

When a lawyer commits misbehaviour, as to commit any disorderly conduct in the presence 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 alone⁴¹ It is a check entrusted to the Executive for special cases⁴² 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 extent of destroying the corrective and deterrent effects of the judicial punishment would be to prevent if not to render entirely nugatory the latter.⁴³

ANICETO G. SALUDO, JR.*

40 Goodhart v. State, 84 Conn. 80.

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 code² 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, 100 Mass. 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).

erring parties, the other branches are helpless. This may justify the criticism that the principle is a stumbling block to efficient government,³ but then the principle is designed, in the words of Justice Brandeis, "not to promote efficiency but to preclude the exercise of arbitrary powers."⁴

"The stability of representative government depends to a large extent upon the trust and confidence which the sovereign people have in the men and women who are delegated to conduct the affairs of administration."⁵ The deterioration of the public service and the consequent loss of confidence of the people in the government must be remedied, and remedied fast, if we are to prevent our democratic institutions from being crumbled by the people's wrath. If there be any law needed at this time to repress graft and corrupt practices and thus restore confidence in the government, Senate Bill No. 293 is such law.

FEATURES

The Preamble of the bill solemnly recites: "It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of both public officials and private persons alike which constitute graft or corrupt practices or which may lead thereto, and to make the enforcement of this policy a concern not only of the Government but also of every citizen."⁶ To repress graft or corrupt practices and to make the enforcement of this policy a concern of both the Government and every citizen—these are the objects of the bill. How it attempts to achieve these goals will be seen in the subsequent sections.

Sections 2, 5, and 6 are directed against public officials. Section 2 defines and declares unlawful corrupt practices not yet penalized by existing laws, which may be committed by all public officials, and the term "public official" as used in the bill,⁷ includes elective and appointive officials, permanent or temporary whether in the classified or unclassified civil service, receiving compensation from the Government. Some of these practices are: (a) the activities of "ten percenters", fixers, and influence peddlers,⁸ (b) causing undue injury to any party, including the Government, or giving any

³ SINCO, PHILIPPINE POLITICAL LAW 132 (10th ed. 1954).

⁴ *Myers v. U.S.*, 272 U.S. 52, 293.

⁵ Except of Senator Tolentino's Sponsorship Speech, SENATE DIARIO No. 28 (March 4, 1959).

⁶ Senate Bill No. 293, sec. 1.

⁷ *Id.*, sec. 13, par. (2).

⁸ *Id.*, sec. 2 (a), (b), (c). "Section 2. Corrupt Practices of Public Officials.—In addition to acts or omissions of public officials already penalized by existing law, the following shall constitute corrupt practices of any public official and are hereby declared to be unlawful:

(a) Abusing or taking undue or improper advantage of the authority, power, or influence attached to his office, employment or commission, in order to serve his personal pecuniary interests or those of any other person.

(b) Requesting or directly or indirectly receiving any gift, present, share, percentage or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public official intervenes or takes part in any manner or capacity whatsoever.

(c) Requesting or directly or indirectly receiving any gift, present or other pecuniary or material benefit, for himself or for any other person, from any person for whom the public official has, in any manner or capacity, secured or obtained any Government permit or license, in consideration with the help given.

unwarranted benefits to others in the discharge of official functions,⁹ and (e) having an interest in any business in violation of any prohibition of the Constitution or any existing law, or which may have been benefited by any official act of the public official.¹⁰ Section 5 prohibits any member of Congress, during the term for which he has been elected, to acquire or receive any financial or pecuniary interest in any specific business enterprise which shall have been directly and particularly favored or benefited by any law or resolution previously approved by Congress during the same term. The same prohibition applies to the President of the Philippines and to the members of his cabinet who recommended to him the enactment or approval of such laws or resolution benefiting a specific business enterprise. Section 6 prohibits persons who have ceased to hold office, from accepting employment from any person benefited by their official acts during their incumbency, for a period of two years after ceasing to hold office. A unique provision is found in Section 7 which requires all public officials to file statements of assets and liabilities. If, on the basis of this statement, it is found that a public official has acquired during his incumbency an amount of property or money manifestly out of proportion to his salary and to his other lawful income, a prima face presumption of graft or corruption in office arises and, unless rebutted, shall be a ground for dismissal or removal.¹¹

"In the fight against graft and corruption, x x x we must not limit our attention to the public officer. Persons who are in public office but who, by reason of their family or personal relations with public officer, are in a position to enrich themselves by the use of their influence attached to or inherent in such relations, may do as much damage to public trust and confidence in the government as do corrupt officials themselves."¹² In recognition of that danger, this proposed bill punishes not only public officers but also private persons. Section 3 punishes "influence peddling" by private persons¹³ and section 4 prohibits the spouse or any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the

⁹ Id., sec. 2(d), (e), (f). See Note 8. "Sec. 2. x x x (d) Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefits in the discharge of his official administrative functions thru manifest partiality, evident bad faith or gross inexcusable negligence.

