POLITICAL LAW
PART I

CONSTITUTIONAL LAW

VICENTE V. MENDOZA*

I. JUDICIAL REVIEW AND THE REQUIREMENT OF CASE AND CONTROVERSY

A. *Ripeness and Standing to Sue.* — In *Tan v. Macapagal*[1] the petitioners, suing as taxpayers and as representatives of the public, brought an action in the Supreme Court for a declaration that the Constitutional Convention did not have the power to propose a form of government different from that provided in the 1935 Constitution on the ground that the Convention was "merely empowered to propose improvements to the present Constitution without altering the general plan laid down therein." Petitioners sought the nullification of the Laurel-Leido resolution defining the authority of the Convention. The Court denied the petition for lack of merit, but petitioners filed a motion for reconsideration. The Court, through Mr. Justice Fernando, denied the motion, on the ground that petitioners lacked standing and that the case was not ripe for adjudication.

On the question of standing the Court held:

> What calls for prior determination is whether or not petitioners had the requisite standing to seek a declaration of the alleged nullity of a resolution of the Constitutional Convention. . . . There has been a relaxation of this rule. So it was announced by the present Chief Justice in Pascual v. The Secretary of Public Works, [110 Phil. 331 (1960).] Thus: "Again, it is well settled that the validity of a statute may be contested only by one who will sustain a direct injury, in consequence of its enforcement. Yet, there are many decisions nullifying, at the instance of taxpayers, laws providing for the disbursement of public funds, upon the theory that the 'expenditure of public funds, by an officer of the State for the purpose of administering an *unconstitutional act constitutes a misapplication of such funds*,' which may be enjoined at the request of a taxpayer." Moreover, where a constitutional question is raised, a Senator has usually been considered as possessed of the requisite personality to bring a

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[1] L-34161, Feb. 29, 1972, 43 SCRA 677.

> suit. Thus, in Mabanag v. Lopez Vito [78 Phil. 1 (1974)] it was a member of the Senate who was heard by this Court in a suit for prohibition to prevent the enforcement of the congressional resolution proposing the parity rights amendment. Likewise, in the latest case in point, Tolentino v. Commission on Elections, [L-34150, Oct. 16, 1971, 41 SCRA 702] it was a Senator who brought the action challenging the validity of Organic Resolution No. 1 of the 1971 Constitutional Convention. . . . Petitioners in the present case cannot be heard to assert that they do qualify under such a category.
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> Moreover, as far as a taxpayer's suit is concerned, this Court is not devoid of the discretion as to whether or not it should be entertained. . . .

The Court did not explain why petitioners' status as taxpayers did not give them standing to sue as such, or why, on the other hand, senators have "usually been considered as possessed of the requisite personality" to raise constitutional questions. The disposition of the standing question was made by resolution, rather than by full-length opinion. Perhaps a reasoned exposition of the canons governing the Court's discretion in taxpayers' suits may have to be evolved on a case-to-case basis, until the question can be posed in an especially sharpened form. This might as well be, for, as has been noted, standing is one of "the most amorphous [concepts] in the entire domain of public law."[2] Some of the complexities peculiar to standing problems result, because standing "serves, on occasion, as a shorthand expression for all the various elements of justiciability."[3]

Nevertheless the following observations may be ventured on the Court's resolution in *Tan v. Macapagal.* Taxpayers' suits have been allowed on the theory that this class of individuals have a special interest in the proper expenditure of public funds.[4] Consequently, the act complained of must relate principally to the raising or expenditure of public funds. Thus it has been held that "a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. 1, sec. 8, of the [U.S.] Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute."[5] There must be shown "a measurable appropriation or disbursement of . . . funds occasioned solely

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[2] Flast v. Cohen, 392 U.S. 83 (1968, quoting Professor Paul A. Freund's statement before the Sub-comm. on Constitutional Rights of the Senate Comm. on the Judiciary, 89th Cong. 2d Sess., Pt. 2, at 498 (1966) during the hearing on S. 2097.

[3] Flast v. Cohen, *id.*, quoting Lewis, *Constitutional Rights and the Misuse of "Standing,"* 14 STAN. L. REV. 433, 453 (1962).

[4] Philconsa v. Mathay, L-25554, Oct. 4, 1966, 18 SCRA 300; Philconsa v. Gimenez, L-23326, Dec. 18, 1965, 15 SCRA 479; Iloilo Palay and Corn Planters Ass'n v. Feliciano, L-24022, March 3, 1965, 13 SCRA 377; Gonzales v. Hechanova, L-21897, Oct. 2, 1963, 9 SCRA 230; Pascual v. Secretary of Public Works, 110 Phil. 331 (1960).

[5] Flast v Cohen, *supra*, note 2.

by activities complained of."[6] On this ground the dismissal of the taxpayers' suit in *Tan v. Macapagal* could be justified, as no appropriation measure was involved there.

