THE LAW OF THE CONSTITUTION AND SOCIAL CHANGE *

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It is a well-known idea that between the laws of a country and its social conditions a certain degree of interaction takes place; but this process is, of course, not always equally beneficial to all groups within it, and its effects are not necessarily similar in nature nor always productive of harmonious relationships among distinct social or community interests. Social conditions being often influenced by geographical environment, by diverse physical factors, by differences in psychological attitudes, and by economic inequalities produce problems that may hinder an all-embracing progress. At times, these differences may even cause antagonisms arising from unintentional misunderstandings, or from actual conflicts of political views, or from rival claims to material possessions. The solution of such problems or the settlement of such differences may at times be more or less effected by customs and practices which have often been observed by the people. This is specially the case when these factors have acquired the force, vitality, and viability of traditional rules from their long acceptance by the community at large. Many of them are often respected and obeyed as established conventions that are not easy to ignore because observance thereof has become almost automatic acting as second nature to men and women living under them.

Where such traditional practices have been developed, they often become part and parcel of the individual, social, and normal life of the people within that particular country or community. Oftentimes, they are regarded with respect. They are followed with strictness and regularity as much as formally enacted legislation on similar subjects. Their sanction does not usually take the form of payment for damages or fines, or arrests, or imprisonment such as those penalties provided for violation of written legislative enactments. They do not necessarily find their way into court decisions or administrative orders. Their impact is not instantly tangible, but it may be eventually registered in social attitudes of approval or disapproval depending upon the degree of the community sensibility to the

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acts frowned upon or condemned. These reactions may take the form of silent hostility toward the violator or of some degree of unpopularity visited on him within his immediate circle. At times, the offender may get the feeling of being a marked man, perhaps, socially ostracized or merely passively ignored. The fear of being considered an outcast, a pariah, at times serves as a motive for self-restraint. In fact, oftentimes there is greater certainty that some types of traditional rules would be enforced when violated than there would be in certain kinds of formal legislative enactments. The mandatory character they assume does not depend upon the probability or certainty of public exposure of the party concerned such as that which follows the publicity given by a court's sentence or decision. Somehow neighbors may begin to discuss the subject, to express their silent consensus in private meetings or in mere casual conversation; and eventually this unpublished and unwritten sanction becomes an open secret whose unpleasant or undesirable character in a way comes to serve as a social judgment.

Legislation directly enacted by a Congress to strengthen the applicability of customs of this type is at times, commendable in case these traditional rules happen to be socially desirable. But legislation that reflects outmoded ideas and obscurantist practices can seriously obstruct social changes which can help the community attain growth and progress, or peace and happiness.

To attain desirable community conditions through the adoption of progressive laws, legislation for social change should not be confined merely to rules of a corrective character. It should incorporate new ideas, conceived by persons with mature minds, broad sympathies, and practical experience. It may also adopt ideas which have been tested in other places with an environment generated by social, political, economic, or cultural factors familiar, not necessarily identical, to the society adopting them. But the process need not really be one of adoption. Neither should it be one of incorporation by adoption. Instead, it is far preferable to resort initially to what may be called reproduction of the desired idea to be followed by a process of adaptation which involves careful and intelligent study preliminary to its adjustment to the conditions and its annexation to the new environment. This is an essential process for the successful incorporation of better laws and better system of government.

And for undeveloped or developing countries, this process is almost indispensable for their growth towards social and industrial achievement. In a way, it may be analogous to the transplant of a sound organ from one man to replace an unsound or diseased organ of another person. It is necessary that the new organ is adaptable in the new body. For a successful transplant of ideas, we should make sure that the social system into which a transplant is to be carried out would not reject or would not fail from

extreme social, psychological, cultural, or economic differences and discrepancies.

Laws are among the instrumentalities to effect this socio-legal transplant, and the legislator bears the responsibility of carrying it out successfully. It is a serious responsibility for it requires adequate knowledge of the legal and the social system of the country. The lawmaker should be equal to this broad requirement of knowledge and responsibility. In this country and in many countries, the lawyer forms the larger section of the membership of the legislative organ of the government. The preparation of the lawyer for this task of law-making should, therefore, involve more than the mere acquisition of skills for legal practice and personal advocacy. It should not be confined to mere attainment of knowledge by memorization of codal provisions, statutes, decisions of courts, and their narrow mechanistic interpretation.

