the King's pardon was expressly constricted by Statutes 2 Edward III C. 2 and 14 Edward III, C. 15, which provided that "no pardon of homicide shall be granted, but only where the King may do it by the oath of his Crown; that is to say, when the man kills another by self-defense or by misfortune." During the time of the revolution, it was doubted if murder could be pardoned generally. The general rule, however, had been that pardon shall be

41 Fuller v. State, 26 So. 146, 32 AM. JUR. 588-9 (1942).
42 32 AM. JUR. 540 (1942).
43 62 N. E. 584 (1805).
44 Ex Parte Grossman, 267 U. S. 87 (1924).
45 2 BLACKSTONE, op. cit. supra, notes 1 & 22 at 538.
46 Ex Parte Wells, 15 L. Ed. 425 (1853).
47 17 ENG. & AM. ESCY. of LAW 318, 510 (1892).

taken most beneficially for the subject. And during the ancient statute of 10 Edward III, G. 2, no pardon of a felony was allowed unless the offender found sureties for good behavior.[48]

Under the United States Constitution, the power of pardon is limited to offenses "against the United States" and cannot extend to cases of impeachment. By settled jurisprudence, the power to pardon may be exercised at any time after the commission of the offense.[49] In most Constitutions of the states of the United States, the pardoning power is much more limited. Some require the concurrence of the legislature while in others, the recommendation of the board of pardons is a prerequisite.[50]

On the whole, the development of the pardoning power in the United States proceeded along two directions: "(1) the power has been augmented by drawing into it certain positive elements of what Blackstone terms 'the most amiable prerogative of the British Crown', (2) it has been released from certain cramping restrictions upon that prerogative." These elements are all in consonance with the undoubted outlook of the Framers, who regarded the pardoning power as a very positive adjunct of the law enforcing machinery.[51]

THEORIES ON PARDON.

The English theory of government was that all powers of the government emanated from the King. It was the King's peace or the peace and good order of the King's realm which was offended by the crime. Consequently, the King could bestow his mercy by pardon.[52]

Our Constitutional government is established upon the principle that "sovereignty resides in the people and all government authority emanates from them."[53] Hence, crime is an offense against the people, prosecuted in the name of the people, and the people alone can bestow mercy by pardon.[54] The people, through the Constitution, merely confers the pardoning power upon the Chief Executive, and the latter is no more than the instrument of the former.

In ancient times, pardon was an act of grace bestowed by the government. It was designed to relieve the individual from unforeseen injustice. But in its modern acceptation, an act of pardon is more than an act of grace, because when properly granted, it is an act of justice supported by wise public

48 2 BLACKSTONE, supra note 45 at 539.

49 17 ENG. & AM. ENCY. OF LAW, supra notes 24 and 47 at 318.

PARRAND 185, cited in CORWIN, op. cit. supra note 30 at 108.

50 WARREN, THE MAKING OF THE CONST. (1947).

51 CORWIN, op. cit. supra note 30 at 205 (1948).

52 32 AM. JUR. 526 (1942).

Lord Coke defines a pardon as a work of mercy, whereby the King, either before or after attainder, sentence or conviction, forgiveth any offense, punishment, execution, right, title, debt, or duty, temporal or ecclesiastical, 3 Inst. 233, 17 ENG. & AM.ENCY. 317 (1802).

A pardon is an act of grace proceeding from the powers entrusted with the execution of the laws, which exempts the individual from tre punishment which the law inflicts for the crimo he has committed. De Leon v. Dir. of Lands, 31 Phil. 64 (1915), citing U.S. v. Wilson, 7 Pet. 150.

53 PHIL. CONST. Art. 2 Sec. 1.

54 Jamison v. Flamer, 110 Kan. 624, 228 P. 82, 85, 35 A.L.R. 973. In this connection, Bishop defines a pardon as a remission of guilt. I BISHOP, CRIM. LAW Sec. 898.

Wharton defines pardon as a declaration of record by a sovereign that a particular individual is to be relieved from the legal consequences of a particular crime. 1 WHARTON, CRIM. LAW Sec. 591.

policy. The granting of pardon is now accepted as an act of the sovereign state, not a personal act of the President.[55]

The pardoning power, one modern author says, is an instrument of law enforcement.[56] It is used to meet gaps in the law because law cannot always be just in every circumstance when enacted and administered.[57]

BIDDLE, GROSSMAN, & OTHER CASES.