The Court likewise mentioned senators as "usually" possessed of standing to sue in public actions. While the cases cited indeed involved senators, it is doubtful whether it was their *status quo* senators which gave them "the requisite personality to bring a suit." In *Mabanag v. Lopez Vito*, the first case cited by the Court, petitioners were members of Congress whose interest was plainly sufficient, because if they were right that some of them (three senators and eight congressmen) had been illegally suspended and prevented from taking their seats, their membership should be considered in computing the three-fourths vote required for the passage of the proposed Parity Amendment to the Constitution.[7]

On the other hand, in the second case cited, *Tolentino v. Comelec*, the petitioner, a senator, did not sue as a senator. He challenged the validity of a resolution of the Constitutional Convention submitting the proposal to reduce the voting age in advance of other proposals in his capacity as a taxpayer, and indeed the challenged resolution contained an appropriation for the holding of a plebiscite. Moreover, it seems to be the petitioner's leadership in the community or at the Bar (another form of standing in a colloquial sense), which, in the Court's view made him sufficiently representative of the public interest, and persuaded the Court to entertain his suit.

In the *Tan* case, did petitioner's representative character or legal acumen assure that concrete adverseness which sharpens the presentation of constitutional issues upon which the Court so largely depends for illumination of difficult constitutional issues? Mr. Justice Fernando made pointed references to the lack of "persuasive quality" and awareness of "authoritative precedents" and to uncritical reliance on secondary sources of American law in petitioners' pleadings in the *Tan* case, and it is not unlikely that in disposing of the standing problem these considerations weighed heavily. For in the standing doctrine, as the United States Supreme Court has noted, there are at work many subtle pressures which tend to cause policy considerations to blend into constitutional limitations.[8]

Moreover in *Tan* the standing problem merged with that of ripeness (the timing of the challenge) and dictated denial of the petition. The

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[6] Doremus v. Board of Educ., 342 U.S. 429 (1952).

[7] Coleman v. Miller, 307 U.S. 433 (1939) (senators who voted against the ratification of a proposed constitutional amendment held to have standing in action brought to nullify the amendment.)

[8] Flast v. Cohen, *supra*, note 2.

action was premature as the Constitutional Convention still had to act on resolutions calling for the adoption of a different form of government. As the Court ruled, "Only after [the Convention] has made concrete what it intends to submit for ratification may the appropriate case be instituted. Until then, the courts are devoid of jurisdiction." At that stage the Court's action could only amount to the giving of an advisory opinion, if not to an interference with the work of a coordinate agency.

B. *Question of Diplomatic Immunity Essentially Political and Non-justiciable.* — In *World Health Organization v. Aquino*[9] the Court, in an opinion by Justice Teehankee, held that "diplomatic immunity is essentially a political question and courts should refuse to go beyond a determination by the executive branch of the government, and [that] where the plea of diplomatic immunity is recognized and affirmed by the executive branch of the government . . . it is . . . the duty of the courts to accept the claim of immunity upon appropriate suggestion by the principal law officer of the government, the Solicitor General in this case, or other officer acting under his direction." The case arose from the issuance of a warrant by the Court of First Instance of Rizal, directing the search and seizure of the personal effects of petitioner Leonce Verstuyft, Acting Assistant Director of Health Services of the WHO, for alleged violation of the Tariff and Customs Code. In their application for a warrant, agents of the Constabulary Offshore Action Center (COSAC) claimed that they found 120 bottles of assorted foreign wine and 15 tins of PX goods which were highly dutiable and that they believed that more contraband goods could be found in nine other big crates still unopened.

Upon protest filed by the Regional Director of WHO, Secretary of Foreign Affairs Carlos P. Romulo wired the judge, advising that "Dr. Verstuyft is entitled to immunity from search in respect of his personal baggage as accorded to members of diplomatic missions" under the Host Agreement[10] and requesting suspension of the search warrant "pending clarification of the matter from the ASAC." Despite the official plea of diplomatic immunity, the judge refused to reconsider his order.

Thereupon petitioner entered a special appearance and filed a motion to quash the search warrant. At the hearing of the motion the Solicitor General appeared and stated, as the official position of the executive department, that petitioner was entitled to diplomatic immunity. The motion was denied. Hence, the petition for certiorari and prohibition in the Supreme Court, which set aside the search warrant and directed the lower court to "desist from further proceedings in the matter."

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[9] L-35131, Nov. 29, 1972, 48 SCRA 242.

[10] Agreement with WHO, art. VIII, sec. 22, July 22, 1951, 2 P.T.S. 707, 149 UNTS 197.

