DEPORTATION OF ALIENS UNDER PHILIPPINE LAW

*Angelino Z. Villanueva**

I. INTRODUCTION

On May 5, 1970, the brothers Quintin and Rizal Yuyitung, publisher and editor, respectively, of the Chinese Commercial News in Manila were deported secretly to Taipei on charges of publishing pro-Communist articles.

Immediately, a concerted howl of protest was raised in almost all mass media condemning the deportation as "inhuman", "unfounded", and "violative of constitutional safeguards". The castigation leveled against the President culminated in resolution of the International Press Institute which reads: "In respect of the freedom of the press, the general assembly of the International Press Institute in the meeting at Hongkong on May 18, 1970, condemns the flagrant and high-handed action taken by Philippine authorities in deporting, *pending legal procedures*, two journalists, Quintin Yuyitung and Rizal Yuyitung, publisher and editor of the Manila Chinese Commercial News, to Taipei in violation of the Declaration of Human Rights and the principle of press freedom."

Previously, our Supreme Court issued a resolution requiring the Commissioner of Immigration and the Solicitor-General to explain the circumstances under which the deportation was carried out despite the pendency of the case before that tribunal.

The interest generated by the incident poses several significant questions, mainly relating to the scope and extent of the President's power to deport aliens.

a) What are the limitations, if any, on the President's power to deport aliens?

b) Was due process observed in the deportation proceedings?

c) If due process was denied, how could the President be made to account for his act?

d) May the President legally exercise his power to deport despite the pendency of the case before the Supreme Court?

The dispute spawned by the *Yuyitung* case is reminiscent of

* *Member*, Student Editorial Board, Philippine Law Journal; *Chancellor*, Order of the Purple Feather (U. P. Law Honor Society).

the notorious *Stonehill* affair in which an American business tycoon, reputed to have woven a web of corruption and bribery in the Philippine government circles, was ordered deported unexpectedly by the President Macapagal,[1] pending congressional investigation and judicial proceedings for criminal charges. Public enthusiasm in the *Stonehill* case was aroused only because of the innuendoes which the case presented, there having been a consensus that public interest demanded his deportation. However, in the case of the Yuyitung brothers the public raised its eyebrows on the propriety of the ground for their deportation.

In view of the uncertainty as to the scope of the President's power to deport, this paper attempts to expound on the nature of such power and to indicate the limits by which it is circumscribed.

II. MEANING AND NATURE OF DEPORTATION

In its strictly legal and technical sense, deportation is the removal or sending back of an alien to the country whence he came.[2] The country "whence he came" has been construed to mean the alien's own country,[3] the foreign port at which he actually embarked for the expelling country,[4] or the country from which he entered the expelling country,[5] or the country in which the alien resided prior to entering the country from which he entered the expelling country.[6] Under Philippine law,[7] an alien ordered deported by the Bureau of Immigration authorities shall be removed to the country whence he came, or to the foreign port at which he embarked for the Philippines, or to the country of his nativity or of which he is a citizen or subject, or to the country in which he resided prior to coming to the Philippines.

In the *Yuyitung* case, President Marcos defended his action in ordering the deportation of the brothers to Taipei because they were Nationalist Chinese citizens. His critics, on the other hand, claim that the President had the discretion and was not required by law to deport the Yuyitungs to Taipei. They base their claim on the fact that section 69 of the Revised Administrative Code makes no reference whatsoever as to where the deportee may be sent. Apart for this, precedents show, as in the cases of *Stonehill* and *Brooks*, that a President can, if he wishes, allow the deportee to go any-

1 See Adm. O. No. 19, s. 1962, 58 O.G .5392 (1962).
2 Black's Law Dictionary 526 (4th ed.).
3 U.S. v. Santos, 33 Phil. 397 (1916).
4 Mackusick *ex rel* Pattavina v. Johnson, 3 F. 2d 398 (1924).
5 Hajdamacha v. Karmuth, 23 F. 2d 956 (1927).
6 U.S. Immigration Act of 1917, sec. 20.
7 Com. Act No. 613 (1940), sec. 39

where as long as he leaves the country. For this purpose, the term "alien" has been defined in the Philippine Immigration Act as "any person not a citizen of the Philippines."[8]

Deportation has been compared with, and distinguished from other related terms, namely:

a. "Banishment" — In *Fong Yue Ting v. U.S.*,[9] the Federal Supreme Court declared that "Banishment and extradition must not be confused. The former is simply a question of expediency and humanity, since no state is bound to receive all foreigners although perhaps, to exclude all would be to say goodbye to the international union of all civilized states; and although in some states such as England, strangers can only be expelled by means of special acts of the legislative power, no state has renounced its power to expel them, as is shown by the alien bill which the government of England had at time used to invest itself with the right of expulsion." "Evidently", the Court continued, "banishment" is used in the sense of expulsion or deportation by the political authority on the ground of expediency and not in the sense of transportation or exile by way of punishment for crime."

In another case,[10] banishment has been defined "as punishment

[8] *Id.*, sec. 50(b).

[9] 149 U.S. 698, 13 S. Ct. 1016, 37 L. Ed. 905 (1893). This case involved three writs of habeas corpus dismissed by the Circuit Court of the United State for the Southern District of New York, upon petition by three Chinese laborers arrested and held by the marshall of the district for not having certificates of residences under section 6 of the Act of May 5, 1892. On appeal, the Federal Supreme Court affirmed the decision finding them negligent to apply for certificates of residences as required by said Act and that they failed to establish that they were without such certificates from unavoidable cause, or that their certificates after they were procured had been lost or destroyed, or their required residences established by a credible white witness as required by the statute. It was because no such testimony of a credible white witness was produced, that the order of deportation was issued.

[10] U.S. v. Ju Toy, 198 U.S. 253, 25 S. Ct.. 644, 49 L. Ed: 1040 (1905) quoting BLACK, LAW DICTIONARY 183 (4th ed.). "This case was a petition for habeas corpus in favor of a person of descent, detained for return to China by the steamship company which brought him to San Francisco; his petition alleging nothing but citizenship as making his detention unlawful and he has been denied admission to the U.S. by the immigration officers after examination, and such denial has been affirmed on appeal by the Secretary of Commerce and Labor. Held: the decision of the Secretary of Commerce and Labor, affirming the denial by the immigration officers, after examination, of the rights of a person of Chinese descent to enter the U. S. is no less conclusive on the Federal Courts under Act of August 18, 1894 (28 Stat. at L. 372, 3901 Chapter 301, U.S. Comp. Stat. 1901, p. 1303), Section 1, in habeas corpus proceedings when citizenship is ground on which the right of entry is

inflicted upon criminals by compelling them to quit a city, place, or country, for a specific period of time or for life. It is inflicted principally upon political offenders . . ." As distinguised from 'transportation', it is inflicted principally upon political offenders and merely forbids the return of the persons banished before the expiration of the sentence . . ."[11]

b. "Exclusion" — In a certain case,[12] the court distinguished "deportation" from "exclusion", thus: "Deporting a person who is already in the country, and therefore enlarged (released), is depriving him of a privilege which he, at least, at the time, is enjoying in U. S., whereas, a person being denied the privilege to enter is not deprived of any liberties which he had therefore enjoyed. The gate is simply closed and he may not enter."

c. "Exile" — Banishment: the person banished.[13]

d. "Extradition" — the surrrender by one state to another of an individual accused or convicted of an offense outside of its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.[14]

e. "Relegation" — In old English Law, banishment for a time only; "Relegation" — Latin; a kind of banishment known to Civil Law, which differed from *"deportatio"* in leaving to the person his rights of citizenship.[15]

f. "Transportation" — as a species of punishment consisting in removing the criminal from his own country to another (usually a penal colony), there to remain in "exile" for a prescribed period.[16] As distinguished from banishment it is a word used to express a similar punishment of ordinary criminals . . . and involves the idea

---

claimed that when the ground is domicile and the belonging to a class excepted from the exclusion acts. They are conclusive on the Federal Courts in habeas corpus proceedings, in the absence of any abuse of authority, even where citizenship is the ground on which the right of entry is claimed." *Per* Justice Malcolm.

