THE COURT'S ATTITUDE TOWARDS "POLITICAL QUESTIONS" REVISITED

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From the basic assumption that governmental functions can be divided into three distinct classes which are assignable to the three organs of the government namely the executive, the legislative and the adjudicative was born the basic feature of the Philippine Government—the principle of separation of powers. However meritorious this principle has proved, it has not escaped criticisms from various quarters. Nowadays, opponents of this theory have as the common target of their doubting inquiries the judiciary, which in not a few cases has been accused of not strictly observing the principle. Put into question is the extent the courts have been putting into practice the system of checks and balances. The reason for this inquiry is the application by the judiciary of the power of judicial review to determine the validity of executive acts and, most often, of legislative measures.

Charles Black in his work [1] stated that in the early tentative days in the development of judicial review, the suggestion was made that courts ought to treat the actions of the legislative branch as unconstitutional only in absolutely clear cases. He continues that if by "absolutely clear" is meant so clear that reasonable men all concede it to be clear, their suggestion was not followed in practice.[2] Further on, all through American history, statutes have been declared unconstitutional not only when their unconstitutionality was incontrovertibly obvious but also when the deciding judges after previous consideration believed them unconstitutional. Opponents of judicial review make the affirmative contention that the implication of the constitution is that the official acts of the political departments of the government are beyond effective questioning in courts and that the courts must simply give effect to the acts of Congress whether or not it believed them in conflict with the constitution. The stand of Black is that "such a conclusion has no presumed validity but has to compete at the best on even terms with its alternative." [3]

What the stand of the Philippine Supreme Court is, still remains a question which has invited various inquiries sought to be answered by reference to decisions laid down by it in specific cases. The an-

* Member, Student Editorial Board, *Philippine Law Journal*, 1961-62.
[1] People and the Court, 13 (1959).
[2] *Id.*
[3] *Id.*, at p. 21.

swer is difficult to make because the inquiry as to whether or not courts will take jurisdiction of any action of either the executive or legislative departments is one which has been presented to the courts many times since the leading case of Marbury v. Madison.[4] Mr. Justice Johnson [5] admitted the complexity of the problem saying that in hundreds of cases which have come before the courts since that time decisions have been equally divided.

Numerous cases have reached the tribunal which have afforded a challenge to the Supreme Court to take a definite stand on controversies which were not only limited to laws or measures alleged to be unconstitutional, but also to other legislative acts claimed ultra vires. One such case was *Alejandrino v. Quezon* [6] which involved the validity of a resolution passed by the Senate suspending Senator Alejandrino for having assaulted another member in the course of a debate. The court speaking through Mr. Justice Malcolm refused to take jurisdiction of the case because separation of powers divested it of the power to compel the Senate to reinstate him. But the case was not without a dissenting voice. Judicial intervention was found necessary and even imperative by the dissenting justices [7] in this case where a person is illegally deprived of his constitutional right to life, liberty or property; and the mere fact that such illegal deprivation is caused by the legislature is not a sufficient justification for the refusal on its part to assume jurisdiction. They admitted that courts have no jurisdiction in matters of purely political nature confided to the political departments, nor the power to interfere with the duties of either of said departments unless under special circumstances.[8] Mr. Justice Ostrand on his part denied the political nature of the question. For him, refusal to assume jurisdiction meant the refusal to afford a remedy to one who has been deprived of his constitutional right.

Consistent with this case, the Court again refused to assume jurisdiction in a case [9] concerning a resolution passed by the Senate refusing to seat the petitioners pending the termination of protest lodged against them. The court reasoned that even granting that the postponement of the administration of oath amounts to a suspension of the petitioners and conceding that it was ultra vires, it could not order one branch of the government to reinstate a member. It expressed fear that to reason out otherwise would be to "establish judicial predominance and to upset the classic pattern of checks

[4] 1 Cranch (U.S.) 137 (1803).
[5] Dissenting Opinion in Vera v. Avelino, 77 Phil., 192 (1946).
[6] 46 Phil. 83 (1924).
[7] Justices Johnson and Ostrand.
[8] In Re Sawyer, 124 U.S., 200 (1887).
[9] Vera v. Avelino. 77 Phil. 192 (1946).

and balances." [10] Denying that the courts can afford a remedy in every case, it expressly invoked political questions as cases in which it cannot intervene to correct any wrong. Mr. Justice Perfecto was not in accord and refused to adopt the "despairing and fatalistic" attitude of refusing to offer a remedy it could afford. He categorized the question as not political but judicial and dismissed the allegation that to exercise jurisdiction is to assert superiority over the other departments. His declaration was that the court was merely asserting the claim to its solemn and sacred obligation assigned by the constitution to determine conflicting claims and that no department is superior over the other. It is worthy to note that the same facts did not create the same impression on the members of the Court. While the majority claimed it was a political question that was involved, the minority expressed the contrary view. Both groups however failed to elucidate further as to the reasons on which their classification were grounded. In short, both failed to define what the elusive term "political question" meant to them.

