POLITICAL LAW—PART ONE

CONSTITUTIONAL LAW

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I. JUDICIAL REVIEW AS POLITICS: THE SUPREME COURT AND ITS LEGITIMATING FUNCTION

It was Prof. Charles L. Black, Jr. who first articulated the political justification for judicial review: namely, that the Supreme Court performs not only a checking function but also a "legitimating" one.[1] Judicial review, as he sees it, performs not only the function of invalidating unconstitutional legislation, but it may also stamp its *imprimatur* on statute law as within congressional power and that it does not violate any constitutional limitations.

The legitimating function is, of course, one side of the dice of judicial review. It is, in fact, the more conspicuous side here in the Philippines, where the dice is "loaded" in favor of majoritarian democracy. The "loading" is in the form of the 2/3 vote requirement to declare a law unconstitutional.[2] This provision in our Constitution was intended by the delegates to the 1934 Convention as a majoritarian counterforce to the power of the Court to sit as a superlegislature and review the acts passed by Congress. Profiting from the experience of the United States at the beginning of the New Deal era, the delegates to the Convention wanted to insure that the Court would not stand in the way of needed social and economic legislation by means of its power of judicial review. The political premise on which the 2/3 vote requirement is based is, as stated by Alexander Bickel, "judicial review is a counter-majoritarian force in our system." [3]

Accent on the passive virtues

It was thus that, in 1970, the Supreme Court performed its legitimating function to the hilt in resisting constitutional challenges against the Con-

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1 BLACK, THE PEOPLE AND THE COURT 84 (1960).

2 CONST., art. VIII, sec. 10.

3 BICKEL, *The Least Dangerous Branch*: *The Supreme Court at the Bar of Politics* 16 (1962).

stitutional Convention Act (Republic Act 6132) and other laws. In upholding the validity of challenged provisions of the Constitutional Convention Act, the Court had to fall back on the "passive virtues"—judicial restraint and judicial recognition of the competence of the legislature to propose solutions to the problems of the body politic.

Thus, in *Badoy v. Ferrer*,[4] where the petitioner assailed as unconstitutional as in violation of freedom of expression Section 12(F) of Republic Act No. 6132, the prevailing opinion declared:

> "Gauged by the more liberal 'balancing-of-interest test', We must exercise judicial restraint in passing upon the statute challenged as unconstitutionally encroaching upon the realm of free expression and hearken to the caution pronounced by Mr. Justice Frankfurter in his concurring opinion in Dennis vs. U.S. that 'free speech cases are not an exception to the principle that we are not legislators, that direct policy-making is not our province. How best to reconcile competing interests is the business of the legislature and the balance they strike is a judgment not to be displaced by ours, but to be respected, unless outside the pale of fair judgment.' "[5]

In almost the same breath, the majority then went on to remind their dissenting colleagues that:

> "The agency of the State in fashioning instruments to generate the greatest good for the greatest number under our present political system is Congress, as a constituent assembly together with the electorate in the formulation of the organic law, or Congress with the President in the exercise of its ordinary law-making power for the enactment of statutes designed to solve the problems that urgently press for panaceas..."

In *Imbong v. Ferrer*,[6] the majority of the Court reminded their colleagues of the *obiter* in *Gonzales v. Comelec*[7] that they must give "due recognition to the legislative concern to cleanse, and if possible, render spotless, the electoral process" and that "in the choice of remedies for an admitted malady requiring governmental action, on the legislature primarily rests the responsibility."

It was in the case of *Del Rosario v. Carbonell*[8] where a unanimous court exercised judicial restraint by resorting to the doctrine of political question.

The case was filed by an interested citizen who, however, did not indicate that he was a prospective candidate for the Constitutional Convention nor did he allege membership of any organization whose rights may be impaired by Section 6(a), par. 5 and Section 8(a) of Constitutional Conven-

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[4] G.R. Nos. 32546 & 32551, October 17, 1970.
[5] *Ibid.*
[6] G.R. Nos. 32432 & 32443. September 11, 1970.
[7] G.R. No. 27833, April 18, 1969.
[8] G.R. No. 32476, October 20, 1970.

tion Act, which he challenged as oppressive. The petitioner assailed the appropriation of ₱29 million in Section 21 of the Act as simply a waste of public funds, because, according to him, no time limit for the duration of the Constitutional Convention is set, and thus the Convention may dissipate its time in pointless discussion without reaching any conclusion.

Answering his contention, the court said that with respect to the charge that Congress abdicated its power as a constituent body to propose amendments in favor of the Constitutional Convention, this is refuted by Article XV of the Constitution which authorizes Congress sitting as a Constituent Assembly either to propose amendments or to call a convention for the purpose. Invoking the doctrine of "political question," [9] the Court stated that the choice of either alternative is solely committed to Congress which cannot be interfered with by the Supreme Court. Whether there is necessity for amending the Constitution is also addressed to the wise judgment of Congress acting as a Constituent Assembly, against which the court cannot pit its own judgment, continued the Court.

Thus, a rule of political wisdom although of dubious constitutional logic has served the Court in good stead in legitimating other provisions of the Constitutional Convention Act.

II. PURIFYING THE ELECTORAL PROCESS AND THE FREE SPEECH ISSUE

The legitimating function of the Court is most difficult when it tackles the issue of freedom of speech, because in this area of judicial review the preferred freedoms are balanced against legitimate social interests that call for protection from the legislature and the courts. This problem is what, in fact, separates the liberals from the libertarians.

In perspective, laws prohibiting corrupt or immoral election practices are calculated to protect the electoral process from the evil effects of money cleverly utilized during elections to manipulate political consent. Such laws are, in fact, attempts on the part of the Congress to stem the influence of

[9] This doctrine is traced as far back as the old American case of *Luther v. Borden*, 7 How. 1, 12 L. Ed. 581 (1849), which arose out of the circumstances of Dorr's Rebellion in Rhode Island in 1842. The dissident group, dissatisfied with the state's outmoded constitution, attempted to set itself up as the legitimate government of the state under a new constitution. The Supreme Court was asked to determine which was the legal government, but the court refused in the following terms: "While the Supreme Court should always be ready to meet any question confided to it by the Constitution, it equally is its duty not to pass beyond its appropriate sphere of action and to take care not to involve itself in discussion which properly belong to other forums. No one, we believe, has ever doubted the proposition, that, according to the institutions of this country, the sovereignty in every State resides in the people of the State, and that they may alter and change their form of government at their pleasure. But whether they have changed it or not, by abolishing an old government, and establishing a new one in its place, is a question to be settled by the political power."

economic power in the political arena. Otherwise, as we have seen in past elections, it would result in distortion of the electoral process.

Yet the solution to the disease carries its own ills. The problem with restricting the use of money in political campaigns, as pointed out by Justice Rutledge of the U.S. Supreme Court in a concurring opinion, is that "it necessarily deprives the electorate, the persons entitled to hear, as well as the author of the utterance, whether an individual or a group, of the advantage of free and full discussion and of the right of free assembly for that purpose." [10] The limitation by Congress of the evil of overspending, corrupt election practices, excessive partisanship, and use of violence and intimidation gives rise to another evil—the loss of freedom of expression of the individuals and groups sought to be regulated and, more than that, the loss to the voting public of the benefit of debate and discussion of political issues.

All such problems came to the fore in a number of cases challenging the validity of certain provisions of the Constitutional Convention Act.

In the case of *Badoy v. Ferrer* [11] the petitioner asked that Section 12(f)[12] of the Constitutional Convention Act be declared unconstitutional because it deprived individuals who were candidates their freedom of speech and of the press and it denied candidates the right to speak and write in favor of their candidacy or against the candidacy of others.

In the second case, petitioner prayed that Section 12(f) of the Act be so construed as to allow the printing and publication of comments and articles for or against a candidate, which were not paid, without mentioning the names of all the other candidates with equal prominence and that a Comelec resolution be declared unconstitutional insofar as it prohibited the printing and publication of comments and articles which were not paid, unless the names of all other candidates are mentioned with equal prominence.

However, after the filing of the petition, the Comelec amended paragraph 6 of its disputed resolution, which limited the prohibition to the publication of paid comments or paid articles without mentioning the names

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[10] Concurring in U.S. v. CIO, 335 U.S. 106, 68 S.Ct. 1349, 92 L.Ed. 1849 (1948) at 144.

[11] G.R. Nos. 32546 & 32551, October 17, 1970.

[12] "The Commission on Elections shall endeavor to obtain free space from the newspapers, magazines and periodicals which shall be known as Comelec space, and shall allocate this space equally and impartially among all candidates within the areas in which the newspapers are circulated. Outside of said Comelec space, it shall be unlawful to print or publish, or cause to be printed or published, any advertisement, paid comment or paid article in furtherance of or in opposition to the candidacy of any person for delegate, or mentioning the name of any candidate and the fact of his candidacy, unless all the names of all other candidates in the district in which the candidate is running are also mentioned with equal prominence."

of all the other candidates with equal prominence. The resolution as amended provides:

> "(6) Outside of the Comelec Space, x x x it shall be unlawful for any newspaper, magazine or periodical to print or publish or cause to be printed or published any advertisement, paid comment or paid article in furtherance of or in opposition to the candidacy of any person for delegate, or mentioning the name of any candidate and the fact of his candidacy, unless all the names of all the other candidates in the district in which the candidate mentioned is running are also mentioned with equal prominence. x x x"

On the issue of freedom of expression, the majority of the Court said that this freedom is not immune to regulations by the State in the exercise of its police power. The validity of the abridgment is gauged by the extent of its inroad into the domain of the liberty of speech and of the press, when subjected to the applicable clear-and-present danger rule or the balancing-of-interests test. If the restriction on the invaded freedom is so narrow that the basic liberty remains, then the limitation is constitutional.

The court went to say that as long as the author of the publication is a juridical person or an organized group of persons of whatever nature, whether in the business of publishing a newspaper, magazine or periodical only for this particular election or not, any advertisement or article published for or against any candidate, paid or unpaid by said publisher, is prohibited as an organized group under par. 1 of Section 8(A) of the Constitutional Convention Act.

The Court pointed out that under par. F of Section 12, the moneyed candidate or individual who can afford to pay for advertisements, comments or articles in favor of his candidacy or against the candidacy of another, is required to mention all the other candidates in the same district with equal prominence, to exempt him from the penal sanction of the law. The purpose of this limitation is to give the poor candidates a fighting chance in the election, said the Court. If the wealthy candidate or the one who can afford only to meet the campaign expenses for his own candidacy alone, is discouraged thereby to pay for any campaign advertisement, comment or article in his favor, then the parity of chances in winning the election among the poor and the rich candidates is further enhanced, observed the court. The restriction in par. F of Section 12 therefore is one of the measures devised by law to preserve suffrage pure and undefiled and to achieve the desired equality of chances among all the candidates. Thus, according to the Court, the restriction on the freedom of expression appears too insignificant to create any appreciable dent on the individual's liberty of expression. The court cited other provisions of the Act calculated to insure the sanctity of the ballot and it noted that the limitation in Section 12 is

less restrictive than in the prohibition in Republic Act No. 4880 which was not declared unconstitutional by the court.

> "The fears and apprehensions of petitioner concerning his liberty of expression in these two cases, applying the less stringent balancing-of-interests criterion, are far outweighed by the all important substantive interests of the State to preserve the purity of the ballot and to render more meaningful and real the guarantee of the equal protection of laws."

The prevailing opinion was written by Justice Makasiar, concurred in by Justices J.B.L. Reyes, Dizon and Castro. Justice Makalintal wrote a separate concurring opinion. On the other side, Justice Fernando wrote a dissenting opinion, concurred in by Justices Zaldivar and Villamor. Justice Teehankee and Barredo also wrote separate dissents. Thus, the voting on the constitutionality of Section 12(F) was stalemated at 5-5, as Chief Justice Roberto Concepcion was on leave and did not take part.