The authoritative voice of Justice Oliver Wendell Holmes suggests to us the essentials of the education of a lawyer, who is not just a butter-and-bread earner but a decent community adviser and, in the words of a famous social scientist, "an officer of civilization." For a diversionary description of his ideas on this subject which I consider quite pertinent to the main theme of this conference, let me quote Justice Holmes' remarkable views from several portions of his address on the subject. Beginning with history as a subject which the lawyer should study, he states the following:

> "The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know. It is a part of the rational study, because it is the first step toward an enlightened skepticism, that is, toward a deliberate reconsideration of the worth of those rules."

But he instantly added:

> *"For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.* It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past."

Explaining the critical position he took on traditional law studies, Justice Holmes explained:

> "I trust that no one will understand me to be speaking with disrespect of the law, because I criticize it so frankly. . . . But one may criticize even what one reveres. Law is the business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and, when I perceive, what seems to me the ideal of its future, if I hesitated to point it out and to press toward it with all my heart."

Then he turned to another subject he considered so essential to a lawyer:

> "There is another study which sometimes is undervalued by the practical minded, for which I wish to say a good word. . . . I mean the study of what is called jurisprudence. Jurisprudence, as I look at it, is simply law in its most generalized part. Every effort to reduce a case to a rule is an effort of jurisprudence, although the name as used in English is confined to the broadest rules and most fundamental conceptions. *One mark of a great lawyer is that he sees the application of the broadest rules.*"

To round up his conception of the study of law, Justice Holmes says:

> "Theory is the most important part of the dogma of the law as the architect is the most important man who takes part in the building of a house. . . It is not to be feared as unpractical, for, to the competent, it simply means going to the bottom of the subject. For the incompetent, it sometimes is true, as has been said, that an interest in general ideas means an absence of particular knowledge. . . But the weak and foolish must be left to their folly. *The danger is that the able and practical minded should look with indifference or distrust upon ideas the connection of which with their business is remote.*"

At this point, Justice Holmes turns to the subject of success and he says:

> "The object of ambition, power, generally presents itself nowadays in the form of money alone. Money is the most immediate form, and is a proper object of desire." But he concludes: *"To an imagination of any scope the most far-reaching form of power is not money, it is the command of ideas. . . And happiness, I am sure from having known many successful men, cannot be won simply by being counsel for great corporations and having an income of fifty thousand dollars. An intellect great enough to win the price needs other food besides success.* The remoter and more general aspects of the law are those which give it universal interest. It is through them that you not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law."

These thoughts and suggestions from one of the greatest thinkers of law and one of the most respected and revered intellectual leaders the world has ever known should make us reflect on the kind of preparation we have had in the College of Law of the University of the Philippines to face the problems in the society we live in and to offer pertinent solutions to them. In a spirit of self-examination, we might frankly ask ourselves whether this institution has been able to contribute, through its past products in various spheres of activity, the type and quality of service, influence, and leadership necessary for national progress in the true sense of the term.

To many of us, the main theme of our celebration today, which marks the 60th anniversary of our College may provoke us into asking if law as we learned it has really served as an agent of social change. To begin

with law as an agent of social change is not, of course, the sole and exclusive agent of social change; and the thought of change for the mere sake of change is obviously meaningless. It could even be productive of evil results when the new system supplanting the old might turn out to be hastily adopted and ill-suited to the conditions prevailing in the country made subject to it. Then another consideration is whether the law used as an agent of change has been tested with success in communities using it or whether it is but a newly hatched system or idea invented by some fanatical or inexperienced adventurers and has not been subjected long enough to practical tests.

Let us remember that social concepts or political and economic ideas have to be tried not in some air-tight laboratory room or in a large well-sealed social vacuum jar, in which human problems are studied in isolation from a variety of influencing factors. A legal or political system must have been exposed to different social and other influences before we could make a reliable decision about its fitness or adequacy for adaptation to a specific social order.