(e) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage.

(f) Entering into any contract or transaction on behalf of the Government manifestly disadvantageous to the same, regardless of whether or not the public official profited thereby."

¹⁰ Id., sec. (g). See Note 8. x x x (g) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or take part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest."

¹¹ Id., sec. 11.

¹² See Note 5.

¹³ Senate Bill No. 203, sec. (a), (b). "Sec. 3. Prohibition on Private Individuals.— (a) It shall be unlawful for any person to directly or indirectly request or receive any present, gift, or material or pecuniary advantage from any other person having some business, transaction, application, request, or contract with the Government, by reason of any family or close personal relations he may have with any public official.

(b) It shall be unlawful for any person who has obtained any license, permit, grant, or privilege intended for his benefit, from any agency or instrumentality of the Government, upon an application filed by him, to convey or alienate the same, or any interest therein, to any other person, unless such conveyance or alienation is legally authorized."

Vice-President of the Philippines, the President of the Senate, and the Speaker of the House of Representatives from intervening in any transaction with the Government.

The sanctions for violations are severe. Violations of Sections 2 (Corrupt Practices of Public Officials), 3 (Prohibition on Private Parties, 4 (Prohibition on Certain Relatives), 5 (Prohibition of Members of Congress and the President and Vice-President of the Philippines, together with Members of the Cabinet), and 6 (Prohibition after Separation from the Government) carry the penalties of imprisonment of not less than one year and not more than ten years, with perpetual disqualification from public office, and with the confiscation or forfeiture in favor of the Government of any unexplained wealth manifestly out of proportion to his salary and other lawful income; while violation of Section 7 (Failure to File Statement of Assets and Liabilities) shall be punished by a fine of not less than ₱100 nor more than ₱1,000 or by imprisonment not exceeding one year, or by both fine and imprisonment in the discretion of the court. It shall also be sufficient cause for removal or dismissal from office. In addition, Section 16 provides that any public official convicted by final judgment under this Act or under those of the Revised Penal Code on bribery shall lose all retirement or gratuity benefit under any law.

Since the maintenance of a high standard of integrity in the public service is the concern not only of the administration but also of every citizen, a private party is given the privilege of prosecuting under his responsibility the guilty official or person in case the fiscal fails or refuses to file the information.¹⁴ As an inducement for the complaining party to exercise this privilege, in case of conviction under the information instituted by him, the complaining party is entitled to recover the amount that he may have given to the accused.¹⁵ Abuse of that privilege is likely to happen as "abuse of power is apt to happen in human institutions."¹⁶ To safeguard against that abuse, Section 11 punishes any person who files an unfounded complaint in bad faith by imprisonment and makes him liable for actual and moral damages, including attorney's fees. All prosecutions under this proposed bill shall be brought before the proper Court of First Instance, unless a special court for the purpose is created.¹⁷

INQUIRY INTO CONSTITUTIONALITY

Abhorrence of graft and corrupt practices and zealousness in eradicating them are commendable. But, in framing a statute, care must be taken that it does not violate any provision of the Constitution. Any statutory provision violative of the Constitution is void and inexistent, for, paraphrasing Prof. Rivera, the Constitution is the shoreline against which the waves of legislation and the angry waves of the impetuous multitude may dash but over which they cannot leap.¹⁸

"No person shall be deprived of life, liberty, or property without due process of law x x x," so speaks the Constitution.¹⁹ This provision requires

¹⁴ *Id.*, sec. 11.

¹⁵ *Id.*, sec. 9 (a).

¹⁶ *Sharpless v. Mayor of Phila.*, 21 Pa. 147, 50 Am. Dec. 759.

¹⁷ Senate Bill No. 293, sec. 12.

¹⁸ RIVERA, *LAW OF PUBLIC ADMINISTRATION* (Preface) 1936.