What these two early cases have indicated is a simple judicial policy to keep away as far as possible from the road of speeding and clashing legislative activities and to maintain as distinct as it can afford the demarcation line between the provinces of the legislature and the judiciary. We cannot totally discount however the voices that have echoed the contrary opinion.

This policy was reiterated in the subsequent case of *Mabanag v. Lopez Vito* [11] which concerned a resolution of both houses proposing an amendment to the constitution. Three senators and eight representatives were suspended shortly after the first session of congress for alleged irregularities in their elections. They did not take part in the passage of the resolution nor was their membership considered in the computation of the ¾ vote necessary for their amendment. The action brought sought to prevent the enforcement of the resolution. While the herein legislative act involved has something to do with the efficacy of the proposal to amend the constitution, so unlike the earlier cases which involved disciplinary action taken against its members, the court stood pat on its stand not to take jurisdiction. It declared that the question was a political one and not within the province of the judiciary except to the extent that the power to deal with such questions has been conferred on the court by express constitutional or statutory provision.[12] The court admitted the difficulty of determining what matters fall within the term "political questions," but it definitely stated that the efficacy

[10] *Id.* at 204.
[11] 78 Phil. 1 (1947).
[12] 16 C.J.S. 431.

of a ratification of a proposed amendment to the constitution is political. Being so, the proposal itself is a political question. Messrs. Justices Bengzon and Padilla concurred with the majority in dismissing the petition but they did not agree that the dismissal was on the ground of lack of jurisdiction, but because the journals and enrolled bill of the legislature are conclusive on the courts. Both maintained that the question was justiciable. Mr. Justice Perfecto dissented and claimed that the court has jurisdiction. He cautioned against the acceptance of the doctrine on its face value and boldly ventured that the "allegedly well established doctrine" is no doctrine at all in view of the conferred difficulty in determining what matters fall within the designation of political questions.[13] His conviction was that the invocation of political questions is just one of the numerous general pronouncements made as an excuse for apathetic, indifferent, lazy or uncourageous tribunal to refuse to decide hard or ticklish legal issues submitted to them.[14] However, he expressed agreement with the majority that the proposal to amend the constitution and the process to make it effective are matters of political nature but not with the conclusion that a litigation as to whether said provision of the constitution [15] has been complied with is beyond the jurisdiction of the tribunals. The questions he posed were: "Is there anything more political in nature than the constitution? Shall all questions relating to it therefore be taken away from the courts? Then, what about the constitutional provision [16] conferring on the Supreme Court the power to decide all cases involving the constitutionality of a treaty or law?" [17] Citing the work of a famous writer,[18] Messrs. Justices Feria and Briones in dissenting also pointed the idea that the constitution being the supreme law, it follows that every act of the legislature contrary to it must be void. But the problem is who shall decide the question which the legislature cannot decide by itself. If the courts will not be allowed to, then the constitution becomes merely advisory and not legally binding. Courts should therefore be the final arbiter.

That the courts has not made a definitive disposition of the problem of jurisdiction is obvious. The voice of the dissenting justices was becoming more and more resonant and the cry for recognition of their stand was becoming more and more appealing. A

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[13] Mabanag v. Lopez Vito, supra, p. 41.
[14] *Id.*
[15] Section 1, Article XV of the Constitution of the Philippines. "The congress in joint session assembled, by a vote of ¾ of all the members of the Senate and of the House of Representatives, voting separately, may propose amendments to this constitution or call a convention for that purpose. Such amendments shall be valid as a part of the Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification."
[16] Section 2, No. 1, Article VIII of the Constitution of the Philippines.
[17] Note 14, *supra*.
[18] 3 WEBSTER'S WORKS, 30.