The Fernando dissent rested on the proposition that the "clear and present danger" test has not been met. "I cannot resist the conclusion," wrote Justice Fernando, "that, on its (Sec. 12(f)) face, there is an abridgment of press freedom." It was pointed out that the task of the law in meeting the standard was not lightened by the fact that what was sought to be restricted was the right to disseminate *political information* which, under our hierarchy of values, enjoys a much greater immunity. Justice Fernando emphasized, leaning mostly on American citations, the indispensability of free speech in a free society.

Justice Fernando admits that "the evil feared is substantial and if it could be met, it should be met by legislation which is not at war with the constitutional command against the abridgment of press freedom." This, of course, already assumes that the provision in question is "at war" with the free speech clause, which is the problem in issue. His succeeding statement that the problem of excessive spending could be met by the ₱32,000 limit or expenses is belied by the experience of the Philippines and of the United States in their failure to regulate campaign spending by means of statutory ceilings.

The second dissent by Justice Teehankee underlines the necessity of elections under our form of government and the need for full and free discussion of public issues.[13]

Without freedom to circulate, through the public media, information and within the legally permissible limit for campaign expenditures, a candidate's qualifications and specific platform as well as to denounce the deficiencies and defects of an opponent and his program, the constitutional rights of both the candidate and the voters to free expression and free press are abridged and they are deprived thereof without due process.

[13] *Ibid.*

Justice Teehankee's opinion turns the tables on the prevailing opinion's argument of equality. He notes the "plight typical of the overwhelming majority of the earnest candidates who wish to serve as delegates—unknown and without previous public exposure, alone and without support of any political party or machine or political leader but perhaps worthy and deserving—who wants to actively pursue his candidacy and asks only that he be given an opportunity to equalize his chances by being allowed, within his means and . . . etc. . . ."

Justice Teehankee parts with his co-dissentient, Justice Fernando, in impugning the use of the clear-and-present danger test in this case. Citing Prof. Freund, he says:

> "I do not believe that the main opinion's anchoring of its ruling on the 'clear-and-present danger' criterion is tenable under the circumstances. The trouble is, as Professor Freund well put it, 'that the clear-and-present-danger test is an oversimplified judgment unless it takes account also of a number of other factors: the relative seriousness of the danger in comparison with the value of the occasion for speech or political activity; the availability of more moderate control than those which the state has imposed; and perhaps the specific intent with which the speech or activity is launched. No matter how rapidly we utter the phrase 'clear and present danger', or how closely we hyphenate the words, they are not substitute for the weighing of values. They tend to convey a delusion of certitude when what is most certain is the complexity of the strands in the web of freedoms that the judge must disentangle." [14]

Justice Teehankee would rather apply the "balancing-of-interests" test as synthesized by Justice Castro in the *Gonzales* [15] case. He would also anchor his dissent on the test of reasonableness required by the due process clause. This is the test which, according to him, the law fails to meet. "The means employed and the strictness decreed strongly tend to defeat, rather than promote, the very objectives of the Act of preventing perversion of the electoral process and 'maximizing, if not approximating, equality of chances among the various candidates.' "

Justice Barredo, while recognizing the necessity of purifying electoral campaign practices, stated that he does not believe "in imposing upon the rich candidates more restrictions in their liberties, just because they are rich which is not a sin, than the limitation of their expenses and those on their behalf to not more than ₱32,000." He decries the element of compulsion in the law, saying:

> "There is an element of odious compulsion in this provision, for it makes it unlawful and punishable with imprisonment and other accessory penalties, the failure of a candidate to spend his own money to advertise with equal prominence the candidacy of his adversaries whenever

[14] *Ibid.*
[15] *Ibid.*

he advertises his own candidacy. It is perhaps not far beyond reasonableness to restrict the advertisements of a candidate in the interest of remedying an evil Congress may recognize, but it is to me clearly unreasonable, nay, unjust and oppressive, to compel a candidate not only to give quarters to his adversary, but to practically help the latter by giving his name equal prominence as his own. It must be borne in mind that the primary objective of a candidate in an election is to win over his opponents and to require him, under pain of suffering imprisonment and/or other penalties, to spend his own money in order precisely that his opponents may be publicized with equal prominence as himself is, to my mind, an intolerable infringement of one's freedom to pursue a legitimate objective by ordinarily lawful means."[16]

The best approach to this difficult problem is exemplified in the dissent of Justice Teehankee, who pointed out that the provision in question is double-bladed and is not an unmitigated good. In such situations, "the dangers of the cure must be weighed against the dangers of the disease." The loss to the body politic and the candidates sought to be prohibited from airing their views outweighs the benefits, if any, obtained by the prohibition against excessive spending, for:

"(T)he most complete exercise of those rights is essential to the full, fair and untrammeled operation of the electoral process. To the extent they are curtailed the electorate is deprived of information, knowledge, and opinion vital to its function."[17]

Apart from the prohibition against undue publicity, the second important prohibition in the Constitutional Convention Act challenged last year was the provision prohibiting any group from supporting any candidate for delegate to the convention. Paragraph 1 of Section 8(a)[18] of the Constitutional Convention Act was impugned by petitioners of the case of *Imbong v. Ferrer,* as violative of the constitutional guarantees of due process, equal protection of the laws, freedom of expression, freedom of assembly and freedom of association. The majority of the Court, however, upheld the validity of the act against this multi-pronged attack by petitioners. With respect to the ban against all political parties or organized groups of whatever nature contained in paragraph 1 of Section 8(a) of the Act, the court noted that the provision permits the candidate to utilize in his campaign the help of members of his family and a campaign staff of not more than one for every 10 precincts in his district. It allows the full

[16] *Ibid.*

[17] Justice Rutledge, concurring in U.S. v. CIO, *supra,* note 10 at 144.

[18] Par. 1 of Section 8(a), Rep. Act No. 6132 (1970) prohibits: (1) any candidate for delegate to the convention (a) from representing, or (b) allowing himself to be represented as being candidate of any political party or any other organization; and (2) any political party, political group, political committee, civic, religious, professional or other organizations or organized group of whatever nature from (a) intervening in the nomination of any such candidate or in the filing of his certificate, or (b) from giving aid or support directly or indirectly, material or otherwise, favorable to or against his campaign for election.

[13] *Ibid.*

expression of his freedom of expression and his right to peaceful assembly, because he cannot be denied any permit to hold a public meeting on the pretext that the provision in said section may or will be violated, stated the court. The right of a member of any political party or association to support him or oppose his opponent is preserved as long as such member acts individually, and the very party or organization to which he may belong or which may be in sympathy with the cause or program of reforms is guaranteed the right to disseminate information about, to arouse public interest in, or to advocate for constitutional reforms, programs policies or constitutional proposal for amendments, continued the majority. The Court came to the conclusion therefore that the restriction contained in Section 8(a) of the Constitutional Convention Act is so narrow that the basic constitutional rights of free assembly and expression remained substantially intact and inviolate.

The Court cited the case of *Gonzales v. Commission on Elections,*[19] whereby the Court unanimously sustained the validity of the limitation on the period for nomination of candidates contained in Section 50-A of Republic Act No. 4880. In analogizing the limitation imposed by the Constitutional Act with that imposed by Republic Act No. 4880, the majority opinion stated that debasement of electoral process as a substantive evil exists today and is one of the major compelling interests that moved Congress to prescribe the total ban against all organizations in Paragraph 1 of Section 8(a) of the Constitutional Convention Act. The majority opinion adverted to the opinion of the *Gonzales* case citing the clear and present danger of excessive partnership, dishonesty and corruption as well as violence that of late has marked election campaigns and partisan political activities in the country.

The Court in justifying the wisdom of the prohibition cited not only the clear and imminent danger of debasement of the electoral process, but it also justified this to assure the candidates equal protection of the laws by according them equality of opportunity. According to the Court, the primary purpose of the prohibition is to avert the clear and present danger of another substantive evil, which is the denial of equal protection of the laws to all candidates. The candidates must depend on their individual merits and not on the support of political parties or organizations, said the Court, and it went on to cite the views of three sponsoring senators that under this prohibition of the Constitutional Convention Act, the poor candidate has an even chance as against the rich candidate. The Court stated that the guarantee of social justice includes the guarantee of equal opportunity, equality of political rights, and equality before the law, citing the opinion of Justice Tuason in *Guido v. Rural Progress Administration.*[20]

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[19] *Supra,* note 7.
[20] 84 Phil. 847 (1949).

The majority of the Court then went on to say that Paragraph 1 of Section 8(a) of the law does not create any hostile discrimination against any party or group and it does not confer undue favor or privilege on an individual. The discrimination applies to all organizations whether political parties or social, civil, religious or professional associations. The majority opinion states that political parties and organized groups have built-in advantages because of their party machinery and other facilities which the individual candidate who is without any organization does not have. The fact that the other civic or religious organizations cannot have a campaign machinery as efficient as that of political parties does not vary the situation, according to the Court, because they still have that built-in advantage as against the individual candidate without similar support. Moreover, the Court cited the possibility of civic, religious and professional associations binding together to support common candidates who advocate the reforms that these organizations champion.

The Court therefore concluded that the first paragraph of Section 8(a) of the Constitutional Convention Act does not necessarily transcend the limits of constitutional immunities enshrined in our Bill of Rights.

The majority opinion was penned by Justice Felix Makasiar and concurred in by Justices J.B.L. Reyes, Arsenio Dizon, Fred Ruiz Castro, and in the result by Justice Querube C. Makalintal. Justice Enrique Fernando dissented with respect to the conclusion of the majority as to the constitutionality of Section 8(a) of the Constitutional Convention Act, which dissent was concurred in by Chief Justice Roberto Concepcion, Justice Calixto Zaldivar, and Justice Julio Villamor. Justice Antonio Barredo dissented in a separate opinion.

In his concurring and dissenting opinion, Justice Fernando declared that he could not subscribe in entirety to the opinion of the majority as he believed that Section 8(a) of the Constitutional Convention Act infringed on freedom of speech and association. According to him, the right of an individual to join others of a like persuasion to pursue common objectives and to engage in activities to pursue such objectives is embraced within the constitutional guarantee of freedom of association. He also questioned the wisdom of the law as to its efficacy in seriously preventing the substantive evils sought to be prevented by Congress saying that the prohibition may work against the very evil sought to be prevented and the outcome might belie the expectations of the sponsors of the bill. Justice Fernando said that the provision in question also suffers from the danger of overbreadth which is to him clear and manifest as to be offensive to constitutional standards, magnified by the probability that the result would be the failure and not the success of the statutory scheme. He took issue with the majority which relied on the *Gonzales v. Comelec* ruling, the justice saying that what survived the test of constitutionality in the *Gonzales* case was the

prohibition for any political party, political committee, or political group to nominate candidates for any elective public office voted for at large earlier than 150 days immediately preceding elections and for any other public office earlier than 90 days immediately preceding such election. The dissenting justice noted that the provision in question went further than the prohibition in the *Gonzales* case in that political parties or any other organizations are precluded from selecting and supporting candidates for delegates to the Constitutional Convention. This is entering a forbidden domain by Congress, trespassing on a field hitherto rightfully assumed to be within the sphere of liberty, concluded Justice Fernando.