Statutes enacted by legislatures are more or less provisional in character and duration. They may be readily changed any time they do not prove effective for the purpose they have been originally adopted. Changed social conditions may call for remedies different from those which at first looked adequate. The flexibility of legislative authority and its readiness and availability at relatively short notice enable an ordinary legislature to meet varying and variable problems. The imagination of the lawyer and the lawgiver is an asset of great value when certain given conditions do not respond to a piece of either remedial legislation or an innovative measure adopted for the correction of unsatisfactory social or economic conditions.

From the foregoing consideration we have discussed, the importance of the structure and organization of the government of a country cannot be overestimated. In the drafting of the Constitution of a nation, such as we are about to do presently, the work of establishing the governmental structure should call for the concentrated attention of all the delegates to the Constitutional Convention. It deserves the highest priority in the consideration of proposals before that Convention. It has ever been so treated in the Constitutional Conventions in other countries. How the political, economic, social, and other critical aspects and questions in our national life will be handled and decided depends very much on the degree of efficiency and responsibility that the nature of the structure of our government may lend itself readily and conveniently. Every serious and knowledgeable student of government and every experienced public official realize this condition as axiomatic in importance.

It should be remembered that laws do not enforce themselves automatically. The principle of government of laws expresses the basic democratic creed but by itself and in itself it generates no automatic active force. It epitomizes the basic conceptions of the democratic system. But to translate it into the realism of human values, for which democracy stands, and to be of actual and positive service to the individual and society this great principle depends for its operation on men, responsible men, educated men. Those who are to put into operation the agencies of law and government can perform their functions satisfactorily only when vested with adequate powers and made responsible and answerable to the people for their acts and policies. This is an indispensable provision for an active and positive organ of government administration. If weak and pusillanimous, the elements of disorder and disobedience will have more chances of disturbing the social organization; and laws may only remain mere printed pieces of paper.

The law of the Constitution in our state system is a written document expressive of the rule of government of laws and not of men. We are now in a stage when changes or revisions of our present Constitution will soon take place. These will naturally involve legal and governmental principles which we have imported from the Constitution of the United States. It is therefore proper and fitting that we should be familiar with them and their merits and demerits.

With respect to legal principles as now expressed in the present Constitution no major changes seem absolutely necessary. But as to governmental principles, we may begin with the theory of separation of powers. Our Constitution today and our organic laws previous to this Constitution established the governmental and political system of our country on the principle of separation of powers, which is the basis of the American system of government. According to critical historians and commentators of the Constitution of the United States, that principle was adopted by the American Constitutional Convention in 1787 for two important reasons: One was the fear of the American leaders at that time of tyranny and absolutism which they thought would arise if the powers of government were concentrated in one man or department, and two, was the mistaken or erroneous belief that the English government was based on the principle of separation of powers. The American leaders were misled by the writings of Montesquieu and Blackstone. These two considerations, fear and error, do not apply to the conditions in our country. The idea of checks and balances is often the cause of inaction, delay and inefficiency. Our experienced leaders and statesmen at various times expressed their preference for a system based on the fusion of executive and legislative powers. The Malolos Constitution incorporated it. The first Council of State was based on the idea of unified responsibility.

The law of the Constitution is intended to stay in force more permanently or for a longer time at least than statutory law. Hence it is couched in general or comprehensive terms to express basic rules and provisions. It leaves to the legislature the power to adapt more detailed regulations needed for the routine work of administration or for special purposes aroused by normally unpredictable changes of social significance.

The influence of law, both constitutional or statutory, on the life of the nation determines to a great extent the direction of its development. The two great systems of private law, the Roman or Civil Law and the Common or Anglo-American System, have been responsible for the direction of the economic and social life and institutions in most countries today.

