or problematical and based on certain economical or sociological problems."[38]

And as stated by an English court:

"Even though the contract is one which prima facie falls under one of the recognized heads of public policy, it will not be held illegal unless its harmful qualities are indisputable. The doctrine should only be invoked in clear cases in which the harm to the public is substantially incontestable and does not depend upon the idiosyncratic inferences of a few judicial minds... In popular language... *the contract should be given the benefit of the doubt.*"[39] (Underscoring supplied).

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37 Cole v. Brown-Hurley Hardware Co., 139 Iowa 487, 117 N.W. 746, 18 L.R.A. (N.S.) 1161, 16 Am. Cas. 846.

38 Maryland Casualty Co. v. Fidelity and Lasualty Co. of New York, 236 P. 210, 71 Cal. App. 492.

39 Fender v. St. John-Mildmay, A.C. 1, at pp. 12-13 per Lord Atkin.

* Notes and Comments Editor, Student Editorial Board, PHIL. L. J. 1939-60.

PARDON IN DIRECT CONTEMPT OF A SUPERIOR COURT

"Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law * * * 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 make it useful must have full discretion to exercise it"[1]

Not very long ago Atty. Topacio Nueno, counsel for Leonardo Manecio, was punished for direct contempt of court by the late Judge Primitivo Gonzales of the Court of First Instance of Cavite. It appears that Nueno in the process of a heated discussion on a delicate point of law in the course of the trial nearly came to blows with the prosecutor. Judge Gonzales admonished Nueno to control his temper, but the latter in a blinded fit of anger shouted back at the judge. For this misconduct he was ordered to jail for ten days for direct contempt of court.[2] He then made a memorandum to the President requesting the latter to pardon him and made it clear that he was not leaving jail unless pardoned. In the meantime, the judge rescinded his order, but Nueno refused to leave jail. The President in answer to Nueno's plea told the latter that to pardon him would be academic since the judge already rescinded or withdrew his judgment and he was a free man. So, the President instead sent an emissary and had Nueno fetched out of jail.

1 Ex parte Crossman, 267 U.S. 87.

2 Rules of Court, Rule 64, Sec. 1. It defines direct contempt as one committed by misbehaviour in the presence of or so near a court or judge as to interrupt the administration of justice, including disrespect toward the court or judge, offensive personalities toward others, or refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition when lawfully required so to do***.

The incident brought out to light a very important legal question involving the pardoning power of the President. Had not the judge rescinded his order, would the President have pardoned Nueno? All indications relating to the happening pointed out the fact that he would have. But, does the pardoning power of the President extend to a case where a person is punished for direct contempt of court?[3]

CONSTITUTIONAL PROVISION ON PARDON

Every civilized country recognizes and has therefore provided for the pardoning power to be exercised as an act of grace and humanity in proper cases.[4] Pardon is defined as an act of grace which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.[5] This term was commonly associated in the eighteenth century to king's grace for the punishment of such dereliction * * * or such indictment imposed upon an individual.[6] The power to pardon violators of the law is traditionally vested in the chief executive of the nation.[7] The Constitution of the Philippines grants this power in the following manner: "The president shall have the power to grant reprieves, commutations, pardons, and remit fines and forefeitures, 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."[8]

Advocates of the theory that the President can undoubtedly pardon a person punished for direct contempt of court rely on this particular constitutional provision. They pointed out that under said provision the President's power to pardon is absolute, except under the following circumstances: (1) that pardon can be given only after conviction; (2) that no person found guilty in an impeachment proceedings maybe pardoned; (3) that a pardon for violations of the election laws may be granted only on recommendation of the commissioner on election.[9] Congress has no authority to limit the effects of the President's pardon, or to exclude from its scope any class of offender. Likewise, courts may not inquire into the wisdom or reasonableness of any pardon granted by the President.[10] Aside from the stated exceptions, the President's pardoning power is absolute and *extends to all offenses.* (Emphasis supplied) Unquestionably, direct contempt is an offense and therefore, the President, according to those who uphold the pardoning power, can certainly pardon any person punished for such an offense.