In his concurring and dissenting opinion, Justice Barredo held that the considerations which makes the restraint on the freedom of association, assembly and speech involved in the ban on the political parties to nominate and support their own candidates, reasonably and within the limits of the constitution, do not obtain when it comes to civic or non-political organizations, for there should be a distinction between political parties and civic or non-political organizations. The prohibition was seen by Justice Barredo as a deceptive device to preserve the built-in advantages of political parties while at the same time crippling completely other kinds of associations. The only way to accomplish the purported objective of the law of equalizing the forces that will campaign on behalf of the candidates to the Constitutional Convention is to maintain said ban only against the political parties, said Justice Barredo. The said Justice adverted to his opinion in *Gonzales v. Comelec* where he maintained that the right of suffrage which is the cornerstone of any democracy is meaningless when the right to campaign in any election is unreasonably and unnecessarily curtailed, restrainted, or hampered. Justice Barredo concluded that Section 8(a) of the Constitutional Convention Act should apply only to political parties and not to other civic and religious organizations who may want to put up their own candidates.

In another case,[21] an organization called "Kay Villegas Kami, Inc." questioned the constitutionality of Section 8 of the Constitutional Convention Act [22] raising the issues of violation of the due process clause, right of association, freedom of expression, and that the Act constitutes an *ex post facto* law. The petitioning organization averred that it had printed materials designed to propagate its ideology and program of government, and that it intended to pursue its purposes by supporting delegates to the Convention who will propagate its ideology.

The Court did not deal with the first three grounds any more since it had already decided the issue in previous cases. The court merely empha-

[21] *In re* Kay Villegas Kami, Inc., G.R. No. 32484, October 22, 1970.
[22] *Supra,* note 18.

sized the rationale for Section 8, par. 7 of the law, which was designed to prevent the prostitution of electoral process and the denial of the equal protection of the laws. Under the balancing-of-interests test which was adopted by the court, the cleansing of the electoral process, the guarantee of equal chances for all candidates, and the independence of the delegates are interests that should be accorded primacy.

The court also struck down the argument of petitioner that the law is an *ex post facto* law, saying that the constitutional inhibition refers only to criminal laws which are given retroactive effect.

Justice Fernando concurred and dissented following his opinion in *Imbong v. Comelec.* Justice Barredo likewise reiterated his views in the same case. Justice Villamor concurred with the prevailing opinion in the sense that the law was declared not *ex post facto* law, and he dissented as to the rest. Justice Teehankee filed a dissenting opinion, reiterating his dissent in *Badoy v. Ferrer* wherein he stated that the restrictions of the law unreasonably strait-jacket the candidates as well as the electorate and violates the constitutional guarantees of freedom of expression, freedom of press and freedom of association, and deny due process and the equal protection of laws.

One point raised in the dissent of Justice Teehankee must be underscored. On freedom of association, he said that the word "law" in the qualifying clause of the constitutional guarantee, "for purposes not contrary to law" [23] does not mean that an enactment of the legislature forecloses the question of freedom of association with finality, otherwise this would render sterile and meaningless the constitutional safeguard by the simple expedient of declaring the purposes or certain activities of certain associations, not wrong *per se,* as "contrary to law." Laws that would regulate the purposes for which associations and societies may be formed or would declare their purposes *mala prohibita* must pass the usual constitutional test of reasonableness and must not abridge freedom of speech and press, he concluded.

It is difficult to see how the Supreme Court could have validated Section 8(a) of the Constitutional Convention Act. The only consoling factor in this respect is that the Court divided on the question, and strong dissents have been registered.

The right of a citizen to free political expression can hardly be denied merely because he prefers to act in concert with others so as to make his voice effective. Exercise of the freedom of expression in the political arena "has traditionally been through the media of political associations," [24] for "effective advocacy of both public and private points of view, parti-

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[23] CONST., art. III, sec. 1 (16).

[24] Sweezy v. New Hampshire, 354 U.S. 237, 240, 77 S.Ct. 1203, 1 L.Ed. 2d 1311 (1957).

cularly controversial ones, is undeniably enhanced by group association." [25] As well put by Justice Rutledge, "the expression of the bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes." [26]

The argument for group political participation is eloquently stated by a noted American student of the Constitution:

> "Probably the highest form of freedom of association . . . is the freedom to associate for political purposes by means of organization of a political party and participation in its activities. The effective functioning of a democratic society depends on the formation of political parties . . . being indispensable agencies both for effective participation in political affairs by the individual citizen and for registering the diversity of views in a pluralistic society." [27]

Another point which needs emphasis here is the adoption in the above cases by the majority of the Court, or at least of the prevailing opinion in said cases, of the "balancing-of-interests" test, wherein the constitutionality of the legislative restriction on free expression is placed on balance against the affected individual's or group's interest in freedom of expression.[28]

As enunciated by Justice Castro in his separate opinion in the *Gonzales* case, the test requires the court to consider various interests that come into play in a given situation involving free expression, and among the factors to be considered are:

"(a) the social value and importance of the specific aspect of the particular freedom restricted by the legislation;

(b) the specific thrust of the restriction, i.e., whether the restriction is direct or indirect, whether or not the persons affected are few;

(c) the value and importance of the public interest sought to be secured by the legislation—the reference here is to the nature and gravity of the evil which Congress seeks to prevent;

(d) whether the specific restriction decreed by Congress is reasonably appropriate and necessary for the protection of such interest; and

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[25] NAACP v. Alabama, 357 U.S. 449, 460-461, 78 S.Ct. 1163, 2 L.Ed. 2d 1488 (1958).

[26] Concurring in U.S. v. CIO, *supra*, note 10 at 129.

[27] KAUPER, CIVIL LIBERTIES AND THE CONSTITUTION (1966).

[28] The "balancing" test is an American importation, applied and enunciated by Justices Frankfurter and Harlan in the following cases: American Communications Ass'n v. Douds, 339 U.S. 382, 70 S.Ct. 674, 94 L. Ed. 925 (1950); Barenblatt v. U.S., 360 U.S. 109, 79 S.Ct. 1081, 3 L.Ed. 1115 (1959); Uphaus v. Wyman, 364 U.S. 388, 81 S.Ct. 153, 5 L.Ed. 2d 148 (1960); Konigsberg v. State Bar of California, 366 U.S. 36, 81 S.Ct. 997, 6 L.Ed. 2d 105 (1961); *In re* Anastaplo, 366 U.S. 82, 81 S.Ct. 978, 6 L.Ed. 2d 135 (1961); Communist Party of the United States v. Subversive Activities Control Board, 367 U.S. 1, 81 S.Ct. 1357, 6 L.Ed. 2d 625 (1961); and Scales v. U.S., 367 U.S. 203, 81 S.Ct. 1469, 6 L.Ed. 2d 782 (1961).

(e) whether the necessary safeguarding of the public interest involved may be achieved by some other measure less restrictive of the protected freedom." [29]

One reason why the balancing test has been frowned upon by civil libertarians is that, almost invariably, when this test is applied, the interest of the state always outweighs the interest in freedom. The danger in this test lies in its misapplication, for the Court may merely weigh against society's interest in regulation merely the affected individual's interest in free speech, when the real competing interest is that of a democratic state itself in free expression. If the real competing interest of society in freedom is placed on the scale against social interest in regulation, then there is a good chance that the balance may tilt in favor of freedom rather than in restriction.

The Court, at least in one case [30] found the balance in favor of free speech, although it expressly used the "preferred freedom" doctrine. In this case, the Court, without any dissenting opinion, upheld the right of the petitioner to use a taped jingle to campaign as candidate for delegate to the Constitutional Convention. The respondent Commission had prohibited petitioner from using jingles in his mobile units equipped with loudspeakers, on the ground that this would violate Section 12(E) of the Constitutional Convention Act making it unlawful for candidates "to purchase, produce, request or distribute sample ballots, or electoral propaganda gadgets such as pens, lighters, fans (of whatever nature), flashlights, athletic goods or materials, wallets, bandanas, shirts, hats, matches, cigarrettes, and the like, whether of domestic or foreign origin."

It was the Comelec's view that "the use of a jingle, a verbally recorded form of election propaganda, is no different from the use of a 'streamer' or 'poster', a printed form of election propaganda." Thus, as Justice Teehankee in his concurring opinion put it, the Comelec would outlaw taped voices and would exact of the candidate that he make use of his sound system personally or by another person.

The Court upheld petitioner's contention that if the above provision of Republic Act No. 6132 were to lend itself to the view that the use of the taped jingle could be prohibited, then the challenge of unconstitutionality would be difficult to meet. The Court declared:

> "It has been our constant holding that this preferred freedom calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage. What respondent Commission did, in effect, was to

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[29] *Ibid.*

[30] Mutuc v. Commission of Elections, G.R. No. 32717, November 26, 1970.

> impose censorship on petitioner, an evil against which this constitutional right is directed."

The Court refuted the argument that petitioner would be free, either by himself or through others, to use his mobile loudspeakers. "The constitutional guarantee is not to be emasculated by confining it to a speaker having his say, but not perpetuating what is uttered by him through tape or other mechanical contrivances," said the court.

The decision in this case must be distinguished from that of the U.S. Supreme Court ruling in *Saia v. New York* [31] where the Court invalidated a city ordinance forbidding the use of sound amplification devices except public dissemination of items of news and matters of public concern provided that the same be done under the permission of the Chief of Police. In striking down the ordinance as unconstitutional, the Court held that it establishes a previous restraint on free speech. The majority further noted:

> "Loudspeakers are today indispensable instruments of effective public speech. The sound truck has become an accepted method of political campaigning." [32]

However, *Kovacs v. Cooper* [33] virtually overruled the *Saia* ruling. Note, however, that in the *Mutuc* case, the petitioner was not being prohibited from using a sound truck, but merely from using tape-recorded jingles, and the reason for the Comelec prohibition was not to protect the captive audience but to equalize campaign opportunities between those who could afford tape recordings and those who could not.

III. EQUAL PROTECTION AND REASONABLE CLASSIFICATION

In constitutional litigation, equal protection of law is the catch-all argument against unjust legislation. Paraphrasing Samuel Johnson, Justice Holmes once remarked that the equal protection clause is the "usual last refuge of constitutional arguments."

Two petitioners challenging the constitutionality of the Constitutional Convention Act, aside from two others, invoked the equal protection argument, in addition to the first-line offensive attacks they levelled at the disputed statutes.

Purifying the Constitutional Convention

The Constitutional Convention Act did not limit itself to the prohibition of corrupt election practices and of the use of money to influence political

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[31] 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 (1948).
[32] *Ibid.*
[33] 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513, 10 A.L.R. 2d 608 (1949).

consent. The Act also attempted to insure that only the pure in heart should run as candidates for delegate to the Convention. This the Congress attempted to achieve by means of a number of provisions calculated to guarantee that only persons motivated solely by a spirit to serve should be allowed to run; that candidates with an eye to the next general election should be prevented from using the convention as a springboard for another elective office, and that public officials should not use their office as a base for the campaign for delegateship.

The persons affected by the prohibitions went to court to challenge the constitutionality of the provisions in point. As in the other cases challenging the validity of the Constitutional Convention Act, the Supreme Court affirmed the validity of the prohibitions.

In *In re Subido* [34] the Supreme Court held that the provision of Section 4 of Republic Act No. 6132, otherwise known as the Constitutional Convention Act, which requires persons holding a public office or position to resign from said positions upon the filing of their certificate of candidacy for the election for Constitutional Convention, is not violative of the equal protection clause of the Constitution. The court stated that while said section of the law applies exclusively to officials and employees of the government or of government-owned or controlled corporations, it does not constitute discriminatory legislation since the classification is germane to the purpose of the act and is based on substantial differences between the situation of said officials and employees and that of persons outside of the government service. This accords with the rule laid down in the case of *Mala Electric Company v. Public Utilities Employees Association,*[35] that legislation which affects with equal force all persons of the same class and not those of another, is not class legislation and does not infringe the constitutional guarantee of equal protection of the laws, if the division into classes is not arbitrary and is based on differences which are apparent and reasonable. The Court then pointed out in the *Subido* case that under the Constitutional Convention Act (Sec. 4), government officials and employees are not absolutely barred from becoming candidates for office of delegate to the Constitutional Convention, the only condition being that when they do so they should relinquish their positions and that this condition is imposed for reasons of public interest because there are certain government offices which afford their occupants many built-in advantages not available to others which may be used or abused to enhance their own candidacies and because to allow government officials and employees to campaign for the convention and, if elected, to sit as delegate without vacating their positions would be detrimental to the government and to the public.