We in this small country, this corner of the world, have been benefited by the use of both systems in a considerable measure and degree. While the word colonial is now anathema to sophisticated elements of our people, we do not need to forget that European or Western colonialism has been responsible for the introduction of both systems of law into our nation. The migration of new or fresh ideas into our society has been considerably hastened in our case through the introduction of political, legal, economic, and religious concepts and practices which some of us might decisively call "colonial". They came to us through force and violence, indeed. But they also cause our disunited and isolated communities, existing in thousands of separate islands and small districts, to group themselves together as one united community through methods of compulsion, of physical force, and of friendship and persuasion. The nature and character of the laws and institutions employed have worked as important and effective factors for their economic, social, and political progress.

We should not let this occasion pass without some mention of the existence of the Constitutional Convention called by our Congress in accordance with its authority under the present Constitution of this country. The Constitution provides that Congress may propose amendments to the Constitution or *call a Convention to propose amendments.* Congress did call a Convention by fixing the date of November 10, 1970, for the election of 320 delegates. Under the expressed terms of the present Constitution, the participation of Congress in the work of amending or revising the Constitution ends on Election Day. The Constitutional Convention is neither a part of Congress nor its subaltern or assistant. Whatever else Congress would do in addition to that single act of *calling* a Convention is outside its authority. Congress completely exhausts its constitutional authority in connection with the organization of the Convention as soon as the delegates to the Convention are chosen and have qualified.

But in the present case Congress was not satisfied with merely calling the Convention which it did by setting a date for the election of the delegates

held on November 10, 1970; it also fixed a date for the inaugural meeting of the Convention. That date is June 1, 1971, which is 7 months after the election of delegates. There is no valid and plausible explanation for Congress to use this power of fixing a date for the inauguration of the Convention. There is no convincing argument for that long delay of 7 months provided by the Act of Congress before the Convention may open. After the election of the majority of all the delegates to the convention had been proclaimed by the proper authority, which is the COMELEC, the Constitutional Convention could have been inaugurated at the instance of the majority of the elected delegates. No power under the present Constitution is authorized to participate in any activity, action, and organization of the Convention outside the Convention itself. The reason is that a Convention is an independent body, not subject to the dictation of any other office or department or the government existing under the present Constitution.

It is bad enough for Congress to have passed the law which assumed the authority to fix the date of the inaugural session of the Convention on June 1, 1971. But it is still worse for Congress to let 7 months pass after the election of all the delegates to the Convention before the Convention may begin its work. If we admit that Congress could hold up the inaugural session of the Constitutional Convention for 7 months, what is to prevent Congress from fixing the beginning of the Convention for January 2, 1974? Then whatever revision of the present Constitution may be made and provided for, its effectivity would have to be postponed 3 or 4 years after the election of the delegates on November 10, 1970. That would be flaunting public opinion for immediate change of officials and offices of the present government.

The inaugural session of the 1934 Convention, it may be recalled, was held only 20 days after the election of the delegates for that Convention. In the present case, the Convention is to hold its inaugural session 7 months after the election of the delegates. This is an atrocity. Because of this unnecessary delay, the delegates of the 1971 Convention have been holding pre-Convention meetings to utilize the long postponement. But they have not been discussing substantial proposals for constitutional amendments, thinking perhaps that such matters must have to wait for June 1, 1971, which Congress has fixed for the inauguration of the Convention. The matters taken up in these voluntary sessions are generally subjects of parliamentary rules and procedure which in this country are more or less familiar matters.

Congress has positively violated the limitations of its constitutional power on amendments. The Constitutional Convention could have started the work of revising the present Constitution on December 1 or 15, 1970, or on any other date a month after the election of the delegates to the

Convention. Then the referendum for the ratification of the new Constitution could then be held sometime in September or October, 1971. By January 5, 1972, the new officers of this Republic could then be chosen. As it is, the present irresponsible system with all its defects, with the abuses of many of its higher officials, the wide practice of graft and corruption, the social disorder and confusion, and the general decadence of the elements of decency, morality, and law will yet have to be endured by the people, perhaps to the point when patience shall have reached its limits.

It is the hope of many that the new Constitution to be drafted and approved will accordingly serve as an effective agent for the social and general welfare of the people.