It will be recalled that supporters of the *Ang* pardon case cited Justice Holmes' dictum in *Biddle v. Perovich.*[58] The issue in this case was whether the President has authority to commute the sentence of Perovich from death to life imprisonment without the convict's consent. With the United States Constitution as its guide, the Court, as was expected, answered the question in the affirmative, reasoning out that "a pardon in our days is not a private act of grace from an individual happening to possess power. It is a part of the Constitutional scheme. When granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment fixed."

There is no argument that such is the status of the pardoning power today. The dictum strongly refutes the contention advanced in support of the *Ang* pardon that the President's power is absolute and unlimited. As Corwin says, the *Biddle* case simply discarded the outright common law theory of pardon.[59] Thus, it is evident that our Constitution as it now stands, embraces nothing of the "private though official act of the President" averred to by Justice Marshall in the ancient case of *U.S. v. Wilson.*[60] It is to be noted, also, that the argument for the United States in the *Wilson* case was made by Attorney General Taney who referred exclusively to British authorities. Justice Marshall, who penned the decision, likewise freely invoked British practice as furnishing the proper rule for the interpretation of the clause "pardon and reprieve." As was shown previously, there is a considerable difference between the British theory of pardon and the modern republican theory.

We are unaware, of course, that the rule in the *Wilson* case was reiterated in *Ex Parte Wells.*[61] But this latter case was met with a vigorous protest in the dissenting opinion of Justice McLean which appeared to have gained ready acceptance in the *Perovich* case and is sanctioned by modern jurisprudence. Justice McLean argued that where this power rests in the absolute discretion of the President, it does not seem to be a power fit to be exercised over a people subject only to the laws. "Who can foresee the excitements and convulsions which may arise in our future history? The struggle may be between a usurping executive and an incensed people. In such struggle, this right, claimed by the Executive...may become dangerous to popular rights... Banishments or other modes of punishment may be substituted and inflicted, at the discretion of the national executive. I cannot consent to the enlarge-

55 32 AM. JUR. 526 (1942).
56 CORWIN, op. cit. supra, notes 2, 49 & 51 at 108 (1957).
57 32 AM JUR. 527 (1942).
58 274 U.S. 480 (1927).
59 CORWIN, op. cit. supra notes 2 & 56 at 101. Id. at 100 (1948).
60 7 Pet. 150 (1833). CORWIN, Ibid. at 162.
61 18 How. 307-331. (1855). 15 L.Ed. 421.

ment of the executive power, which is not restrained and guided by positive law." Justice McLean pointed out that in a monarchy, the offense is against the Monarch, and that consequently he is the proper person to extend the pardon. It is a high prerogative of the King and is irreparably incident to the Crown. Justice McLean concluded in these terse terms:

> "The power to pardon is a prerogative of the Monarch, which cannot, it seems, be restrained by statute... If the President can exercise the pardoning power as free from restraints as the Queen of England, his prerogative is much greater than has been supposed... I had thought that he was a mere instrument of the law, and that the flowers of the Crown of England did not ornament his brow..."

The *Ex Parte Grossman* case[62] was also advanced in support of the *Ang* case. In the first instance, it must be noted that the case was based on a different set of facts. The question therein was whether the President of the United States can grant a pardon to Grossman who was found guilty of contempt for violating an injunction issued by the Court and was sentenced to 1 year imprisonment and a fine of $1000. The Court, speaking through Mr. Chief Justice Taft, ruled that for civil contempts, the punishment is remedial and for the benefits of the complainant and a pardon cannot therefore stop it. For criminal contempts, the sentence is punitive in the public interest, to vindicate the authority of the court and to deter other like derelictions. Hence, a pardon was proper. To the contention that pardon cannot extend to criminal contempts because it destroys the independence of the judiciary and in effect violates the principle of separation of powers, the Court answered by enumerating some negative restraints which show that the independence of each branch is qualified. To bolster its argument, the Court said, with special reference to the power to pardon criminal contempts:

> "Executive clemency exists to afford relief from undue harshness or evident mistakes in the operation or enforcement of criminal law. The administration of justice by the court is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford remedy, it has always been thought essential in popular governments as well as in monarchies, to vest in some other authority than the Courts power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive for special cases.
>
> "To exercise it to the extent of destroying the deterrent effect of judicial punishment would be to prevent it; but whoever is to make it useful must have full discretion to exercise it...
>
> "Personal element may sometimes enter into a summary judgment pronounced by a judge who thinks his authority is flouted or denied. To avoid possible mistake, undue prejudice or needless severity, the chance of pardon should exist."

At the same time, Justice Taft cautioned against the excessive use of the power. He emphasized that the Constitution confers this discretion on the highest officer of the land "in confidence that he will not abuse it."

