POLITICAL LAW — PART ONE

CONSTITUTIONAL LAW AND LAW ON LOCAL GOVERNMENTS

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CONSTITUTIONAL LAW

Under the present Supreme Court, how much of a shield is the Bill of Rights[1] against the exertions of governmental power.

It is this question which this essay seeks to answer in its analysis of some 1968 Supreme Court decisions dealing with constitutional issues.

It is obvious that the question implies a chain of premises. It implies that in this country the Bill of Rights could indeed be a shield for individual rights. It could be such a shield because a person may invoke any of its provisions to protect himself from what he considers an undue exercise of government power. How effective a shield it is, however, depends on the Supreme Court. Our constitutional tradition has it that the Constitution is the supreme law of the land to which must conform all acts of all departments of government.[2] In interpreting and thus implementing the Constitution, especially its Bill of Rights, the Supreme Court could uphold the rights of persons against acts of government that nullify such rights.

In such a role, in exercising its so-called power of judicial review,[3] the Supreme Court is in effect some kind of a super-body overseeing the acts of formally equal and coordinate branches of government,[4] like the Congress or the President of the Philippines. This decisive assumption of responsibility is made acceptable by the insistence that it is not the Supreme Court but our Constitution that is being made to prevail.[5] Except for some rare denunciations,[6] this revisory functions of our Supreme Court has never been seriously questioned. This is partly because of our very high regard for the Court. This is also because the Court has not been making decisions that are really difficult to accept. Its decisions invariably reflect the consensus and

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[1] CONST. art. III.

[2] State v. Main. 37 A. 80 (1897).

[3] A good summary about the power of judicial review in the Philippines is Feliciano, *On the Functions of Judicial Review and the Doctrine of Political Question*, 39 PHIL. LAW J. 444-462 (1964).

[4] Angara v. Electoral Commission, 63 Phil. 139 (1936).

[5] *Ibid.*

[6] Liwag, *The Supreme Court and the Rule of Law*, 28 LAWYERS J. 3 (1963).

many times better judgment that could be arrived at after a more careful and exhaustive deliberation of issues.

The conflict between the exercise of police power by Congress and the protection of the due process clause over the right to life, liberty and property was well dramatized in 1968 in the cases of *Morfe v. Mutuc,*[7] *Gomez v. Palomar,*[8] and *Alalayan v. National Power Corporation.*[9]

In these cases the constitutionality of measures adopted by the Congress to promote the common weal were assailed. In *Homeowners Association v. Municipal Board of the City of Manila,*[10] the constitutionality of a city ordinance[11] limiting the maximum rental that property owners may charge for the lease of residential buildings was contested. Unlike in the three cases involving legislation enacted by the Congress which our Supreme Court sustained, the court revoked the city ordinance regulating rentals.

In two cases, *i.e. Philippine American Life Insurance Co. v. Auditor General,*[12] and *Tirona v. City of Manila*[13] the Supreme Court expounded on the non-impairment clause[14] of the Constitution.

The Supreme Court reiterated its conviction that tenancy relations are properly the subject of regulation by the government; that government regulations like those embodied in the Agricultural Land Reform Code[15] and the earlier related law, the Agricultural Tenancy Act[16] were valid and also enlightened and desirable — exercises of police power in *Genuino v. Court of Agrarian Relations,*[17] *Del Rosario v. de los Santos,*[18] *De la Paz v. Court of Agrarian Relations,*[19] *Marcelo v. Matias,*[20] and *Tinio v. Mina.*[21] The First four cases assailed the constitutionality of section 14 of the Agricultural Tenancy Act. In the last case, section 168 of the Agricultural Land Reform Code was controverted. In all these cases, the Supreme Court sustained the constitutionality of the questioned provisions.

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[7] G.R. No. 20387, January 31, 1968.
[8] G.R. No. 23645, October 29, 1968.
[9] G.R. No. 24396, July 29, 1968.
[10] G.R. No. 23979, August 30, 1968.
[11] MANILA ORDINANCE No. 4841, December 31, 1963.
[12] G.R. No. 19255, January 18, 1968.
[13] G.R. No. 24607, January 29, 1968.
[14] CONST. art. III, sec. 1(10).
[15] Rep. Act No. 3844 (1963).
[16] Rep. Act No. 1199 (1954).
[17] G.R. No. 25035, February 26, 1968.
[18] G.R. Nos. 20589-90, March 21, 1968.
[19] G.R. No. 21488, October 14, 1968.
[20] G.R. No. 22252, October 29, 1968.
[21] G.R. No. 29488, December 24, 1968.

One of the most vital guarantees available to an individual under the Constitution is the right against self-incrimination.[22] The Supreme Court had the opportunity to give concrete reality to the provision in *Chavez v. Court of Appeals,*[23] where it freed a convicted individual who had been characterized by the trial court as "a self-confessed culprit."[24]

In a number of cases, the Supreme Court also had occasion to elucidate on the requirements of procedure due process. The subtle danger posed to the freedom of speech by a relatively minor government office, *i.e.* Radio Control Office is exposed by a brief opinion penned by Justice Jose B. L. Reyes in *Lemi v. Valencia.*[25] Towards the end of another opinion formulating a decision in a labor case, *Security Bank Employees Union-NATU v. Security Bank and Trust Co.*[26] The Supreme Court said some significant things on the right to picket and the freedom of expression.

Due process and equal protection

One of the most significant cases brought before our Supreme Court for its resolution in 1968 was *Morfe v. Mutuc.*[27] Its significance lies in the fact that in it, our Supreme Court discussed once again and at rather great lengths now it views its task of resolving the problems that arise between the government exercising its "police power" and a person seeking to protect his right to "life, liberty or property" of which he could not be deprived without "due process."[28]

In addition to enlightening statements on the protection provided by the constitutional prohibition against "unreasonable searches and seizures"[29] and the constitutional right of a person not to be "compelled to be a witness against himself,"[30] *Morfe v. Mutuc* also provided a first occasion for our Supreme Court to express an opinion on the right to privacy under our Constitution.

The issue in *Morfe v. Mutuc* was relatively simple. It did not ask the question: Is Republic Act No. 3019, better known as the Anti-Graft and Corrupt Practices Act, unconstitutional? This question was not raised. Definitely, the Congress has the right to enact a law

[22] CONST. art. III, sec. 1(18).
[23] G.R. No. 29169, August 19, 1968.
[24] CFI Quezon City Crim. Case No. Q-5311, February 1, 1965, Annex C, p. 14, Rolls, p. 108.
[25] G.R. No. 20768, November 29, 1968.
[26] G.R. No. 28536, April 30, 1968.
[27] G.R. No. 20387, January 31, 1968.
[28] CONST. art. III, sec. 1(1).
[29] Ibid., art. III, sec. 1(3).
[30] Ibid., art. III, sec. 1(18).

"to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto."[31]

Thus, the Congress had the right to pass a law that would penalize such corrupt practices as

> "... Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense; directly or indirectly requesting or 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 officer in his official capacity has to intervene under the law; directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to section thirteen of this Act; accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination; causing undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions; 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, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party; entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest; directly or indirectly becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified

[31] Rep. Act No. 3019 (1960), sec. 1.

> for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled; and divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date...."[32]

If the Anti-Graft and Corrupt Practices Act limited itself to legally proscribing the above enumeration of corrupt practices, there would have been no question about its constitutionality. However, the Act also requires a public officer to prepare and file with the head of the office to which he belongs within thirty days after the approval of the Act or after his assumption of office and within the month of January of every other year thereafter, as well as upon the termination of his position "a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year...."[33]

To the public officer involved in *Morfe v. Mutuc*, who is a Judge of the Court of First Instance, the requirement of a periodical submission of a statement of assets and liabilities constituted a number of things: (1) It was an oppressive exercise of police power and thus was violative of due process and (2) it was an unlawful invasion of the constitutional right to privacy, implicit in the ban against unreasonable searches and seizures construed together with the prohibition against self-incrimination.

On these challenges, the Supreme Court said in effect: First, that not enough facts had been introduced into the case to justify an inquiry into the constitutionality of the challenged provision; Second, that even if one indeed inquired into the constitutionality of the disputed provision, the same must be sustained as a constitutional exercise of police power, not because there was no right to "life, liberty or property" nor a right to privacy of the public officer concerned but because, there was no denial of due process.

As to the first point, that there were not enough concrete facts to allow an inquiry into the alleged unconstitutionality of the controverted provision of the Anti-Graft and Corrupt Practices Act, the Supreme Court said that an act passed by the Congress must be presumed to be constitutional; but the weight of this presumption is not the same for all statutes. Where a measure is restrictive only of property rights, the presumption of its constitutionality is closer to conclusiveness than if the law is restrictive of the freedom of the mind

[32] Ibid., sec. 3.
[33] Ibid., sec. 7.

or the person,[34] stated in another way, the Supreme Court seems to trust more readily the Congress when the latter deals with property rights than when it deals with the freedom of the mind and of the person. The consequence of this distinction is the different "factual foundations" required to bring about a probe into the alleged unconstitutionality of a law. Thus, it would be difficult to declare a law affecting property rights unconstitutional purely "on the pleadings and the stipulation of facts." On the other hand, where a law poses a "present and ominous" threat to those constitutional rights to freedom of the mind or of the person, there should not be "a rigid insistence on the requirement that evidence be presented."[35]

The above formulation may, of course, be just a question of semantics for there is still the requirement that the threat to the freedom of mind is "present and ominous." Our Supreme Court could easily rule that this cannot be proven purely "on the pleadings and the stipulation of facts."

A crucial issue touched upon in *Morfe v. Mutuc* refers to an old question: Are the constitutional rights of a person in the government service lesser than those of private individuals?

This question has arisen in the consideration of a number of restrictions imposed on those in the government service but not on private persons. Thus, the Civil Service Act prohibits officers and employees in the civil service from engaging "directly or indirectly in partisan political activities or take part in any election except to vote."[36] The Act also imposes a limitation on the right of government employees to strike.[37]

These restrictions could, of course, be easily explained in terms not of government employees being inferior to private persons as regard their constitutional rights but as examples of proper classifications that do not offend the equal protection clause of the constitution. Also, the holding of a public office is not a right; relative to it, the law may impose restrictive limitations.

The limitation imposed on the political activities of government employees is allowed by no less than a specific provision of our Constitution.[38] The limitation on the right of government employees to strike only underscores the principle that so-called right to strike is not a fundamental, *i.e.* a constitutional right, but a right that exists

[34] FREUND, ON UNDERSTANDING THE SUPREME COURT 111 (1951).

[35] Ermita-Malate Hotel and Motel Operators Association v. Mayor of Manila, G.R. No. 24693, July 31, 1967.

[36] Rep. Act No. 2260 (1959), sec. 29.

[37] *Ibid.*, sec. 28(c).

