CONSTITUTIONAL LAW *

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The preceding year was a virtually barren period for constitutional law. It would seem that the New Era had lost the boldness and vigor it exhibited the year before last in probing the unexamined parts of the constitutional corpus. Last year could be the lull before the storm that is expected to stir the constitutional structure this year. In all probability, it was merely an interregnum presaging increased activity this year in the constitutional field.

The outpouring of cases brought about by the Supreme Court's decision in Aytona v. Castillo [1] continued. However, there was no modification made in the Court's previous stand on the effect of former President Garcia's "midnight appointments" or of President Macapagal's recall or withdrawal thereof by the issuance of Administrative Order No. 2. In the expropriation cases brought before it, the Court hewed to its earlier rulings that only landed estates may be expropriated.[2] In sum, it may be said that it was all quiet in the constitutional front.

THE PRESIDENCY

Echoes of the *Aytona* v. Castillo [3] Case

The same issue was raised in three cases [4] brought before the Supreme Court last year concerning appointments made by former

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* As the term is understood in both American and Philippine jurisprudence, constitutional law refers to "the law embodied in the constitution and the legal principles growing out of the interpretation and application made by the courts of the provisions of the constitution in specific cases." (VICENTE G. SINCO, PHILIPPINE CONSTITUTIONAL LAW 67, 11th ed.). As differentiated from the other branches of political law like the law of public administration, administrative law, and the law of public corporations, and in a more restricted sense, it is described as that subdivision of political law dealing with the guaranties of the constitution to the rights of individuals and the limitations on governmental action. To minimize duplication and unnecessary repetition of cases, this survey is limited strictly to cases construing provisions of the Constitution. Cases concerning the naturalization of aliens are included in the survey on civil law.

** Chairman, Student Editorial Board, PHILIPPINE LAW JOURNAL, 1964-65.

1 G.R. No. L-19313, Jan. 20, 1962.

2 This will be discussed extensively in the section on "Expropriation."

3 For a thorough examination of the case see 37 PHIL. L.J. 626, No. 4 (September, 1962) and 38 PHIL. L.J. 183, No. 2 (March, 1963). See also 39 PHIL. L.J. 45, No. 1 (February, 1964) for the earlier cases following in the wake of Aytona v. Castillo.

4 Gillera v. Fernandez and Subido, G.R. No. L-20741, Jan. 31. 1964; Jorge v. Mayor, G.R. No. L-21776. Feb. 28, 1964; and Quisumbing v. Tajanglangit, G.R. No. L-19981, Feb. 29, 1964.

President Garcia. Petitioners asked whether or not their *ad interim* appointments were validly recalled or withdrawn by the incumbent President's Administrative Order No. 2, in the light of the Court's ruling in the case of Aytona v. Castillo.

In *Gillera v. Fernandez & Subido*, the Supreme Court, quoting its resolution of March 30, 1962 [5] clarifying the ruling enunciated in Aytona v. Castillo, said that "this Court not only did not categorically declare Administrative Order No. 2 valid and all appointments made by then outgoing President Garcia ineffective, but clearly indicated that its decision was more influenced by the doubtful character of the appointments themselves and not by the contention that the President had validly recalled them. As a matter of fact, in the decision in that Aytona case, it was stated that the filling up of vacancies (by the outgoing President) in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted.'" The Court cited the case of Merrera v. Liwag,[6] where it upheld the validity of an appointment to the position of Auxiliary Justice of the Peace extended by President Garcia and released on December 20, 1961 notwithstanding Administrative Order No. 2 of President Macapagal, as illustrating this last point.

The Court held, in the instant case, that petitioner Gillera is entitled to the position of Member of the Board of Pharmaceutical Examiners considering her qualifications, the exigency of the service and the fact that her appointment was not one of those "mass *ad interim* appointments" issued in a single night. Petitioner was designated to the position on December 26, 1961 and took the oath of office on December 28. Clearly, her case was not covered by the Aytona ruling.

A similar holding was made in the subsequent cases of *Jorge v. Mayor* and *Quimsing v. Tajanglangit*. In the first case, the Court ruled that "there is certainly no parity between the appointment of petitioner on December 13, 1961 and the confused scramble for appointments in and during the days immediately preceding the inauguration of the administration. For ought that appears on the record before us, the appointment of petitioner Jorge was the only one made

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[5] The quoted portion of the Court's resolution reads: ". . . the resolution of the majority in this case has not specifically declared the 'mid-night' appointments to be void. The resolution in substance held that the court *had doubts* about their validity, and having due regards to the separation of powers and the surrounding circumstances, it declined to overthrow the executive order of cancellation and to grant relief."