¹⁹ PHIL. CONST. Art. III, sec. 1, par. (1).

that criminal statutes should clearly define acts which they designate and classify crimes.²⁰ "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."²¹

Section 2 (a) of the proposed bill was the subject of an interesting discussion in the Senate Hall on account of the indefiniteness of its scope. Prior to its amendment, Section 2 (a) provides:

"SEC. 2. x x x the following shall constitute corrupt practices of any public official and are hereby declared to be unlawful:

(a) Taking advantage of the authority, power, or influence attached to his office, employment or commission, in order to serve his personal pecuniary interests or those of any other person."

The scope of this provision was left to conjecture. Senator Rosales' interpellation follows:

SENATOR ROSALES: x x x A man who is a son of a good leader of mine in the province asked me to recommend him for a position or a job in the government. Well, I used my influence. I went to the Director of Posts and said: "I am Senator Rosales. Here is a man who just wants to work even for three months or one year." He was taken in by the Bureau Director to his pecuniary benefits. Does not, Your Honor, think that because of that action of mine I would come under this?

SENATOR TOLENTINO: There was no improper use of influence, but an element of industry.²²

Senator Sabido, still in doubt of the scope of the above-quoted provision, asked for an example, and the following was given by Senator Tolentino:

Supposing that in the Committee on Banks, Corporations, and Franchises, one member has a bill—he is interested very much and it is a good bill—pending in that Committee. And then, Your Honor, as Chairman of the Committee, says, "Unless you vote for this franchise I am not going to report out your bill."—this is improper and that would be taking advantage of the authority that you have in your office and you will fall under the purview of this provision.²³

In the ensuing interpellations, it was crystallized that the particular paragraph under discussion punishes the use of improper methods no matter how good the intentions may be. It does not punish the use of influence, provided that no improper means are resorted to. Neither is the use of proper arguments prohibited. It is our right and perhaps our duty to convince by proper arguments.²⁴

During the period of amendments, the words "undue or improper" were inserted between "taking" and "advantage" to make more certain and less

²⁰ SINCO, PHILIPPINE CONSTITUTIONAL LAW 82 (1949).

²¹ *Connally v. Gen. Construction Co.* (1920), 209 U.S. 885, cited in SINCO, PHILIPPINE CONSTITUTIONAL LAW, 82 (1949).

²² SENATE DIARIO No. 37, March 17, 1959.

²³ See Note 22.

²⁴ Note 22.

controversial the practices penalized by the provision. As now worded,²⁵ it is submitted that the provision is sufficiently certain as not to violate the "due process clause" of the Constitution. "We cannot with absolute accuracy and arbitrariness indicate in the bill demarcation lines. And if we could simply clarify the provisions to show our intentions, then we may leave to the courts the interpretation of the provisions. Because these various ways of determining when there is influence exerted or the various ways of taking advantage, that would depend on the surrounding circumstances of each case."²⁶

Another controversial provision of the bill is Section 2 (g) which provides:

"SEC. 2. x x x the following shall constitute corrupt practices of any public official and are hereby declared to be unlawful:

(g) Directly or indirectly having financial or pecuniary interest in business, contract or transaction in connection with which he intervenes or takes part in his official capacity x x x"

Under this provision, department heads and chiefs of bureaus of offices and their assistants will be prohibited from intervening in any private enterprises which may be affected by the functions of their office, although such intervention does not amount to management or control. Under the Constitution, however, "the heads of departments and chiefs of bureaus or offices and their assistants shall not, during their continuance in office, intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of their office x x x."²⁷ What this provision prohibits is intervention amounting to management or control. By implication, intervention short of management or control is allowed and permitted. The question, then, is: Can Congress pass a law prohibiting an act which is impliedly allowed by the Constitution?

U.P. President Sinco believes that a statute may be declared unconstitutional not necessarily because it violates an express provision of the Constitution but because it is clearly repugnant to the implied prohibitions and restraints of the fundamental law.²⁸ To the same effect is the case of *People v. Albertson*,²⁹ which declares: "A written Constitution would be of little avail as a practical and useful restraint upon the different departments of government, if a literal reading only was to be given to it, to the exclusion of all necessary implication, and the clear intent ignored, and slight evasions or acts palpably in evasion of its spirit, should be sustained as not repugnant to it." These authorities would declare void a law running counter to an implied restraint of the Constitution. Does it follow that if the Constitution impliedly allows an act, there is an implied restraint against prohibiting that act? It is believed that there is none. "If the Constitution contains an express provision saying that the members of Congress can do this or do that, and then a bill is passed revoking that express provision of the Constitution, assuredly that bill would be unconstitutional. But in this case, there is nothing in the Constitution that would be contravened, no-

²⁵ Note 8.