[38] CONST. art. XII, sec. 2.

only because of statutory recognition.[39] The same statute that recognizes the right to strike may provide for certain reasonable qualifications including a proviso denying it to certain groups of workers.[40]

It is therefore very far from the truth to say that government employees are "second-class citizens" in our country. Giving this assurance were some of the pronouncements of our Supreme Court in *Morfe v. Mutuc.*

Before it gave the above assurance, however, our Supreme Court first analyzed the nature of the rights of a government employee that may indeed be placed in some jeopardy by the Anti-Graft and Corrupt Practices Act. The Court traced these rights to be coming from the basic right of a public officer to continue in his office. The public office itself being a public trust, our Supreme Court said that public office is not property.[41] But the right to continue in office, *i.e.* security of tenure, could be analogous to property in the sense that a government employee may not be removed, or, put in another way, he may not be deprived of his property — referring to his security of tenure — without due process of law.[42]

The Supreme Court also allowed that the Anti-Graft and Corrupt Practices Act could place in some jeopardy not only the property but the liberty of a government employee. As the Court said: "Admittedly without the challenge provision (that required the periodical submission of a sworn statement of assets and liabilities), a public officer would be free from such a requirement. To the extent then that there is a compulsion to act in a certain way, his liberty is affected."[43]

After defining the rights to property and liberty placed in some jeopardy by the Anti-Graft and Corrupt Practices Act, the Supreme Court affirmed, if negatively: "Even a public official has certain rights to freedom the government must respect. To the extent then that there is a curtailment thereof, it could only be permissible if the due process mandate is not disregarded." Going now to the resolution of the conflict between the rights to "life, liberty and property" asserted in *Morfe v. Mutuc,* and the exercise by the government of its "police power" by the enactment of the Anti-Graft or Corrupt Practices Act, the Supreme Court expressed the opinion that the Act is constitutional. It defined the reasons for the enactment of the Act in these terms: That the Act was "aimed at curtailing and minimizing the opportunities for official cor-

[39] Rex Taxicab v. Court of Industrial Relations, 70 Phil. 621 (1940).
[40] Rep. Act No. 875 (1953), sec. 11.
[41] Cornejo v. Gabriel, 41 Phil. 188 (1920).
[42] Lacson v. Romero, 84 Phil. 740 (1949).
[43] Morfe v. Mutuc, *supra,* note 7.

ruption and maintaining a standard of honesty in the public service," and that it was "intended to further promote morality in public administration." On the urgency of doing something to achieve the above ends, the Court said: "The condition then prevailing called for norms of such character," that "the times demanded such a remedial device as the Anti-Graft and Corrupt Practices Act." With these pre-dispositions, it was not therefore a very big leap for the Court to state: "It would be to dwell in the realm of abstractions and to ignore the harsh and compelling realities of public service with its ever present temptation to heed the call of greed and avarice to condemn as arbitrary and oppresive a requirement as that imposed on public officials and employees to file such sworn statement of assets and liabilities every two years after having done so upon assuming office."

When the Supreme Court disposed of the contention that requiring a public officer to periodically submit a statement of his assets and liabilities was unconstitutional because it was violative of the due process clause of our Constitution, it did not thereby dispose of all objections to the above requirement. It was also contended that the requirement was violative of the right to privacy and of constitutional guarantees against unreasonable searches and seizures and against self-incrimination.

As regards the right to privacy, in *Morfe v. Mutuc*, the Supreme Court not only recognized its vital significance to our concept of liberty; it also based its existence in specific provisions of the Constitution and thus categorically declaring the right to privacy a constitutional one.

On the crucial importance of the right to privacy, the Supreme Court appropriately quoted the words of a leading constitutional scholar in the United States, Professor Thomas I. Emerson who wrote: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector — protection, in other words, of the dignity and integrity of the individual — has become increasingly important as modern society has developed. All the forces of a technological age — industrialization, urbanization, and organization — operate to narrow the area of privacy and facilitate intrusions into it. In modern terms, the capacity to main-

tain and support this enclave of private life marks the difference between a democratic and a totalitarian society."[44]

As to the right to privacy being founded on provisions of our Constitution, the Supreme Court cited the provision on communication and correspondence being inviolable except upon lawful order of Court or when public safety and order may require otherwise,[45] the provision against unreasonable searches and seizures[46] and that guaranteeing the liberty of abode.[47]

But even as the right to privacy was considered basic and as having a constitutional status, the Supreme Court, in *Morfe v. Mutuc,* believed that requiring a public officer to submit periodically a statement of his assets and liabilities did not unconstitutionally infringe upon the public officer's right to privacy. It is not very clear how our Supreme Court arrived at this conclusion. Did it hold this view because the Court believes that information about the assets and liabilities of a public officer is not within the protected sphere of privacy? Or did the Court believe that, while such information was within his protected sphere of privacy, still he could be compelled to give such information because of the "rational relationship such a requirement possesses with the objective of a valid statute." It was the latter argument that our Supreme Court seemed to adopt, effectively undermining to some extent the high value that it accorded to the right of privacy.

How about the arguments that the requirement of periodically submitting a statement of assets and liabilities imposed on a public officer was violative of the constitutional prohibition against unreasonable searches and seizures and also against the constitutional guarantee that a person may not be compelled to be a witness against himself?

In *Morfe v. Mutuc,* the Supreme Court seemed to say: There was no unreasonable search and seizure in the above requirement of the Anti-Graft and Corrupt Practices Act because in securing the information on the assets and liabilities of a public officer, the Act does not allow a procedure that exceeds "the permissible limits of persuasion".[48] The Act does not use force or fraud.

The Court also held that the requirement of periodic sworn statement of assets and liabilities did not offend the constitutional guarantee against self-incrimination because what this guarantee seeks to prohibit

[44] Emerson, *Nine Justices in Search of a Doctrine,* 64 MICH. L. REV. 219, 229 (1965).
[45] CONST. art. III, sec. 1(5).
[46] *Ibid.,* art. III, sec. 1(3).
[47] Ibid., art. III, sec. 1(4).
[48] U.S. v. Lefkowitz, 285 U.S. 452, 52 S.Ct. 420, 76 L.Ed. 877 (1931).

is the "compulsory disclosure of incriminating facts,[49] and the facts disclosed by a statement of assets and liabilities, to be incriminatory facts must await the existence of actual cases, be they criminal, civil or administrative."[50]

The acts of government that may sometimes impinge on the rights of persons could proceed not only from that fountainhead, the police power, but also from the power of taxation.

In *Gomez v. Palomar*,[51] the constitutionality of Republic Act No. 1635 better known as the Anti-TB Stamp Law, as amended by Republic Act No. 2631, was questioned. It was contended that when the law required an additional five centavos for a so-called service postal stamp from every person who mailed a letter from August 19 to September 30 every year,[52] the law was unconstitutional because it was violative of the equal protection clause of the Constitution,[53] because a tax was being levied not for a public purpose and because the tax did not meet the constitutional requirement of uniformity.[54] It was also alleged that as implemented by the Bureau of Posts, there was an unconstitutional delegation of power.

Addressing itself to the above contentions, the majority opinion of the Supreme Court[55] accepted the implied premise of the contentions that the Anti-TB Stamp Law is an exercise of the power of the government to tax, that the five centavo charge that it levied was in the nature of an excise tax laid upon the privilege of using the mails.

With this as a starting assumption, our Supreme Court then stated that the Anti-TB Stamp Law does not violate the equal protection clause of our Constitution nor the constitutional rule that taxation shall be uniform. The Court also stated that the fact that the funds raised by the law "shall constitute a special fund and be deposited with the National Treasury to be expended by the Philippine Tuberculosis Society" did not mean that the Anti-TB Stamp Law was levying a tax not for a public purpose. The Court also did not find any undue delegation of power in the implementation of the law by the Bureau of Posts.

In holding that the Anti-TB Stamp Law did not violate the equal protection clause of our Constitution, our Supreme Court pointed out

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[49] People v. Carillo, 77 Phil. 572 (1946).
[50] Suarez v. Tengco, G.R. No. 17113, May 31, 1961.
[51] *Supra*, note 8.
[52] Rep. Act No. 1635 (1937), as amended by Rep. Act No. 2631 (1960), sec. 1.
[53] CONST. art. III, sec. 1(1).
[54] *Ibid.*, art. III, sec. 22(1).
[55] Penned by Justice Fred Ruiz Castro.

how "it is settled that the legislature has the inherent power to select the subjects of taxation and to grant exemptions", how, "in the field of taxation, more than in other areas, the legislature possesses the greatest freedom in classification" because "classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden."

In saying the above, of course, our Supreme Court reiterates "that legislative classification must be reasonable."

The issue, therefore, in *Gomez v. Palomar* is: Is the classification in the Anti-TB Stamp Law that singled out mail-users to pay the five centavo levy reasonable?

The party questioning the levy said that the classification was not reasonable because the choice of the mail users did not have some reasonable relationship to the end to be sought. The Supreme Court agreed that in other laws, the above proposition may indeed fatally give a taint of unconstitutionality, but according to the Court this is not the case in tax laws. There may indeed be no direct reasonable relationships between the choice of mail users as the tax payers and the end to be sought, i.e. the eradication of tuberculosis. But there is still reason enough for the classification: Mail users are chosen on the basis of their better ability to pay and for administrative convenience. On the latter point, our Supreme Court said: "In the case of the Anti-TB Stamp Law, undoubtedly, the single most important and influential consideration that led the legislature to select mail users as subjects of the tax is the relative case and convenience of collecting through the post offices. The small amount of five centavos does not justify the great expense and inconvenience of collecting through the regular means. On the other hand, by placing the duty of collection on postal authorities, the tax was made almost self-enforcing, with as little cost and as little inconvenience as possible."

The above may dispose the classification between mail-users and non-mail users. But how about the different treatment accorded to certain mail users i.e. the exemption of newspapers and government offices from the payment of anti-TB stamps.

The Supreme Court found adequate reasons for the exemptions. Newspapers are beneficent enterprises and the legislature may properly withhold the burden of taxes in order to foster what it conceives to be a beneficent enterprise. As for certain government offices, their exemption according to the Court rests on "the State's sovereign immunity from taxation. The State cannot be taxed without its consent and such consent being in derogation of the sovereignty, is to be strictly construed."

But how about the fact that tuberculosis seems to have been singled out to the exclusion of other diseases as the special object of concern by the Anti-TB Stamp Law? To this the Supreme Court said: "It is never a requirement of equal protection that all evils of the same genus be eradicated or none at all. If the law presumably hits the evil where it is most felt, it is not to be over thrown because there are other instances to which it might have been applied."[56]

Another argument raised against the Anti-TB Stamp Law is that it imposes a levy that is not for a public purpose as no special benefit accrues to mail users as taxpayers.

This argument is dismissed by the Supreme Court by stating that the eradication of a dreaded disease is a public purpose. The Court admits that the Anti-TB Stamp Law does not directly benefit the mail users as taxpayers but this does not make the Law unconstitutional for according to the Court, "the only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. Any other view would preclude the levying of taxes as except as they are used to compensate for the burden on those who pay them and could involve the abandonment of the most fundamental principle of government and that it exists primarily to provide for the common good."[57]

About the constitutional requirement that taxation shall be uniform, our Supreme Court finds that the imposition by the Anti-TB Stamp Law, of a flat five centavo levy on all kinds of mails does not violate the rule of uniformity. The Court said: "A tax need not be measured by the weight of the mail or the extent of the service rendered.... Consideration of administrative convenience and cost afford an adequate ground for classification."

The allegation that there was undue delegation of power in the implementation of the Anti-TB Stamp Law was dismissed because the Supreme Court found that the directives issued by the Bureau of Posts were pursuant to the law itself and were in fact needed to enforce the law.