11 BLACK, *supra*, note 2 at 183.

12 *Ex parte* Domingo Corypus, 6 2d 336 (1925). In this case, petitioner was denied the privilege of landing in the U.S. on the ground that he is excluded by reason of Chinese descent. He appealed and pending this, he sought to be released on bail. Petitioner cited cases, which the appellate court found to be all deportation cases, and hence inapplicable.

13 BLACK, *supra*, note 2 at 684.

14 Walter v. Jordan, 58 Ariz. 169, 118 P. 2nd 450, 451 (1941). See BLACK, *supra*, note 2 at 698.

15 BLACK, *supra*, note 2 at 1454.

16 15A WORDS AND PHRASES 373 (Permanent ed.) citing U.S. v. Ju Toy, *supra*, note 10.

of liberty after the convict arrives at the place to which he has been carried.[17]

Similarly, the court distinguished deportation in the case of *Fong Yue Ting v. U.S.*,[18] thus: "Strictly speaking, 'transportation', 'extradition', and 'deportation', although each has the effect of removing a person from a country, are different things, and have different purposes. 'Transportation', is by way of punishment of one convicted of an offense against the laws of the country. 'Extradition' is the surrender to another country of one accused of an offense against its laws, there to be tried, and, if found guilty, punished. 'Deportation' is the removal of an alien out of the country simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated, either under the laws of the land out of which he is sent or of those of the country to which he is taken."

Deportation proceedings are not criminal in nature, and as such deportation cannot be considered a punishment. The proceedings are in no proper sense a trial and consequently a sentence for a crime or offense. The order of deportation is not a punishment, in a sense that the word is often applied to the banishment of a citizen from his country by way of punishment.[19]

According to the accepted maxims of international law, every sovereign nation has the power as inherent in sovereignty and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.[20]

III. TWO TYPES OF DEPORTATION PROCEEDINGS

Deportation proceedings in the Philippines are governed by two different statutory provisions. The first type of deportation proceeding is governed by the Revised Administrative Code; the second type, by the Philippine Immigration Act of 1940 as amended.[21] Authority to deport under the first type is vested in the President, the proceedings being undertaken by the Deportation Board created by Executive Order No. 33 of May 29, 1936, and is placed for administrative purposes under the Department of Justice. On

[17] BLACK, *supra*, note 2 at 183.

[18] *Supra*, note 9.

[19] U.S. v. Santos, 33 Phil. 397 (1916).

[20] Chae Chan Ping v. U.S., 130 U.S. 581., 9 S. Ct. 623, 32 L. Ed. 1068 (1889); Nishimura Ekiu v. U.S., 142 U.S. 651, 659, 12 S. Ct. 336, 35 L. Ed. 1146 1892); Yong Yue Ting v. U.S., *supra*, note 9; 4 MOORE, DIGEST OF INTERNATIONAL LAW 67 (1906).

[21] *When An Alien May be Deported*, 27 LAWYERS J. 259 (1962).

the other hand, authority to deport under the second type lies in the Bureau of Immigration and the proceedings are undertaken by the Bureau's Board of Special Inquiry.

A. POWER OF THE PRESIDENT TO DEPORT ALIENS

1. *Basis of the President's Power to Deport Aliens*

No dispute exists as to whether the Philippine government has the power to expel or deport undesirable aliens. As expressed by our Supreme Court:

> "Every sovereign nation has the power, as inherent in sovereignty and essential to self-preservation, to forbid the entrance of aliens only in such cases and upon such as it may see fit to prescribe . . . An alien's right to remain in the territory of foreign government is purely a political one and may be terminated at the will of such govenrments."[22]

What arouses controversy, however, is the issue as to whether the power of the President is inherent in his office or merely delegated by the legislature.

In the case of *In re Patterson*,[23] the very first case in which the question of the power to deport arose, the court held that "the executive power may expel without appeal any person whose presence tends to disturb the public peace." It is to be noted however that in this case, the court upheld the exercise of this prerogative not by the Governor-General, but by the Collector of Customs who acted solely by virtue of a statute. At the time this case was decided, therefore, the legislature had invested the power to deport in an administrative officer.[24]

It was in the celebrated case of *Forbes v. Chuoco Tiaco*[25] that the question was brought to the fore. In this case, the Governor-General, upon request of the consul general of the Imperial Government of China, ordered the deportation of certain Chinese nationals. Subsequently, he and two other officials who acted on his orders to deport and prevent the return to the Philippines of these aliens were sued for damages. An inferior court upon application of the aliens seeking reentry into the Philippines issued injunction to prevent their

[23] 1 Phil. 93 (1902).

[22] Forbes v. Chuoco Tiaco, 16 Phil. 534 (1910).

[24] See dissenting opinion, *ibid*, "Although the legislature may direct the exclusion of foreigners and invest and administrative officer with exclusive authority to decide as to the right of such persons to enter the country, still such executive officer must act within the scope of his authority," (Per Cooper J., dissenting).

[25] 16 Phil. 534 (1910).

being sent back once more to China. The Supreme Court dismissed the actions brought by the aliens and on appeal the U.S. Supreme Court upheld this decision. At the time the Governor-General issued his order, there was no statute giving him the power to deport. Not until suits for damages had been brought did the legislature enact a measure approving, ratifying, and affirming his action. [26]

Mr. Justice Johnson who wrote the majority opinion declared:

> "The Governor-General, acting in his political and executive capacity, is invested with plenary power to deport obnoxious aliens whose continued presence in the territory is found by him to be injurious to public interest, and in the absence of express and prescribed rules as to the method of deporting or expelling them, he may use such methods as his official judgment and good conscience may dictate. It being inherent in the political department of the government, it need not be defined by express legislation although in some states, the Legislative Department of the government has prescribed the condition and the method under which and by which it shall be carried into operation. The mere absence of legislation regulating his inherent right to deport or expel aliens is not sufficient to prevent the chief executive, head of state, acting in his own sphere and in accordance with his official duty to deport or expel undesirable aliens, when he deems such action necessary for the peace and domestic tranquility of the nation."

On appeal to the Federal Supreme Court, the Philippine Supreme Court's decision was affirmed, the judgment of the former court being on the strength alone of the law passed by the legislature granting a writ of prohibition, which however, was not expressly declared to be the proper remedy against the judge, who had taken jurisdiction of the deportees' action against the Governor-General for damages. Mr. Justice Holmes, writing for a unanimous court declared:

> ". . . Any lack of power in the Governor-General of the Philippines, acting in his official capacity, to authorize the deportation of an alien, could be covered by the subsequent enactment of the Philippine Act of April 19, 1910, ratifying his action even though suits then pending to make the Governor-General personally answerable for damages for such action.
>
> Therefore the deportation is to considered as having been ordered by the Governor-General in pursuance of a statute of the Philippine Legislature directing it, under their combined power, and it is necessary to consider whether if he had not, he had immunity from suit from such official act done in good faith. The former matter is now regulated by a latter statute providing for a hearing, etc. Act No. 2113 of February, 1912."[27]

---

[26] CORTES. *THE PHILIPPINE PRESIDENCY*, 199 (1966).

[27] Chuoco Tiaco v. Forbes, 228 U.S. 549, 33 S. Ct. 585, 57 L. Ed. 960 (1913).

It is noted that the issue of whether or not the power was inherent in the office of the Spanish Governor-General to the extent of continuing after the transfer of sovereignty to the United States, which occupied the Philippine Supreme Court's decision in this case of *Forbes v. Chuoco Tiaco*, was not directly resolved by the appealed decision. It merely found the issue unnecessary; it became academic because of the passage of Act No. 1896. However, it is significant to note that the Federal Supreme Court considered the deportation as having been ordered by the Governor-General in pursuance of a statute of the Philippines directing it under their "combined powers."

