

BOOK REVIEW

THE BILL OF RIGHTS by Justice Enrique M. Fernando, Central Law-book Publishing Co., Inc. Quezon City, Philippines, 1970, 338 p.

This book of Justice Fernando has become even more interesting and informative after President Marcos' proclamation suspending the privilege of *habeas corpus*. It may be recalled that immediately after this proclamation, seventeen persons were arrested and detained inside Camp Crame for alleged subversive activities and, of course for some political reasons. The Military would not say when they would incarcerate another one hundred and eighty blacklisted activists and suspected communists. For sure, the "crackdown down" had just started and is going on.

Perhaps because of the vigilance of public opinion, generated with deliberate spontaneity by the ever-militant, united action of the student sector, the labor and peasant groups, the press and media, the opposition party, Senator Diokno and a few Constitutional Convention delegates, the Supreme Court took cognizance of the case. Despite the adverse rulings in the *Barcelona v. Baker* and *Montenegro v. Castaneda* case (i.e. the court is denied the prerogative of reviewing the presidential act; thus the issue is non-justiciable and the determination by the president of the existence of the constitutional grounds for the suspension of the writ is final and absolute) the high Court categorically told the government solicitors at the very start *not* to invoke precisely the presidential act and upon this ground move for the dismissal of all judicial proceedings on the matter — a virtual "turn-about" from a rather harsh but prevailing jurisprudence. In effect, the high Court probed into the presidential action.

Pending the final disposition of the case, the Camp Crame detainees should have some happy moments reading this book if only to feel assured of the civil libertarian outlook of its author, who fortunately for them, is still a member of the Supreme Court.

On the privilege of the writ of *habeas corpus*, Justice Fernando has this to say: "By virtue of the writ of *habeas corpus*, a court may inquire with all promptness and dispatch into the legality of the detention of any individual. This it does by having the officer or person restraining his liberty produce his body in court and explain why he is being so held. If no valid justification be shown, then the restraint is declared illegal and his liberty restored."

He stresses the importance of this privilege and sees no reason why the President should at all be given the power to suspend it as in case of

rebellion, insurrection or other crisis conditions, the President as Commander-in-chief can always summon the armed forces to meet the danger posed to public safety. On the same argument, the author favors the removal from the President of the power to declare martial law.

The discussion on habeas corpus and martial law constitutes only a brief portion of this book. Actually, the author took pains to classify all the rights and privileges embodied in Article III of the Constitution. First, he discusses the concepts of liberty and property as these are the more substantive though broader classifications of the bill of rights. Together with liberty and property, the constitutional powers of the state such as police power, taxation, eminent domain and the promotion of social justice; as well as the due process, equal protection and non-impairment clauses of the constitution, are made interrelated. Then the author breaks down the classification of liberty into intellectual liberty and physical liberty. The former includes freedom of speech and press; freedom of assembly; freedom of association and freedom of religion. The latter covers freedom of person, home and possessions including communication except when search and seizure is responsible; freedom from involuntary servitude; freedom from imprisonment for debt; rights of an accused; prohibition against ex post facto law and bill of attainder; and the writ of habeas corpus.

Consistently, the overall theme of the book is that the state should give its citizens the widest possible latitude in the exercise of their rights and liberties as embodied in the bill of rights of the Constitution, to be constrained only by some recognized, justifiable limitations.

The standard powers of the state like police power, taxation and eminent domain are in themselves limitations to liberty and property, in the same way that the state in the exercise of these powers is in itself limited by considerations of the liberty and property of individuals, due process, equal protection and non-impairment of their contractual obligations.

In the scale of values recognized by our Constitution, intellectual liberty must be preferred. It is in the realm of thought that the individual should be guaranteed the fullest exercise of freedom. Thus, a true subversive may harbour some anti-government ideas; yet the state must not intrude unless these ideas are merged into concrete actions detrimental to the very existence of the state. There should be no prior restraint on speech and on the press. The criterion on the "balancing of interest" as a reasonable limitation on free speech and press has "not found favor with some eminent civil libertarians" but the "clear and present danger rule" has its "continuing validity". So is freedom of religion reasonably limited by the clear and present danger rule. Intellectual liberty is significant to a democratic society. It is only through it that man in society is "assured of the possible means to self-realization".

In short therefore, the book is concerned with an inextricable nexus — the symbiotic relationship of state power on one hand and of individual liberty on the other, must be struck at a balance where in the words of Lincoln “the government is neither too strong for the liberties of the people nor too weak to maintain its existence”.

The author however fails to take note that above anything else, to set the first possible means to self-realization is to give man in society the material conditions for self-realization. Only President Marcos and the ruling class in Philippine society have these means for self-realization. The many Filipinos are hungry in the streets and to them the bill of rights in the Constitution remains something of a “luxury” — a grotesque piece of paper which can not meet even the most basic of their needs.

This omission is understandable as the book was written from a purely legalist point-of-view. The student of law will find it valuable, as legal concepts are well discussed with pertinent provisions of the Constitution interpreted by the author, and amply supported by jurisprudence and authority. It is likewise well written that the layman will find it easy reading.

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