In *Alalayan v. National Power Corporation*,[58] a franchise holder of an electric plant, for himself and for other persons having common or general interest with him, challenged the enforcement by the National Power Corporation of section 3 of Republic Act No. 3043. This provi-

[56] Lutz v. Araneta, 98 Phil. 148 (1955).
[57] Citing Carmichael v. Southern Coal and Coke Co., 301 U.S. 495, 57 S.Ct. 868, 81 L.Ed. 1245 (1937).
[58] *Supra*, note 9.

sion, which is applicable to all electric plant operators who receive at least 50 per cent of their electric power from the National Power Corporation, imposes on these operators a ceiling on their net profits, *i.e.* 12 per cent annually of their respective investments plus two-month operating expenses.

The constitutionality of section 3 of Republic Act No. 3043 was assailed on a number of grounds. It was contended that the law violated the constitutional requirement that no bill "which may be enacted into law shall embrace more than one subject which shall be expressed in (its) title."[59] The above section was alleged to be merely a rider in a bill that had for its basic purpose the increase of the authorized capital stock of the National Power Corporation. This contention was dismissed by our Supreme Court which said that "it must be deemed sufficient that the title be comprehensive enough reasonably to include the general object which the statute seeks to effect without expressing each and every end and means necessary for its accomplishment. Thus, mere details need not be set forth. The legislature is not required to make the title of the act a complete index of its contents."[60] The more decisive reason was, of course, this statement of the Court that "if the law amends a section or part of a statute, it suffices if reference to be made to the legislation to be amended, there being no need to state the precise nature of the law in question."[61] Republic Act No. 3043 specifically referred to the law it sought to amend, namely the charter of the National Power Corporation.[62]

The constitutionality of section 3 of Republic Act No. 3043 was also assailed because it was alleged that it deprived a person of his liberty of contract without due process and that it likewise impaired obligation of contracts.

On the first allegation, our Supreme Court cited the many instances where our constitutional tradition allowed restrictions in a wide range of contractual relations pursuant to the welfare state concept that the Supreme Court states "is not alien to the philosophy of our Constitution."

The Court went on to cite provisions in the Constitution that commands the promotion of social justice[63] and the protection of labor.[64] Referring to the latter provisions, the Court said that the "particular

[59] CONST. art. VI, sec. 21(1).
[60] People v. Carlos, 78 Phil. 535 (1947).
[61] People v. Buenviaje, 47 Phil. 536 (1925).
[62] Com. Act No. 120 (1936), as amended.
[63] CONST. art. II, sec. 5.
[64] *Ibid.*, art. XIV, sec. 6.

reference to the rights of working men in industry and agriculture certainly cannot preclude attention to a concern for the rights of consumers."

On the allegation that section 3 of Republic Act No. 3043 impairs the obligation of contracts, the Court quoted with approval an earlier ruling that states that statutes enacted for the regulation of public utilities, being a proper exercise by the State of police power, are applicable not only to those public utilities coming into existence but likewise to those already established and in operation.[65]

In any case, in *Alalayan v. National Power Corporation,* considering the actual facts upon which it would apply its so-called "process of balancing, adjustment or harmonization," the Supreme Court found section 3 of Republic Act No. 3043 definitely a proper exercise of police power.

Police power is exercised for the State namely by the legislature of the national government, but, as in the Philippines, it may also be exercised by the legislative bodies of local governments.[66]

When exercised by the latter, police power is, of course, no longer the broad grant to enact laws assumed by a national legislature. Instead it becomes a limited grant to enact only such laws that the national legislature has authorized a local government to consider.[67]

It is against the background of the above principles that one should try to understand the case of *Homeowners' Association of the Philippines, Inc. v. Municipal Board of the City of Manila.*[68]

In this case, the validity of an ordinance passed by the Municipal Board of the City of Manila was questioned. The controverted ordinance had this feature: After declaring the existence of "a state of emergency in the matter of providing housing accommodations especially for the poor at reasonable rates", it imposed certain drastic ceilings on the rentals that property owners could charge for the lease of their residential houses.[69]

The Court of First Instance that tried the case held the ordinance to be "ultra vires, unconstitutional, illegal and void ab initio". The lower court declared the controverted ordinance to be unconstitutional for a number of reasons: That the municipal Board of the City of

[65] Pangasinan Transportation Co., Inc. v. Public Service Commission, 70 Phil. 221 (1940).

[66] REV. ADM. CODE, sec. 2238.

[67] Homeowners Association of the Phil. v. City of Manila, *supra,* note 10.

[68] *Ibid.*

[69] See note 11.

Manila had no power to declare a state of emergency which exclusively pertains to Congress: that in any case, there is no longer any state of emergency which may justify the regulation of house rentals; that the said ordinance arbitrarily encroaches on the constitutional rights of property owners; that the power of the City of Manila to "regulate the business of letting or subletting of lands and buildings" does not include the authority to prohibit what is forbidden in the questioned ordinance; and that the same cannot be deemed sanctioned by the general welfare clause of the charter of the City of Manila.[70]

Instead of touching upon these points cited by the lower court, the Supreme Court invalidated the ordinance merely by considering it as an invalid exercise of police power.

This conclusion is reached through a number of steps. Step 1: Municipal corporations may exercise police power. Step 2: The regulations of house rentals could be a proper exercise of police power. Step 3: For a municipal corporation, however, to regulate house rentals, as an incident of its exercise of police power, it must do so under the same limitations that confronts the national government, *i.e.* that the regulation of house rentals could be done only during a state of emergency. Step 4: Because house rentals could be regulated only during a period of emergency, to be valid, ordinances providing for such regulations could be enacted only for a state of emergency and must be limited only to its duration. Step 5: It is doubtful whether the Municipal Board of the City of Manila could declare the existence of a state of emergency. Step 6: But even if there is indeed a state of emergency, the ordinance providing for the regulations of house rentals is invalid because it does not provide for a definite period that it is to be in force. On Step 6, the Supreme Court seems to argue in this wise: A statute passed to meet a given emergency should limit the period of its effectivity, otherwise, a new and different law would be necessary to repeal it, and said period would accordingly be "unlimited, indefinite, negative and uncertain," which characteristics make a law null and void.[71]

All the above propositions seem to be soundly formulated except that one may well ask: Why should a law regulating house rentals be believed to be valid only when there is a state of emergency when the regulation, for instance, of the rentals of agricultural land as in the Agricultural Land Reform Code and earlier in the Agricultural Tenancy Act, does not seem to need a state of emergency to be valid.[72]

[70] Rep. Act No. 183 (1947), as amended.
[71] Araneta v. Dinglasan, 84 Phil. 368 (1949).
[72] Rep. Act No. 3844 (1963), sec. 34.

Or could this be an admission that the situation in agricultural tenancy is in a state of emergency?

Non-impairment of obligation of contracts

The Bill of Rights has a number of provisions protective of property rights. The provision that "no person may be deprived of life, liberty or property without due process of law"[73] not only protects "property" as such but also the more meaningful right of a person to use his property according to his desires. The latter right is included in the word "liberty".[74] The provision in our Bill of Rights that "private property shall not be taken for public use without just compensation"[75] obviously safeguards property rights.

In addition to these, there is also another provision concerned with property rights, which states: "No law impairing the obligation of contracts shall be passed."[76]

It must be clarified that when two persons act to enter into an agreement, the right to determine for themselves the terms and conditions of such agreement is what is referred to as "freedom of contract" which is a substantive part of the "liberty" that a person enjoys and of which he may not be deprived without due process.[77] However, the scope of the freedom of contract has been very much diminished. This is clearly the case, for instance, in contracts that determine the relations between employers and employees. Thus, in 1924, in *People v. Pomar,*[78] the Supreme Court readily annulled one of our early pieces of enlightened social legislation which sought to provide maternity leave for women workers[79] on the ground that the laws deprived the employer of his right to contract as regards the terms and conditions of employment of his workers. This pronouncement has since been overruled. Expressing the present principle, the Civil Code of the Philippines provides: "The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects."[80]

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[73] CONST. art. III, sec. 1(1).
[74] Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919).
[75] CONST. art. III, sec. 1(2).
[76] *Ibid.*, art. III, sec. 1(10).
[77] See note 71.
[78] 46 Phil. 4440 (1927).
[80] Rep. Act No. 386 (1950), art. 1700.
[79] Act No. 3071 (1923).

While there is some relationship between the freedom of contract and the obligation of contracts they are quite distinct from each other for the latter refers to the undertaking that persons entering into a contract bind themselves to do in accordance with the terms and conditions they have earlier agreed upon.[81]

Two important things must be emphasized in seeking to understand the non-impairment clause. Firstly, it refers only to contracts concerning property or property rights.[82] Thus, a marriage contract is not covered by the constitutional provision.[83] Secondly, an obligation is said to be impaired when a contractual right is extinguished or diminished and likewise when the means for enforcing such contractual right is taken away.[84]

The issues dealing with the non-impairment clause involved in the case of *Philippine American Life Insurance Co. v. Auditor General*[85] arise from these set of circumstances:

The Philippine-American Life Insurance Co. (Philamlife) entered into a reinsurance contract with the American International Reinsurance Co. (Airco) of Bermuda. Under this contract, life insurance policies underwritten by the Philamlife were to be reinsured with Airco.

This reinsurance contract was entered into on January 1, 1950. Pursuant to this contract, Philamlife made foreign exchange remittances to Airco in payment of the reinsurance premiums which the former had to pay to the latter.

On July 16, 1959, the Congress of the Philippines enacted into law Republic Act No. 2609 better known as the Margin Law which subjects sales of foreign exchange by the Central Bank and its authorized agent banks to a uniform margin of not more than 40 per cent over the banks' selling rates.[86] This law also empowers the Monetary Board to fix the margin "at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve."[87] Pursuant to this provision, the Monetary Board pegged the margin fee at 25 per cent.[88]

Applying this law, the foreign exchange remittances made by Philamlife to Airco pursuant to their reinsurance contract after the enactment

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[81] MALCOLM, CONSTITUTIONAL LAW 526 (3rd ed., 1936).
[82] Dartmouth College v. Woodward, 4 Wheat. 518, 4 L.Ed. 629 (1819).
[83] Maynard v. Hill, 125 U.S. 190, 8 S.Ct. 723, 31 L.Ed. 654 (1888).
[84] Government v. Visayan Surety & Ins. Corp., 66 Phil. 326 (1938).
[85] G.R. No. 19255, January 18, 1968.
[86] Rep. Act No. 2609 (1959), sec. 1.
[87] *Ibid.*
[88] Central Bank Circular No. 95, July 17, 1959.

of Republic Act No. 2609 were subjected to the 25 per cent margin fee. This fee had already amounted to ₱268,747.48 at the time that Philamlife questioned it and sought the refund of the amounts paid. The Monetary Board, adopting the opinion of its legal counsel, was willing to refund the Philamlife, but the Auditor General objected. Hence, this case.

The first question that had to be decided was: Were the foreign exchange remittances made by the Philamlife to Airco pursuant to their reinsurance contract exempted from the payment of the margin fee on the ground that they belonged to one of those classes of remittances specifically exempted by the law, *i.e.* because they were merely liquidation "of contractual obligations calling for the payment of foreign exchange issued, approved and outstanding" as of the date the Republic Act No. 2609 took effect.

In answering this question, our Supreme Court did not agree with the legal counsel of the Monetary Board who opined that the foreign exchange remittances of Philamlife to Airco were exempted because they were "only made in the implementation of a mother contract, a continuing contract" which was entered into before Republic Act No. 2609 was passed.