In the case of *In re McCulloch Dick*,[28] the question of whether the Governor-General could exercise the deportation power in the absence of a statutory authority was once more raised. The Governor-General in this case acted pursuant to what is now section 69 of the Revised Administrative Code. It was argued that the above statute merely prescribed the procedure to be followed by the Governor-General but conferred on him no power to deport. Since there was no other law conferring that power, it was claimed that the deportation was illegal. The Supreme Court reviewed the local legislation on deportation and found that after the Act ratifying the deportation of Tiaco, another statute (Act No. 2113) was passed in the preamble of which was stated what may be taken to be a legislative recognition of the Governor-General's power to deport, independent of legislative grant. According to the preamble, "Whereas it has been decided that the Governor-General of the Philippines has authority to deport, expel, exclude or repatriate foreigners by due process of law". . . . therefore, the legislature prescribed the procedure to be followed. This was substantially incorporated into the Administrative Code. The Supreme Court held, contrary to the insistent objection of petitioner Dick against whom the deportation proceedings were instituted, that the authority of the Governor-General to deport, exclude, expel or expatriate aliens residing in the Philippine Islands as an act of state was "clearly derivable" from the Act. It explained the cautious language of the preamble as due to the doubts in the mind of some legislators regarding the nature of the power to deport. The court concluded that section 69 of the Administrative Code of 1917 "was intended to confer and that it does confer a regulated authority upon the Governor-General in the matter of deportation of aliens" and that the power to exclude or expel aliens is vested in the political department of the government to be regulated by treaty or Act of the Legislature. It is an act of

[28] 38 Phil. 41 (1918).

state done under the combined powers of the legislature and the executive.[29]

In resume, it can be deduced from the foregoing judicial pronouncements that, in the absence of a statutory grant, the Executive Head has the power to deport aliens, such power being inherent in his office. However, when the power is conferred by Congress, the act of deportation may be regarded as made under the combined powers of the Legislative and Executive departments, the latter then acting pursuant to congressional directions.

2. *Legislative Regulation of the President's Power to Deport Aliens*

There is no specific provision in the Philippine Constitution on the power to deport, but being inherently inseparable from the concept of statehood, the exercise of such essential power is fundamental.[30]

It has been settled in the case *In re McCulloch Dick* that the power to exclude or expel aliens is vested in the political department of the government to be regulated by treaty or Act of the legislature. It is an act of state done under the combined powers of the legislature and the executive. Consequently, it is significantly pertinent to trace the legislative efforts to regulate the President's power to deport aliens.

The first legislative mandate on the subject was Act No. 1896 which was passed on April 10, 1910. This act, however, merely cured and ratified Governor-General Forbes' questioned authority to deport aliens. It was this legislative assistance that saved the day for the Governor-General in the case of *Forbes v. Chuoco Tiaco*.[31]

Two years later, the general subject of deportation and repatriation of foreigners was dealt with by the Philippine Legislature in the passage of Act No. 2113 on February 1, 1912. It provides in part:

> "Sec. 1. Hereafter, the Governor-General of the Philippine Islands may not deport, expel, exclude, or repatriate from said Islands any foreigners residing therein without prior investigation made by said Executive or his authorized agents, in which the person or persons whose deportation, expulsion, exclusion, or repatriation is contemplated, and their counsel and witnesses, shall be given a hearing. Such persons shall be informed of any charges which there may be against them, and shall be granted a period of time not less than three days to prepare their defense and shall be given an opportunity to cross-examine the witnesses for the prosecution. . . ."

[29] CORTES, *supra*, note 27 at 200.
[30] PADILLA, *The Power to Deport*, 13 LAW REV. 142 (1962).
[31] *Supra*, note 25.

This provision was substantially incorporated in the Administrative Code which was enacted by the Philippine Legislature on March 10, 1917. Section 69 thereof reads:

> "Section 69. *Deportation of subject of a foreign power* — The subject of a foreign power residing in the Philippines shall not be deported, expelled, or excluded from said Islands or repatriated to his own country by the President of the Philippines except upon prior investigation, conducted by said Executive or his authorized agent, of the ground upon which such action is contemplated. In such case the person concerned shall be informed of the charge or charges against him and he shall be allowed not less than three days for the preparation of his defense. He shall also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses."

One is apt to observe that the above provision "does not define the cases in which the Chief Executive may exercise his power to deport; neither does it limit or curtail said power. What it does is to prescribe the procedure necessary for the exercise of the power that the alien may have his day in court."[32]

Another legislative enactment on the matter and which occassioned legal controversy was Act No. 2757.[33] This was an "Act to penalize publication of libels against the Government of the Philippine Islands or of the United States during the present war." Section 2 of said Act provides that "In case the offender is a subject of a neutral foreign nation, the Governor-General may (after conviction of publishing matter tending to obstruct the government) besides, order him deported after service by the accused of the penalty imposed upon him."

It was urged by the minority in the case of *In re McCulloch Dick* that this Act impliedly forbade the deportation of other aliens. Mr. Justice Carson writing for the majority, rejected this contention and held that:

> "We find no conflict between the summary deportation of convict subjects of neutral nations and the provisions of Section 69 of the Philippine Administrative Code *conferring a regulated authority* upon the Governor-General to deport aliens as an act of state, upon investigation conducted in the manner and form prescribed in that section. Certainly, the Act 2757 does not deprive the Governor-General of any power prior to its enactment, to deport aliens other than those mentioned therein."[34]

---

[32] *In re* McCulloch Dick, *supra*, note 28.

[33] Approved February 23, 1918, cited in *In re* McCulloch Dick, *id.* at 227.

[34] *Id.* at 229.

3. *Executive Implementation of Section* 69

The first executive order on deportation was that of Governor-General Frank Murphy[35] constituting a Board to take action on complaints against foreigners, to conduct investigations and thereafter make recommendations. By virtue of Executive Order No. 33. dated May 29, 1936, President Quezon created the Deportation Board primarily to receive complaints against aliens charged to be undesirable, to conduct investigations pursuant to section 69 of the Revised Administrative Code and make the corresponding recommendation. Since then, the Deportation Board has been conducting the investigation as authorized agent of the President.[36]

The Deportation Board was reorganized by the late President Quirino in 1951 by issuing Executive Order No. 455.[37] This order provided for the membership of the Board which up to the present is composed of three members, to wit: the Undersecretary of Justice, the Solicitor-General and a representative of the Secretary of National Defense. The present composition resulted from several amendments of Executive Order No. 33.

An examination of the procedure conducted by the Deportation Board in deportation proceedings will show that it conforms to the requirement of Section 69 of the Revised Administrative Code. Said Board is authorized to conduct investigation *motu propio* or upon the complaint of any person, on whether a subject of a foreign power residing in the Philippines is an undesirable alien or not and to submit its recommendations to the President after such investigation.

The person charged before said Board. in conformity with du process guaranteed by the constitution, shall be informed of the charge or charges against him and shall be allowed not less than three days from notice hereof for the preparation of his defense. He shall also have the right to be heard by himself or counsel and to produce witnesses.[38]

The investigation in any deportation case shall be finished within five days, unless extended by the President. Presumably, the intent of this Executive Order is to limit the "waiting days" of the alien who is confined in Engineer Island and to dispose of deporta-

[35] Ex. O. No. 494, July 26, 1934.

[36] Qua Chee Gan v. Deportation Board, G.R. No. 10280, September 30,

[37] Ex. O. No. 398 (1951), 47 O.G. 6 (1951). See Executive Order No. 1963, 62 O.G. 7708 (Oct., 1966).
455 (1915), 47 O.G. 2800 amending Executive Order No. 398 with respect to membership in the Deportation Board.

[38] *Ibid.*

tion cases as soon as possible with the least harassment upon the alien.