²⁶ Note 22.

²⁷ F-HIL. CONST. Art. VII, sec. 11 (2).

²⁸ SINCO, *op. cit.* *supra* note 20, at 28.

²⁹ 55 N.Y. 50.

thing."³⁰ "The Constitution unavoidably deals in general language x x x The instrument was not intended to provide merely for the exigencies of a few years but was to endure through a long lapse of ages x x x It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter. x x x Hence, its powers are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects and to mould and model the exercise of its powers, as its own objects and special interests should require."³¹ It could not be supposed that the "enlightened patriots who framed our Constitution, and the people who adopted it"³² intended to restrain the legislature from passing a law which would punish practices corroding the people's faith in the integrity of government. The arguments lead to the conclusion that the constitutionality of the above-quoted provision of the proposed bill is unassailable.

A NOVELTY IN PROCEDURE

Under the present provisions of the Rules of Court, all criminal actions may be commenced only either by the prosecuting officers, or by the offended party, a peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated. No other person is authorized to institute the action.³³ It is the right and the duty of the public prosecutor to appear for the government in the trial of criminal cases,³⁴ since he is the legal representative of the state, and the offense is an outrage against the sovereignty of the State.³⁴ It is true that the offended party or his attorney may commence a criminal suit, but he may intervene in the prosecution of the criminal act so commenced only if he has not waived the civil action or expressly waived the right to institute it, subject to the discretion and control of the fiscal.³⁶ Even in crimes which can be prosecuted only upon complaint of the offended party,³⁷ the prosecuting officer assumes full responsibility for and retains control of the prosecution.³⁸ The prosecuting attorney being the one charged with the prosecution of offenses, should determine the information to be filed and cannot be controlled by the offended party.³⁹

Section 11 of Senate Bill No. 293 introduces a novelty to our settled rules of procedure. A private person under this bill is given a right that he ordinarily does not have, that is, to file a criminal case if the prosecuting attorney fails or refuses to file an information against the public official or person. This he can do by presenting a petition before the judge of the proper Court of First Instance or any special court that may be created for the purpose.⁴⁰ The judge immediately conducts a preliminary investigation and if he finds a *prima facie* case against the accused, he shall grant the peti-

³⁰ Remarks of Senator Tolentino. See Note 22.

³¹ JUSTICE STORY in *Martin v. Hunter's Lessee*, 1 Wheat. 304, 4 L. ed. 97.

³² *Gibbons v. Ogden*, 9 Wheat. 1, 188, 6 L. ed. 23.

³³ MORAN, COMMENTS ON THE RULES OF COURT 585 (1957 ed.).

³⁴ Rev. Adm. Code, secs. 1631, 2463.

³⁵ 2 MORAN, *op. cit.*, *supra* Note 33, at 593.

³⁶ *People v. Velez*, 77 Phil. 1023 (1947).

³⁷ Rev. Penal Code, Arts. 33-339, 342-343, 360, par. (4).

³⁸ RULES OF COURT, Rule 106, sec. 15.

³⁹ *People v. Sope*, 75 Phil. 510 (1940).

⁴⁰ Senate Bill No. 203, sec. 12.

tion. Thereafter, the complaining party may prosecute the case under his responsibility and may designate a private prosecutor or request any Government prosecuting attorney to assist him.⁴¹ The case being now under the responsibility of the complainant, the fiscal cannot intrude against the will of the complaining party because precisely the complaining party was forced to go to the court himself because the fiscal refused to prosecute. Even if a special prosecutor is appointed by the Secretary of Justice to prosecute the case for the government, the complaining party still retains control over the case.⁴² In this connection, it may seem pertinent to produce the excerpt of the interpellation:

SENATOR CEA: Supposing the Secretary of Justice would send a special prosecutor to prosecute the case for the government, what would be the position of the private person who filed the case?