Rejecting the above interpretation, our Supreme Court observed that all that the reinsurance treaty provided was that Philamlife "agrees to reinsure" with Airco. Thus, without reinsurance no premium was due. The reinsurance treaty, therefore, did not obligate the Philamlife to remit to Airco a fixed, certain and obligatory sum by way of reinsurance premiums. It did not *per se* give rise to a contractual obligation calling for the payment of foreign exchange "issued, approved and outstanding" as of the date Republic Act No. 2609 was enacted into law.

Following up this observation, our Supreme Court could have summarily dismissed the subsequent contention of Philamlife that when it was compelled to pay the margin fee, there was an impairment of obligation of contract because it was being forced to comply with its obligation with Airco subsequent to the enactment of Republic Act No. 2609 under a considerably more onerous condition, since it must now pay reinsurance premiums—which had to be in foreign exchange—only with the payment of 25 per cent margin fee. To this argument, the Supreme Court could just have retorted: But where is the obligation of contract that was impaired? Our Supreme Court, however, chose to utilize the *Philamlife* case to expound at some length its views on the non-impairment clause.

Thus, in the *Philamlife* case, the Court reiterated the view that for a law to impair an obligation of contract, it must be a law, passed after

a contract has been entered into and made to apply retroactively to such contract; and that a law passed before a contract was entered into cannot be said to impair such contract for all laws pertinent to a contract are part of the unwritten conditions of such contract.[89] The reiteration of these principles is implied by the citation by our Supreme Court of the Central Bank Act[90] being enacted on June 15, 1948 or before the reinsurance treaty was entered into by Philamlife and Airco in 1950. The Central Bank Act categorically stated the policy that reasonable restrictions may be imposed by the State through the Central Bank on all foreign exchange transactions "in order to protect the international reserve of the Central Bank during an exchange crisis."[91] Observing that Republic Act No. 2609 was "nothing more than a supplement to the Central Bank Act", the former law could thus be considered a part of the body of the laws already in effect at the time the reinsurance treaty was entered into and could not therefore impair any contractual obligation arising under the treaty.

But even more significant, the Supreme Court also indicated in the Philamlife case its readiness to affirm the constitutionality of Republic Act No. 2609 even if it was a law being given a *retroactive* effect on a *definite* contractual obligation. In coming to this conclusion, the Supreme Court weighed the right of an individual to remit foreign exchange without restrictions against the power of the State to impose such restrictions to achieve "domestic and international stability of our currency"[92] and categorically gave greater importance to the latter.

Another 1968 case that also involved the non-impairment clause was *Tirona v. City Treasurer of Manila.*[93]

In here, the City of Manila refused to accept a backpay certificate in payment of real estate taxes due to it. The payment was being made pursuant to Republic Act No. 304, as amended by Republic Act Nos. 500 and 897. Rep. Act No. 304 is better known as the Backpay Law.

The City of Manila believed that this law allowed the use of the backpay certificates only for the payment of "obligations subsisting at the time of the approval of the (Backpay Law) for which the applicant may directly be liable to the Government or to any of its branches or instrumentalities."

The Supreme Court dismissed this contention citing an earlier ruling it promulgated[94] that in turn reversed a still earlier decision.[95] The

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[89] 1 COOLEY, CONSTITUTIONAL LIMITATIONS 582 (8th Ed., 1927).
[90] Rep. Act No. 265 (1948).
[91] *Ibid.*, sec. 74.
[92] *Ibid.*, sec. 2.
[93] G.R. No. 24607, January 29, 1968.
[94] Tirona v. Cudiamat, G.R. No. 21235, May 31, 1965.
[95] De Borja v. Gella, G.R. No. 18330, July 31, 1963.

Court stated that the Backpay Law, as amended, allowed the payment, through backpay certificates, not only of those obligations of a holder subsisting at the time of the approval of the law but also of "his taxes", and real estate taxes are definitely part of this latter category of obligations.

But in the *Tirona* case, the City of Manila brought out the question: If the City of Manila were compelled to accept backpay certificates for the payment of taxes due to it, would this not constitute an unconstitutional impairment of the obligation of contracts? Implied in the question were these premises: That taxes due to the City of Manila are in the nature of contractual obligations and that they are impaired if instead of cash, these taxes are paid in backpay certificates.

The Supreme Court, in the *Tirona* case, seemed to agree that there would indeed be impairment if instead of cash, the Backpay Law itself provided that backpay certificates might be given to settle obligations "to any citizen of the Philippines or to any association or corporation organized under the laws of the Philippines," where they are not willing to accept the same for such settlement.[96]

As regards the City of Manila, however, our Supreme Court pointedly remarked that it could not be classified among those who may *not* be compelled to receive the backpay certificates for it could not be included in the terms "any citizen of the Philippines" or "any association or corporation organized or corporation under the laws of the Philippines". Instead, the City of Manila as a municipal corporation is under the full control of the Congress which could even withdraw from the City of Manila its power to tax and definitely also compel it to remit the taxes that are already due and payable.

Tenancy relations and police power

Four cases decided in 1968 by our Supreme Court provided it the opportunity to reiterate a ruling it first stated in 1964 that section 14 of Republic Act No. 1199 was a valid exercise of police power. These four casse are *Genuino v. Court of Agrarian Relations*,[97] *Del Rosario v. Del los Santos*,[98] *De la Paz v. Court of Agrarian Relations*,[99] and *Marcelo v. Matias*.[100]

Section 14 of Republic Act No. 1199 vests in a tenant the power to change the tenancy contract he may have entered into from one of

[96] Rep. Act No. 304 (1948), as amended, sec. 8.
[97] G.R. No. 25035, February 26, 1968.
[98] G.R. No. 20589, March 21, 1968.
[99] G.R. No. 21488, October 14, 1968.
[100] G.R. No. 22252, October 29, 1968.

share tenancy to leasehold tenancy and vice versa and from one of crop sharing arrangement to another of the share tenancy.

This provision was assailed as unconstitutional on the ground that it deprived a landowner of his liberty to contract without due process and that it impaired obligation of contracts.

There is no doubt that while the provision at issue does not deprive a tenant of his liberty to contract—precisely, he is allowed to change in a certain manner unilaterally his tenancy contract with his landlord—the same provision indeed deprives the landlord of his liberty to contract because he is compelled to abide by a decision which is not his as regards his relations with his tenants.

Also, as regards the landlord, there is likewise an impairment of obligation of contract because whatever undertaking a tenant may have assumed under a tenancy contract, the same could be changed by the tenant, *e.g.* from share tenancy to leasehold system or vice versa or from one crop sharing to another under the share tenancy.

In all the above cases, however, our Supreme Court uniformly declares that the landlord is not being deprived of his liberty to contract without due process nor is there an unconstitutional impairment of the obligation of contract.

The Court easily reached these conclusions because it considers section 14 of Republic Act No. 1199 as an urgently needed exercise of police power, considering the age-old problem afflicting tenancy in the country. The Court also expressed the view that the enactment of the statue is directly authorized by the protection to labor and social justice provisions of the Constitution.[101]

In related case, *Tinio v. Mina*,[102] the Court had still another opportunity to resolve a conflict that arose in the field of tenancy relations even as these relations are subjected to regulations aimed at ameliorating the conditions of tenants.

In this case, section 168 of the Agricultural Land Reform Code[103] was assailed as unconstitutional. This section has this effect: Under Republic Act No. 1199, a tenant may be ejected from the land he is cultivating if among other causes, a landlord intends to cultivate the land himself through the employment of farm machinery and implements. Under section 168 of the Agricutural Land Reform Code, a landlord may no longer exercise this particular right unless, having applied for mechanization, "the corresponding certifications for suitability for mech-

[101] CONST. art. XIV, sec. 6 and art. II, sec. 5.
[102] G.R. No. 29488, December 24, 1968.
[103] Rep. Act No. 3844 (1963).

anization and for availability of resettlement by the Agricultural Tenancy Commission and the National Resettlement and Rehabilitation Administration, respectively, have been issued and properly served on the tenants at least two months prior to the approval of the (Agricultural Land Reform) Code."

It was alleged that section 168 of the Agricultural Land Reform Code was unconstitutional because under it, a landlord could no longer exercise a right granted to him by a previous law, *i.e.* a right to eject a tenant, unless he fulfilled a newly imposed requirement.

Giving a retroactive effect to section 168 of the Agricultural Land Reform Code was found by our Supreme Court to be quite proper. Firstly, it viewed section 168 as involving only a procedural right and as such, our Supreme Court said: "There is no constitutional objection to retroactive statues where they relate to remedies or procedure."[104]

Secondly, our Supreme Court also said that if section 168 adversely affect a substantive right, it would still be constitutional because it meets the requirement of due process. It did not completely do away with the right of a landlord to eject a tenant should the former intend to personally cultivate his land through mechanization. He still has this right if he complied with certain requirements two months before the approval of the Agricultural Land Reform Code. This proviso, according to the Court, reveals "on its face the concern shown by the legislative body for pending action for mechanization based on the previous Agricultural Tenancy Act."

Procedural due process

The concern of our Supreme Court for the observance of procedural due process is revealed in many cases decided in 1968 involving certain administrative and quasi-judicial agencies.

Thus, in *Perez v. Subido,*[105] *Gracilla v. Court of Industrial Relations,*[106] *Santiago v. Alikpala,*[107] *Board of Immigration Commissioners v. Callano*[108] and *Lemi v. Valencia.*[109] The Supreme Court reversed decisions promulgated respectively by the Civil Service Commssion, the Court of Industrial Relations, a general court martial, the Board of Immigration Commissioners and Commissioner of Immigration and the Radio Control Office for having denied the persons aggrieved by these decisions procedural due process.

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[104] Gregorio v. Court of Appeals, G.R. No. 22802, November 24, 1968.
[105] G.R. No. 26791, June 22, 1968.
[106] G.R. No. 24489, September 28, 1968.
[107] G.R. No. 25133, September 28, 1968.
[108] G.R. No. 24530, October 31, 1968.
[109] G.R. No. 20768, November 29, 1968.

In *Perez v. Subido*, the Commissioner of Civil Service invalidated *ex parte* the examination papers of a patrolman of the Manila Police Department, cancelled his civil service eligibility derived from the examination and terminated his services. The patrolman had earlier been extended a permanent appointment. The basis of the actions of the Commissioner of Civil Service was the failure of the patrolman to indicate in the application he filed at the time he took the patrolman examinations that instead of just two, he had been actually charged in four criminal cases which were all dismissed, however, before he took the examinations.

In this case, the Supreme Court clarified that it is "when an applicant for examination intentionally makes a false statement of any material fact in his application"... (that) the Commissioner (of Civil Service) shall invalidate his examination and such offense shall be ground for his removal from the service."[110]

The Court observed that since there was no hearing conducted by the Commissioner of Civil Service, it could not have specifically found the patrolman as having intentionally made the false statement he actually made. The Court, therefore, ruled that the patrolman was illegally dismissed.

In *Gracilla v. Court of Industrial Relations*,[111] our Supreme Court set aside a decision of the Court of Industrial Relations and directed the latter to consider the case anew and specifically "to inquire into and pass upon the monetary claim" of a certain security guard. It appeared that while the Court of Industrial Relations considered the issue as to whether the security guard was illegally dismissed or not, it completely ignored his monetary claim which was not dependent on whether he was illegally dismissed or not. The failure of the Court below to consider the "monetary claims which were timely raised and insisted upon at all stages of the proceedings before the Court of Industrial Relations amounted," according to our Supreme Court, "to a disregard of such a cardinal right embraced in due process, namely, that the issues raised by a party should not be ignored or left undecided."