All proceedings before the Board shall be reduced to writing and a full record of the proceeding shall be kept in all cases and shall include a statement of the findings and conclusions of the Board signed by the members thereof. A majority of the members shall constitute a quorum, and a vote of two shall be necessary to arrive at a decision. Any dissent from the majority opinion shall be reduced to writing and filled with the records of the proceedings.[39]

The assistance of all law enforecement agencies and other offices of the government should be made available to the Deportatior Board at the request of the Chairman thereof.[40]

Distinct from the procedure provided for in the Philippine Immigration Act of 1940, deportation proceedings under the Revised Administrative Code, are based on only one ground, "undesirability".[41] This ground is broad and comprehensive so that it is worthy to attempt to a measure of specification by citing some causes which have been regarded as sufficient for deportation as an "undesirable alien". *In re Ku Kim Piao,* Case No. R-7, the deportee was the President and leader of a communist action organization known as the "Chinese Democratic League", which was actively cooperating with the communist guerrilla bands in the Philippines. *Marcel Peyronat, in* Case No. R-30, was a French Fascist and Vichy collaborator during the last world war who, moreover, acted as a spy for the Japanese authorities in the Philippines. The deportee in *In re Chua Tay,* Case No. R-63, had been convicted by the courts four times of illegal possession, preparation or use, of opium, and once of rebbery, In *re. Tan,* Case No. 453, the alien had fraudulently, by means of forged documents, caused himself to be admitted into the country as a Filipino citizen.[42]

Alien may also be ordered deported by the President where they have been convicted by final judgment of a court of violating statutes which specifically subject alien violators thereof to deportation. Examples of such statutes are Republic Act No. 1180, known as the Retail Trade Nationalization Act; Republic Act No. 1168 which provides for the fixing of maximum prices and the punishment of "profiteers"; Republic Act No. 1093 which renders liable for deportation aliens who knowingly and fraudulently evade the payment

---

[39] *Id.*, par. (c).

[40] *Id.*, par (d).

[41] REV. ADM. CODE, sec. 69; EX. O. No. 398 (1951).

[42] *Freedom from Arbitrary Arrest, Detention and Exile,* YEARBOOK ON HUMAN RIGHTS, First Supplementary Volume, 185 (1959).

of any internal revenue tax or who wilfully refuse to pay such tax after the decision of the competent administrative or judicial body on his tax liability has become final and executory; Act No. 1757 as amended by Act No. 3211 which makes liable to deportation an alien who has been convicted twice of having played "jueteng" or having possessed any paper or device pertaining thereto; Act No. 3094 which penalizes persons who induce an orphan, homeless, neglected or abused child to leave the benevolent person, institution, or society to whom such child has been entrusted; Section 2702 of the Revised Administrative Code as amended by Republic Act No. 455, which punishes persons who fraudulently or knowingly import into the Philippines any merchandise contrary to law; and Republic Act No. 857, as amended by Republic Act No. 5515, which penalizes with deportation any alien found guilty of unfair labor practice.

As mentioned above, an alien may be charged before the Deportation Board on complaint of anybody or by the Board itself, *motu proprio*. Upon receipt of the complaint, the Office of the Special Prosecutor of the Board conducts an investigation of the case. If satisfied that there is a *prima facie* case against the respondent, the Special Prosecutor files charges which corresponds to the information filed by the fiscal in criminal cases. Under Section 1(b) of Executive Order No. 398 issued by President Quirino in 1951 reorganizing the Deportation Board, the Board was authorized *motu propio* or upon the filing of the formal charges by the Special Prosecutor of the Board, to issue the warrant for the arrest of the alien and to hold him under detention during the investigation unless he files a bond for his provisional release in such amount and under such conditions as may be prescribed by the chairman of the Board. It is of interest to note at the outset that Section 69 of the Revised Administrative Code, under the authority of which the President's power to deport is predicated, does not provide for the exercise of the power to arrest. Thus, when the Board's power to issue warrants of arrest under Section 1(b) of Executive Order No. 39 was challenged in the case of *Dalamal v. Deportation Board*,[48] the Supreme Court held that:

> "Whenever, therefore, the President exercises his power of deporting an alien upon prior investigation conducted in the manner and form prescribed in Section 69 of the Administrative Code of 1917, he does so, not only as an act of state, but also 'under the combined powers' of the President and the Legislature. As an act of state, the President has the inherent power to order the deportation of an alien and, as incident thereof, his arrest, while at the same time that power may be deemed vested in him thru delegation by the Legisla-

[48] G.R. No. 16812, October 31, 1963, 62 O.G. 8402 (Nov., 1966).

> ture thru the enactment of an appropriate statute (Section 69, Revised Administrative Code). But insofar as his power to order the arrest of an alien is concerned, either as a measure to insure his appearance at the investigation proceedings to determine if he is liable to deportation, or as an incident of his inherent power to deport to make effective his deportation order, assuming only *arguendo* that he has such incidental power, that power cannot be delegated either under the principle of *delegata potesta non potest delegari*, or upon the theory that it is non-delegable because it involves the exercise of judgment or discretion."

As a consequence of the above pronouncement, it is clear that the authority to issue warrants of arrest by the Deportation Board, pursuant to Section 1(b) of Executive Order 398, is null and void, as the Court in fact held, thereby rendering said section invalid. This invalidity and the resulting gap inevitably created in the procedural rules of the Board was already answered by the Court in a previous decision. It was in the case of *Qua Chee Gan v. Deportation Board*,[44] that the situation was remedied. In the said case the court emphatically declared:

> "The contention of the Solicitor-General that the arrest of a foreigner is necessary to carry into effect the power of deportation is valid only when there is already an order of deportation. To carry out the order of deportation, the President obviously has the power to order the arrest of the deportee. But certainly, during the investigation, it is not indispensable that the alien be arrested. It is enough, as was true before the order of President Quirino, that a bond be required to insure the appearance of the alien during the investigation, as was authorized in the executive order of President Roxas (Executive Order No. 69, July 29, 1947)."

It could be gleaned from the above that the arrest of the foreigner is no longer necessary. The mere execution of a bond to insure his appearance during the investigation is sufficient. Of course, it will be to his detriment should he not be present during the hearing, for he shall not be able to exercise his rights and such absence would be tantamount to a waiver.

After the proper execution of the bond, the case may be set for trial on the merits before the Board. Trial proceeds as in the ordinary courts of justice where the prosecuting officer of the government first introduces his evidence to be followed by the respondent. As soon as the hearing of the case is terminated, the case is considered submitted to the Board, which will then prepare its report and recommendations to the President of the Philippines.[45]

---

[44] *Supra*, note 36.

[45] *Supra*, note 21.

4. Due Process Requirement

Although it is a settled principle repeatedly confirmed by pronouncements that a deportation proceeding is neither a criminal proceeding nor a judicial hearing, still it is recognized and accepted that an alien running through the gauntlet of deportation proceedings is entitled to the due process clause of the Constitution. Even if the forcible removal of an alien is not considered a punishment, it cannot be denied that such removal is at least a deprivation of his liberty and no amount of platitude can conceal the pragmatic fact that, as to the alien thus removed, it means banishment, a forcible severance of his social, if not his family ties. And considering the fact that the due process clause of the Constitution extends its protection to both citizens and aliens alike,[46] it will indeed be a flagrant violation of the fundamental law if aliens are taken arbitrarily into custody without giving them the opportunity to be heard upon the questions involving their right to remain in the country.

No definition has yet been articulated of due process that could serve as a mechanical yardstick to supply mechanical answers in countless variant situations. For, the term "due process of law" expresses a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the bill of rights; and its asserted denial is to be tested, not as a matter of rule, but rather by appraisal of the totality of facts involved in the particular case.[47] The very fact that the phrase embodies an abstract principle of justice rather than a concrete rule of law presents an insuperable obstacle in the way of a comprehensive formulation of its requirements capable of serving in every instance as a standard criterion of the validity of governmental acts. Reorganizing these difficulties, the United States Supreme Court has more than once deliberately refrained from giving a definition of due process, preferring to let the full meaning of the term "be gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise.[48] The court explained in the case of *Holden v. Hardy*[49] "that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard."