Viewed from a logician's point of view, the reasoning is decidedly plausible, but whether it is true or not is definitely a ticklish legal question which up to the present has never been tactfully and satisfactorily scrutinized, examined or dealt with.

Let us then proceed to closely examine the problem. Since the Constitution itself clearly prohibits the granting of pardon until after the convic-

3 Ibid.

4 Laird v. Sims, 16 Ariz. 521.

5 Moore v. State, 43 Mo. 203.

6 Ex parte Grossman, 267 U.S. 87.

7 SINCO, PHIL. POLITICAL LAW, (10 Ed.).

8 Art. VII, Sec. 10 (6)

9 Ibid.

10 Ex parte Garland, 4 Wall, 333; In re Guarina 30 Phil. 87; Cristobal v. Labrador, 27 Phil. 84; Pelobello v. Palatino, 72 Phil. 441.

tion of the accused, the believers that the President can pardon a person punished for direct contempt will ultimately and necessarily contend and admit that there is a *conviction* when the judge summarily adjudges one for direct contempt of court and punished him thereafter. Otherwise, if the summary pronouncement by the judge does not amount to a conviction, then the President can not pardon such person so summarily adjudged. Is such a summary declaration by the judge that a person is guilty of direct contempt equivalent to a conviction of the accused as envisaged in the constitutional provision as constituting a condition precedent before the President can lawfully exercise his power to pardon? Is there such a conviction?

CONVICTION — ITS MEANING AND SIGNIFICANCE

Conviction is not one term which does not have a specific meaning. The meaning of the term *conviction* maybe divided into two classes. One related to the verb *convictio*, the other to the verb *convinco*.[11] Under the verb *convictio* or to convict, it acquires meanings in three different senses. It is used in its general sense, ordinary sense or in its strict legal sense.

In its general or comprehensive sense, referred to as its popular meaning, the term has been defined as the overthrow of a defendant by the establishment of his guilt *according to some of the known legal method of establishing one's guilt*, beyond reasonable doubts in a case of a criminal prosecution.[12] (Emphasis supplied)

Taken in its ordinary legal phraseology, the term is used to designate that particular stage of a criminal prosecution when a verdict of guilty is returned by a jury.[13]

When we take it in its strict legal sense or when used in its more restricted and technical sense, the term has been defined as denoting the final judgment of the court and as denoting the final consummation of the prosecution, from the complaint to the judgment.[14]

When we use the term in connection with the verb *convinco* or to convince, it simply means that the court after close perusal of the evidences presented it has been convinced that the accused is guilty of the charge imputed him.

Conviction necessarily includes accusation, trial and judgment.[15] It means when a person has been indicted by a grand jury, tried by a court, found guilty of the offense charged.[16] In another case it has been held that an order of judgment committing an alleged contemnor to imprisonment for direct contempt of court made in his absence is void.[17] Still in one case the court emphasized that refusal to hear evidence to purge himself offered by defendant punished for direct contempt of court is an abuse of discretion.[18]

11 9 Words and Phrases 593.
12 Ibid.
13 Ibid.
14 Ibid.
15 9 Words and Phrases 599.
16 Egan v. Jones. 21 Nev. 433.
17 Ex parte Dawes, 239 P. 689, 31 Okl. cr. 357.
18 Lewis v. Theodoro, 126 S. E. 158, 33 Ga. App. 355.

It is, therefore, sufficiently clear that before a person can be lawfully convicted, his guilt should be proved first by any legal means or method. Contempt of court is a specific criminal offense***. It may be punished.[19] In one celebarted case the court categorically stated in its decision that contempt of court is in the nature of a criminal offense.[20] Being such, it is but the most prudent and advisable course for the court to take in consonance with the spirit underlying criminal cases whereby the accused is almost always given the benefit of a doubt. His guilt must be proved. He should be given all the chances to defend himself and not to be unjustly denied of his inalienable rights guaranted him by the Constitution as clearly embodied in the Bill of Rights.[21]