[6] G.R. No. L-20079, September 30, 1963.

on that day . . ." Furthermore, the Court held that Administrative Order No. 2 refers only to *ad interim* appointments extended and released by President Garcia after the joint session of Congress that ended on December 13, 1961. Although petitioner's *ad interim* appointment is dated December 13, 1961, there is no evidence on record that it was made and released after the joint session of Congress. Petitioner's appointment, therefore, was not included in nor intended to be covered by Administrative Order No. 2, and the same stands unrevoked.

The Court, in ruling that petitioner Quimsing is entitled to hold the position of Acting Police Chief of Iloilo City, merely reiterated its rulings in the cases aforementioned.

Power to Pardon

The Constitution vests in the President the power to grant pardons.[7] In the words of Chief Justice Taft:

> **Executive clemency exist to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the court's power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive for especial 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.[8]**

In American use, the term "pardon" is given a broader scope to include one granted before conviction.[9] Under the Philippine Constitution, however, pardon may be given only to offenders who have already been convicted. The Philippine concept is closer to Blackstone, who considers it as an instrument only of clemency, than to the framers of the American constitution who regard it as also an instrument of law enforcement.[10]

An absolute pardon blots out the crime committed and removes all disabilities resulting from the conviction.[11] When granted after

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[7] PHIL. CONST., Art. VII, sec. 10(6). The whole subsection reads: "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." A similar provision can be found in the American Constitution, Art. II, Sec. 2(1), and in the Jones Law (sec. 21).

[8] *Ex parte* Crossman, 267 U.S. 87.

[9] *Ex parte* Garland, 4 Wall, 333.

[10] See EDWARD S. CORWIN, THE PRESIDENT: OFFICE AND POWERS 1787-1957, 158-159 (1957 ed.).

[11] Cristobal v. Labrador, 71 Phil. 34.

the expiration of the term of imprisonment it removes all that is left of the consequences of conviction.[12] In the words of Justice Field, speaking for the majority of a closely divided Court in the case of *Ex parte* Garland:

> 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 the offense . . .; if granted after conviction, it removes the penalties and disabilities, and restores him all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.[13]

However, as commented by Willoughby,[14] it does not operate to impair the rights of others, as for example, to restore the offender's property which has been forfeited; nor does it restore one *ipso facto* to a forfeited office.

In the case of *Flora, et al. v. Oximana, et al.*,[15] a complaint was filed against respondent seeking to disqualify him as president of the Benguet-Balatoc Workers' Union on the basis of the provisions of sec. 17 (e) of R.A. 875. It appears that in 1926, Oximana was convicted of the crime of *abusos deshonestos* for which he was sentenced to imprisonment. In 1961, the President of the Philippines granted him full, absolute and plenary pardon for the crime he had committed in 1926. On the basis of these facts, the Court upheld the dismissal of the case for lack of merit by the Court of Industrial Relations. The Court ruled that the pardon granted by the President to Oximana restored him to the full enjoyment of his civil and political rights, one of which is the right to hold any office in any legitimate labor organization.

Veto Power

An auxiliary weapon of presidential leadership is the veto power.[16] In passing on laws that are submitted for his approval, the executive is regarded as a competent part of the lawmaking body, and as engaged in the performance of a legislative rather than an executive, duty.[17] The power is both negative and positive: negative if used to suspend final approval of a bill and to cause it to be reconsidered by Congress before it is finally approved or disapproved,

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[12] Pelobello v. Palatino, 72, Phil. 441.
[13] See note 9.
[14] WESTEL, W. WILLOUGHBY, III THE CONSTITUTIONAL LAW OF THE UNITED STATES, (2nd ed.) 1491.
[15] G.R. No. L-19745, Jan. 31, 1964.
[16] PHIL. CONST., Art. VI, sec. 26.
[17] Memphis v. United States, 97 U.S. 293.

and positive if used as a weapon for bargaining to secure alterations of parts of a bill or additions thereto.