But Justice Johnson, speaking for the Philippine Supreme

[46] MALCOLM, *PHILIPPINE CONSTITUTIONAL LAW* 328-333 (2nd ed.) (1926).

[47] Betts v. Brady, 316 U.S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595 (1942).

[48] Twining v. New Jersey, 211 U.S. 78, 29 S. Ct. 14, 53 L. Ed. 97 (1908).

[49] 169 U.S. 366, 18 S. Ct. 383, 42 L. Ed. 780 (1890).

Court boldly defined due process in the case of *United States v. Ling Su Fan*,[50] thus:

> "Due process of law is process of proceedings according to the law of the land. 'Due process of law' is not that the law shall be according to the wishes of all the inhabitants of the state, but simply —
>
> "First. That there shall be a law prescribed in harmony with the general powers of the legislative department of the government;
>
> "Second. That this law shall be reasonable in its operation;
>
> "Third. That it shall be enforced according to the regular methods of procedure prescribed; and
>
> "Fourth. That it shall be applicable alike to all citizens of the state or to all of a class."

The concept of due process of law however is not violated just because deportation of aliens is left solely unto the hands of administrative officers for it has been laid down that the "procedure required under due process of law is not necessarily judicial, but any legal proceeding enforced by public authority which regards and preserves principles of liberty and justice is due process of law, whether the proceeding be judicial or administrative or executive in nature.[51]

In perspective, rulings[52] of judicial tribunals are uniform in holding that due process of law in deportation cases is secured to the alien if under the circumstances he is given substantial notice of the reason why he should be deported from the country if he is given a fair and reasonable opportunity to present evidence controverting any evidence adduced by the officers of the government and tending to exculpate him from the commission of the unlawful acts imputed to him if he is afforded at some stage of the hearing, reasonably early therein so as to be of some substantial advantage to him, the opportunity to secure the advice and assistance of counsel — and if it appears upon the whole proceeding that the government officers acted in good faith, and that their determination as finally arrived at was fair and not an arbitrary one, or one induced by a manifest disregard of the alien's right in the premises.

In the case of *Ang Tibay v. Court of Industrial Relations*,[53] the Supreme Court delineated certain "cardinal primary rights"

---

[50] 10 Phil. 104 (1908).

[52] Yamataya v. Fisher, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903);

[51] Malcolm, *supra*, note 46 at 319-320.

Ex parte Hidekuni Iwats, 219 F. 610 (1915); *Ex parte* Bridges, 49 F. Supp. 292 (1943).

[53] 69 Phil. 635 (1940).

which must be respected in administrative proceedings. Since deportation proceedings are administrative in nature, it is submitted that these "cardinal rights" should also be observed.[54]

The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes . . . "the libertty and property of the citizen and the alien shall be protected by the rudimentary requirements of fair play."

Second, not only must the party be given an opportunity to present his case and adduce evidence tending to establish the rights which he assert but the Tribunal must consider the evidence presented. In the language of the Court, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

Third, "while the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely that of having something to support its decisions. A decision with absolutely nothing to support it is a nullity, at least when directly attacked." This principle emanates from the more fundamental principle that the genius of the Constitutional government is contrary to the vesting of unlimited power anywhere.

Fourth, not only must there be some evidence to support a finding or conclusion . . ., but the evidence must be "substantial". "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Fifth, the decision must be rendered on the evidence presented at the hearings or at least contained in the record and disclosed to the parties affected.

Sixth, the administrative tribunal must act on its own independent consideration of the law and the facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

Last but not least, the administrative tribunal should in all controversial questions, render its decisions in such manner that the

[54] See also: Manila Trading and Supply Co. v. Philippine Labor Union, 71 Phil. 124 (1940); Philippine Movie Pictures Workers Ass'n. v. Premiere Productions Inc., 92 Phil. 843 (1953).

parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

It must also be noted, that generally speaking, the same remedies available to individuals in case of unlawful arrest or detention are open to aliens who are subjected to deportation.[55] Judicial review in appropriate cases may also be available through the instrumentality of extraordinary legal remedies — certiorari, prohibition and mandamus — on grounds of absence or excess of jurisdiction abuse of discretion.[56]

Unless the defect or practice complained of led to denial of justice or resulted in the absence of one of the elements deemed essential in due process, the hearing cannot be said to be unfair.[57] It has however been ruled that the fact that the decision is wrong does not mean that the hearing was not fair.[58] What is required of the decision is that there be substantial evidence on which it is based, substantial evidence being relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[59]

An examination of the cases decided by the courts relating to the procedure followed by the administrative bodies in deportation cases reveals the evolution of what is known as the standard of fairness — a standard which must be followed in all cases and under all circumstances if due process of law as provided in the Constitution can be approximated. This standard is not based on technical rules and does not require a proceeding akin to the observed in ordinary courts. In the case of *Moyer v. Peabody*,[60] Justice Holmes said:

> ". . . But it is familiar that what is due process of law depends on circumstances. It varies with the subject matter and the necessi-

[55] Lao Tang Bun v. Fabre, 81 Phil. 682 (1948); Carmona v. Aldanese, 54 Phil. 896 (1930); Chua Hiong v. Deportation Immigration, 96 Phil. 665 (1955). But Cf. Johnson v. Commissioner of Immigration, 96 Phil. 665 (1955), where it was held. "In the absence of exceptional circumstances, habeas corpus proceeding to prevent deportation is premature if proceedings are still pending . . ."

[56] DE LA ROSA, PHILIPPINE IMMIGRATION LAWS 151 (1948).

[57] U.S. *ex rel* Bilokumsky v. Tod., 263 U.S. 149, 44 S. Ct. 54, 68 L. Ed. 221 (1923); Bufalina v. Irvine, 103 F. 2d 830 (1939); Kielema v. Crossman, 103 F. 2d. 292 (1939); Reynolds v. U.S. *ex rel* Dean, 68 F. 2d 346 (1934).

[58] U.S. *ex rel* Tisi v. Tod, 264 U.S. 131, 44 S. Ct. 260, 68 L. Ed. 590 (1924); Jung Sam v. Haff, 116 F. 2d 384 (1940); U.S. *ex rel* Di Battista v. Hughes, 299 F. 99 (1924).

[59] Ang Tibay v. C.I.R., 69 Phil. 635 (1940).

[60] 212 U.S. 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

ties of the situation. Thus summary proceedings suffice for taxes and executive decisions for exclusion from the country."

And so long as the courts can find that there was no abuse of discretion and no arbitrary action, and that there was an attempt in good faith and without prejudice and passion to discover all the facts and to pass a fair judgment upon them, the acts of the administrative officers will seldom be disturbed. Where however technical rules have been observed, but the record shows unfairness, passion and prejudice, the court may intervene.[61]

Consonant with the holding that deportation of alien is not a judicial proceeding, the constitutional rights which in ordinary criminal cases are accorded to the accused are denied to the aliens who are facing deportation charges.

There have been court rulings to the effect that the right to be immune from unreasonable searches and seizures,[62] the right to be protected from *ex post facto* laws,[63] the right not to be compelled to be a witness against one's own self,[64] and the right of not being subjected to cruel or unusual punishment[65] are not applicable to aliens under deportation proceedings.

Moreover, administrative bodies are not bound by the strict rules of evidence[66] which are followed by judicial tribunals in considering the guilt of the accused. Hearsay evidence therefore is admissible[67] against the alien. However, the alien faced by hearsay evidence should be given an opportunity to explain or rebut the same

---

[61] "The requirement of a fair hearing have not been met: first, when because of defects in the statute or rules the proceedings of the officers in accordance therewith are unreasonable and arbitrary and prevent the holding of such hearing; second when the statute, is not unconstitutional but is not followed by the officers, and the alien as a result is deprived of substantial rights; third, when the officer fails to follow the immigration rules and thus prejudices the aliens' case; and fourth, when the acts of the officers either of commission or of commission are not covered by any statute or rule, but in view of all the facts are arbitrary. x x x" (VAN VLECK, THE ADMINISTRATIVE CONTROL OF ALIENS, A STUDY IN ADMINISTRATIVE LAW AND PROCEDURE, 160 (1932).