[34] G.R. Nos. 32436 & 32439, September 9, 1970.
[35] 79 Phil. 410 (1947).

In the case of *Imbong v. Ferrer,* the provision of the Constitutional Convention Act disqualifying any elected candidate from running from any public office in any election or from assuming any appointive office or position in the government until after the final adjournment of the constitutional convention, was assailed as unconstitutional for being undue deprivation of liberty without due process of law and as denial of the equal protection of laws. Again, the court ruled that this is without merit. The citizen does not have any inherent or natural right to a public office and the state, through its constitution or legislative body can create an office and define the qualifications and disqualifications therefor as well as impose inhibitions on public officers, said the court. Consequently, only those with qualifications and who do not fall under any constitutional or statutory inhibition can be validly elected or appointed to a public office so as to immunize the delegates from the diverting influence of self-interest, party-interest, or vested interest and to insure that he dedicates all his time to performing solely in the interest of the nation which may endure for generations. The court continued that the disqualification embodied in Section 5 of the Constitutional Convention Act will insure that the delegate will not utilize his position as a bargaining lever for concessions in the form of an elective and appointive office as long as the convention has not finally adjourned. The overriding objective of the challenged disqualification, noted the court, is to compel the elected delegates to serve in full their terms as such and to devote all their time to the convention, pursuant to their representation and commitment to the people.

The court further noted that the discrimination against delegates to the Constitutional Convention is valid for it is based on a substantial distinction which makes for real differences, is germane to the purposes of the law, and applies to all members of the same class. The court again noted that the function of a delegate is more far-reaching and its effect more enduring than that of any ordinary legislator or any other public officer.

Equal protection in expropriation statutes

But it was in an expropriation statute where the Court discussed fully the nature of the equal protection clause. It was necessary for the Court to do this because, unlike previous expropriation statutes which were in general terms, the law involved in this case specified the property which was to be expropriated. So, the petitioner in the case of *J. M. Tuason v. Land Tenure Administration,*[36] raised the point that the law, Republic Act No. 2616, which authorizes the expropriation of the Tatalon Estate in Quezon City, which was owned by petitioner, violates the equal protection of the laws clause because it is directed only against the petitioner unlike

[36] G.R. No. 21064, February 18, 1970.

other expropriation laws which confer authority to expropriate landed estates in general. The court, however, did not give due weight to this contention, saying that it gives due recognition to the power of Congress to designate the particular property to be taken and how much thereof may be condemned in the exercise of the power of expropriation. However, the Court said that it is still a judicial question whether, in the exercise of such competence, the party adversely affected is the victim of partiality or prejudice.

In tackling the above question, the Court started with the presumption of validity in favor of a challenged statute. The Court then noted that the law states that the Tatalon Estate has an area of more than 96 hectares and the lots therein were then occupied by no less than 1,500 heads of families who had expressed their earnest desire to purchase the lots at a minimal cost. Then the Court noted that the law also provides that the population of Quezon City has considerably increased, and this increase in population was causing a serious housing problem to city residents so that the law would not only solve the problem but would also implement the land for the landless program of the administration. The Court then cited another fact which removed the statute from the infirmity of the equal protection clause, and that is, that the petitioner, J. M. Tuason and Co., led the occupants of the Tatalon Estate to believe that they were dealing with the representatives of the real owners in the purchase of their lot, it appearing that a subdivision company was allowed to construct roads inside the estate and to advertise the sale of the lots inside. The occupants therein paid for their lots and spent fortunes to build their homes. It was only after the place had been improved that the J. M. Tuason and Company claimed for the first time that it was the owner of the estate. The Court pointed out that the petitioner did not answer the persuasive recital of conditions by respondents that motivated Congress to pass a law expropriating the estate.

The Court then declared that there is nothing to prevent Congress to follow a system of priorities in expropriating landed estates considering the limited funds at its disposal. Congress was moved to act in view of what it considered a serious social and economic problem, the solution which for it was the most acceptable was the expropriation of the Tatalon Estate, continued the Court. That Congress stopped short of attaining the cure of other analogous ills certainly does not stigmatize its efforts as a denial of equal protection. The Court cited jurisprudence to the effect that "the legislature is not required by the constitution to adhere to the policy of 'all or none'." [37]

In *Tan Ty v. Land Tenure Administration,*[38] the Court held that Section 3, Republic Act No. 1162, as amended by Republic Act No. 1599

[37] Lutz v. Araneta, 98 Phil. 148 (1955).
[38] G.R. No. 27971, October 7, 1970.

which gave the tenants of an expropriated estate the right to purchase the subdivided lots,[39] applies only to Filipino citizens who are in no financial position for the present to buy the land, but not to non-Filipinos, even if they may really have been tenants thereon prior to the acquisition of the expropriated property by the government. To allow aliens to benefit from the provisions of the law quoted above would result in their acquiring possession in perpetuity which is, in effect, in violation of the Constitution. The fact that the law withdraws from non-Filipinos the enjoyment of certain rights does not expose the law to unjust discrimination, declared the Court, for classification will constitute no violation of the individual's right to equal protection as long as it is not unreasonable, arbitrary or capricious. The Court cited the established principle that classification is not unreasonable where it is based on substantial distinctions that make for real differences, is germane to the aim and purpose of the law, is not limited to existing conditions, and applies to all members of the same class under similar conditions.

The cases on equal protection point to no other conclusion than the demise of the time-worn principle of "one law for all." The complexity of the problems of the country as a developing nation compels Congress to single out individuals and certain economic interests who must be regulated by legislation in response to the felt necessities of our time. Justice Fernando, the *ponente* in the *J. M. Tuason* case, notes in his new book that "the necessities imposed by public welfare may justify the exercise of the governmental authority to regulate, even if thereby certain groups may plausibly assert that their interests are disregarded." [40]

Freedom of assembly: the argument of fear

Contemporary student activism finally made jurisprudence in the area of free speech and assembly in the case of *Navarro v. Villegas*.[41] Petitioner, spokesman for the Movement for Democratic Philippines, a federation of students', workers', and peasants' organizations, went to the Supreme Court for a writ of mandamus to compel the Mayor of Manila to issue a permit to hold a rally at Plaza Miranda on Thursday, February 26, 1970, from 4:00 to 11.00 p.m. On the same day, the Mayor denied the request, saying:

[39] The law provides: "Sec. 3. The landed estates or haciendas expropriated by virtue of this Act shall be subdivided into small lots, none of which shall exceed one hundred and fifty square meters in area, to be sold at cost to the tenants, or occupants, of said lots, and to other individuals, in the order mentioned; *Provided*, That if the tenant of any given lot is not able to purchase said lot, he shall be given a lease from month to month of said lot until such time that he is able to purchase the same: *Provided, further*, That in the event of lease, the rentals that may be charged by the Government shall not exceed eight per cent per annum of the assessed valuation of the property leased."

[40] FERNANDO, THE BILL OF RIGHTS 58 (1970).

[41] G.R. No. 31687, February 26, 1970, 31 SCRA 730 (1970).

> "In the greater interest of the community, this office, guided by a lesson gained from the events of the past few weeks, has temporarily adopted the policy of not issuing any permit for the use of Plaza Miranda for rallies or demonstrations during week days." [42]

The Mayor then suggested that the MDP "utilize the Sunken Gardens near Intramuros for its rally and the rally be held earlier during the day in order that it may end before dark." [43]

The MDP, through Navarro, went to the Supreme Court the following day, contending that the Mayor's action violated his right to peaceably assemble and petition the government for redress of grievances and to equal protection of the laws.

The Mayor contended that the permit to hold a rally was not being denied and in fact the Sunken Gardens was offered as the place of the rally. The petitioner asserted that Plaza Miranda has been designed purposely as a convenient place for rallies and demonstrations, and it has earned the reputation as the "Congress of the People", the "Court of Last Resort" and the "Forum of the Masses." According to petitioner, the Mayor's suggestion "to banish the scheduled rally to the inconspicuous Sunken Gardens is a design to unduly minimize the effectiveness of the projected rally and to sink it to futility." [44]

In a short resolution handed down the day following the oral argument (February 26, 1970, the rally having been scheduled in the afternoon of the same day), the court denied the writ prayed for, reasoning that:

1) The respondent Mayor has not denied nor absolutely refused the permit sought by petitioner, and he stated his willingness to grant permits for peaceful assemblies at Plaza Miranda on Saturdays, Sundays, and holidays, and at the Sunken Gardens on weekdays;
2) The Mayor possesses reasonable discretion to determine or specify the streets or public places to be used for the assembly in order to secure convenient use by others and provide adequate and proper policing; and
3) Experience in connection with present assemblies and demonstrations shows that a public rally at Plaza Miranda, as compared to one at the Sunken Gardens, poses a clearer and more imminent dangers of public disorders, breaches of the peace, criminal acts, and even bloodshed as an aftermath of such assemblies.

Two justices, Fernando and Castro dissented, saying that "if respondent Mayor premised his refusal to grant the permit as sought by petitioner on

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[42] Annot., 31 SCRA 742, 743 (1970).
[43] *Ibid.*
[44] *Id.* at 744.

a clear showing that he was so empowered under the criteria supplied by *Primicias v. Fugoso,* then this petition should not prosper;" however, the grounds for his refusal as set forth in his letter do not meet the standard of the *Primicias* ruling. "The effect is one of prior restraint of a constitutional right," wrote the dissenting justices, citing *Shuttleworth v. Birmingham,* where the American Supreme Court declared:

> "For in deciding whether or not to withhold a permit, the members of the Commission were to be guided only by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience.' This ordinance as it was written, therefore, fell squarely within the ambit of the many decisions of this Court over the last 30 years, holding that a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." [45]

The above decision of the majority in *Navarro* certainly accords with the ruling of the Supreme Court in *Ignacio v. Ela,* [46] where the Court upheld a town mayor's denial of a permit to the Jehovah's Witnesses to hold a public meeting at the town plaza because of the mayor's fear that the applicants, a militant religious sect, may provoke disturbance due to the proximity of the Catholic Church. The Court, or at least a majority of it, observed that the mayor had offered the northwestern part of the plaza as a substitute meeting place, and hence there was hardly any merit in the contention that the applicants were denied free assembly.

As for the appropriateness of *Primicias v. Fugoso* [47] as authority, the Supreme Court in that case did say that the Mayor possesses reasonable discretion to specify the public places to be used for meetings and rallies. However, it must be noted that *Primicias* is two-pronged. The Court there also held, in effect, that mere apprehension on the part of the Mayor that disturbance might erupt as a result of the meeting is not sufficient ground for denial of the permit sought for by the applicant. That is why the Court quoted, among others, Justice Brandeis' now classic concurring opinion in *Whitney v. California* [48] that "fear of serious injury cannot alone justify suppression of free speech and assembly," and that "the fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression."

Under the First Amendment to the American Constitution, from which we copied verbatim the guarantee of free expression, fear of public dis-

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[45] 394 U.S. 147, 89 S. Ct. 935, 22 L. Ed. 2d 162, 167 (1969) as quoted in 31 SCRA 733 (1970).

[46] 99 Phil. 346 (1956).

[47] 80 Phil. 71 (1948).