The Constitution provides:

> **The president shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. When a provision of an appropriation bill affects one or more items of the same, the President cannot veto the provision without at the same time vetoing the particular item or items to which it relates. . . .[18]**

This provision was included in the Constitution to safeguard the public treasury against the pernicious effect of what is called "log-rolling"—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items, are sometimes included.[19]

In *Bolinas Electronics Corp., et al. v. Valencia and San Andres*,[20] the Supreme Court ruled that the President may not legally veto a condition attached to an appropriation or item in the appropriation bill, and since the veto is illegal, i.e., unconstitutional, the same produces no effect whatsoever and the restriction imposed by the appropriation bill remains. The Philippine Broadcasting Service, as intervenor alleged, that it can legally operate Channel 9, a television station in Manila. However, the appropriation to operate the PBS as approved by Congress and incorporated in the 1962-63 budget of the Republic of the Philippines provided:

> 1. For contribution to the operation of the Philippine Broadcasting Service, including promotion, programming, operations and general administration, *provided, that no portion of this appropriation shall be used for the operation of television stations in Luzon or any part of the Philippines where there are television stations.* . . . **₱300,000.00. (Emphasis supplied)**

The proviso contained in the appropriation was vetoed by the President but since it was an illegal act, as held by the Court, it produced no effect whatsoever and PBS can use the amount appropriated for its operation only in a manner not contrary to the proviso.

RIGHTS OF THE ACCUSED

In the words of the Constitution, "no person shall be held to answer for a criminal offense without due process of law".[21] Gen-

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[18] PHIL. CONST., Art. VI, sec. 20(2).

[19] Bengzon v. Sec. of Justice and Insular Auditor, 299 U.S. 410; 81 L. ed. 312; 57 S. Ct. 252, reversing 62 Phil. 912.

[20] G.R. No. L-20740, June 30, 1964.

[21] PHIL. CONST., Art. III, sec. 1(15).

erally speaking, what due process requires in criminal cases, as in other instances, is a mode of procedure which does not offend some principle of justice so rooted in the traditions and conscience of the people that it is ranked as fundamental.[22] And as applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very conception of justice.[23]

Right to Counsel

In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel.[24] The purpose of this guarantee is to protect the accused from a conviction resulting from his own ignorance of legal and constitutional rights. Without the benefit of counsel, the accused, ignorant of his rights, would in effect stand deprived of the protective mantle of due process of law.[25]

This right to counsel is a fundamental one and its disregard will constitute a ground for reversal of judgment of conviction.[26] However, as was held in the case of *Alberca v. Superintendent*,[27] where the record of the case does not show whether or not the court informed the accused of his right to have counsel, it is to be presumed that the law had been complied with and, consequently, that the court had complied with its duty to inform the accused that he may have counsel. Furthermore, as the Court correctly pointed out, the right to counsel may be waived, as by a plea of guilty voluntarily given. In this case, the information against the accused was filed on April 8, 1957 and in the evening of the same day, she was arraigned and upon her plea of guilty was sentenced to imprisonment for theft plus an additional penalty for habitual delinquency.

Defendant also contended on appeal that her right to due process had been violated because she was not given sufficient time to prepare for her defense. Under section 7, Rule 118 of the New Rules of Court (formerly sec. 7, Rule 114) on which defendant relied, the defendant is entitled to at least two days to prepare for trial. The Court dismissed the contention since the rule applies only where the defendant enters a plea of not guilty. Defendant's plea of guilty dispenses with the necessity of trial and, hence, of such time as may be required to prepare for the defense.

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[22] Snyder v. Massachusetts, 291 U.S. 97; 78 L. ed. 674; 54 S. Ct. 330; 90 A.L.R. 575.

[23] Lisenba v. California, 314 U.S. 219; 86 L. ed. 166; 62 S. Ct. 280.

[24] PHIL. CONST., Art. III, sec. 1(17). A similar provision can be found in sec. 3 of the Jones Law and in the Sixth Amendment to the U.S. Constitution.

[25] State ex rel. Baker v. Utecht, 221 Minn. 145, 151; 21 N.W. 2d 328, 332 (1946). Cert. denied 327 U.S. 810 (1946).

[26] U.S. v. Palisoc, 4 Phil. 207; People v. Holgado, 47 O.G. 4621.

[27] G.R. No. L-16896, Jan. 31, 1964.

Double Jeopardy

In the common law, the double jeopardy principle was expressed in the maxim *nemo debet bis vexari pro una et eadem causa,* which means that no one shall be twice vexed for the same cause. The principle is founded on "the humanity of the law, and in a jealous watchfulness over the rights of the citizen" [28] which is so necessary because of the inequality of the parties in a criminal case. It is a "part of the protection of the Constitution against pressures and penalties that offend civilized notions of justice." [29] Under our Constitution, "no person shall be twice put in jeopardy of punishment for the same offense." [30] And under the New Rules of Court,[31] the protection against double jeopardy may be invoked by the accused in any of the following cases: (1) previous acquittal of the same offense; or (2) previous conviction of the same offense; or (3) when the case against him has been dismissed or otherwise terminated without his express consent.