later case was to prove that the Court's stand was wavering. The *Avelino v. Cuenco case* [19] put to issue the validity of the ouster of Senate President Avelino from his post by a resolution of certain senators who declared the seat vacant and designated Senator Cuenco in his stead. The first stand of the court was that it had no jurisdiction in view of the political nature of the controversy and the constitutional grant to the senate of the power to elect its own president. Its declaration of policy was re-stated, "The court will not sally into the legitimate domain of the Senate on the plea that our refusal to intercede might lead to a crisis and even a revolution." [21] Mr. Chief Justice Moran vigorously dissented asserting that the court had jurisdiction. His basis was that the crisis in the Senate was one that imperatively called for the intervention of the Court. He denied that the issue as to the legal capacity of the respondent group to act as a senate is a political question. In the motion for reconsideration, the court resolved by a majority of seven to assume jurisdiction. This was in the light of subsequent events which justified its intervention and partly on the grounds stated by Messrs. Justices Feria, Perfecto and Briones. The majority was now ready to define what a political question was. Mr. Justice Feria opined that although it is difficult to define a political question, it has generally been held that it involves political rights which consist in the power to participate directly or indirectly in the establishment or management of the government while justiciable questions are those affecting civil, personal or property rights accorded to every member of the community. What determines the jurisdiction of the courts is the issue involved and not the law or constitutional provisions which may be applied.[22] Mr. Justice Perfecto in his concurring opinion criticized the "hands-off policy of the Courts as "a showing of official inferiority complex." In this same case, the earlier cases of *Alejandrino v. Quezon, Vera v. Avelino* and *Mabanag v. Lopez Vito* were thrown to naught as being rendered by a colonial Supreme Court to suit the policies of the masters. The cry uttered by the Court was for judicial emancipation from colonial policy. The new policy of the court was put across in a vivid analogy:

> "Our refusal to exercise jurisdiction in this case is just as unjustifiable as the refusal of the senators on strike to attend the sessions of the Senate and to perform their duties. A senatorial-walkout defeats the legislative power vested by the Constitution in Congress but judicial walkouts are even more harmful than a laborers' strike or a legislative impasse.

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[19] 83 Phil. 17 (1949).
[20] No. 1, Section 10, Art. VI of the Constitution of the Philippines.
[21] Avelino v. Cuenco, Note 19, *supra*, p. 22.
[22] *Id.* at 71.

> Society may go on normally if the laborers strike but society is menaced with dissolution in the absence of an effective administration of justice. Anarchy and chaos are its alternatives." [23]

The dissenting voices in the earlier cases have finally been heard. It would find greater support in subsequent cases laid before the court. One such case [24] concerns the validity of the election of some members of the electoral tribunal which was alleged to be in violation of the constitutional mandate.[25] The Court declared that it had jurisdiction and distinguished the legislative prerogative from the judicial right of review of its acts. It said that the legislative may in its discretion determine whether it will pass a law or submit a proposed constitutional amendment to the people. The courts will have no judicial control over such matters not merely because they involve political questions but because they are matters which the people have by the constitution delegated to the legislature.[26] But the Court was unequivocal in asserting that every officer under a constitutional government must act according to law and he is subject to the restraining and controlling power of the people acting through the courts as well as through the executive and legislature. One department is just as representative as the other and the judiciary is charged with the special duty of determining the limitations which the law places on all official action.[27] The majority denied that the action involved was a political question. It reasoned that the senate is not clothed with full discretionary authority in the choice of the members of the electoral tribunal but the exercise of its power thereon is subject to constitutional limitations which are mandatory in nature. It was thus within the legitimate province of the judiciary to pass on the validity of the proceedings in connection therewith. The decision did not meet the agreement of some justices.[28] While they agreed that it is the duty of the court to step in when a constitutional mandate is ignored, they believed that this was not the proper time to do so. Actually, the dissent was grounded on the fact that the form and manner in which the senate exercises its expressly authorized power to elect members of the Senate Electoral tribunal, was not clearly proven to be violative of the constitutional mandate. Were it not for this finding of the dissenting justices, it could reasonably be inferred that a unanimous decision could have been arrived.

In so far as the stand taken by the court in the last case is concerned, it can be gleaned that it is slowly abandoning the "hands-

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[23] *Id.* at 78.
[24] Tañada v. Cuenco, 83 Phil. 78 (1949).
[25] Section 11 of Article VI of the Constitution of the Philippines.
[26] In Re McConaughy, 119 NW, 408 (1909).
[27] *Id.*
[28] Justices Paras, Endencia, Labrador.

off policy" and the distinction between political and justifiable cases has been reduced to the minimum.