[48] 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927), quoted in 87 Phil. 87-88 (1950).

turbance has always been held insufficient to justify abridgment of free speech. In a recent case, the U.S. Supreme Court stated:

> "[U]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right of free expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear . . . But our Constitution says we must take this risk . . ."[49]

This is because "mere legislative preferences or beliefs respecting matters of public convenience may well support regulations directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."[50] Thus, the "state may not unduly suppress free communication of views . . . under the guise of conserving desirable conditions."[51]

The expressed fear of the majority in the *Navarro* case that "every time that such assemblies are announced, the community is placed in such a state of fear and tension that offices are closed early and employees dismissed, storefronts boarded up, classes suspended, and transportation disrupted, to the general detriment of the public" is hardly sufficient to justify denial of a permit to hold a meeting at Plaza Miranda, if the criterion to be used is that utilized by their more liberal American colleagues.

> ". . . the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be 'substantial' . . . it must be 'serious' . . . And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression . . . [T]he substantive evil must be extremely serious and the degree of imminence extremely high . . ."[52]

IV. THE DUE PROCESS CLAUSE

Substantive due process: the dying gasps of a stubborn doctrine

The death of the economic doctrine of laissez faire did not kill substantive due process entirely. Intellectual inertia apparently outlives stare decisis; thus, while the Supreme Court has not utilized substantive due process lately as a legislation-killer, the doctrine still lives in the hearts and minds of some lawyers and their clients. It was the 1935 Constitution which dealt the *coup de grace* to substantive due process with its provisions

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[49] Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503, 509, 89 S.Ct. 733 (1969).

[50] Schneider v. State, 308 U.S. 147, 161, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

[51] Cantwell v. Connecticut, 310 U.S. 296, 308, 60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352 (1940).

[52] Bridges v. California, 314 U.S. 252, 262-3, 62 S.Ct. 190, 86 L.Ed. 192, 159 A.L.R. 1346 (1941).

on social justice, protection to working women and minors, regulation of relations between landowner and tenant and between capital and labor, etc. But our Supreme Court is still delivering the eulogies, and in the present Court, the eulogist is Justice Fernando.[53]

In *Edu v. Ericta,*[54] Justice Fernando, who wrote for the Court, had another opportunity to remind the petitioner, who challenged the validity of the Reflector Law (Rep. Act No. 5715), that substantive due process should not now be invoked to attack the constitutionality of welfare legislation.

In this case the petitioner challenged the amendment to the Land Transportation and Traffic Code[55] which prohibits registration of motor vehicles without reflectorized tapes at the front and rear ends of said vehicles. According to the petitioner, the law deprived him of property without due process of law. Upholding the law as a proper exercise of public power, the Court justified it in two sentences:

> "It would be to close one's eyes to the hazards of traffic in the evening to condemn a statute of this character. Such an attitude betrays lack of concern for public safety."

The *ponente,* Justice Fernando, then lectured on the private respondent for having been unable to resist the influence of American decisions. Declaring that such decisions on due process have lost their weight in this jurisdiction, the Court pointed out that substantive due process as a constitutional doctrine was tied up to the dominance of the economic doctrine of *laissez faire.*[56]

In another case,[57] where the Court held that an alien tenant can not enjoy the right given by law to tenants of an expropriated property to purchase the lot they have occupied, the Court said that this does not amount to deprivation of property without due process. Due process as a constitutional mandate is based on reason, and no irrationality can be said to characterize the denial of appellant's application for purchase, said the Court.

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[53] See *e.g.* Ermita-Malate Hotel and Motel Operators Ass'n. v. Mayor of Manila, G.R. No. 24693, July 31, 1967; Morfe v. Mutuc, G.R. No. 20387, January 31, 1968; Alalayan v. NPC, G.R. No. 24396, July 29, 1968.

[54] G.R. No. 32096, October 24, 1970.

[55] Appropriate parking lights or flares visible on hundred meters away shall be displayed at a corner of the vehicle whenever such vehicle is parked on highways or in places that are not well-lighted or is placed in such manner as to endanger passing traffic. Furthermore, every motor vehicle shall be provided at all times with built-in-reflectors or other similar warning devices either pasted, painted or attached at its front and back which shall likewise be visible at night at least one hundred meters away. No vehicle not provided with any of the requirements mentioned in this subsection shall be registered. (Rep. Act No. 5715 (1969).

[56] On the historical development of this thesis, see Agabin, *Laissez Faire and the Due Process Clause: How Economic Ideology Affects Constitutional Development,* 44 PHIL. L. J. 709 (1969).

[57] Tan Ty v. Land Tenure Administration, *supra,* note 38.

It observed that the alien's occupancy of the lots as a tenant of the previous owner before it was expropriated did not confer upon said alien any vested right on the property that the new owner (the government) was bound to respect.

In the case of *J. M. Tuazon v. Land Tenure Administration,* where Congress singled out a particular property for expropriation, the court had occasion to rule that the standard of due process also protects the landlord. According to the Court, the Congress can deny due process only under pain of nullity, and it would constitute a valid objection on the exercise of Congressional power.[58]

However, the Court closed by saying that if it would declare as unconstitutional the challenged statute, the judiciary may lend itself susceptible to the charge that in its appraisal of governmental measures with social and economic implications, its decisions are characterized by the narrow unyielding insistence on the primacy of property rights. In no other sphere of judicial activity are judges called upon to transcend personal predilections and private notions of policy, lest legislation intended to bring to fruition the hope of a better life for the great masses of our people, as embodied in the social justice principle of the constitution, be unjustifiably stricken down.

Procedural due process and the need for fair play

In the case of *Luzon Surety Company, Inc. v. Beson,*[59] the Supreme Court found that the surety company was denied procedural due process when the lower court, without giving the surety company an opportunity to be heard, confiscated the bond notwithstanding that there was a previous order of the court cancelling two bonds executed by the same surety company for another respondent in the same case. The Court stated that the requirements of fairness were not met as the surety company had defenses against confiscation of the bond which could not be summarily brushed aside.

This ruling of the Court adheres to previous decisions whereby a surety must be given an opportunity to be heard, otherwise, the writ of execution issued under it is void.[60] Even when the execution is proper, the party

[58] This is one of the grounds why expropriation of lots less than one hectare was disapproved by the Supreme Court in the previous cases of City of Manila v. Arellano Law Colleges, 85 Phil. 663 (1950); Lee Tai v. Choco, 87 Phil. 814 (1950); Republic of Samia, 89 Phil. 483 (1951); and of lots less than 2 hectares in the cases of Commonwealth v. De Borja, 85 Phil. 51 (1949); and Republic v. Prieto, G.R. No. 17946, April 30, 1963, 7 SCRA 1004 (1963).

[59] G.R. Nos. 26865-66, January 30, 1970.

[60] Luzon Surety Co., Inc. v. Guerrero, G.R. No. 20705, October 22, 1966, 17 SCRA 400 (1966); Ganay v. Gutierrez David, 48 Phil. 768 (1926).

against whom it may be directed could show facts that had developed subsequently that would make it unjust or inequitable. This necessitates a hearing before the issuance of a writ of execution.[61]

V. OTHER RIGHTS

Free access to courts

The constitutional principle of free access to courts was given meaning by the Supreme Court in *Enaje v. Ramos.*[62] The issue involved here was whether or not the petitioner should be allowed to litigate as pauper before the Municipal Court for the recovery of ₱85.00 in a civil case, in which petitioner was plaintiff and respondent Dugan was defendant. The petitioner filed an affidavit that he owned several parcels of land but that for several years prior to the filing of the complaint in the Municipal Court, said parcels of land referred to had been divided and partitioned among his children who had since been in possession and petitioner no longer owned or possessed a single parcel of land. Apart from that he had no income or means of livelihood. The municipal judge denied the petition to litigate as pauper since a person by the same name as petitioner was owner of some parcels of land under tax declarations filed with the municipal treasurer. The petitioner then went to the Court of First Instance on certiorari where he was allowed to litigate as pauper only for that case. Later, in the main case, the Court of First Instance ruled that the municipal judge did not abuse his discretion in disallowing petitioner to sue as pauper.

The Supreme Court reversed. It stated that under the Constitution a "pauper litigant" does not refer to a person who is so destitute as to have no means at all of even supporting himself. It suffices, according to the Court, that the plaintiff is indigent though not a public charge. This ruling follows an American case [63] where "pauper" was defined as "a suitor who on account of poverty, is allowed to sue or defend without being chargeable with costs."

The Court's view of a pauper is consonant with recent legislation like the act requiring courts to give preference to criminal cases where the party or parties involved are indigents,[64] and the act providing transporta-

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[61] Calvo v. De Gutierrez, 4 Phil. 203 (1905); Lec v. Mapa, 51 Phil. 624 (1928); Li Kim Tho v. Sanchez, 82 Phil. 776 (1949); Pascual v. Tan, 85 Phil. 164 (1949); City of Butuan v. Ortiz, G.R. No. 18054, 3 SCRA 659 (1961); Candelario v. Cañizares, G.R. No. 17688, 4 SCRA 738 (1962); Vda. de Albar v. Carandang, G.R. No. 18003, 6 SCRA 211 (1962); Robles v. Timario, G.R. No. 18239, October 30, 1962, 6 SCRA 380 (1962); Abellana v. Dosdos, G.R. No. 19498, Februory 26, 1965, 13 SCRA 244 (1965).

[62] G.R. No. 22109, January 30, 1970.

[63] People v. Schoharie County, 121 N.Y. 345, 24 N.E. 830 (1890).

[64] Rep. Act No. 6033 (1969).

tion and other allowances for indigent litigants,[65] where "indigent" is defined as a person "who has no visible means of income or whose income is insufficient for the subsistence of his family." There is also the law requiring stenographers to give free transcript of notes to indigent and low-income litigants,[66] where "indigent litigant" has a more expansive meaning to include anyone who has no visible means of support or whose income does not exceed ₱300.00 per month or is insufficient for the subsistence of his family.

The guarantee of free access to courts is actually an aspect of the doctrine of equality as recognized in our Constitution. The devaluation of the peso as well as the high cost of litigation has virtually closed our courts to the needy and the underprivileged. It is in the light of the serious economic imbalance in our society that the concept of "free access to courts" should be given substance, otherwise it will remain a paper guarantee. The decision of the Court in *Enaje v. Ramos* defines "pauper litigant" realistically, instead of the wooden and literal meaning given to the term by the lower courts.

Right to free association

In the case of *Confederation of Unions in Government Corporations and Offices (CUGCO) v. Subido*[67] the petitioners contested the memorandum circular issued by respondent Commissioner of Civil Service ruling that under Republic Act Nos. 2266 and 2327, the Auditor General and the Government Corporate Counsel are considered employers of the personnel employed in the auditing and legal departments of government-owned and controlled corporations and in view thereon he directed the Auditor General, the government corporate counsel, and board chairmen and general managers of government corporations requiring all union members or petitioner unions employed in the auditing and legal departments to sever their connection from the local employees' unions and to renounce collective bargaining benefits, otherwise, they would face disciplinary actions. One of the objections of petitioners to this memorandum circular was that it is unconstitutional because it violates the right to form or join associations or labor unions of their own choice.

In holding that the memorandum circular is not violative of the freedom of association, the Supreme Court said that the right to form and join associations and unions is not absolute or unlimited, and thus, if a person accepts employment that falls under the Civil Service Law, and his employer performs governmental functions, he may not resort to and exercise the

[65] Rep. Act No. 6034 (1969).
[66] Rep. Act No. 6035 (1969).
[67] G.R. No. 22723, April 30, 1970.

right to strike, because that is prohibited by law. Having accepted the employment freely and being chargeable with knowledge of the fact that he has no right to strike to enforce his demands against his employer, his only recourse is either to respect and comply with that condition or resign.