[62] Fong Yue Ting v. U.S., supra, note 9.

[63] *Ex parte* Bridges, *supra*, note 52.

[64] U.S. *ex rel* Rennie v. Brooks, 284 F, 908 (1922); Low Foon Ying v. U.S., 145 F. 791 (1906); Tom Wah v. U.S. 163 F. 1008 (908).

[65] Fong Yue Ting v. U.S., *supra*, note 9.

[66] Morel v. Baker, 270 F. 577 (1920), appeal dismissed, 258 U.S. 606, 63 L. Ed. 786 (1922).

[67] Lewis *ex rel* Lai Thuey Lem v. Johnson, 16 F. 2d 180 (1926); Sercerchi v. Ward, 27 F. Supp. 437 (1939).

and a denial of this opportunity will make the proceeding unfair.[68] And when there is no evidence other than hearsay and rumor to support the findings of the officer, the hearing is considered improper.[69]

In regard to the alien held in custody pending determination of deportation proceedings, it has been held that such action by the deportation board is legal. The reason for this is the fact that detention is merely temporary in character and considered as a mere step in the process of exclusion or expulsion of an undesirable alien and pending arrangement for his deportation, the government has a right to hold him under confinement for only a reasonable length of time.[70] It has also been held in another case,[71] that the court has the power to "release from custody an alien who has been detained for an unreasonably long period of time by the Department of Justice after it has become apparent that although a warrant for his deportation has been issued, the warrant cannot be effectuated; that the theory on which the court is given the power to act, is that the warrant of deportation, not having been able to be executed is *functus officio*, and the alien is being held without any authority of law.

5. *Other Limitations*

a. International Law

In the case of *In re McCulloch Dick*, the court had occasion to declare that the deportation power of the Chief Executive is not an arbitrary power, but one subject to "recognized rules of international law." Said the Court:

> "The instances in which aliens may be deported as an act of state must be determined upon recognized principles of international law, and when the legislature conferred upon the Chief Executive the power to deport aliens, it did not confer an arbitrary power to de-

[68] Whirfield v. Hanges, 222 F. 745 (1915).

[69] Datz v. Commissioner of Immigration, 245 F. 316 (1917).

[70] Borovsky v. Commissioner of Immigration and Deportation Board, 84 Phil. 161 (1949); "The investigation in any deportation case shall be finished within five days unless extended by the President of the Philippines." See Malanyaon, *The President and Undesirable Aliens*, 5 SAN BEDA L. J. 34 (1962).

[71] Borovsky v. Deportation Board, 90 Phil. 107 (1951). Accord: Andreu v. Commissioner of Immigration, 90 Phil. 347 (1951), where it was held: "Habeas Corpus may also be issued when an order of deportation cannot be executed and has become *functus officio. Provided*, that no criminal charges have been filed against him and no judicial order issued, the deportable alien cannot, in such case, be held under indefinite detention and must be released."

> port any alien upon a mere whim but only such aliens as may properly and lawfully deported under recognized rules of international law."[72]

This judicial opinion is a recognition of the generally accepted principle that a state does not have the unlimited power to treat aliens as it deems fit.

The state, on the contrary, is bound to recognize certain rights as belonging to aliens admitted to its territory.

It is the practice of states to extend generally the same civil rights to aliens that it extends to nationals.[73] But as far as international law is concerned, the alien is not necessarily entitled to all civil rights.[74] For example, a state does not violate any rule of customary law by excluding aliens from ownership of real property, or by excluding them from the exercise of certain professions.[75]

However, there is also a certain minimum standard of treatment demanded by international law which cannot be annulled by municipal law, notwithstanding the fact that ordinary treatment of nationals fall below this standard.[76] Consequently, in the protection of that which constitutes a minimum standard of treatment, it is possible for an alien to claim as of right better treatment than that accorded to nationals.[77]

The same idea is cogently expressed by Commissioner Nielsen in his concurring opinion in the case of *Neer v. Mexico*:

> "Although there is the clear recognition in international law of the scope of sovereign rights relating to matters that are subject of domestic regulation, it is also clear that the domestic law and the measures employed to execute it must conform to the requirements of the family of nations which is international law, and that any failure to meet those requirements is a failure to perform a legal duty, and as such an international delinquency. Hence a strict conformity by authoties of a government with its domestic law is not necessarily conclusive evidence of the observance of legal duties imposed by international law although it may be important evidence on that point."[78]

Recognizing the existence of an "international minimum standard", it is apt to determine the obligations of each nation, the non-

---

[72] *In re* McCulloch Dick, *supra*, note 28.

[73] GIBSON, ALIENS AND THE LAW 3 (1940).

[74] *Ibid.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] ROTH, THE MINIMUM STANDARD OF INTERNATIONAL LAW APPLIED TO ALIENS, 95 (1949) citing U.S.-Mexico, General Claims, Opinions of Commissioners, 71 (1927).

observance of which is considered as an international delinquency.

One of the rights which a state is obligated under international law to extend to aliens is protection against arbitrary and unfair arrest. A state which maltreats an alien is held to have violated international law regardless of the municipal law on the subject.[79] It has been decided that:

> "Under international law a nation has responsibility for the conduct of judicial officers . . . There must be some ground for depriving a person of his property. He is entitled to be informed of the charge against him if he is arrested on a warrant. Gross mistreatment in connection with arrest and imprisonment is not tolerated, and it has been condemned by international tribunals."[80]

As a general rule therefore, international law requires that in cases of arrest and detention, pending deportation proceedings, an alien must be accorded certain rights. There must be some grounds for his arrest; he is entitled to be informed of the charges against him (e.g. grounds for his proposed deportation); he must be given opportunity to defend himself.

Unduly harsh or oppressive or unjust treatment during arrest, trial or imprisonment has frequently provided ground for international reclamation and award. As Judge Beichmann stated in the Case of Mme. Cheveau:

> "The prisoner should be treated in a manner appropriate to his situation, and corresponding to the standard customarily accepted among civilized nations. If this rule is not observed a claim is justified."[81]

Not only does international law demand that aliens in prison be treated according to a proper international standard, but it also provides that there shall be no excessive delay in bringing the alien prisoner to trial.[82] This is the *ratio decidendi* in the case of *Chazen v. Mexico*. Arbitrary deprivation of liberty is an important and frequent form of violating the fundamental rights of the alien. Misconduct on the part of administrative authorities may take the form of unduly long detention prior to trial.[83]

In a capsule, it would seem that the international minimum standard is complied with if due process, as conceived by our courts, is faithfully observed.

---

[79] GIBSON, *supra*, note 73 at 5.

[80] U.S. (Way) v. Mexico, cited in Gibson, *supra*, note 73.

[81] 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 693 (1942). citing France (J. Chevreau) v. Great Britain (1931).

[82] GIBSON, *supra*, note 73 at 6.

[83] ROTH, *supra*, note 78 at 144.

b. Public Interest

In the case of *Forbes v. Chuoco Tiaco*,[84] the court held explicitly ". . . That every government has the inherent power to expel from its borders aliens whose presence has been found detrimental to the public interest." This statement indicated another limitation to the President's power to deport — public interest. Curiously, the court did not find it necessary to inquire into the particular ground upon which the respondent was deported. It was enough that the Chief Executive had determined that the expulsion of the respondent was in the public interest. No conscious attempt was made to define the scope of "public interest." But the Court's quotations from authorities are indicative of the Court's thinking. Quoting with approval *In re Patterson*,[85] and as earlier mentioned, the Court in effect said:

> "Unquestionably every state has a fundamental right to its existence and development, and also to the integrity of its territory and the exclusive and peaceable possession of its dominions, which it may guard and defend by all means against any attack."