Coming to the *Ang* case, it will be recalled that Ang was given an aggregate sentence of 28 to 46 years and a definite sentence of life imprisonment for a series of crimes such as murder, frustrated murder, frustrated homicide, grave coercion with murder, illegal possession of explosives and

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62 267 U.S. 87 (1924).

ammunition, and illegal possession of firearms. Grossman was found guilty of contempt and sentenced to one year imprisonment. It could not therefore be contended that the grant of pardon to Ang stemmed from undue harshness or evident mistake in the operation and enforcement of criminal law. No such evident mistake or undue harshness was shown. The reasons given for the *Ang* pardon were entirely different. They were based on certain standing policies which the President and the Board of Pardons and Parole considered as basic. They wanted to relieve congestion at the National Penitentiary. They wanted to relieve the government of the burden of supporting Ang while in prison. Indeed, were these reasons sufficient to comply with the basic requisite of promoting public welfare? Is the Penitentiary now relieved of congestion? How much will the government save each year for relieving itself of supporting Ang?

NATURE AND REASON FOR PARDON.

The dangerous precedent set by the *Ang* case brings us to examine more closely the nature and reason of the pardoning power.

The pardoning power is essentially an incident of a coordinated checks and balances which features our Constitution.[63] It is the exercise by the President of a quasi-judicial power, and therefore, when exercised by the President is strictly "not in accordance with the principle of separation of powers."[64] Nevertheless, it is evidently needful that the power should be lodged in some department of the government. There are many reasons why the power should be confided to the highest executive officer. It involves a wide discretion. The proceedings upon the trial may be reviewed. New evidence may be taken upon which to rest the pardon. It may be *ex parte* after the witnesses are dead or have disappeared. It may and often is based upon an alleged reform of an offender. Youth or age may furnish an excuse for its exercise. Importunities of interested parties and friends, may be expected where there is hope of success. It is therefore of highest importance that this power should be carefully exercised and that the fullest responsibility should rest upon the person whom it is confided. The office of the President is generally considered to be the proper one with which to lodge such responsibility.[65]

In every system in the administration of justice, unavoidable errors and miscarriages of justice may occasionally occur, as for example, evidence discovered subsequent to the trial may establish the innocence of a convicted man.[66] Hence, the existence of special circumstances demand that the pardoning power must be readily available somewhere, especially when the circumstances of any case disclose such uncertainties as make it doubtful if there should have been a conviction of the criminal, or when they are such as to show that there might be a mitigation of the punishment without lessening the obligation of vindicatory justice.[67] Without such a power of clemency to be exercised by some department or functionary of the government,

63 See Ex Parte Garland, 4 Wall. 333, 380, 18 L.Ed. 366; Ex Parte Grossman, 45 S. Ct. 337.
64 MATTHEWS, AM. CONSTITUTIONAL SYS. 175 (1940).
65 Rich v. Chamberlain, 62 N.E. 584 (1805).
66 MATTHEWS, supra note 64 at 175.
67 Ex Parte Wells, 18 How. 307-331, 15 L.Ed. 421, (1856).

it would be most imperfect and deficient in its political morality and in that attribute of Diety whose judgments are always tempered with mercy.[68] Hamilton expressed it in more rhetorical terms:

> "The Criminal Code of every country partakes so much of necessary severity; that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel. As the sense of responsibility is always the strongest in proportion as it is undivided, it may be inferred that a single man would be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which are calculated to shelter a fit object of its vengeance."[69]

REASONABLE DISCRETION, NOT ABSOLUTE.

The challenging excesses in the exercise of the presidential pardoning power have always been predicated upon and justified by the common misconception that the power is absolute in the light of the phrase, "upon such conditions and with such restrictions and limitations as he may deem proper to impose."[70] This situation is fortified by the sweeping generalization that "no matter how flagrant the breach of duty or how grossest the abuse of this discretionary power to pardon by the President, the law affords no remedy and the power is beyond legitimate criticism."[71]

The theory of absolutes has its proper place in monarchies. Under a republican system of government, no person exercises supreme executive power or performs the duties of a sovereign. As Mr. Justice Miller of the U. S. Supreme Court says, "No man in this country is so high that he is above the law. No officer of the law may set that law in defiance, with impunity. All officers of the government, from highest to lowest, are creatures of the law and are bound to obey it."[72] We have previously indicated that a crime is an offense against the people, prosecuted by the people, and the people alone can bestow mercy by pardon.[73] When the people, through the Framers of the Constitution, conferred the pardoning power upon the President, they were aware of serious abuses committed by the President under the Jones Law, and intended to put a stop to them.[74]

It must therefore be said that the pardoning power was vested upon the President as a purely official duty or responsibility. While the President was given full discretion to exercise that power, that discretion must be consistent with the regular performance of the official duty enjoined by the Constitution. The discretion must be reasonable and it cannot be treated as a privilege.[75] It is lodged in the President not for the benefit of the convict only but for the welfare of the people.