In *Santiago v. Alikpala*, a sergeant of the Philippine Army was charged with having unlawfully disposed of ten carbines belonging to the Government on December 18, 1960. On December 17, 1962, for the purpose of avoiding the prescription of the alleged offense which has a two-year prescriptive period, a general court martial that was constituted to try another officer, hastily arraigned the sergeant over

[110] Civil Service Rules, rule II, sec. 5.
[111] *Supra*, note 106.

the objection of his counsel that the general court martial seeking to try the sergeant was without jurisdiction to do so, having no special order to try him. It was also alleged that the sergeant was not furnished a copy of the charge prior to his arraignment as required in the manual for court martial except on the very day thereof, and there was no written summons or *subpoena* served on the sergeant or counsel.

In spite of the protest of the accused sergeant made before the general court martial and also before the chief of Constabulary, the general court martial proceeded with the trial.

In view of these, the sergeant sought to restrain the general court martial from further proceeding with the trial by filing with the Court of First Instance a petition for certiorari and prohibition. The Court of First Instance dismissed the petition because in its opinion the case already became moot and academic for meanwhile, the general court martial had convicted the accused sergeant.

Our Supreme Court reversed the decision of the lower court, the former declared that the general court martial had no jurisdiction to try the sergeant because it was not properly convened to specifically try him. It had no special order designating it for this purpose. This was a fatal defect because thereby the proceedings before the general court martial lacked "the first requirement of procedural due process, namely the existence of the Court or Tribunal clothed with judicial or quasi judicial power to hear and determine the matter before it."[112]

In *Board of Immigration Commissioners v. Callano*,[113] the Supreme Court prevented the repatriation of four children of a Filipino mother and a Chinese father who, however, was not married to their mother. The children were being repatriated on the basis of a decision of the Board of Immigration Commissioners and a warrant of exclusion issued by the Commissioners of Immigration, which orders, it was argued, became final because there had been no appeal from either to the Secretary of Justice.

The Supreme Court dismissed this argument on a finding that both orders were issued without previous notice and hearing and were therefore in violation of due process. The Court went on the say that the same would hold true even if the four children were aliens which the Court declared they were not.

In *Lemi v. Valencia*,[114] our Supreme Court strongly condemned the action of officials of the Department of Public Works and Commu-

[112] Banco Español-Filipino v. Palanca, 37 Phil. 921 (1918).
[113] *Supra*, note 108.
[114] *Supra*, note 109.

nication and the Radio Control Office and some agents of the Presidential Anti-Graft Committee who searched a radio station and seized and carried away a radio transmitter on the ground of violation of the Radio Control Law.[115]

The Court took this action after having found that certain rules and regulations dealing with the operation of radio stations in the country, earlier only laxly enforced, were afterwards strictly enforced against the complaining radio station which had been giving its facilities to a certain commentator attacking the Radio Control Office. It was not the enforcement of the rules and regulations that our Supreme Court frowned upon; rather, it was the manner of their implementation that led to the seizure of the radio transmitter of the radio station without any hearing whatsoever.

The above cases illustrate how the Supreme Court reversed decisions of certain administrative and quasi-judicial bodies because they were promulgated in disregard of procedural due process. On the other hand, the Court also had occasions in *Batangas Laguna Tayabas Bus Co. v. Cadiao*[116] and in *Asaali v. Commissioner of Customs*[117] to uphold questioned acts, this time of the Public Service Commission and the Bureau of Customs because they complied with the requirements of procedural due process.

In *Batangas Laguna Tayabas Bus Co. v. Cadiao*, an order of the Public Service Commission that would have been fatally defective on the ground that it was issued *ex parte* and therefore, would have been violative of due process was nevertheless upheld as valid because the aggrieved party was later on given the opportunity to be heard on a motion for reconsideration.

In this case, the court reiterated an old ruling: "What the law prohibits is not the absence of previous notice, but the absolute absence thereof and the lack of opportunity to be heard."[118]

In *Asaali v. Commissioner of Customs*,[119] five sailing vessels were intercepted while they were heading towards Sulu. They were found to contain cases of cigarettes which were not covered by import licenses required by the Import Control Law[120] then in force. They were seized and their cargo declared forfeited.

To this contention, our Supreme Court retorted: "How could there be a denial of due process? There was nothing arbitrary about the

[115] Act No. 3846 (1932), as amended.
[116] G.R. No. 28725, March 12, 1968.
[117] G.R. No. 24170, December 16, 1968.
[118] De Borja v. Tan, 93 Phil. 167 (1953).
[119] G.R. No. 24170, December 16, 1968.
[120] Rep. Act No. 426 (1950).

manner in which such seizure and forfeiture were affected. The right to a hearing (of the owners of the vessels and cargoes) was respected. It would be an affront to reason if under the above circumstances, they could be allowed to raise in all seriousness a due process question. Such a constitutional guaranty, basic and fundamental, certainly should not be allowed to lend itself as an instrument for escaping a liability arising from one's own nefarious acts."

Prohibition against self-incrimination

As a priceless personal safeguard against government abuses especially of its law enforcement arm whose zeal against wrong doings and wrongdoers may sometimes be so righteously intense that they are quite willing to trample on whatever rights these wrongdoers may have along with those of the innocent, our Constitution provides: "No person shall be compelled to be a witness against himself."[121]

The Supreme Court had the opportunity in 1968 to further make of this constitutional guarantee the protective rampart for personal liberty that it has been intended to be. The Court did so in *Chavez v. Court of Appeals*.[122] In this case, a person was charged with a crime. In the trial, over the protests of the counsel of the accused and the accused himself, the latter was made to testify. The accused was later on convicted, in a large part, on the basis of his testimony. An attempt to appeal the case to the Court of Appeals was dismissed because of a failure of the counsel of the accused to file his brief in time. On behalf of the convicted person, who was in jail, a petition for a writ of *habeas corpus* was filed. The petition was granted on the finding of our Supreme Court that there had been a violation of the constitutional rights of the accused, *i.e.* he was compelled to testify against himself. The violation so tainted the criminal proceedings that the conviction was set aside.

In this case, the Court stressed that the right against self-incrimination includes the prohibition against forcing an accused in a criminal case to testify unless he is first discharged. Of course, the accused may testify should he voluntarily decide to do so.

But in the *Chavez* case, the court noted that the accused, through counsel and personally had expressed timely objections to being presented as a witness. In spite of these objections, however, the trial court ruled that the accused could be presented as a witness of the prosecution, saying: This action of the trial court amounted to wielded authority. By the words, accused was enveloped by a coercive force, they deprived

[121] CONST. art. III, sec. 1(18).
[122] G.R. No. 29169, August 19, 1968.

him of the will to resist, they foreclosed choice; the realization of human nature tell us that as he took his oath to tell the truth, the whole truth and nothing but the truth, no genuine consent underlay submission to take the witness stand."

The Supreme Court also held: "It matters not that, if all efforts to stand of the (accused's) taking the stand because fruitless, no objections to quest was propounded to him were made. Here involved is not a mere question of self-incrimination. It is a defendant's constitutional immunity from being called to testify against himself. And the objections made at the beginning is a continuing one."

LAW ON LOCAL GOVERNMENTS

Power of Congress

Local governments, *i.e.* provinces, cities, municipalities, barrios, have always been a part of our scheme of government. In the last ten years, or so, however, acting on what it felt to be a national consensus, Congress has been enacting laws designed to make our local governments more effective. The major examples of such laws are the Local Autonomy Act passed in 1959,[123] the Barrio Charter also passed in 1959[124] and later on amended in 1963[125] and the Decentralization Act of 1967.[126]

The powers that local governments may exercise, either as instrumentalities of the national government or as institutions concerned with the particular problems of our different communities, are determined by the Congress. To describe local governments as mere creatures of Congress is to describe accurately their status under our present political traditions.[127] This fact underscores the almost absolute power that the Congress has over local governments. Of course, once brought into being, a local government, in its so-called corporate capacity has certain rights as a "person" guaranteed by our Constitution.[128] Congress may not also expand the power that the President of the Philippines has over local governments,[129] which is, in the words of our Constitution of "general supervision . . . as may be provided by law".[130]

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[123] Rep. Act No. 2264 (1959).
[124] Rep. Act No. 2370 (1959).
[125] Rep. Act No. 3590 (1963).
[126] Rep. Act No. 5185 (1967).
[127] City of Manila v. Manila Electric Railroad & Light Co., 36 Phil. 89 (1917).
[128] *e.g.* City of Cebu v. National Waterworks and Sewerage Authority (NAWASA), G.R. No. 12892, April 30, 1960.
[129] Mondano v. Silvosa, 97 Phil. 143 (1955).
[130] CONST. art. VII, sec. 10(1).

Role of our Supreme Court

But while it is indeed Congress that determines what our local governments could do to help govern the nation and advance the common good, this determination is really just a formality.

Congress merely defines the maximum limits of the potentials of our local governments. Their actual effectiveness is still directly related to the extent and manner with which our local governments exercise the powers given to them by Congress. Stating this does not mean an endorsement of all acts of political leadership in our local governments. For some of them must sometimes be challenged: Local governments cannot exercise powers they do not have. They must justify every power they exercise with a legislative grant. And then again, it may not be enough that there is a legislative grant of power. It may be necessary sometimes to show that such grant conforms with our Constitution.

It is the vital function of our Supreme Court to resolve issues that arise when the exercise of power by our local governments is questioned by any one affected by it. The resolution of these conflicts by the Supreme Court undoubtedly contributes to the definition of the role of our local governments in the nation.

National policy on local governments

Efforts to increase the effectiveness of our local governments have been in two directions: Their power to govern has been increased. Likewise, their power to exercise the power to govern independently of the National Government has been increased.

The increased power to govern now vested in local governments is most evident in the increase in their power of taxation.

The increased independence that local governments now enjoy in the exercise of their power to govern is formally acknowledged in the names of the laws that gave them such increased independence, *i.e.* Local Autonomy Act, Decentralization Law and Barrio Charter.

To what extent has the Supreme Court expressed sympathy with these moves to strengthen our local governments?

There are a number of cases involving local governments decided in 1968. It is true that even as the Court limits itself to interpreting the laws, it cannot express its own feelings as regards the seemingly national policy towards stronger and more independent local governments. It can only make judgments as to whether or not there is a valid legislative basis for a challenged act of a local government; or

granting that there is such basis, whether or not the act is in conformity with the mandates of the Constitution.

Answering the above questions, however, the Court could reveal its bias for or against the grant of greater responsibilities for local governments.

Categories of cases involving local governments

For purposes of analysis, the cases involving local governments decided by the Supreme Court can be placed into three categories:

There are those cases that question the particular exercise by a local government of its police power.

There are those cases that question the particular exercise by a local government of its taxing power.

Then, there are those cases involving the selection, appointment, discipline or dismissal of local officials.

Police powers and local governments

There is a wide variety of powers that local governments could exercise. This fact is well illustrated in a number of cases decided by the Supreme Court in 1968.

Operation of electric plant

One such power is the operation of an electric plant by local governments without the necessity of obtaining certificates of public convenience and necessity from the Public Service Commission.