Clearly, the reasoning of the Court here is reminiscent of the old Holmesian dictum that while a person has a constitutional right to free speech, he has no constitutional right to be a policeman. This illiberal attitude that impales the petitioner on the horns of a dilemma is, in other jurisdictions, fading into obsolescence. American courts would rather balance the state's interest in the need for the prohibitory legislation against interest in the protection of freedom of association. In the case at bar, our Court did not even ask itself what the nation's interest is in having government lawyers and auditors who are not union members. Why should a position as government counsel or auditor be had only at the price of surrendering not only a constitutional right but also property rights in the collective bargaining agreement benefits? Should the government impose unconstitutional conditions as requisites for public employment?

Right of privacy

The Supreme Court reiterated the rule previously enunciated in *Vivo v. Montesa* [68] in the case of *Calacday v. Vivo.*[69] The rule is that the issuance of warrant of arrest by the Commissioner of Immigration solely for purposes of investigation and before a final order of deportation is issued, conflicts with the constitutional guarantee against the right of the people to be secure in their persons, houses, papers and effects.[70] This ruling was also reaffirmed in the cases of *Qua Chee Gan v. Deportation Board,*[71] *Dalamal v. Deportation Board,*[72] *Morano v. Vivo* [73] *and Neria v. Vivio.*[74]

VI. Congress and the Constitutional Convention

Under the Constitution, Congress, aside from being a legislative body, may also act as constituent assembly. Thus, under Section 1, Article XV, Congress, in joint session assembled, by a vote of three-fourths of all the Members of the Senate and of the House of Representatives voting separately, may propose amendments to the Constitution or call a convention for that purpose.

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68 G.R. No. 24576, July 20, 1968.
69 G.R. No. 26681, May 29, 1970.
70 CONST., art. 3, sec. 1, par. 3.
71 G.R. No. 10280, September 30, 1963.
72 G.R. No. 16812, October 31, 1963.
73 G.R. No. 22196, June 30, 1967.
74 G.R. Nos. 26611-12, September 30, 1969.

Of course, the powers of Congress as a constituent assembly differs from its powers as an ordinary legislative body. As a legislative body, its enactments are subject to approval by the President of the Philippines; as a constituent assembly, it acts on its own without any check exercised on its will by the President. In the enactment of statutes, generally only a majority vote is required, except in certain instances, while if it acts as a constituent assembly, an extraordinary 3/4 majority must be garnered.

When Congress, as a constituent assembly, calls a Constitutional Convention, can it lay down the details of such convention in its capacity as a legislative body? This question was tackled by the Court in *Gonzales v. Comelec.*[75] In this case, the petitioner contested the constitutionality of the whole Republic Act No. 6132 which implements the resolutions of Congress calling a constitutional convention on the ground, among others, that it was passed by Congress acting as a legislative body in the exercise of its law-making authority, and not as a constituent assembly. In sustaining the validity of Republic Act No. 6132, the Court declared that when Congress acts as a constituent assembly pursuant to article XV of the Constitution, it has full and plenary authority to propose constitutional amendments or to call a convention for the purpose. The Court then observed that the resolutions calling for a Convention were passed by a 3/4 vote. The grant to Congress as a constituent assembly of such plenary authority to call a Constitutional Convention includes all other powers essentials to the effective exercise of the principal power granted, such as the power to fix the qualifications, number, apportionment, and compensation of the delegates as well as appropriation of funds to meet the expenses for the election of the delegates and for the operation of the Constitutional Convention itself, said the Court. But while the authority to call a Constitutional Convention is vested by the present Constitution solely and exclusively in Congress as a constituent assembly, the power to enact the implementing details does not exclusively pertain to Congress acting as a constituent assembly; such implementing details are matters within the competence of Congress *in the exercise of its comprehensive legislative power,* which power encompasses all matters not expressly or by necessary implication withdrawn or removed by the Constitution from the ambit of legislative action. Consequently, said the Court, when Congress omits to provide for such implementing details after calling a constitutional convention, Congress, acting as a legislative body, can enact the necessary implementing legislation to fill in the gaps. The fact that a bill providing for such implementing details may be vetoed by the President is no argument against conceding such power in Congress as a legislative body for Congress can override the presidential veto or Congress can reconvene as a constituent assembly and adopt a resolution prescribing the required implementing details, said the Court.

[75] G.R. No. 32443, September 11, 1970.

This decision is the sensible approach to the problem posed by the petitioner in the above-mentioned case. When one descends from semantical hairsplitting to actual operation, the legalistic distinction between Congress acting as a constituent assembly and as a legislative body in the particular instance of passage of the Constitutional Convention Act was virtually immaterial, because Congress passed the Act overwhelmingly. In other words, the distinction means only a difference of about 30 votes between the plain majority required for the passage of a bill and the 3/4 majority required for Congress to pass action as a constituent assembly. In the passage of Republic Act No. 6132, even the 3/4 majority requirement was met although, of course, Congress did not pass it in joint session. If anything, the argument of invalidity of Republic Act No. 6132 based on the constituent assembly—legislative body dichotomy is a reminder of our lawyers' obsession with semantical niceties. Furthermore, —

> "Long-established usage has settled the principle that a general grant of legislative power carries with it the authority to call conventions for the purpose of amendment or revision of the Constitution; and even where the only method provided in the Constitution for its amendment is by legislative submission of amendments, the better doctrine seems to be that such provision, unless in terms restrictive, is permissive only, and does not preclude the calling of a constitutional convention under implied powers of the legislative department."[76]

The matter of apportionment of delegates to the Constitutional Convention was also dealt with by the court in the same case of *Gonzales*. The petitioner contended that the apportionment of delegates to the convention is not in accordance with proportional representation and therefore violates the constitution and the intent of the law. But the Court declared that apportionment of delegates to the convention is unlike apportionment of representative districts for Congress, sitting as a constituent assembly, may constitutionally adopt a method of allocation different from the allocation of representatives for congressional districts for reasons of economy and to avoid having an unwieldy convention. The court then noted that the apportionment provided for in the Constitutional Convention Act (Sec. 2, Rep. Act 6132) cannot conflict with its own intent expressed in said act for it merely obeyed and implemented the intent of Congress acting as a constituent assembly expressed in Section 1 of Resolution No. 4, which provides that the 320 delegates should be apportioned among the existing representative districts according to the number of their respective inhabitants, but fixing a minimum of at least 2 delegates for a representative district. The presumption is that the factual predicate, the latest available official population census for such apportionment, was presented to Congress which, accordingly, employed a formula for the necessary computation to effect

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[76] Bessermar v. Birmingham Electric Co., 252 Ala. 171, 40 So. 2d 193 (1949), quoted in Annot. 35 SCRA 57 (1970).

the desired proportional representation. The fact that the latest census was only a preliminary census would not preclude it as valid basis of apportionment, continued the Court, and it does not vitiate the apportionment as effecting proportional representation. According to the Court, absolute proportional apportionment is not required and is not possible when based on the number of inhabitants, for the population census cannot be accurate nor complete, dependent as it is on the diligence of the census takers, aggravated by the constant movement of population, as well as daily death and birth. It is enough that the basis employed is reasonable and the resulting apportionment is substantially proportional, concluded the Court.

There are statements of the Court in this case which are pregnant with disturbing implications. For instance, after noting that the petitioner in this case failed to pinpoint any specific provision in the Constitution providing for proportional representation, the Court states:

> "Unlike in the apportionment of representative districts, the Constitution does not *expressly* or *impliedly* require such apportionment of delegates to the convention on the basis of population in each congressional district. Congress, sitting as a Constituent Assembly may constitutionally allocate one delegate for each congressional district or for each province, for reasons of economy and to avoid having an unwieldy convention." [77]

Our Constitution expressly guarantees equal protection of the laws.[78] Inequality of apportionment has been held to be contrary to the Constitution for it would go against the vital principle of equality.[79] Thus, in the United States, it has been held that unequal apportionment of state legislative districts violates the equal protection clause of the Constitution.[80]

Equality of representation lies at the foundation of representative government. Central to the doctrine of equal representation is the rule of one-man-one-vote, and the electorate have a fundamental interest in an "equally effective vote" which includes the right to be free from dilution of the vote. Thus, *"the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."* [81]

The above pronouncements, made with respect to legislative apportionment, should apply with more reason to apportionment of delegates to the Constitutional Convention, who perform functions more fundamental, more

[77] *Ibid.*, emphasis supplied.
[78] CONST., art. III, sec. 1.
[79] Macias v. Comelec, G.R. No. 18684, September 14, 1961, 3 SCRA 1 (1961).
[80] Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964); Cf. Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663 (1962); Gray v. Sanders, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed. 2d 821 (1963).
[81] Reynolds v. Sims, *supra*, at 555.

pervasive and more comprehensive than ordinary legislators. It would, therefore, be constitutionally suspect for Congress to allocate, for reasons of economy, one delegate for each province regardless of population. To take an extreme example, to allocate one delegate for Batanes, with a population of only 11,425, and one for Rizal, with a population of 2,781,081,[82] would do violence to the equal protection clause in the name of economy.

Title of a law

Under the Constitution, "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill."[83] It has been said that this requirement is designed to prevent "log-rolling" legislation and also to prevent fraud or surprise both on the legislature and on the people.[84]

In *del Rosario v. Comelec*,[85] the petitioner impugned the constitutionality of the Constitutional Convention Act on the ground, among others, that it failed to include in its title the phrase, "To Propose Amendments to the Constitution of the Philippines." The title of the Act reads:

> "An Act Implementing Resolutions of Both Houses Numbered Two as Amended by Resolution of both Houses Numbered Four of the Congress of the Philippines Calling For A Constitutional Convention, Providing for Proportional Representation Therein and Other Details Relating to the Election of Delegates to and the Holding of the Constitutional Convention, Repealing for the Purpose Republic Act Four Thousand Nine Hundred Fourteen, and for Other Purposes."

The inclusion of the phrase "To propose amendments to the Constitution of the Philippines" is unnecessary, declared the Court, because the title expressly states that the Act implements the resolutions of Congress which categorically states in their titles that the Constitutional Convention was being called to propose amendments to the Constitution of the Philippines. Furthermore, according to the Court, there was no fraud or surprise that was perpetuated by the questioned title on the legislature and the public, since the power to propose amendments to the Constitution is implicit in the calling of the Convention itself. The court concluded by citing the settled rule that the title of the bill is not to be an index to the body of the act and that it should not be comprehensive in matters of detail. It is enough that it indicates the general subject and covers all the provisions of the act so as not to mislead Congress or the people.

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[82] Preliminary Report, 1970 Census, Bureau of Census & Statistics, September 1970.

[83] CONST., art. VI, sec. 21(1).

[84] Government of P.I. v. Hongkong & Shanghai Banking Corp., 66 Phil. 486 (1938).

[85] G.R. No. 32476, October 20, 1970.