SENATOR TOLENTINO: The private person would still have control over the case. In other words, he may agree that the case be prosecuted by the fiscal or to assist him in the prosecution of the case. But that is at his option and he may refuse and himself prosecute.⁴³

In other respects, the usual rules of procedure will be followed. Ordinarily, a complainant may go to the fiscal's office or to the justice of the peace and file a complaint. The only exception being made is that in the event the prosecuting attorney refrains or refuses to file the corresponding information after investigation, then the private individual has a recourse to the court directly.

Our prosecuting offices or agencies are under the control of the President. Pressure from above will be a potent deterrent against the prosecution of parties close to the Executive. The procedure laid down by this bill is designed to meet that difficulty. The innocent have no reason to fear vexatious litigations against them, for Section 11, foreseeing that danger, wisely provided for safeguards against abuse of the privilege by punishing any person who in bad faith files an unfounded complaint by imprisonment and making him liable for actual and moral damages, including attorney's fees.

This bill will modify the Rules of Court insofar as the prosecution of anti-graft cases, including bribery defined by the Revised Penal Code and enlarged by this bill, is concerned. The authority of Congress to do this is undeniable, as the mandate of the Constitution on this point is clear: "x x x The Congress of the Philippines shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure x x x"⁴⁵

CONCLUSION

We have in Senate Bill No. 293 a wonderful piece of legislation. Its objects are legitimate and the means to attain them reasonable. The right

⁴¹ Id., sec. 11.

⁴² Remarks of Senator Tolentino, SENATE DIARIO NO. 28 (March 4, 1959).

⁴³ See Note 42.

⁴⁴ See Note 42.

⁴⁵ PHIL. CONST., Art. VIII, sec. 13.

of the citizen to provide for his future is not taken away from him. Only, the exercise of the right is limited by the requirement that his providing for his future be through legitimate means. Clear ahead lies a huge obstacle to the accomplishment of the good intentions of the bill, and, that is, the construction given by our Supreme Court to the "double jeopardy" provision of the Constitution.

No procedure for appeal is laid down by the bill. The explanation to this omission is that the procedure in ordinary cases will be followed. If, then, there be a judgment of conviction, the party convicted can appeal; if, instead, there is acquittal, the party prosecuting the case is barred from appealing.⁴⁶ The reason is that if there is acquittal by a competent court upon a valid complaint, an appeal therefrom is putting the accused twice in jeopardy for the same offense and the Constitution prohibits: "No person shall be twice put in jeopardy of punishment for the same offense."⁴⁷ The Supreme Court regards an appeal in a criminal case from a judgment of acquittal by the party prosecuting the case shall "twice put in jeopardy of punishment for the same offense" the accused. It is a matter of interpretation. While the Supreme Court still adheres to this outmoded and at times unjust concept of duple jeopardy, we can only hope that due to the inhibition on the part of the prosecution from appealing from a judgment of acquittal there will be no guilty party celebrating with impunity his escape from the clutches of the law. Under the circumstances, we can only pray that those who hold the balance of justice remain faithful to their oath, unmindful of impertinent and irrelevant, extraneous matters; and that private citizens remember their civic duty of helping in the house-cleaning of the government by fearlessly prosecuting the guilty in case, falling under this bill, when and if ever this bill becomes a law.

CICERO J. PUNZALAN *

⁴⁶ *Kepner v. U.S.*, 11 Phil. 660 (1904), (105 U.S., 100); *U.S. v. Yam Tung Wai*, 21 Phil. 67 (1911) and a string of other decisions.

⁴⁷ PHIL. CONST. Art. III, sec. 1 par. (20).

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REPUBLIC ACT 1827 ON LOBBYING

I. INTRODUCTION:

In an attempt perhaps to minimize if not to get rid of rampant 'influence — peddling' in the government, the distinguished law-maker from Rizal, Senator Lorenzo Sumulong, sponsored Senate Bill 590, later to become Republic Act 1827.¹ The law enacted by both Houses of Congress, on the last day of session, May 23, 1957, has for its purpose—

"to prohibit corrupt and undesirable methods of lobbying, to promote a high standard of ethics in the practice of lobbying, to prevent harassing, unfair and unethical lobbying practices, and to pro-

¹ Senate Congressional Record, 1957, Regular Session P. 728, Senator Sumulong:

"From the moment we started our session there were already professional lobbyists. If we don't discover them it is precisely because of the absence of a law. We are not in a position to know who they are because there is no law requiring professional lobbyists to register before they lobby."