This power was questioned in *Surigao Electric Co. v. Municipality of Surigao*[131] on the ground that while there was indeed a law[132] that allows this power to "government entities or government owned or controlled corporations," a municipality, in this case, the municipality of Surigao, was neither a "government entity" nor a "government owned or controlled corporations".

The Supreme Court agreed that a municipality is not a "government owned or controlled corporation" but it said that it is definitely a government entity. While admitting that there would have been no ambiguity at all had the term "municipal corporation" had been employed. The Court had no difficulty in considering a municipality as a government entity by referring to the "dual character of a municipal

[131] G.R. No. 22766, August 30, 1968.
[132] Rep. Act No. 2677 (1960).

corporation, one as governmental, being a branch of the general administration of the state and the other as quasi-private and corporate"[133] and how, citing an authority on municipal corporations, "legislative and governmental powers" are "conferred upon a municipality, the better to enable it to aid a state in properly governing that portion of its people residing within its municipality."[134] It could be gleaned from the above citations of our Supreme Court that because municipal corporations function as a part of the governmental machinery of the state, a municipal corporation is clearly a government entity.

In further support of its view that a municipal corporation may operate an electric plant without obtaining a certificate of public convenience and necessity from the Public Service Commission, the Court also pointed out how the law giving this power was enacted shortly after the passage of the Local Autonomy Act. The Court said: "It would be to impute to Congress a desire not to extend further but to cut short what the year before it considered a laudatory scheme to enlarge the scope of municipal power, if the law giving government entities or government owned or controlled corporations the power to operate electric plant without the necessity of obtaining certificate of public convenience and necessity from the Public Service Commission were to be so restrictively construed."

Patrimonial property, eminent domain

Two different powers of local governments are recognized, if only incidentally in *Province of Zamboanga del Norte v. City of Zamboanga*[135] and *Municipality (now city) of Legaspi v. A. L. Ammen Transportation Co., Inc.*[136]

In the former case, the province of Zamboanga had certain lots and buildings located in the City of Zamboanga which, according to the law creating the City of Zamboanga,[137] were to be acquired and paid for by the City at a price to be fixed by the Auditor General when these lots and buildings were abandoned upon the transfer of the capital of the province of Zamboanga from the city of Zamboanga to another place.

Pursuant to the above law, the lots and buildings were valued at ₱1,294,244.00.

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[133] Mendoza v. de Leon, 33 Phil. 508 (1916).

[134] 1 DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 68 (5th ed., 1911).

[135] G.R. No. 24440, March 28, 1968.

[136] G.R. No. 22377, November 29, 1968.

[137] Com. Act No. 39 (1936), sec. 50.

Sometime afterwards, the province of Zamboanga was divided into two: Zamboanga del Norte and Zamboanga del Sur.[138] Pursuant to the law creating these provinces, the assets and obligations of the province of Zamboanga were apportioned as follows, 54.39 per cent for Zamboanga del Norte and 45.61 per cent for Zamboanga del Sur. Zamboanga del Norte therefore became entitled to 54.39 per cent of ₱1,294,244.00 the total value of the lots and buildings of the defunct province of Zamboanga in the City of Zamboanga or ₱704,220.05, payable by the City of Zamboanga.

The City of Zamboanga commenced paying that amount through deductions of its regular internal revenue allotment from the National Government.

These deductions were later on stopped, however, and a refund of a portion of the deductions was made when a law was passed providing that all buildings, properties and assets belonging to the former province of Zamboanga and located within the City of Zamboanga were to be transferred, free of charge, in favor of the said city of Zamboanga.[139]

The constitutionality of this last law was assailed on the ground that it deprived Zamboanga del Norte of property without due process and just compensation.

Resolving the above issue, the Supreme Court recognized the fact that Zamboanga del Norte was co-owner pro-indiviso of the lots and buildings being transferred free of charge to the city of Zamboanga. But the Court inquired into the nature of the ownership of Zamboanga del Norte over these properties. Zamboanga del Norte held some properties in its public and governmental capacity. These properties are public in character and Congress has absolute control over them. They could therefore be transferred free of charge to the City of Zamboanga by legislative enactment. Some of the properties, however, were owned by Zamboanga del Norte in its private or proprietary capacity. Over these properties, Congress has no absolute control. Zamboanga del Norte cannot be deprived of the latter class of properties without due process and the payment of just compensation.

How are the lots and buildings of the defunct province of Zamboanga located in the City of Zamboanga to be classified?

Our Supreme Court did not choose to utilize the classification embodied in Articles 423 and 424 of the Civil Code because it found

[138] Rep. Act No. 711 (1952).
[139] Rep. Act No. 3039 (1961).

these too restrictive of what should be considered public property. And in any case, the Court observed that the above provision of the Civil Code was "without prejudice to the provisions of special law".

Our Supreme Court utilized instead what it called the principles constituting the law of municipal corporations and after citing a number of cases[140] held that the lots used as capitol site, school sites and grounds, hospital and sanitarium sites and high school playground sites were held by the defunct province of Zamboanga in its governmental capacity and therefore subject to the absolute control of Congress. Hence, they could be properly transferred by Congress free of charge to the City of Zamboanga.

There were a number of issues in *Municipality of Legaspi v. A. L. Ammen Transportation Co., Inc.* involving local governments. However, the important fact in this case refers to the City of Legaspi not wanting to surrender possession of a certain property which had been adjudged to be the property of A. L. Ammen Transportation Co., Inc.

The City of Legaspi did not want to do so because the property in question is a public road making up one of the vital arteries of commerce and trade in the City.

Faced with this problem the Court affirmed decision of the Court of Appeals giving the City of Legaspi a year within which to expropriate the portion occupied by the road if it does not want to return the portion in question to its owner.

Allocation of stalls

The power to establish public markets and regulate their use, *e.g.* the allocation of the stalls, may not appear significant but the exercise of this power may generate many conflicts. This fact is exemplified in *Navarro v. Lardizabal*[141] which case affirmed the power of the City of Baguio to enact an ordinance regulating the award of stalls in its public market and in accordance with which ordinance, the right of a person to occupy the stalls may decisively be determined.

House rentals, motorcabs

In two cases decided by the Supreme Court in 1968, these questions relating to the powers of local governments were asked: Can the City of Manila enact an ordinance imposing a ceiling on house rentals? Can the City of Tacloban enact an ordinance prescribing rules and regulations for the operation and maintenance of motorcabs?

[140] *e.g.* Hinumangan v. Director of Lands, 24 Phil. 124 (1913).
[141] G.R. No. 25361, September 28, 1968.

The first question was answered in the negative in *Homeowners Association of the Philippines, Inc. v. Municipal Board of the City of Manila*[142] if the ordinance imposing a ceiling on house rentals was not enacted during a state of emergency and limited in its duration for such period of emergency.

The second question, however, was not answered by our Supreme Court because *Gray v. Kiungco*[143] was elevated to the Court only on the actual issue of whether a Court of First Instance has jurisdiction over a case contesting the power of a city to enact an ordinance prescribing rules and regulations for the operation of motorcycles. The Court answered the question affirmatively.

Taxing power of local government

As stated earlier, the increase in the power to govern of local governments is most evident in the increase in its power to tax, a power that local governments seem never reluctant to exercise to the fullest possible extent.

A majority of the cases decided by our Supreme Court in 1968 involving local governments dealt with their exercise of the power to tax.

In *Ormoc Sugarcane Planters Association Inc. v. Municipal Board of Ormoc,*[144] Ormoc City passed in 1964 an ordinance providing: "There shall be paid . . . on any and all production of centrifugal sugar milled at the Ormoc Sugar Co., Inc. in Ormoc City a municipal tax equivalent to one per cent per export sale to the United States of America and other foreign countries."

Also affecting a sugar central (and a sugar refinery) was the case of *Victorias Milling Co., Inc. v. Municipality of Victorias.*[145] In this case, the Municipality of Victorias, Negros Occidental passed in 1956 an ordinance, amending an earlier ordinance, providing, "Any person, corporation or other forms of companies, operating sugar central or engaged in the manufacture of centrifugal sugar shall be required to pay . . . an annual municipal license tax (graduated according to its production capacity).

The same ordinance also provides: "Any person, corporation or other forms of companies shall be required to pay an annual municipal license tax for the operation of a sugar refinery mill . . . (graduated according to its production capacity)."

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[142] G.R. No. 23979, August 30, 1968.
[143] G.R. No. 25222, September 27, 1968.
[144] G.R. No. 23793, February 23, 1968.
[145] G.R. No. 21183, September 27, 1968.

The Ormoc ordinance was invalidated by the Supreme Court. It was found to infringe the equal protection clause of our Constitution, "since it refers exclusively to the Ormoc Sugar Co". Also, shortly after the ordinance was passed, the Local Autonomy Act was amended by Republic Act No. 4497 which among others provided that no city, municipality or municipal district may levy or impose . . . "taxes, fees or levies of any kind, which in effect impose a burden on exports of Philippine finished, manufactured and processed products or products of Philippine cottage industries."[146] The Supreme Court, noting that the Ormoc Ordinance imposes an export tax declared that Republic Act No. 4497 in effect repealed the Ormoc ordinance.

Unlike the Ormoc ordinance which was invalidated, the Victorias ordinance was sustained by our Supreme Court.

The latter ordinance was assailed on a number of grounds. It was alleged that the ordinance was a regulatory measure and thus, it imposed an excessive license tax relative to the cost of police inspection, supervision or regulation that the ordinance might entail.

Our Supreme Court found this contention groundless. Citing the introductory portion of the ordinance which clearly stated its purpose to raise revenues, the Court said that the ordinance was a tax measure the imposition of which was expressly authorized by section 1 of Commonwealth Act No. 472.

It was likewise argued that Victorias had no power to enact the ordinance in question because the national government had preempted it from entering the field of taxation of sugar central and sugar refineries. In support of this view, it is pointed out that section 189 of the National Internal Revenue Code[147] subjects proprietors or operators of sugar centrals or sugar refineries to percentage tax.

Dismissing this argument, the Supreme Court stated that the Victorias ordinance does not deal with percentage tax but rather with "a tax specifically for operators of sugar centrals and sugar refineries. The rates imposed are based on the maximum annual output capacity which is not a percentage because it is not a share nor is it a tax based on the amount of the proceeds realized out of the sale of sugar, centrifugal or refined.[148]

In any case, our Supreme Court stated that the fact that a municipality taxes the same field as that taxed by the national government does not invalidate the municipal tax measures. For as the Court said,

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[146] Rep. Act No. 2264 (1959), sec. 2(b), as amended by Rep. Act No. 4497 (1965).

[147] *Supra*, note 145.

[148] Shell Co. of the P. I. Ltd. v. Vaño, 94 Phil. 389 (1954).

Congress could allow municipal corporations to cover fields of taxation it already occupies in which case the doctrine of pre-exemption will not apply.

The doctrine of pre-exemption, however, applies to percentage taxes by virtue of a specific prohibition against the levy of this kind of taxes by municipalities in section 1 of Commonwealth Act No. 472.

The Victorias ordinance was also attacked as "excessive". The Supreme Court conceded that a tax measure may be invalidated on the ground that it is "so excessive as to be prohibitive, arbitrary, unreasonable, oppressive or confiscatory."

The Victorias ordinance was found by the Court to be reasonable. In reaching this conclusion, it ignored the argument that the tax exceeded. "The cost of regulation and that the municipality has adequate funds . . . as embodied by the municipality's cash surplus."