Is the accused afforded all the rights he is entitled before he can be found guilty and punished in case of direct contempt of court, considering the nature of the proceeding in a superior court in declaring one guilty of direct contempt? Direct contempt in all cases is summarily punished.[22] Consequently, the pronouncement by the court that a person is guilty of direct contempt is always final.[23] * * *. Judgments of Superior Courts on direct contempt shall not be appealable.[24] No appeal lies to the Superior Court from a decision of the of First Instance in summary proceedings for direct contempt.[25]

After all the discussion, can one honestly say that when a judge orders one to be committed to jail for ten days as punishment for misconduct in the presence of the judge, the person so adjudged did have all the chances and opportunity to defend himself, present evidence in his favor, argue for his case and ask for reconsideration of the judgment from the very same person offended by the untowardly act, who is both the injured party and the accuser and who is at the same time given the full discretion to impose judgment? And what is more cruelly unfair is the fact that when such order is promulgated it is immediately final. It could, however, be argued that the judge sitting on the bench is honestly impartial in his dealings, be it a personal offense taken against his person or otherwise. This is theoretically true, but in actual life it certainly will not hold water. Nature for what it is and the fact that a judge is as real a man as anybody else subject him to all the frailties of human nature. There are always extra legal stimuli that may in some way affect the deci-

19 In re Acher, 66 Fla. 200-202.

20 Roberts v. Hackney, 100 Ky. 205.

21 The Bill of Rights specify the following rights:
(1) The right to be heard.
(2) The right to be informed of the nature of the cause of the accusation against him.
(3) The right to be informed or to meet the witnesses.
(4) The right to have compulsory process to compel the attendance of witnesses in his behalf.
(5) The right not to be held to answer for a criminal offense without due process of law.
(6) The right not to be compelled to be a witness against himself.

22 SINCO, op. cit., 874.

23 Ibid.

24 Rules of Court, Rule 64, Sec. 2.

25 People v. Abaya, 43 Phil. 247.

sional behaviour of the members of the adjudicative organ.[26] It is indeed very unfortunate that some people entertain the idea that mere pronouncement in case of direct contempt of court is a conviction.[27]

PARDON FOR DIRECT CONTEMPT OF COURT AND THE PRINCIPLE OF SEPARATION OF POWERS

Is the act of the President in granting pardon in case of direct contempt an undue encroachment upon the judiciary?

The principle of separation of powers is a basic feature of the government of the Philippines under the present Constitution. Its starting point is the assumption of the division of the functions of the government into three distinct classes — the executive, the legislative, and the judicial. Its essence consists in the assignment of each class of function to one of the three organs of government. In the exercise of the functions alloted to it, each department is supreme. Each is not lower nor higher than the other in the manner of hierarchical system. It is rather coordinate and co-equal with the others. *The acts of one in usurpation of the powers of the other or in excess of the powers granted to it by the Constitution are invalid.* (Emphasis mine) But, while the three are independent of one another, they form an interdependent unit in so far as may be necessary to carry out the work of government.[28]

The underlying reason of this principle is the assumption that arbitrary rule and abuse of authority would inevitably result from the concentration of the three powers of the government in the same person, body or organ, body of persons, or organ.[29]

The doctrine of separation of powers as adopted by the convention of 1787, was not to promote inefficiency but to preclude the exercise of arbitrary power * * * to save the people from autocracy.[30]

In order that these limits maybe observed the Constitution gives each department certain powers by which it may definitely restrain the others from exceeding their authority. A system therefore of checks and balances is thus formed.[31]

To carry out this system, the Constitution provides that the acts of the legislative department have to be presented to the executive for approval or disapproval. The executive department may veto the acts of the legislative if in its judgment they are not in conformity with the constitution or more detrimental to the interests of the people. In their own, the courts in turn are authorized to determine the validity of legislative measures or executive acts. *Through its pardoning power, the executive may modify or set aside the judg-*

26 PASCUAL, THE NATURE AND ELEMENTS OF THE LAW (1954 Ed.), p. 131. Professor Pascual states that these extra-legal stimuli may be roughly grouped under six heads:

(1) the stimuli set up by the witnesses
(2) the stimuli set up by the lawyers
(3) the stimuli set up by the judge's biases
(4) the stimuli set up by the judge's predilections or preconceptions
(5) the stimuli set up by current socio-political ideas and conditions
(6) the stimuli set up by current historical or political precedents

27 Ex parte Shull, 221 Mo. 623.

28 SINCO, op. cit., 131.

29 Ibid.

30 Ibid.

31 Ibid.

ments of the courts. (Emphasis supplied) The legislative likewise may pass laws that in effect amend or completely revoke decisions of the courts if in its judgment they are not in harmony with its intention or policy which is not contrary to the Constitution.[32]

Another question will necessarily arise after a closer look and understanding of the theory of separation of powers and the principle of checks and balances. Is punishment for direct contempt of court contemplated or covered or necessarily included in the seemingly and apparently all embracing phrase "* * * through its pardoning power the executive may modify or set aside the judgments of the courts"?

The power to punish for contempt is of ancient origin. It was exercised as early as the annals of the law extend. In England, it has been exerted where the contempt consisted of scandalizing the sovereign, his ministers, the lawmaking power or the courts. In America, however, the power to punish for contempt, as far as the executive department is concerned is obsolete. It is also very limited in the legislative branch of the government, but it is carefully preserved in the judicial branch.[33]

One of the essential powers of every court under our system of government is that of punishing for contempt persons who are guilty of disobedience to its orders or disrespect to its authority.[34] The importance of this power to the effective administration of justice maybe gathered from the following passage: "While it is sparingly used, yet the power of the courts to punish for contempts is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration whose judgment and decress would be only advisory."[35]

It is highly apparent that the power to punish for contempt is inherent in every court to uphold its dignity and for a better administration of justice. This power of the courts to punish for contempts is an incident and essential to the execution and maintenance of judicial authority. In other words it is exclusively an *internal affair* of the courts intended purely as a disciplinary measure.

Does the pardoning power of the president extend to cases involving matters purely domestic to the courts?

Prior to the American Revolution, this question would have been so academic, because English sovereigns during these times exercised the power to pardon contempts just as he pardoned ordinary crimes and misdemeanors. In the mind of a common-law lawyer of the eighteenth century the word *pardon* included within its scope the ending by the King's grace of the punishment of such dereliction, whether it was imposed by the court without a jury or upon indictment for both forms trial for contempts were had.[36] But, because the law has immensely progressed ever since, the question should be answered in the light of the Constitution and some cases decided by our Supreme Court and

32 Tarlac v. Gale, 20 Phil. 338; Alejandrino v. Quezon, 46 Phil. 83.

33 Ex parte Hudgings, 249 U.S. 378. Ex parte Earman, 85 Fla. 297; Little v. State, 90 Ind. 338; State v. Shepherd, 177 Mo. 205.

34 SINCO, op. cit. 872.

35 Gompers v. Buck's Stove Range Co., 221 U.S. 418.

36 Ex parte Grossman, 267 U.S. 87.

courts of the United States. The constitutional provisions on the theory of separation of powers have already been dealt with. So, let us try to examine cases involving matters pertinent to our discussion. Owing, however, to the difficulty that not a single case can be found to have dealt with squarely the question as to whether, the President can pardon in case of direct contempt of court, we can only cite cases involving practically and basically the same principle, though involving another branch of the government. By analogy, therefore, we shall try to sustain our contention that the President can not give pardon in case of direct contempt of court in the light of the theory of separation of powers.

In one controversial case,[37] a certain appointive senator was suspended from his office and deprived of his salary and other privileges for one year by virtue of a resolution to that effect adopted by the Philippine Senate on February 6, 1924. The alleged cause of the suspension was *disorderly conduct* and flagrant violation of the privileges of the Senate on the part of said senator in assaulting another senator when the latter uttered certain phrases in the course of a debate regarding the credential of the former. The petitioning senator in this case, filed an action before the Supreme Court for the issuance of an order to annul the Senate resolution suspending him and to reinstate him in his office. The Supreme Court denied the petition on the ground that it had no jurisdiction over the action of the Senate, otherwise it would transgress the principle of separation of powers.