In the last case, a dismissal upon defendant's motion will not be a bar to another prosecution for the same offense as said dismissal is not without the express consent of the defendant. However, this rule has no application to a case where the dismissal, as was held by the Supreme Court in the case of *People v. Cloribel, et al.,*[32] is predicated on the right of a defendant to a speedy trial.[33] Likewise, when a case is dismissed on defendant's motion based upon the insufficiency of the evidence of the prosecution, such dismissal is considered an acquittal for it decides the merits of the case regarding the guilt or innocence of the accused, and bars another prosecution for the same offense.[34]

EXPROPRIATION

The Philippine Constitution lays down as a fundamental policy the promotion of social justice by the state.[35] One of the provisions giving flesh to this policy is that found in Art. XIII, sec. 4 which states:

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[28] States v. Jones, 7 Ga. 422, 425 (1847).

[29] Justice Frankfurter concurring in U.S. ex. rel. Marcus v. Hess, 317 U.S. 537, 555 (1943).

[30] PHIL. CONST., Art. III, sec. 1(20).

[31] Rule 117, sec. 9.

[32] G.R. No. L-20314, Aug. 31, 1964.

[33] See People v. Tacneng, et al., G.R. No. L-12082, April 30, 1959.

[34] People v. Diaz, G.R. No. L-6518, March 30, 1954; People v. Albano, G.R. No. L-7862, May 17, 1955.

[35] PHIL. CONST., Art. II, sec. 5 which states: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the state."

> The Congress of the Philippines may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.

Acting under the authority of Republic Act Nos. 267 and 498, which authorize cities, municipalities and provinces to purchase and/or expropriate homesites and landed estates within their respective jurisdictions and to resell them at cost to their respective residents, plaintiff, in the case of *Bulacan v. B. E. San Diego, Inc., et al.*,[36] sought to expropriate the property of the defendant with a total area of about twenty-six hectares situated in three different municipalities of Bulacan. The case was dismissed by the Court of First Instance of Bulacan and on appeal the issue was raised whether or not the land sought to be expropriated falls within the purview of the aforementioned statutes. The Supreme Court affirmed the dismissal of the complaint and quoted with approval its decision in the case of Republic v. Baylosis, *et al.*:[37]

> In conclusion, we hold that under sec. 4, Art. XIII of the Constitution, the Government may expropriate only landed estates with extensive areas, specially those embracing the whole or a large part of a town or city; that once a landed estate is broken up and divided into parcels of reasonable areas, either through voluntary sales by the owner or owners of said landed estate, or thru expropriation, the resulting parcels are no longer subject to further expropriation under section 4, article XIII of the Constitution; that mere notice of the intention of the Government to expropriate a parcel of land does not bind either the land or the owner so as to prevent subsequent disposition of the property, such as mortgaging or even selling it in whole or by subdivision; that tenancy trouble alone whether due to the fault of the tenants or of the landowners does not justify expropriation; that the Constitution protects a landowner against indiscriminate and unwarranted expropriation; that to justify expropriation, it must be for a public purpose and public benefit, and that just to enable the tenants of a piece of land of reasonable area to own portion of it, even if they and their ancestors had cleared the land and cultivated it for their landlord for many years, is no valid reason under the Constitution to deprive the owner or landlord of his property by means of expropriation.

In the subsequent case of *Republic v. Manotok Realty, Inc.*,[38] the Land Tenure Administration, acting under the authority of R.A. No. 2342 amending R. A. No. 1162, filed a complaint to expropriate several contiguous parcels of land with an area of about seven hectares belonging to the defendant for the purpose of subdividing the same into smaller lots for sale to the tenants and/or occupants there-

[36] G.R. No. L-15946, Feb. 28, 1964.
[37] 51 O.G. 722.
[38] G.R. No. L-20204, July 31, 1964.

of, allegedly for the sake of promoting social justice and the peace and security of all concerned. Section 1 of R.A. No. 2342 provides:

> The expropriation of landed estates or haciendas, or lands which formerly formed part thereof, or any piece of land in the city of Manila, Quezon City and suburbs, which have been and are actually being leased to tenants for at least ten years, is hereby authorized: Provided, that such lands shall have at least fifty houses of tenants erected thereon.