Delegation of powers

In *Edu v. Ericta,* the petitioner below challenged not only the validity of the Reflector Law but also the order of the Land Transportation Commissioner implementing the law. On the basis of the law, which provides:

> "Appropriate parking lights or flares visible one hundred meters away shall be displayed at a corner of the vehicle whenever such vehicle is parked on highways or in places that are not well-lighted or is placed in such manner as to endanger passing traffic. Furthermore, every motor vehicle shall be provided at all times with built-in reflectors or other similar warning devices either pasted, painted or attached at its front back which shall likewise be visible at night at least one hundred meters away. No vehicle not provided with any of the requirements mentioned in this subsection shall be registered," [86]

the Commissioner drafted the following implementing order:

> "(1) For two wheeled motorcycles — One in front and another at the rear which shall be installed, pasted or painted on the lowest tip of both fenders. (2) For three-wheeled motorcycles — One in front to be installed, pasted or painted at the outer-most side of the rear end of the body of the vehcile. (3) For Trailers with platform body irrespective of size, two at the rear to be installed, pasted or painted on in outer-most side of the rear end of the body. (4) For Trailers with Stake or Van Body irrespective of size — Two in front to be installed, pasted or painted 5 inches below the two upper corners of the body; and four at the rear end of the trailer, two of which shall be installed, pasted or painted 5 inches below the upper two corners of the rear end of the body and the other two to be installed, pasted or painted 5 inches above the two lower corners of the rear end of the body. (5) For Four-wheeled motor vehicles 2½ meter high or lower irrespective of weight — Two in front to be installed at the outer-most side of the vehicle preferably at the outer-tip of the front bumper or at the lower tip of the front fender; and two at the rear to be installed, pasted or painted on the outer-most side of the rear end of the body of the vehicle preferably at the outer tip of the rear fender or bumper. (6) For four-wheeled motor vehicle 4 meters high but not lower than 2½ meters irrespective of weight — Four in front, two of which to be installed, pasted or painted at the outer-most front end of the vehicle preferably on the outer tip of the front bumper or fender and another two to be installed, pasted or painted, 5 inches below the upper two corners of the front end of the body of the motor vehicles; and four in the rear, two of which to be installed, pasted or painted 5 inches below the upper two corners of the rear end of the body and the other two to be installed, pasted or painted 5 inches above the outer-most rear end of the body of the motor vehicle."

The petitioner below contended that the drafting of this order was contrary to the principle of non-delegation of legislative power. In answer-

[86] G.R. No. 32096, October 24, 1970.

ing this argument, the Court reminded the petitioner below of the distinction between delegation of power to make the law and delegation of authority as to its execution. According to the Court:

> "To determine whether or not there is an undue delegation of legislative power, the inquiry must be directed to the scope and definiteness of the measure enacted. The legislature does not abdicate its functions when it describes what job must be done, who is to do it, and what is the scope of his authority. For a complex economy, that may indeed be the only way in which the legislative process can go forward."[87]

Perhaps the petitioner below was imprecise in his language. He probably wanted to bring out the point that the rule promulgated by the Commissioner exceeded or modified the authority conferred by the statute. He could have invoked the rule that an administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment.[88]

VII. Executive Power: Extent of Control

The power of the executive was again defined in the case of *Tecson v. Salas*[89] whereby the petitioner who was superintendent of Dredging in the Bureau of Public Works sought to nullify the order of respondent Secretary placing petitioner on temporary detail to the Office of the President by imputing to it the character of removal without cause.

In denying the petition, the Court took occasion to discuss the presidential power of control over executive bureaus and offices. The court referred to previous decisions especially in the case of *Villena v. Secretary of the Interior*[90] wherein Justice Laurel stated that under the presidential type of government and considering the departmental organization of our Constitution, all executive and administrative organizations are adjuncts of the executive department, the heads of various executive departments are assistants and agents of the chief executive, and except in cases where the chief executive, is required by the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the President maybe performed through the executive department and the acts of secretaries of such departments, performed and promulgated in the regular courses of business, are presumptively the acts of the chief executive.

The court acknowledged that while the case of *Villena v. Secretary of the Interior* may no longer be good authority as far as presidential power over

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[87] *Id.*
[88] I Cooper, Administrative Law 256 (1965).
[89] G.R. No. 27524, July 31, 1970.
[90] 67 Phil. 451 (1939).

local governments is concerned, it still holds good with respect to the pronouncements on executive departments, bureaus, and offices. In fact, subsequent decisions relied extensively on the *Villena* ruling, especially *People v. Jolliffe* [91] and *Pelaez v. Auditor General.*[92] In the latter case, the court said that "the power of control implies the right of the President to interfere in the exercise of such discretion as may be vested by the law in the officers of the executive departments, bureaus, or offices of the national government, as well as to act in lieu of such officers."

The court then ruled that the detail of petitioner to the Office of the President was not constitutionally objectionable. According to the court it could not be considered a removal or even a transfer and that even if it could be so viewed, it would still be allowable under the Civil Service Act then in force, so long as there was no reduction in rank or in salary, such transfer not being considered disciplinary when made in the interest of public service.

The court further stated, in conclusion, that it was not for the Supreme Court, much less for an inferior court, to inquire into the motives that may have prompted the exercise of presidential authority. The concept of separation of powers presupposes mutual respect by and between the three departments of the government, said the court.

In the case of *Lim v. Secretary of Agriculture and Natural Resources,*[93] the court reiterated the rule that the acts of department secretaries performed in the regular course of business are, unless they are disapproved, presumptively the acts of the executive. This follows the ruling laid down in several previous cases.[94]

VIII. JUDICIARY AND THE EXERCISE OF JUDICIAL POWER

Supervisory power of the Supreme Court

Judicial power as defined in Article VIII, Section 13 of the Constitution was held to include the power of the Supreme Court to transfer the trial of cases from one court to another of equal rank in a neighboring site, in the notorious *Bantay* cases, docketed in the Supreme Court as *People v. Hon. Gutierrez.*[95]

In this case, the Secretary of Justice issued an administrative order authorizing the Circuit Criminal Court of the Second Judicial District, with official station at San Fernando, La Union, to hold a special term in Ilocos Sur. Three days later, the Secretary again issued another administrative order, authorizing the respondent judge to transfer the *Bantay* arson cases

[93] G.R. No. 26990, August 31, 1970.
[94] Donnelly and Associates v. Agregado, 95 Phil. 124 (1954).
[95] G.R. Nos. 32282-83, November 26, 1970.

to the Circuit Criminal Court "in the interest of justice and pursuant to Republic Act No. 5179."

The prosecution, armed with the Secretary's administrative orders, moved the respondent judge for a transfer of the arson cases, but the defense opposed the motion. The respondent judge declined the transfer sought. The prosecution went to the Supreme Court on certiorari and mandamus to set aside the order of denial and to compel remand of the cases to the Circuit Criminal Court.

Striking down the power of the Secretary of Justice to transfer cases, the high court held that the present laws do not confer upon the Secretary the power to determine what court should hear specific cases. At the same time, however, the Court held that the respondent judge abused his discretion in failing to act upon the contention of the prosecution that the cases against the accused should be transferred to the criminal court because a miscarriage of justice was impending, in view of the refusal of the prosecution witnesses to testify in the court sitting in Vigan, Ilocos Sur, where they felt their lives would be endangered.

On the argument of the defense that the trial site could not be transferred in view of the rule in criminal procedure that one who commits a crime is amendable only in the jurisdiction where the crime is committed, the Court declared that such rule is only for the convenience of the accused, and where this is opposed against the convenience of the prosecution, the court should have the power to decide where the balance of convenience lies, and to determine the most suitable place of the trial according to the exigencies of truth and justice. The court then noted that to compel the prosecution in this case to proceed to trial in a locality where the witnesses will not be at liberty to reveal what they know is to make a mockery of the judicial process. The Court went on:

> "We must thus reject the idea that our courts, faced by an impasse of the kind now before Us, are to confess themselves impotent to further the cause of justice. The Constitution has vested the Judicial Power in the Supreme Court and such inferior courts as may be established by law (Article VIII, Sec. 13), and such judicial power connotes certain incidental and inherent attributes reasonably necessary for an effective administration of justice x x x.
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> One of these incidental and inherent powers of court is that of transferring the trial of cases from one court to another of equal rank in a neighboring site, whenever the imperative of securing a fair and impartial trial, or of preventing a miscarriage of justice, so demands."

[91] 105 Phil. 677 (1959).
[92] G.R. No. 23825, December 24, 1964.

Trial by newspaper vs. a fair trial

One of the rights of the accused guaranteed in our Constitution is to have a speedy public trial inside the courtroom under circumstances where the accused can confront the accuser. The technological revolution in the mass media has posed a new problem in our courts with respect to cases which have caught the interest of the newspaper and other media. The problem is how to insure, in the light of sensational and inflamatory newspaper accounts, that the judge who presides over the trial of the accused receives the evidence with an open mind and hands down a distinterested judgment after trial. The problem is most specially acute in countries that adhere to the jury system — since jurors are more susceptible to succumb to newspaper bombardment than the skeptical, hardboiled judge.[96]

But the problem did crop up here in the case of *Martelino v. Alejandro.*[97] This case involves the famous Jabidah trial which was made political campaign fodder by the Liberals in 1969. Major Martelino, alias Abdul Latif, challenged the court martial president on the ground that newspaper accounts of what had come to be referred as the "Corregidor Massacre" might unduly influence the trial of their case. The petitioner's counsel referred to a news item appearing in an afternoon daily to the effect that "coffins are being prepared for the President of the Philippines in Jolo," that, according to Senator Benigno Aquino, massacre victims were given sea burial, and that Senator Magsaysay, Liberal Party Vice-Presidential candidate, had gone to Corregidor site and found bullet shells. The petitioner also cited the editorial of a morning daily, claiming to have the highest circulation among other dailies, that "the Jabidah issue was bound to come up in the course of the election campaign," and that "the opposition could not possibly ignore an issue that is heavily loaded against the administration." The petitioner argued that under those circumstances they could not expect a just and fair trial. They contended that in overruling their challenge for cause based upon this ground, the general court martial committed a grave abuse of discretion, and in support of their contention, petitioners invoked the rulings of the United States Supreme Court in *Irvin v. Dowd,*[98] *Rideau v. Louisiana,*[98a] *Estes v. Texas,*[99] and *Sheppard v. Maxwell.*[100]

The Supreme Court noted, however, that the American cases cited were not analogous to the case at bar. The court stated that the spate of publicity

[96] See e.g., *The Changing Approach to "Trial by Newspaper,"* 38 ST. JOHN'S L. REV. 136 (1963); also Forer, *A Free Press and a Fair Trial,* 39 A.B.A. J. 800 (1963).
[97] G.R. No. 30894, March 25, 1970.
[98] 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed. 2d 751 (1961).
[98a] 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed. 2d 663 (1963).
[99] 381 U.S. 532, 85 S.C. 1628 (1965).
[100] 384 U.S. 333, 86 S. Ct. 1507 (1966).

in this case did not focus on the guilt of the petitioners but rather on the responsibility of the government for what was claimed to be a massacre of Muslim trainees. If there was a trial by newspaper at all, said the court, it was not of the petitioner but of the government. According to the court, there was no showing of failure of the court martial to protect the accused from massive publicity encouraged by those connected with the conduct of the court martial.

Judicial interference in school matters

The court in the case of *Santiago v. Bautista*[101] dealt with the question as to whether or not courts may interfere with the conclusion of elementary school teachers in ranking honor students. This case was instituted by one of the pupils who placed third under the teachers' ranking, claiming that the teachers committed grave abuse of discretion in giving him only that rank. In denying the writ of certiorari applied for against the Court of First Instance which dismissed the case, the Supreme Court had the opportunity to define the limits of judicial power. It quoted definitions of "judicial power" under American jurisprudence that the term implies the construction of laws and the adjudication of legal rights. It includes the power to hear and determine, but not everyone who may hear and determine has judicial power, said the court.[102]

Another authority cited by the court as to the definition of judicial power states that "it is not enough to make a function judicial that it requires discretion, deliberation, thought, and judgment. It must be the exercise of discretion and judgment within that subdivision of the sovereign power which belongs to the judiciary, or at least, which does not belong to the legislative or executive department. As to what is judicial and what is not seems to be better indicated by the nature of a thing, than its definition." [103]

This decision follows the earlier ruling of the court in *Felipe v. Leuterio*. The issue presented in that case was whether or not the court had the authority to reverse the award of the Board of Judges in an oratorical contest. The court declared in that case that the judiciary has no power to reverse the award of the Board of Judges and it would not interfere with literary contest, beauty contest, and similar competitions.