But another case [29] was to upset this situation. In an action brought questioning the validity of the resolution passed by the House of Representatives suspending one of its members for alleged disorderly behaviour, the Court returned to its old stand not to take jurisdiction. It will be noted that the resolution was passed in pursuance to its disciplinary power which was no different from an earlier case in which the court made a stand that it would not take jurisdiction. It classified the action of the committee formed by Congress to pass the resolution as a purely legislative action into which the Court will not intervene. It considered the plenary power of Congress.[30] The Court took note of the fact that no preliminary injunction had been issued to prevent the committee from acting in pursuance of the resolution and that the House has closed its session, the committee ceasing to exist as such. It seemed therefore that the case should be dismissed for having been moot or academic and thus there is no reason to discuss whether the Court should take jurisdiction or not. The Court, aware of this, intimated that the petitioner could include all members of the House as respondents and ask for reinstatement thus presenting a justiciable cause but it predicted that the most probable outcome of such reformed suit will be a pronouncement of lack of jurisdiction. Mr. Justice J. B. L. Reyes expressed his dissent saying that petitioner Osmeña was entitled to invoke the Court's jurisdiction, declaring that the resolution in so far as it attempts to divest petitioner of the immunity vested in him under the Rules of the House of Representatives consisted an *ex post facto* law. His brave declaration was that the lack of power of the Court to direct or compel the legislature to act in any specified manner should not deter it from recognizing and declaring the unconstitutionality of questioned resolutions and of all actions taken in pursuance thereof. The voices of Messrs. Justices Ostrand and Johnson were echoing in a court supposed to be free from "colonial policies." Another justice [31] made a strong dissent, in substance declaring that although the government of the Philippines is based on the principle of separation of powers. the court cannot abandon its duty to pronounce what the law is when a citizen invokes it. The courts, he said, should not shirk their responsibility simply on the broad excuse of separation of powers and the fact that a coordinate branch of the government is involved should not deter the court from its duty. It even recognized the possibility that it

[29] Osmeña v. Pendatun—G.R. No. L-17144, October 28, 1961.
[30] Note 9, *supra*.
[31] Justice Labrador.

does not have the power to enforce their decision if the House chooses to disregard it. But in such case, the members of the House stand before the bar of public opinion to answer for their act in ignoring what they themselves have approved as their norm of conduct. Considering that no sharp line separates the instant case from the case of *Avelino v. Cuenco*, the obvious conclusion is that the Court's stand in the latter case has again wavered.

The latest case to challenge the Court's stand was *Macias v. Commission on Elections* [32] which involved the validity of a law passed [33] by Congress apportioning districts in pursuance to the constitutional provision regarding membership in the House of Representatives.[34] Unlike the other cases they have decided, the justices this time were all in accord—the Court has jurisdiction and that the law was void. It was argued by the respondents in this case that since the law improved present set-up, the Court could not exercise jurisdiction since the case is of a purely political character. The Court however decided otherwise. It considered the constitutionality of the Apportionment Act as a judicial question. The mere impact of the suit on political situation does not render it political. Strong reasons prompted the Court to assume jurisdiction foremost of which is that it created disproportionate representation resulting in inequality.[35] Equality of representation in the legislature being such an essential feature of Republican institutions and affecting so many lives, the judiciary may not with clear conscience stand by to give free hand to the discretion of political departments.[36] There were other causes which prompted the Court to take cognizance of the case but it was unequivocal in its decision that minus such other causes, the inequality alone in the apportionment was sufficient for it to acquire jurisdiction. Finding that it could acquire jurisdiction, the Court did not deem it necessary to go into the discussion of what distinguished a political from a justiciable question. This, despite the fact that the case involved not merely a resolution but a law approved and signed by the chief executive.

Compared with the earlier cases, no such great difference in facts and issues involved exist to warrant a great defection of the Court from its former stand. In all these cases, put into question were all acts of one and the same coordinate branch—the legislature. The principle of separation of powers has not cowed the Court

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[32] G.R. No. L-18684, Sept. 14, 1961.
[33] Republic Act No. 3040.
[34] Section 5 of Article VI of the Constitution of the Philippines.
[35] It gave Cebu 7 members, while Rizal with a bigger number of inhabitants got only 4; it gave Manila 4 members while Cotabato with a bigger population got 3 only; Pangasinan with less inhabitants than both Manila and Cotabato got more than both, 5 members having been assigned to it, etc.
[36] Macias v. Commission on Elections, supra.

into strict obedience to its old decisions finding that strong reasons exist for the assumption of jurisdiction. Has the Court having decided unanimously to be the final arbiter of legislative acts finally defined its stand? Can we therefore reasonably expect the Court to voice the same decision in relatively similar cases to come in the future? Does the Macias case provide the answer to the long judicial pilgrimage in search for a definite stand? The answer to these questions is that: The Court is still the final arbiter. What it will do in the future is beyond prediction although there is a common agreement that whatever stand it takes will be moved and motivated by strong policy reasons. It will put into its proper place the principle so deeply rooted in our government—the principle of separation of powers. As to the issue of political questions, the Court in its latest case seems to have finally arrived at a more stable stand. It found wisdom in the words of Charles Black whose explanation of the "political question" limitation was expressed in the negative—"it emphatically does not mean that the Court may never decide a question having political implications in the sense that there is widespread interest in the outcome, and that this interest is closely interwoven with the interest that move voters as such; all the great constitutional question put to the Court have been of this sort." [37]

[37] People and the Court—p. 29.