The reference to "cost of regulation" was summarily dismissed because the Court stressed: The Victorias ordinance was not a regulatory measure but a tax measure. In the latter, the cost of regulation is an irrelevant factor.

As to the existence of a cash surplus, our Supreme Court said: "Discretion to determine the amount of revenue required for the needs of the municipality is lodged with the municipality authorities . . . judicial intervention steps in only when there is a flagrant, oppressive and excessive abuse of power by said municipal authorities."[149]

The Court also found the Victorias ordinance reasonable by citing how the price of sugar has gone up from ₱6.00 per picul in 1940 when a tax of one centavo per picul was considered reasonable to ₱12.00 to ₱15.00 per picul in 1956 when the tax was from one centavo to two centavos.

The Court likewise cited the high rates of profits of the complaining sugar central and sugar refinery, well beyond ₱7,000,000 in one year.

But the Victorias ordinance was also assailed as discriminatory because it actually affected Victorias Milling Co. which is the only operator of a sugar central and a sugar refinery in Victorias.

To this attack, the Court said that the questioned ordinance "does not single out Victorias (Milling Co.) as the only object of the ordinance. Said ordinance is made to apply to any sugar central or sugar refinery which may happen to operate in the Municipality."

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[149] 38 AM. JUR. *Municipal Corporations* § 352 (1941) citing Desser v. City of Wichita, 96 Kan. 820, 153 P. 1194, 1916 D L.R.A. 246 (1915).

The Court points out how in an earlier case, the fact that a sugar central was actually named did not even invalidate the ordinance because there were the added phrase "or by any other sugar mill."[150]

Another objection raised against the Victorias ordinance was the allegation that it constitutes double taxation.

Our Supreme Court in the *Victorias* case, did not retort: What if it does? This would have been a valid basis for dismissing the objection because there is no constitutional prohibition against double taxation in our country.[151] The Court instead showed how the Victorias ordinance did not bring about double taxation by pointing out that the two taxes imposed by the ordinance covers two different objects *i.e.* persons operating sugar centrals and persons operating sugar refineries. Both taxes are imposed on occupation or business and not on sugar. The amount of tax is graduated on the basis of annual output capacity and not on actual sugar milled. The Court also stated: The object of taxation is not the sugar produced but the business of producing it.

The *Ormoc* and *Victorias* cases involved sugar centrals. Two cases dealing with the taxing power of local governments decided by our Supreme Court in 1968 involved among others soft drinks.

In *City of Naga v. Court of Appeals*,[152] the validity of an ordinance passed in 1954 by the City of Naga was assailed. This ordinance imposed a municipal tax of 1/48 of a centavo for every bottle of Tru-Orange, Coca-Cola, 7-Up or other similar beverages so corked, capped or stoppered." The tax is "levied and collected from all breweries, distilleries, bottling houses, *toyo* factories and other establishments whose business includes the corking and copping of bottles, operating in the City of Naga.

In *Pepsi-Cola Bottling Co. v. City of Butuan*,[153] the questioned ordinance passed in 1960 imposed a tax upon any agent and/or consignee of any person, association, partnership, company or corporation engaged in selling soft drinks or carbonated drinks. The ordinance prescribed a tax of ₱0.10 per case of 24 bottles received by the agent or consignee based and computed from the cargo manifest a bill of lading or any other record showing the number of cases of soft drinks, liquors or all other soft drinks or carbonated drinks received.

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[150] Ormoc Sugar Co., Inc. v. Municipal Board of Ormoc City, G.R. No. 24322, July 21, 1967.
[151] De Villata v. Stanley, 32 Phil. 541 (1915).
[152] G.R. No. 24954, August 14, 1968.
[153] G.R. No. 22814, August 28, 1968.

In the *Naga* case, the petition of the taxpayer, San Miguel Brewery, was endorsed on an allegation that it was being doubtly taxed, for in addition to being taxed under the controverted ordinance, it was also being taxed under another ordinance as manufacturer of aerated water.

Our Supreme Court invalidated the Naga ordinance not on the basis of the double taxation argument but because of a finding that the City of Naga lacked the power to impose the kind of tax levied by the questioned ordinance which was a tax on a specific articles.

The Court dismissed the claim that the tax was authorized by provision in the Charter of the City of Naga that vested in its municipal board the power "to regulate any other business or occupation not specifically mentioned in the preceding paragraphs as to impose a license fee upon all person engaged in the same and who enjoy privileges in the city." The Supreme Court said that the above provision involved a "grant of police power which is the authority to enact rules and regulations for the promotion of general welfare. Such authority is irrelevant to the ordinance under consideration which is an exercise of the power of taxation."

But it was argued: the subsequent passage of the Local Autonomy Act in 1959[154] which greatly broadened the taxing power of local governments validated the questioned ordinance. The Court found this argument untenable. It held that the legality of an ordinance is dependent upon the power of a municipal corporation at the time of its enactment. "The subsequent approval of (The Local Autonomy Act) did not remove the infirmity of origin of the ordinance in question, because none of the provision of said Act suggests the intent to give thereto either a curative nature or retroactive effect."

In the *Pepsi-Cola* case, the disputed ordinance was assailed as null and void on these grounds: (1) That it was an import tax; (2) that it amounted to double taxation; (3) that it was excessive, oppressive and confiscatory; (4) that it was highly unjust and discriminatory and, (5) that section 2 of the Local Autonomy Act[155] pursuant to which the ordinance was enacted was an unconstitutional delegation of power.

Grounds Nos. 2 and 5 were dismissed as "manifestly devoid of merit," the former because "double taxation, in general, is not forbidden by our fundamental law"[156] and the latter because "the theory of separation of powers is subject to one well established exception, namely: legislative powers may be delegated to local governments . . . in respect to matters of local concern."[157]

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[154] Rep. Act No. 2264 (1959).
[155] *Ibid.*
[156] See note 29.
[157] U.S. v. Bull, 15 Phil. 7 (1910).

As to ground No. 3, the Court declared that the tax of "₱0.10 per case of 24 bottles" or less than ₱0.0042 per bottle is "manifestly too small to be excessive, oppressive or confiscatory."

The Court, however, held the disputed ordinance to be invalid because the tax it imposed was in the nature of an import tax is beyond the authority of the City of Butuan or any other city for that matter to impose by express provision of law.[158] It was held to be an import tax because it subjected to tax only those agents or consignees of another dealer who in the nature of things must be engaged in business outside the City of Butuan.

The ordinance was also found to be invalid because it was discriminatory: It imposed a tax only on agents or consignees of outside dealers excepting local dealers regardless of the volume of their sales. The Court declared this classification as not meeting the required criterion of reasonableness.

In three other cases, *i.e. Municipality of Opon v. Caltex,*[159] *City of Baguio v. de Leon*[160] and *Villanueva v. City of Iloilo,*[161] the power of the Municipality of Opon, Cebu, the City of Baguio and the City of Iloilo enact certain tax measures was questioned.

In the *Opon* case, the legality of a tax measure was not at issue, rather the manner in which it was being implemented. The ordinance imposed a tax on tin factories, graduated according to their respective annual output capacity. It was being applied to Caltex because of the manufacturing activity which it undertook as an incident the main business of importing, distributing or selling of gasoline, kerosene, and other petroleum products. The Court held that it would be illegal to tax the tin manufacturing activity as if it were a separate undertaking of Caltex to the extent that it made tin cans for its own use. But it was properly taxed for the tin cans it made for the use of another firm, Tidewater.

Reiterating an old ruling, our Supreme Court said that when a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely in part of, incidental to and is necessary to its main business.[162]

In the *Baguio* case, the validity of an ordinance passed by the City of Baguio imposing a license fee on any person doing business in

[158] Rep. Act No. 2264 (1959), sec. 2(i).
[159] G.R. No. 21853, February 26, 1968.
[160] G.R. No. 24756, October 31, 1968.
[161] G.R. No. 26521, December 28, 1968.
[162] Standard Vacuum Oil Co. v. Antigua, 96 Phil. 909 (1955).

the City was assailed on a number of grounds that were afterwards found untenable.

To the charge that the City of Baguio did not have the power to pass the ordinance in question, the Court cited as sufficient legislative basis, Republic Act No. 329 amending the Charter of the City of Baguio[163] and empowering it to fix the license fee and regulate "business, trades and occupations as may be established and practiced in the City". The Court said that the above provision effectively broadened an earlier provision that empowered the City of Baguio merely to impose a license fee for the purpose of regulating the business that may be established in the City. The Court admitted that the power thus conferred is indeed limited as it does not include the power to levy a tax. The Court goes on to say, however, that Republic Act No. 329 amended the above provision adding to the power to license of the City of Baguio also the power to tax and regulate.

The protesting taxpayer in the *Baguio* case also assailed the Baguio ordinance as imposing double taxation and as violating the requirement of uniformity.

As regards the former, our Supreme Court quotes Justice Holmes: "The (due process clause) no more forbids double taxation that it does doubling the amount of a tax short of confiscation or proceedings unconstitutional or other grounds."[164]

About the requirement of uniformity, the Court admitted that the Baguio ordinance indeed imposed different annual fees on real estate dealers based on the value of the properties they handled. But this does not *per se* violate the rule of uniformity because as the Court pointed out: "The taxing power has the authority to make reasonable and natural classification for purposes of taxation."

In the *Villanueva* case, the City of Iloilo passed in 1946 an ordinance which imposed a tax on owners of tenement houses. This ordinance was declared by our Supreme Court as *ultra vires* on the ground that the power to enact this kind of a tax measure was not among those clearly and expressly granted to the City of Iloilo by its charter.[165]

After the enactment of the Local Autonomy Act in 1959,[166] the City of Iloilo passed a similar ordinance.

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[163] Rev. Adm. Code, sec. 2253(c).
[163] Fort Smith Lumber Co. v. Arkansas, 251 U.S. 532, S.Ct. 304, 64 L.Ed. L.Ed. 396 (1920).
[165] Com. Act No. 158 (1936), as amended.
[166] Rep. Act No. 2264 (1959).

This time the ordinance was upheld as valid. Our Supreme Court, interpreting section 2 of the Local Autonomy Act, said that this provision supplied the needed statutory basis for the enactment of the ordinance.

In reaching this conclusion, the Court said that the ordinance was not a real estate tax, the imposition of which cannot be more than one per cent under section 38 of the Charter of the City of Iloilo. It was instead a "license tax on persons engaged in the business, of operating tenement houses" which tax the City of Iloilo could impose because section 2 of the Local Autonomy Act provides that chartered cities have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business or exercising privileges within their respective territories and otherwise to levy for public purposes just and uniform taxes, and licenses fees.

In the *Villanueva* case, it was also argued that the ordinance in question constituted "not only double taxation but treble at that", that it was "oppressive" and that it violated the rule of uniformity of taxation.

All these arguments were dismissed by the Court.

On the first argument the Court stated that there was no double taxation because the questioned license tax was levied upon a business and not on the property subjected to property tax. In any case, the Court said: There is no constitutional prohibition against double taxation in the Philippines".[167] It is something not favored, but is permissible.

To the argument that the license tax was oppressive because it not only carried a "penal clause" but also because it subjects owners of tenement houses for "non payment of an obligation which is purely sum of money," our Supreme Court said that the above views are probably traceable to the knowledge that the Constitution provides that "no person shall be imprisoned for debt on the non-payment of a poll tax."[168] The Court however states that "a tax is not a debt in the sense of an obligation incurred by contract." . . . and therefore is not within the constitutional . . . provisions . . . prohibiting imprisonment for debt."[169] The Court also said that the tax in question is not a poll tax since it is not "a tax of a fixed amount upon all persons, or upon all persons of a certain class, resident within a specified territory, without regard to their property or the occupations in which they may be engaged in."[170]

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[167] See note 29.