Exercise of quasi-judicial power by administrative agencies

The petitioner in *Luzon Stevedoring Corporation v. Social Security Commission*[104] sought a review of a resolution of the Social Security Com-

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[101] G.R. No. 25024, March 30, 1970.
[102] Citing 34 C.J. 1183-1184 (1924).
[103] Citing Ruperto v. Torres, G.R. No. No. 8785, February 25, 1957, (unreported).
[104] G.R. No. 26175, July 31, 1970.

mission which set aside a reduction in the monthly pension of three retired employees who were included as respondents. The petitioner company assailed the resolution of the Commission on the ground, among others, that the respondent Commission had no authority to act on the matter since the question involves judicial power which should be answered by the judiciary. The Supreme Court, in striking down the contention that the action of the Commission violated the principle of separation of powers, stated that the principle is a relative theory of government which should not be enforced with pedantic rigor. As a principle of statesmanship the practical demands of statecraft would argue against its theoretical application, said the court. The court recalled the opinion of Justice Laurel in the case of *Planas v. Gil*[105] wherein he stated that there is actually an interdependence than independence and separation of powers for, as observed by Justice Holmes, the court cannot lay down "with mathematical precision and divide the branches into watertight compartments" not only because "the great ordinances of the Constitution do not establish and divide fields of black and white" but also because "even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to the other."[106] There is no such thing as complete and definite designation by the Constitution of all the particular powers that appertain to each of the governmental departments," said the court.

The Court then expressed the view that there is no merit to petitioner's contention that the performance of a quasi-judicial function cannot be constitutionally vested in an administrative agency like the Social Security Commission. The performance of a task may entail judicial discretion, said the court, but that is no argument against its validity. The court recalled cases where the same principle was relied upon, especially in the cases of *In re Patterson,*[107] *Philippine Shipowners Association v. Public Utility Commissioner,*[108] *Ynchausti Steamship Company v. Public Utility Commissioner.*[109]

To cast doubt, then, on the power of the Social Security Commission to assume jurisdiction over this question comes rather late, and the contention, if sustained would have undesirable consequences, according to the Court. The Court said that if the contention of petitioner were upheld, the enforcement of statutes intended to cope with the growing complexity of modern life calling for the multiplication of the subjects of governmental regulations may be doomed to futility. Since statecraft must face the test

[105] 67 Phil. 62 (1939).
[106] Springer v. Philippine Islands, 277 U.S. 189, 48 S.Ct. 480, 72 L.Ed. 845 (1928).
[107] 1 Phil. 93 (1902).
[108] 43 Phil. 328 (1922).
[109] 44 Phil. 363 (1923).

of actuality and it must necessarily be pragmatic in its approach, such iron-clad formalism cannot be justified, concluded the court.

IX. FUNCTIONS OF THE CONSTITUTIONAL CONVENTION

In *Del Rosario v. Comelec*,[110] the Supreme Court had occasion to touch on the function and powers of the Constitutional Convention.

Some of our legal minds, reading Section 1, Article XV of the Constitution literally that Congress or the convention "may *propose amendments* to this Constitution," would deny the convention the function of *revising* the Constitution, drawing a distinction between the power to propose amendments and the power to revise the fundamental law.[111] Citing some obscure American state cases, the proponents of this school of thought delineate "revision" from "amendment" as follows:

> "'Revision,' as applied to fundamental law, such as constitution or city charter, suggests convention to examine the whole subject and prepare and submit a new instrument fundamentally changing the law, while 'amendment' is correction of detail; 'revision' being an act of re-examination to correct, review, alter, or amend, while 'amendment' implies such addition to or change within the lines of the original instrument as will effect improvement or better carry out the purpose thereof. 'Revision' of city charter implies redraft of the whole law without obligation to maintain form, scheme, or structure of old charter, while 'amendment' implies continuance of general plan with corrections."[112]

The petitioner Del Rosario must have gotten his cue from the author of the article, for in his petition to the Court, he raised the question as to whether the convention should only propose amendments to the Constitution or entirely overhaul the present one and propose an entirely new Constitution based on a foreign ideology.

Fortunately, the Supreme Court refused to take such a wooden view of the Constitutional provision invoked by petitioner. It brushed aside the petitioner's query as immaterial, holding in effect that a constitution is to be decided upon by the people and not by hairsplitting legalists. The Constitution will be submitted to the people for ratification, declared the Court, and once the Constitution is ratified by a sovereign people, there can be no debate about its validity. The Court did not look kindly at petitioner's attempt to split hair, saying that "amendment" includes "revision" or total overhaul of the entire Constitution.

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[110] *Supra*, note 85.

[111] See e.g., Tenza, *Can the Delegates on the Constitutional Convention in 1971 "revise" and "Revise" the Present Constitution of the Philippines or Can They Write a New Constitution?* 44 PHIL. L. J. 688 (1969).

[112] Tenza, *id*, at 691, citing Kelly v. Laing, 259 Mich. 212, 242, N.W. 891, 259 (1932), and 37-A WORDS AND PHRASES 321-322 (1950).

X. EXPROPRIATION AND PUBLIC PURPOSE

The Supreme Court finally removed a judicially-imposed stumbling block to the expropriation of landed estates. The Constitutional injunction is clear: "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals." [113] Yet by judicial legislation by a conservative Court, the above constitutional provision has been emasculated and rendered ineffective. How did the Court do this? First, the Court read into the constitutional provision the requirement that what is contemplated by the provision are big landed estates, not just lands of several hectares.[114] The Supreme Court, in the *Guido* case, speaking thru Justice Tuason, defended property rights in very strong terms, thus:

> "There are indeed powerful considerations, aside from the intrinsic meaning of section 4 of Article XIII of the Constitution, for interpreting Act No. 539 in a restrictive sense. Carried to extremes, this Act would be subversive of the Philippine political and social structure. It would be in derogation of individual rights and the time-honored constitutional guarantee that no private property shall be taken for private use without due process of law. The protection against deprivation of property without due process of law and against the taking of private property for public use without just compensation occupies the forefront positions (paragraphs 1 and 2) in the Bill of Rights (Article III). The taking of private property for private use relieves the owner of his property without due process of law; and the prohibition that "private property should not be taken for public use without just compensation" forbids by necessary implication the appropriation of private property for private uses." [115] (29 CJS 819).

Second, and corollary to the first, the Court, mistaking expropriation for eminent domain, applied the test of "public use" to expropriation cases.[116] The reasoning of the Court is again expressed by Justice Tuason as follows:

> "These are vast social problems with which the Nation is vitally concerned and the solution of which would redound to the common weal. Condemnation of private lands in a makeshift or piecemeal fashion, random taking of a small lot here and small lot there to accommodate a few tenants or squatters is a different thing. This is true be the land urban or agricultural. The first sacrifices the rights and interest of one or a few for the good of all; the second is deprivation of a citizen of his property for the convenience of another citizen or a few other citizens without

[113] CONST., art. XIII, sec. 4.

[114] Republic v. Manotok Realty, G.R. No. 20204, July 31, 1964; Bulacan v. San Diego, G.R. No. 15946, February 28, 1964; Guido v. Rural Progress Administration, 84 Phil. 847 (1949); Urban Estates v. Montesa, 88 Phil. 348 (1951); De Borja v. Commonwealth of the Philippines, 85 Phil. 51 (1950); Arellano Law Colleges v. City of Manila, 85 Phil. 663 (1950).

[115] Guido v. Rural Progress Administration, 84 Phil. 850-51. (1949).

[116] Urban Estates, Inc. v. Montesa, 88 Phil. 348 (1951).

> perceptible benefit to the public. The first carries the connotation of public use; the last follows along the lines of a faith or ideology alien to the institution of property and the economic and social systems consecrated in the Constitution and embraced by the great majority of the Filipino people." [117]

One authority has posited the view that since the Constitution expressly provides for the expropriation of lands for subdivision to the occupants, this should be considered by the courts as sufficient declaration of public purpose to justify taking.[118] But the Supreme Court chose to subordinate human values to property rights, and it chose to draw its authorities from American jurisprudence than from the spirit of the Filipino Constitution.

So, when another expropriation case [119] came up, the weight of *stare decisis* was already too heavy on the side of property rights balanced against human values. Even if the estate sought to be expropriated was 67 hectares, the majority of the Supreme Court, through Justice Montemayor, stuck to the *Guido* ruling:

> "What section 4, Article XIII of the Constitution intended and sought to do was merely to break up landed estates, and trusts in perpetuity. It intended to discourage the concentration of and excessive landed wealth in an entity or a few individuals, but surely it did not intend or seek to distribute wealth among citizens or take away from a citizen land which he did not actually need and give it to another who needs it. That does not come within the realm of social justice." [120]

Three justices dissented from the majority, and in his dissent, Justice J. B. L. Reyes pointed out that "the propriety of exercising the power of eminent domain under Article XIII, section 4 of our Constitution cannot be determined on a purely quantitative or area basis." But the argument lost out, to be vindicated 15 years later in *J. M. Tuason Co., Inc. v. Land Tenure Administration.*[121]

What was challenged here was a law authorizing expropriation of part of the Tatalon estate.[122] After the passage of the law, the owner of the estate, petitioner company, filed a special action for prohibition with preliminary injunction against the Land Tenure Administration. The lower court declared the law unconstitutional and granted prohibition. On appeal, the high tribunal reversed.

In upholding the constitutional power of Congress to authorize the expropriation of lands to be subdivided into small lots, the Court, through

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[117] *Id.* at 352.
[118] Sinco, *The Constitutional Policy on Land Tenure,* 28 PHIL. L. J. 837 (1953).
[119] Republic v. Baylosis, 96 Phil. 461 (1955).
[120] *Id.* at 483.
[121] *Supra,* note 36.
[122] *Id.*

Justice Fernando, also delved into the history of Section 4, Article XIII. This time, the Court arrived at a conclusion directly autithetical to that of the Tuason opinion in *Guido*. The Court found that there was no historical basis for the area requirement imposed in *Guido* and in the other cases; what could be expropriated are "lands" and not "landed estates."

In repudiating the rule laid down in *Baylosis,* the Court realized the 'inarticulate major premises' on which the decision was based. The Court noted:

> "The more fundamental reason though why we find ourselves unable to yield deference to such opinion of Justice Montemayor, well-written and tightly-reasoned as it is, is its undue stress on property rights. It thus appears then that it failed to take into account the greater awareness exhibited by the framers of our Constitution of the social forces at work when they drafted the fundamental law. To be more specific, they were seriously concerned with the grave problems of inequality of wealth, with its highly divisive tendency, resulting in the generous scope accorded the police power and eminent domain prerogatives of the state, even if the exercise thereof would cover terrain previously thought of as beyond state control, to promote social justice and the general welfare."

The Court also pointed out that the Constitution rejected the doctrine of *laissez faire* with its abhorrence for the least interference with the autonomy supposed to be enjoyed by the property owner.

The Court went on to say that the constitutional provision giving authority to Congress to authorize the expropriation of landed estates is a manifestation of a policy together with the social justice principle.

On the question of just compensation, the Court stated that this means the equivalent for the value of the property at the time of its taking. Anything beyond that is more than just compensation. According to the Court, just compensation does not include whatever gain should accrue to the expropriating entity. The Court equated market value with just compensation, defining market value as the sum of money which a person, desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property. To the market value must be added the consequential damages, if any, minus the consequential benefits, and the assessed value of real property while constituting *prima facie* evidence of its value in case of condemnation proceedings is not conclusive.