Other refinements of "public interest" made by the Anglo-American and European international law authorities were freely borrowed by the Court: A state may deport an alien at pleasure "if it considers his presence in the state opposed to its peace, order and good government, or to its social or material interest; if it has just cause to fear that they will corrupt the manners or occasion any other disorder contrary to public safety."[86]

Eight years after the *Forbes* decision, *In re McCulloch Dick* upheld the exercise in wartime of the deportation power of the President."[87] The presence of McCulloch Dick was found by the Chief Executive to be "a menace to the peace and safety of the community."

Although the term "public interest" covers a wide spectrum, the government must, however, prove clearly that the continued stay of the alien in the country is prejudicial to public interest. Deportation must not be availed of by the President for political or devious reasons.

6. *Availability of Judicial Remedies*

It is an accepted rule that the decision of the Chief Executive

---

84 *Supra*, note 25.

85 *Supra*, note 23.

86 Luna, International Law Standards and the Philippine Law on Deportation, I PHIL. INT'L L.J. 350 (1963).

87 *Supra*, note 28.

in deportation cases is not subject to judicial review, by reason of the doctrine of separation of powers. However, there is a significant observation which points to about the only modification of this rule.

"While the President himself is not controllable by the courts, the Deportation Board . . . (is) subject to judicial restraint . . . where the case is still with the Deportation Board . . . judicial remedies against unlawful arrests or detention are available to the respondent. Thus, habeas corpus may be availed of to challenge the legality of the alien's confinement and proposed deportation. Judicial review may also be invoked through the extraordinary legal remedies for absence or excess of jurisdiction or grave abuse of discretion on the part of the Deportation Board . . ."[88]

In fine, the findings of the Deportation Board are reviewable by the courts when properly brought before them by a petition of the alien seeking remedy. The decision of the Board and its recommendation to the President is held in abeyance until the court shall finally dispose of the case before it. On the other hand, the President's action is based solely on the recommendation to be made by the Board. He cannot act alone on said matter. Thus, in theory the court's review of the decision of the Board is virtually an indirect review of the President's forthcoming action. Once the court finds that the case against the alien is meritorious, the Board's findings and conclusions shall be upheld, and forthwith, the proper recommendation shall be made by the Board to the President. In other words, the review of the Chief Executive's decision is made before proper recommendation and before Presidential action. However, if the President acts before the court review (of the Board's action) has been terminated, he could not be made to account for his act by judicial mandate.

B. Deportation Under the Immigration Law

Deportation proceedings under Section 69 of the Revised Administrative Code should not be confused with deportation proceedings under Commonwealth Act No. 613, otherwise known as the Philippine Immigration Act of 1940. Under the latter, authority to deport aliens is lodged in the Commission of Immigratioon, particularly its Board of Commissioners. Section 8 of said Act provides:

> "Section 8. The Board of Commissioners, hereinafter referred to in this Act, shall be composed of the Commissioner of Immigration and two Deputy Commissioners. In the absence of a member of the Board, the Department Head shall designate an officer or employee

[88] Luna, *supra*, note 86 at 352, 353.

> of the Bureau of Immigration to serve as a member thereof. In any case coming before the Board of Commissioners, the decision of two members shall prevail."[89]

As previously mentioned, the power to expel or exclude aliens, being a power affecting international relations, is vested in the political departments of the government, and is to be regulated by treaty or act of Congress, and to be executed by the executive authority according to the regulations so established, except so far as the judicial department has been authorized by treaty or statute, or required by the paramount law of the Constitution, to intervene.[90] Immigration laws must therefore be construed with a view to preserving treaty rights of aliens unless these rights are clearly annuled.[91] If reasonably possible, therefore, they must be construed so as not to conflict with any treaty. Immigration laws include conventions and treaties relating thereto.[92]

1. *Origin of the Philippine Immigration Law*

The Philippine law on immigration was patterned after or copied from American law practice.[93] Its provisions regarding primary inspection, boards of special inquiry, excludible classes of aliens, the process of exclusion and deportation, and administrative action against vessels, etc., were taken from the United States Immigration Act of February 5, 1917. Commonwealth Act No. 613, entitled "An Act to Control and Regulate the Immigration of Aliens Into the Philippines," otherwise known as the Philippine Immigration Act of 1940, was, after having been passed by the National Assembly, approved by the President of the United States on August 26, 1940 and proclaimed by the President of the Philippines on September 3, 1940. Section 52 of said Act provides that it "is in substitution for and supersedes all previous laws relating to the entry of aliens into the Philippines, and their exclusion, deportation, and repatriation therefrom," except Section 69 of the Revised Administrative Code and pending liabilities and prosecutions.[94] It also repealed the law as enacted by the Congress of the United States regulating the entry of Chinese persons into the Philippines.

2. *Object and Scope of the Law*

The general object of immigration laws is not only to prevent

---

89 4 PUBLIC LAWS OF THE COMMONWEALTH (1940-46).

90 Fong Yue Ting v. U.S., *supra*, note 9.

91 Cheung Sum Shee v. Nagle, 268 U.S. 366, 45 S. Ct. 539, 69 L. Ed. 985 (1925).

92 Karnuth v. United States, 279 U.S. 231, 49 S. Ct. 274, 73 L. Ed. 677 (1929).

93 Borovsky v. Deportation Board, *supra*, note 71.

94 8 PHIL. ANNOTATED LAWS 139, 140.

the admission of undesirable or forbidden aliens, but also to remove from this country all such aliens who might have succeeded in effecting entry.[95]

The Philippine Immigration Act of 1940 applies to and is to be enforced in all the territory and waters subject to the jurisdiction of the Government of the Republic of the Philippines. The admission into and expulsion from the Philippines of aliens is governed entirely by its provisions without prejudice to Section 69 of the Revised Administrative Code. All immigration matters come under the Bureau of Immigration at Manila with a Commissioner of Immigration in charge who is responsible for the administration of the immigration laws. The Commissioner is assisted by two Deputy Commissioners and the three officials constitute a Board of Commissioners before which all matters relating to immigration are considered.

3. *Grounds for and Procedure in Deportation Under the Act*

Section 37 of the Philippine Immigration Act of 1940, as amended, enumerates aliens subject to deportation;

> "(1) Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or at any place other than at a designated port of entry;
>
> (2) Any alien who enters the Philippines after the effective date of this Act, who was not lawfully admissible at the time of entry;
>
> (3) Any alien who, after the effective date of this Act, is convicted in the Philippines and sentenced for a term of one year or more for a crime involving moral turpitude committed within five years after his entry to the Philippines, or who, at any time after such entry, is so convicted and sentenced more than once;
>
> (4) Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs;
>
> (5) Any alien who practices prostitution or is an inmate of a house of prostitution or is connected with the management of a house of prostitution, or is a procurer;
>
> (6) Any alien who becomes a public charge within five years after entry from causes not affirmatively shown to have arisen subsequent to entry;
>
> (7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant;
>
> (8) Any alien who believes in, advises, advocates or teaches the

[95] Haw May v. North, 183 F. 89 (1953).

overthrow by force and violence of the Government of the Philippines, or of constituted law and authority, or who disbelieves in or is opposed to organized government or who advises, advocates, or teaches the assassination of public officials because of their office, or who advises advocates or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines;

(9) Any alien who commits any of the acts described in section forty-five and forty six of this Act, independent of criminal action which may be brought against him; Provided, that in the case of an alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: Provided however, that the imprisonment maybe waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head;

(10) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of the Philippine Commonwealth Act numbered Six Hundred and Fifty-Three, otherwise known as the Philippine Alien Registration Act of 1941, or who, at any time after entry, shall have been convicted more than once of violating the provisions of the same act;

(11) Any alien who engages in profiteering, hoarding, or black-marketing, independent of any criminal action which may be brought against him;

(12) Any alien who is convicted of any offense penalized under Commonwealth Act Numbered Four Hundred and Seventy Three, otherwise known as the Revised Naturalization laws of the Philippines, or any law relating to acquisition of Philippine citizenship;

(13) Any alien who defrauds his creditor by absconding or alienating properties to prevent them from being attached or executed."