[168] CONST. art. III, sec. 1(12).

[169] 51 AM. JUR. *Taxation* § 982 (1944) citing Cousins v. State, 50 Ala. 113, 20 Am. Rep. 290 (1874); Rosenbloom v. State, 64 Neb. 342, 89 N.W. 1053, 57 L.R.A. 922 (1902). Voelkel v. Cincinnati, 112 Ohio St. 374, 147 N.E. 754, 40 A.L.R. 73 (1925).

[170] *Id.* at § 38.

About the "penal clause" of the ordinance, the Court reiterated an earlier ruling that a tax measure is not illegal and void *per se* just because it imposes a penalty.[171]

As to the requirement of uniformity, the complaining taxpayer in the *Villanueva* case had this rather novel proposition: That the ordinance was discriminatory because it added a tax on tenement house owners which is not imposed on owners of other kinds of building and also because it makes tenement house owners in the City of Iloilo pay a tax not perhaps paid by tenement house owners in other places. To this argument the Supreme Court said there was reasonable classification; that as to the fact that only tenement house owners in Iloilo are subjected to the tax does not violate the rule of uniformity because this rule does not require that taxes for a certain purpose be imposed in different territorial subdivisions at the same time.[172]

Local elective and appointive officials

The kind of government given by our provinces, cities, municipalities and barrios depends to a very large extent on the kind of persons who serve as their officials and employees.

The political leadership of local governments is determined by election. This political leadership is increasingly being given the power to appoint local appointive officials and employees pursuant however to the Civil Service Law[173] which makes merit and fitness the decisive criteria for appointment and which ensures security of tenure for the officials and employees who are appointed.

Local elective officials are held accountable for their acts not only at election time should they wish to run again for office but also through a process that could mean their punishment from reprimand to dismissal should they be found guilty of "(a) disloyalty to the Republic of the Philippines; (b) dishonesty; (c) oppression; and (d) misconduct in office."[174]

Police forces

A number of cases involving local governments decided by our Supreme Court in 1968 dealt with the appointment and dismissal of chiefs of police and members of police forces.[175]

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[171] Punsalan v. Municipal Board of Manila, 95 Phil. 46 (1954).
[172] 51 AM. JUR. *Taxation* § 153 (144).
[173] Rep. Act No. 2260 (1959).
[174] Rep. Act No. 5185 (1967), sec. 5.
[175] G.R. No. 29658, November 29, 1968.

In *Morales v. Subido,* our Supreme Court had the opportunity to clarify what the qualifications were of a chief of police of a city and in the process declared that a person who served as chief of the Detective Bureau of the Manila Police Department for 14 years, holding the successive ranks of captain, major and lieutenant Colonel, and who was awarded three Presidential awards and even given the Congressional Commendation — the highest award ever conferred in the history of the Manila Police Department was not qualified to be Chief of Police because he did not have a bachelor's degree which the law requires. His associate in arts degree and two years of law school were not sufficient to meet the qualification prescribed by law. The Court held that in accordance with section 10 of the Police Act of 1966, the minimum qualifications for a chief of police of a city includes, among others, a bachelor's degree except if a person has served as officer in the Armed Forces for at least eight years with the rank of captain and/or higher, in which case, it is enough that he is a high school graduate.

In four cases, *i.e. Jimenea v. Guanzon,*[176] *Del Rosario v. Subido,*[177] *Nemenzo v. Sabillano,*[178] and *Santos v. Chico,*[179] the newly-elected mayors respectively of the City of Bacolod; Imus, Cavite; Pagadian, Zamboanga del Sur and Baliuag, Bulacan terminated the services of members of police forces who were appointed earlier by outgoing mayors.

Reflecting the attitude of the Supreme Court towards the contested acts of the newly-elected mayors was this statement in *Nemenzo*; "There are altogether too many cases... wherein local elective officials, upon assumption of office, wield their new-found power indiscriminately by replacing employees with their own proteges regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the commission of such illegal acts."

In accordance with this fidelity to the Civil Service Law,[180] in the *Nemenzo* case a corporal, in the police force of Pagadian, Zamboanga del Sur who was a Civil Service eligible with a valid appointment but had been illegally dismissed was reinstated, and allowed to claim back salaries from the mayor who dismissed him.

In the other cases, however, the termination of the police officers was given due course, not because police officers have no security of tenure but because the appointments extended to them were either merely provisional or temporary and our Supreme Court observed that

[176] G.R. No. 24795, January 29, 1968.
[177] G.R. No. 23934, July 25, 1968.
[178] G.R. No. 20977, September 7, 1968.
[179] G.R. No. 24155, September 28, 1968.
[180] Rep. Act No. 2260 (1959).

"a provisional appointment shall in no case extend beyond 30 days from receipt by the appointing officer of the certificate of eligibles" and as regards a person appointed to a position in a temporary capacity, he "is not entitled to the protection accorded by Republic Act No. 557 nor to the protection of security of tenure in office guaranteed by the constitution."

Creation and abolition of offices

The power of local governments to abolish existing positions and create new ones is illustrated in three cases; *Cruz v. Primicias,*[181] *Gutierrez v. Court of Appeals*[182] and *Villegas v. Subido.*[183]

In the *Cruz* case the newly-elected Governor of Pangasinan and members of the Provincial Board passed a resolution authorizing the Governor among others to "effect... such reform and changes in the different offices and branches of the Provincial Government as maybe necessary, with the power to diminish, add to or abolish those existing and create new ones... and do what ever is necessary and desirable to effect economy and promote efficiency of the government service and provide necessary service for the promotion of the general social welfare."

Pursuant to this resolution, the Governor abolished certain positions and created new ones. Certain employees whose positions were abolished protested the abolition of their positions.

The Supreme Court upheld the protest of these employees and ordered their reinstatement. In arriving at this decision, the Court did not say that it was not within the power of the Governor or the Members of the Provincial Board to abolish offices in the provincial government but for abolition to be valid, it must be in good faith. "Where abolition is made in bad faith or for personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees, it is null and void."

Our Supreme Court found the abolition of the offices of the complaining employees was in bad faith. It said: "The justification advanced for the abolition of (their) offices, (*i.e.*) economy and efficiency, are but resorted to for disguising an illegal removal of permanent civil service employees, in violation of the security of tenure guaranteed by the Constitution." To support this conclusion, the Court cited how the abolished items add up only to ₱25,538.71 while the new items carried a total appropriation of ₱57,180.00. To the Court, this belied the claim of economy.

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[181] G.R. No. 28573, June 13, 1968.
[182] G.R. No. 25972, November 26, 1968.
[183] G.R. No. 29588, December 27, 1968.

As to the alleged need for greater efficiency, the Court pointed out that the efficiency of the employees whose positions were being abolished was attested by their recently made promotional appointments. The Court also noted that in the reorganization sought to be implemented, 22 civil service eligibles were replaced by 23 confidential employees. Addressing itself to this fact, the Court said: "Political loyalty or disloyalty are not statutory nor constitutional pre-conditions for appointment or grounds for separation of eligibles in the Civil Service."

In the *Gutierrez* case, the Court stayed the act of the Provincial Board of Batangas abolishing the position of "budget and fiscal officer" after the Court found out that the abolition of the position was only "a mere subterfuge to remove (its incumbent) without due process of law."

In the *Villegas* case, the City of Manila created the position of City Legal Officer and the positions of his staff. The right to create these positions pursuant to Section 19 of the Decentralization Act of 1967[184] is not questioned. But the Commissioner of Civil Service was not acting on the appointments made to these positions despite the lapse of over 6 months.

After finding that the person appointed to the position of City Legal Officer had the necessary qualifications, the Court ordered the Commissioner of Civil Service to approve the appointments. He was also ordered to act on the appointments made to the staff of the City Legal Officer.

Suspension and removal of local elective officials

To help keep local elective officials loyal to their oaths of office, the Decentralization Act of 1967 now provides for uniform causes for suspension or removal, namely, disloyalty to the Republic, dishonesty, oppression, and misconduct in office.[185]

In the *Milanes v. de Guzman,*[186] our Supreme Court had the opportunity to clarify what kind of acts may cause the suspension or removal of a local election official.

In the *Milanes* case, a municipal Mayor while acting as a toastmaster at a political meeting, depicted a certain person as one with physical deformity, held the front collar and neck of this person and simultaneously shook him with violence and told this person that if he

[184] Rep. Act No. 5185 (1967).
[185] *Ibid.*, sec. 5.
[186] G.R. No. 23967, November 29, 1968.

would persist in attacking his (the Mayor's) administration, the Mayor would kill him.

These acts were the basis of an administrative charge filed against the Mayor who was later on suspended by the Provincial Governor. They were also the basis for the filing of complaints before the justice of the peace court for serious slander by deed, slight slander and grave threats.

The cases before the court were dismissed upon the ground that they were filed late and were already barred by the Statute of Limitations.

The legality of the suspension of the Mayor is the issue presented for resolution by our Supreme Court.

The Court made the preliminary observation that the case already became academic because the term of the suspended Mayor had expired. In similar 1968 case, in *Valencia v. Crisologo*,[187] the fact that the term of the suspended mayor had already expired was the basis of the dismissal of the case by our Supreme Court. In *Milanes* case, however, the Court proceeded to discuss the merits of the case and expressed the view that the suspension of the Mayor was illegal because whatever offenses he committed were not nonfeasance, misfeasance and malfeasance in office. The mayor committed acts he did in his private capacity. He was acting as a toastmaster at the time; he considered the attacks against his administration which provoked as a personal affront to him.

In another case involving a suspended municipal mayor, *Equizabal v. Maleniza*[188] our Supreme Court had occasion to clarify the application of section 2189 of the Revised Administrative Code which limits the preventive suspension of a municipal officer to not more than 30 days. This section further provides that after the expiration of 30 days, the suspended officials shall be reinstated in office... unless the delay in the decision of the case is due to the fault, neglect, or request of the accused, in which case the time of the delay shall not be counted in computing the time of the suspension.

In the above case, a motion to dismiss made by a suspended mayor prevented the case from proceeding and being decided on its merits. Thus, from the time the motion to dismiss was filed to the time it was decided, the same shall not be counted in computing the time of the suspension. In this case, the Supreme Court also said that the filing of a new administrative charge justified the issuance of a new suspension order.

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[187] G.R. No. 25646, October 14, 1968.
[188] G.R. No. 24432, January 12, 1968.

Barrio election contests

In *Falcotelo v. Gali*,[189] our Supreme Court had the opportunity to interpret the Revised Barrio Charter.[190] This law provides among other things that all disputes over barrio election shall be brought before the justice of the peace court of the municipality concerned.

The Revised Election Code provides that the eligibility of a local election official may be contested only within one week after the proclamation of his election whereas his election maybe contested upon grounds other than ineligibility within two weeks after said proclamation.

The above provisions were reconciled. The Court to dismissed a petition protesting against the election of some barrio captain and barrio councilmen because the petition was filed later than the reglementary period provided for in the Revised Election Code.

[189] G.R. No. 24190, January 8, 1968
[190] Rep. Act No. 3590 (1963).