Applying the same principle the Supreme Court refused to exercise jurisdiction in a case presented by three senators to annul a Senate resolution prohibiting them to assume their seats in that chamber during the pendency of the protest against their election before the Electoral Tribunal of the Senate. The court held that the principle of separation of powers forbids it to annul the Senate resolution and to reinstate members it has suspended.[38]

The Supreme Court in so holding was only cognizant of the fact that to do so would violate the mandate of the Constitution. It would have been a simple case of undue encroachcment on the part of the judiciary upon matters exclusively belonging to the Legislature. The uprightness of the holding of the Supreme Court in those cases in consonance with the principle of separation of powers has been expressed by U. P. President Sinco in his book: "The power to punish a member for misbehaviour is intended purely as a disciplinary measure. Such misbehaviour should be one that affects the performance of his duties or the legal procedure of the house of which he is a member, and not misconduct affecting merely his character as a private individual."[39]

It is here made obvious that if a member of either branch of the government misbehaves or fails to follow the legal procedure adopted by the body of which he is a member, he is liable for punishment for such dereliction. It in effect promulgates the idea also that when an action is taken by the constituted body against its erring members, it is purely an internal affair or exclusively within the four walls of the department so concerned, as in cases of of punishing members to discipline them, and such an action is beyond the reach of either branch to interfere without transgressing the principle of separation of powers.

37 Alejandrino v. Quezon, 46 Phil. 83.
38 Vera v. Avelino, G.R. No. L 543.
39 SINCO, op. cit., 181.

When a lawyer commits misbehaviour, as to commit any disorderly conduct in the presene of the judge to interrupt the proceedings of the court or any disrespect or insolent behaviour toward the judge presiding or any breach of order, decency or decorum * * * or any misconduct which tends to embarrass the administration of justice,[40] such misbehaviour necessarily affects the performance of his duties or legal procedure of the constituted body of which he is a member and is an act affecting not merely his character as a private person or individual.

The power of pardon vested in the President of the Republic by the Constitution should be exercised on public consideration alone[01] It is a check entrusted to the Executive for special cases[42] and obviously enough punishment for direct contempt is not one of those *special cases* contemplated. It is rather one of the few limitations on the power of the President to pardon.

The framers of the Constitution were cognizant of the great danger that might arise in lodging too great a power in one man without reasonable limitations. It could not have been the intention of the framers to make the judiciary a mere rubber stamp of the executive department, which would ultimately result in the gradual destruction of the adjudicative branch of the government. To exercise the pardoning power to the extend of destroying the corrective and deterrent effects of the judicial punishment would be to prevent if not to render entirely nugatory the latter.[43]

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40 Goodhart v. State, 84 Conn. 60.
41 Ex parte Grossman, 267 U.S. 87.
42 Ex parte Crump, 10 Okla. 188.
43 Ex parte Grossman, 267 U.S. 87.
* Recent Decision Editor, Student Editorial Board, Phil. L. J. 1959-60.

THE PROPOSED ANTI-GRAFT ACT—SENATE BILL 293.

INTRODUCTION

In a constitutional government, a public office is a public trust. Its sole purpose is to carry out the ends of government, which are "the common good, and not the profit, honor, or private interest of any one man, family, or class of men."[1] This principle, though sacred, has been flouted with impunity by not a few government officials. They remain untouched by the law, first, because there being a gap in the law, their acts, though morally reprehensible, fall outside the ambit of present laws, and second, because possibly of the self-paralysis of some of those in charge of prosecuting offenses committed against the sovereignty of the State. The offenses committed by public officials defined in the Revised Penal code[2] are inadequate to attain purity and fidelity in the public service. This is further aggravated by the principle of separation of powers in the set-up of our government in the sense that if the executing arm of the government does not move to punish

1 Brown v. Russel, 166 Mash. 14; Atty. Gen. v. Jochim, 58 N.W. 611, cited in SINCO, PHILIPPINE POLITICAL LAW 424 (10th ed. 1954).
2 Revised Penal Code, Arts. 203-245 (Crimes Committed by Public Officers).