This discretion should be exercised on public considerations alone. A loose exercise of the pardoning power is greatly to be deplored. It is inexcusable. It is a blow to good order and is an additional hardship upon society in its irrepressible conflict with crime and criminals.[76] Thus, it was held that the

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68 Ibid.

69 FEDERALIST NO. 74 (Hamilton), cited in 71 U.S. 4 Wall, 368, (1863).

70 PHIL. CONST. Art. 7, Sec. 10.

71 Rathburn v. Baumel, 191 N. W. 297; Henry v. State, 136 P. 982.

72 Yakus v. U.S., 321 U S. 414 (1944).

73 Jamison v. Flamer, 228 P. 82, 85, 35 A.L.R. 973.

74 See notes 35 & 36.

75 Ex Parte Ridley, 106 P. 549 (1910).

mere fact that the President believes that a particular law is too harsh or unjust is not alone a sufficient reason for exercising a pardoning power, because the duty of mitigating the severity of the law lies with the legislature.[77]

In issuing a pardon grant, the President is supposed to act in accordance with sound principles and upon proper facts presented to him. While he is the sole judge of the propriety of granting pardon, and no other department can interfere, nevertheless, he acts for the public and dispenses the public grace and mercy. The efficacy of pardon flows from the sovereign people.[78]

It is essential that the pardoning power must be exercised for public benefit only. The interest and wishes of the convict and his family or friends are, as a general rule, immaterial unless these same individuals constitute an infinitisimal fraction of the general public. In a case, it has been pointed out that when the President pardons, he is not forgiving his own personal debtor but the public debtor whose trespass has impaired or endangered the happiness of the public. Hence, the personal sympathies and inclinations of the President are entitled to but scant consideration. "If an executive should grant a pardon because of personal sympathies for the criminal, his wife or his children, or indeed, for any reason, his conduct...would not differ in kind from what it would be, had he given such pardon for bribe money."[79]

SOME LEGAL EFFECTS OF THE ANG PARDON CASE.

As previously indicated, the findings of the Senate Blue Ribbon Committee inquiry on the *Ang* case show that the Board of Pardons and Parole "failed or neglected wittingly or unwittingly to study conscientiously" the criminal records of Ang. President Garcia himself freely admitted ignorance of the material facts of the case. Against persistent demands from the deceased pilot's heirs and the general public, the President stood firm on his decision and refused to reconsider the pardon.[80] The crucial question may then be raised: May not the President revoke or withdraw said pardon, assuming that Ang is still within the jurisdiction of our Courts?

In *De Leon v. Director of Prisons*,[81] our Supreme Court, citing a U. S. case decided in 1869, ruled that when a pardon is complete, there is no power to revoke it, any more than there is power to revoke any other completed act. And a pardon is complete after it has been delivered and accepted. The rule is subject to an exception. That is, "a pardon obtained by fraud upon the pardoning power, whether by misrepresentation or by suppression of the truth, or by any other imposition, is absolutely void."[82]

In England, when the King who granted pardon was not freely apprised of both the heinousness of the crime and of how far the party stood convicted upon the record, the pardon was considered void. In the United States, the same rule applies. In a case, it was held that when it may be reasonably inferred from the language of the pardon, considered in connection with the record of the cause in which it was granted, that the President was deceived by false statements or omissions to state relevant facts, or by suppression of

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78 Rich v. Chamberlain, 62 N.E. 584 (1805).
77 82 AM. JUR. 527 (1942).
78 Montgomery v. Cleveland, 184 Miss. 182, 98 S.E. 111.
79 52 L.R.A. (NS) 114, 115, 82 AM. JUR. 527 (1042).
80 The Manila Daily Bulletin, July 14, 18, 21, 1950.
81 51 Phil. 60 (1015).
82 SINCO, PHIL. POLITICAL LAW 283 (1954).

fact, the pardon is void. Other jurisdictions require a hearing before any such pardon can be declared void.[83]

Without necessarily deciding whether fraud has been committed upon the President, we maintain it is sufficient, in order to render the pardon void, that the President acted upon the pardon in ignorance of the material and relevant facts. Clearly, the English rule does not distinguish between a pardon based on a fraudulent imposition and one based on ignorance. Once it is satisfactorily shown that the President was not fully apprised of the material facts upon which a legitimate pardon may be based, the President should be allowed to avoid it. No rule is better settled than that a pardoning power must be exercised on purely public considerations and for the benefit of the public welfare. The interest and wishes of the convict is immaterial unless it incidentally forms part of the general welfare which must be ultimately served.[84] Even the more liberal doctrine holds that a pardon is not granted for the benefit of the convict only but for the welfare of the people.[85] Hence, considering its unique position in our Constitutional scheme, Ang could not have claimed any vested right in it after having duly accepted it. A grant of pardon, it must be repeated, is more than an ordinary civil act, which, if completed, cannot generally be revoked. Its efficacy flows from the sovereign people[86] and must be exercised for public benefit only.[87] In the instant case, public welfare would have been better served if Ang were locked behind prison bars.