The Court noted that the lots in question were formerly part of a 28-hectare property. Supposing, *arguendo*, that such 28-hectare land was expropriable because it constituted a landed estate, the Court held that it does not follow that years after it has been partitioned, a seven-hectare part thereof is still a landed estate within the meaning of the Constitution permitting expropriation of land for resale to tenants. Furthermore, the Court ruled that the Legislature may not validly declare such land to be an estate simply because it is in the City of Manila and is occupied by fifty tenants. For the purpose of determining whether a piece of land is a landed estate within the meaning of the Constitution, its area or extension must be taken into account and not necessarily the number of tenants.

ADMINISTRATIVE DUE PROCESS

In administrative proceedings, the right to a notice and hearing is not always essential to due process of law.[39] In some instances, however, it becomes necessary and vital. Thus, in the case of *Vigan Electric Light Co. v. Public Service Commission*,[40] the Supreme Court held that the order of the respondent PSC reducing the rates being charged by petitioner without previous notice and hearing is a denial of due process. Respondent's contention was that the disputed order had been issued under its delegated legislative authority, the exercise of which does not require previous notice or hearing. However, the Court observed that although the rule-making power and even the power to fix rates when such rules and/or rates are meant to apply to all enterprises of a given kind throughout the Philippines—may partake of a legislative character, such is not the nature of the order complained of. The order in this case applies exclusively to petitioner herein. Furthermore, it is predicated upon the finding of fact that petitioner is making a profit of more than 12% of its invested capital, which is denied by petitioner. In making said finding of fact, respondent performed a function partaking of a quasi-judicial character, the valid exercise of which demands previous notice and hearing.

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[39] VICENTE G. SINCO, PHILIPPINE CONSTITUTIONAL LAW (1960 ed.), 104.
[40] G.R. No. L-19850, Jan. 30, 1964.

DELEGATION OF POWERS

One of the fundamental rules of constitutional law is that one department of government may not delegate to another department or to any other body the powers intrusted to it by the constitution.[41] This rule is principally applied to legislative powers. In such a case, the prohibition is against the delegation of the power to make the laws which necessarily involves the exercise of discretion as to what the law shall be. Delegation of power and discretion to an executive officer as to how the laws should be executed under the terms therein provided is not within the scope of the prohibition.[42]

In answer to respondent's claim that the disputed order reducing the rates that petitioner can charge had been issued under delegated legislative authority, the Supreme Court, in the case of *Vigan Electric Light Co. v. Public Service Commission*,[43] held that, consistently with the principle of separation of powers, legislative powers may not be delegated except to local governments and only as to matters of purely local concern. However, this does not preclude Congress from delegating to administrative agencies of the government the power to supply the details in the execution or enforcement of a policy laid down by a law which is complete in itself. Such law is not deemed complete when it lays down a standard or pattern sufficiently fixed or determinate, or, at least determinable without requiring another legislation to guide the administrative body concerned in the performance of its duty to implement or enforce said policy. Otherwise, there would be no reasonable means of ascertaining whether or not said body has acted within the scope of its authority, and, as a consequence, the power of legislation would eventually be exercised by a branch of the Government other than that in which it is lodged by the Constitution, in violation, not only of the allocation of powers therein made, but also of the principle of separation of powers. Hence, according to the Court, Congress has not delegated, and cannot delegate legislative powers to the Public Service Commission.

In another case,[44] the Supreme Court declared Municipal Ordinance No. 7, Series of 1960 of the municipality of Hinabangan, Samar, null and void since it infringes upon the express restrictions placed by the legislature upon the taxing power delegated to city and municipal councils. Sec. 2, par. 1 of R.A. No. 2264, after con-

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[41] SINCO, *op. cit.* 72.

[42] Cincinnati, W. and Z. R. Co. v. Clinton County Commrs. (1852), 1 Ohio St. 88.

[43] See note 40.

[44] Marinduque Iron Mines Agents, Inc. v. Mun. Council of Hinabangan, Samar, et al., G.R. No. L-189224, June 30, 1964.

ferring power to cities, municipalities, and municipal districts to impose license taxes and service fees or charges or business and occupations, expressly limited said powers by the following proviso:

> Provided, that municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon.

It is true, according to the Court, that the ordinance purports to base the tax on either "gross output or sales," but the only standard provided for measuring the gross output is its peso value, as determined from true copies of receipts and/or invoices (which are precisely the evidence of sales) that the taxpayer is required to submit to the municipal treasurer without deductions being provided for freight, insurance, or incidental costs. Directly or indirectly, the amount of payable tax under this ordinance is determined by the gross sales of the taxpayer, and violated the explicit prohibition that the municipality must not levy, or impose, "taxes in any form based on sales."