A perusal of the above-enumerated grounds would disclose the fact that they are legitimate consequences of the sovereign power of the state. Paragraph (1) is closely connected with the honesty of the alien who has entered the country. This would effectively prevent aliens already in the country to lawfully stay when their entrance were effected by deliberate deceit upon the authorities and such was committed prior to or during their entry. It would be a mockery of the law if aliens would be allowed by the simple means of use of false and misleading statements to enter the country, and assimilate with the citizens of the receiving country. In order to guard the interests of the state, foreigners seeking entry must comply with the requirements of the local law.

Another instance of illegal entry is provided for in paragraph 2.

This would warrant deportation precisely because entrance was effected against the law. If illegal entrants shall be permitted to stay in the country, it is as if we were allowing flagrant violation of the laws.

The other grounds are based upon public interest. Certainly, we should not allow foreigners to stay and permit them to do acts opposed to our public policy, morals, and good customs. As intimated earlier, "a state may deport an alien at pleasure if it considers his presence in the state opposed to its peace, order, and good government, or to it social or material interests; if it has just cause to fear that they will corrupt the manners of the citizens; that they will create disturbances or occasion any other disturbances contrary to public safety.[96]

It should be noted that the Commissioner is empowered to issue warrants of arrest by the Immigration Act. This power, which is far different from that under section 69 of the Revised Administrative Code, has been unassailed and is respected by the courts. In contrast to that power claimed to be necessary to effectively carry out the provisions of said section 69, the authority vested, in the Commissioner by section 37, paragraph (a), has been expressly provided for by statute. It is therefore discretionary on the part of the Commissioner to issue said warrants of arrest and in the exercise of such discretion only such acts as would amount to grave abuse of discretion could be challenged before the courts.

It would be observed too, that a number of the clauses under Section 37 of the Act requires conviction either of an offense as defined by the Revised Penal Code or of a violation of the special laws relative to the regulation and stay of aliens (clauses 3,4,10, 12). Under the other clauses, deportation proceedings may be brought independent of any criminal action (clauses 9 and 11). Mere belief in or practice of acts contrary to law are likewise considered as grounds for deportation (clauses 5 and 8).

4. *Court Rulings Under the Immigration Law*

In the case of *Villahermosa v. Commissioner of Immigration*[97] the Court held that where the son of a Chinese father and a mother who was originally a Filipina and who reacquired Philippine citizenship after her husband's death, illegally entered the Philippine citizenship merely by making the required declaration at the age of majority, not having yet arrived at such age, and having entered

[96] Luna, *supra*, note 86 at 350.

[97] 80 Phil. 541 (1948).

illegally, he was subject to deportation as an alien.

A decision of a Board of Special Inquiry set up under Section 77 of the Immigration Law, as to whether an alien would be permitted to land in the Philippines or should be excluded, and particularly one which goes beyond the general power of such boards by finding that the alien in question is a returning resident alien, is not *res judicata*, and does not prevent deportation of the alien by the Commissioner of Immigration. [98]

The case of *Mejoff v. Director of Prisons*[99] forwarded the doctrine that entry into the Philippines is not unlawful where the person is brought in by armed and belligerent forces of a *de facto* government, such as the Japanese government during the occupation period, whose decrees and orders had force and effect of law.

In immigration cases, it is settled by a long line of decisions that courts should not disturb the conclusions of fact of the immigration authorities in matters which are within their competence, whenever there is some evidence to support their conclusion.[100] And it was held in a case[101] that decisions of immigration officials do not constitute *res judicata* so as to bar re-examination of the alien's right to enter the country.

In the case of *Ong Hee Sang v. Commissioner of Immigration*,[102] the court ruled that the Commissioner of Immigration is possessed of the power to grant bail and that this is discretionary on his part. The reasons, according to the court, are that.

> ". . . the determination as to the propriety of allowing an alien subject to deportation to be released temporarily on bail as well as the condition thereof, falls within the exclusive jurisdiction of the Commissioner and not in the court of justice because the courts do not administer immigration laws."

In the cases, however, of *Mejoff v. Director of Prisons*[103] and *Borovsky v. Commissioner of Immigration*[104] the Immigration Commissioner allowed their release from custody on the ground that petitioners, being stateless citizens, and there being no country to which they could be legally deported, or willing to receive them,

---

[98] Ong Se Lun v. Board of Immigration Commissioners, 95 Phil. 785 (1954).

[99] 90 Phil. 70 (1951).

[100] Manabat v. De la Cruz, G.R. No. 11228, April 30, 1958.

[101] Sy Hong v. Commissioner, G.R. No. 10224, May 11, 1957.

[102] G.R. No. 97600, February 28, 1962.

[103] *Supra*, note 99.

[104] *Supra*, note 71.

their indefinite detention would constitute an unwarranted deprivation of their liberty. In the *Ong Hee Sang* case, the petitioners were in the Philippines in violation and in defiance of our immigration laws and were not stateless citizens.

It is interesting to note that in the *Mejoff* and *Borovsky* cases; it was held furthermore that aliens illegally staying in the Philippines have no right to asylum therein even if stateless. It is equally of interest that in said cases, due to the indefinite detention resulting from the want of country to which they could be legally deported, thus constituting an unwarranted deprivation of liberty, the petitioners were set free by the court. The ultimate result, therefore, in these instances regarding stateless persons is the inability of the state to deport them despite the existence of the grounds by which they could be legally deported. Hence here is an instance where the power to deport cannot be exercised in spite of the alien's being undesirable and therefore, liable to deportation.

IV. CONCLUSION

From a reading of the foregoing discussion, one cannot avoid arriving at the conclusion that, indeed, the President's power to deport aliens is so broad that it approximates absoluteness.

Despite the legislative enactments and judicial pronouncements limiting the scope of his authority, the present set-up of our government allows the Chief Executive much leeway and the apprehension that he might exercise it arbitrarily and with impunity is not unfounded. The power to deport can be wielded by an unscrupulous President to achieve his personal and political ends. This suspicion came to the surface both in the *Stonehill* and *Yuyitung* cases.

Although the legislature provided for the procedure with which the President may deport aliens, still one wonders whether it is a sufficient compliance with the due process clause. Since the President is the sole judge as to whether the evidence warrants the deportation of an alien, the whole proceeding might turn out to be a farce.

Due process is not a mere literal compliance with the procedure outlined by law. It is an evaluation of all circumstances obtaining as would clearly justify the observance of the rudiments of fair play. In the *Yuyitung* case, there is no doubt that the legal procedure was observed but there was a vocal criticism that the quantum and quality of proof was not exactly convincing. Furthermore, the fact that deportation was carried out notwithstanding the pendency of the case

in the Supreme Court is strongly indicative that the whole affair was a travesty.

That the President can disregard judicial proceedings brings to light another repugnant facet of the present set-up. As came to pass in the *Yuyitung* case, the appeal to the Supreme Court became a debased mockery and it revealed the stark impotence of the judiciary in protecting the constitutional rights of aliens whom the President is determined to deport.

In view of the glaring flaws of the system brought to light in the *Yuyitung* case, Senator Sumulong filed a bill in Congress proposing the divestiture of the power from the President and its delegation to a commission which will be amenable to judicial review.

Agreeing with this proposal, one writer expresses his view, thus:

> "It is not even essential nor economic that the authority to expel aliens should be lodged in the Chief Executive whose decision, by reason of the doctrine of separation of powers, is not subject to judicial review, nor is it necessary that the opportunity to deport aliens should be cast in such broad terms as undesirability and public interest. The power should be defined by statute in precise limits consistent with the legitimate purpose of protecting the integrity of the country and promoting its welfare in a manner that would assure its exercise only in clear cases of necessity. Preferably, it would be vested in a subordinate public office with provision for judicial review in appropriate cases. In this direction, section 69 of the Revised Administrative Code should be repealed. . .[105]

[105] Luna, *supra*, note 86 at 358, 359.