It remains for us to consider an incidental question which becomes now purely academic. Were the heirs of the deceased pilot entitled to enforce the ₱6,000 civil indemnity awarded to them by the Court of First Instance notwithstanding the sonorous doctrine recognized in American jurisdictions that "a pardon releases the punishment and blots out of existence the guilt" of the offender?

In the case of *In Re Lontok*[88] our Supreme Court appeared to have adopted the doctrine laid down in the case of *Ex Parte Garland*[89] regarding the pervasive effects of a pardon grant. The Court said:

> "A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed a crime...If granted after conviction, it removes the penalties and disabilities and restores him to his civil rights; it makes him as it were, a new man and gives him a new credit and capacity. The only limitation is that it does not restore officers forfeited *or property or interest vested in others* in consequence of conviction or judgment."

The above rule was qualified by the *Carlesi v. New York*[90] case which held that a pardon does not necessarily blot out the fact of guilt if it has been established by pervious conviction.

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83 32 AM JUR. 544 (1942).
84 52 L.R.A. (NS) 114, 115.
85 Ex Parte Ridley, 106 P. 549 (1910).
86 Montgomery v. Cleveland, 134 Miss. 132, 98 S.E. 111.
87 32 AM. JUR. 527 (1942).
88 In Re Lontok, 43 Phil. 293 (1922).
89 4 Wall. 333 (1866).
90 233 U.S. 51 (1914).

With respect to the civil liability, the rule in *Ex Parte Garland* is not quite clear. However, Article 36 of the Revised Penal Code expressly provides that "a pardon shall in no case exempt a culprit from the payment of the civil indemnity imposed upon him by the sentence." Thus, while a pardon ordinarily releases the punishment and blots out of existence the guilt of the offender, it "does not extinguish the private right of the offended party to enforce the civil liability against the convict."[91] This rule finds support in the ancient maxim, *non poterit rex gratiam facere cum injuria et damno aliorum* — the King may not use his grace to the injury or detriment of others![92] Premises considered, it is clear that Ang was, by virtue of the pardon, not relieved of his civil liability to the heirs of the deceased pilot.

CONCLUSION.

Any claim to absolute power of pardon under a republican system of government is dangerous to the popular rights of the sovereign people. The pardoning power, in place of remaining a matter of high public responsibility, would degenerate into a routine award of political gifts. And indeed, an abuse or excessive use of the pardoning power in conspiracy with the doctrine of absolutes would certainly embarrass our impartial courts and would stifle coercive measures to enforce a suitor's right and the deterrent influence of criminal laws. Deplorable instances like these would, of course, suggest a resort to impeachment[93] but experience has shown that this Constitutional remedy has almost become a practical impossibility.

It ultimately rests upon any President of the Philippines to realize that under the Constitutional scheme, he is a mere instrument of the law that emanates from the sovereign people and that " the flowers of the Crown of England did not ornament his head."[94]

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91 PADILLA, REV. PENAL CODE ANN. 375 (1957).

92 4 BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND 398 (1879), CORWIN, op. cit. supra, note 2 at 457, (1957).

93 PHIL. CONST. Art IX, Sec. 1 provides: "The President... shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes." See Ex Parte Grossman, 267 U.S. 87 (1924), at note 62.

94 Ex Parte Wells, 274 U.S 480 (1927) (Justice McLean,, dissenting).

* Notes and Comments Editor, Student Editorial Board, PHIL. L. J. 1959-60.

THE PAPER CURTAIN: THE RIGHT TO TRAVEL AND ITS RESTRICTIONS

> Men are free when they are in a living homeland, not when they are escaping to some wild west. The most unfree souls shout of freedom. Men are freest when they are most unconscious of freedom. The shout is the rattling of chains, always was. — *D. H. Lawrence*

I. Introduction

Two important developments in our time have greatly affected the right to travel. The first is the ever-increasing role of science in the development of the methods of transportation. When men began to systematically mine the