In holding the question of diplomatic immunity to be conclusive on the judicial department, the Supreme Court emphasized the commitment of the conduct of foreign relations to the President, the unambiguous action of the executive department in recognizing the diplomatic immunity of the petitioner, and the potentiality of embarrassment that might arise from conflicting pronouncements by various departments of the Government on one question. Not all cases touching foreign relations are beyond judicial cognizance, but the embarrassing consequences of courts exercising veto power on the conduct of the nation's foreign relations indeed suggests the need for a single-voiced statement of the Government's position in this case.[11] On the other hand, as the Court noted, in case of abuse of diplomatic privilege the Convention on the Privileges and Immunities of Specialized Agencies of the United Nations[12] provides for consultation between the host state and the agency concerned (here the WHO) to determine whether such abuse has occurred, and if so, attempt to insure that in the future no such repetition occurs.

C. *Sovereign Immunity from Suit.* — In several cases[13] decided in 1972, the Court affirmed its 1966 ruling in *Mobil Phil. Exploration v. Customs Arrastre*[14] that the Bureau of Customs could not be sued for damages in connection with the operation of its arrastre service. The *Mobil* decision stressed the fact that the Bureau of Customs did not have a juridical personality separate from that of the National Government; that its primary function was the collection of revenues and custom duties, fees, charges and fine; that the operation of the arrastre service, though may be deemed proprietary in character, was nevertheless "a necessary incident" of its primary, governmental function; and that there was no statute authorizing suits against the Bureau of Customs.

In other cases previously decided, the following governmental offices were likewise held immune from suit: the Bureau of Public Works, with respect to claims filed against it for workmen's compensation,[15] although a later statute (Republic Act No. 4119), amending the Workmen's Compensation Act, extended the coverage of the latter Act to all government employees and thereby allowed claims against the Government arising

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[11] *See* Baker v. Carr, 369 U.S. 186 (1962); Frank, *Political Questions*, in SUPREME COURT AND SUPREME LAW 36 (E. Cahn ed. 1954).

[12] Convention on the Privileges and Immunities of Specialized Agencies of the United Nations, art. VII, sec. 24, 1 P.T.S. 621, 33 UNTS 261.

[13] Union Ins. Soc'y of Canton v. Republic, L-26409, L-26550, L-26587, & L-31157, July 31, 1972, 46 SCRA 120; Federal Ins. Co. v. Republic, L-26480, June 15, 1972, 45 SCRA 379; Champion Auto Supply Co. v. Bureau of Customs, L-26287, April 27, 1972, 44 SCRA 455; Universal Mills Corp. v. Bureau of Customs, L-24005 & L-25339, Jan. 29, 1972, 43 SCRA 47.

[14] L-23139, Dec. 17, 1966, 18 SCRA 1120.

[15] Republic v. De Leon, 101 Phil. 773 (1957).

under the Act; the Angat Irrigation River System, with respect to cases filed against it for unfair labor practice,[16] and the Philippine Veterans Board with respect to claims of employees for back wages.[17]

In two of the 1972 cases, *Union Insurance Society of Canton v. Republic*[18] and *Universal Mills Corp. v. Bureau of Customs*[19] the Court made the additional observation that "pursuant to Act No. 3083 and Commonwealth Act No. 327, the Government may not be sued in court for the recovery of a sum of money unless a claim therefor has been previously filed with the Auditor General by plaintiffs herein."

Resort to Act No. 3083 would have required the parties in these cases to satisfy the following conditions under which the Government consents to be sued:

1. The claim must be for money.

2. The liability asserted must arise "from contract, express or implied, which could serve as a basis of civil action between private parties."

3. The claim must have been presented to the Auditor General but the latter failed to decide the claim within two months of its presentation. (Pursuant to Commonwealth Act No. 327, which implements article XI, section 4 of the 1935 Constitution, if the Auditor General acted on the claim within the period of limitation, the appeal may be taken to the Supreme Court, if the aggrieved party is a private party, otherwise appeal may be taken to the President.)

4. The claim must be filed with the Court of First Instance which has exclusive jurisdiction of the matter.

5. No execution will issue upon any judgment that may be rendered by the court against the Government. Instead a certified copy of the decision will be transmitted to the President who in turn will transmit it to Congress so that if Congress shall determine that payment should be made, it shall appropriate the sum which the Government has been sentenced to pay.

Actually, Act No. 3083 and Commonwealth Act No. 327 do not apply to the claims involved in these cases, and the Court's reference to them in its decision must be regarded as hypothetical and as having been

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[16] Angat Irrigation River System v. Angat River Worker's Union, 102 Phil. 789 (1957).

[17] Roldan v. Philippine Veterans Board, 105 Phil. 1081 (1959).

[18] *Supra*, note 13.

[19] *Supra*, note 13.

made on the assumption that the function of the Bureau of Customs was primarily proprietary in nature. For given the Court's repeated characterization of the arrastre service as a "necessary incident" of the performance by the Bureau of Customs of its primary, governmental function, it may well be questioned whether the claims in these cases satisfied the requirement of Act No. 3083 that they must "[arise] from contract, express or implied, which could serve as a basis of civil action between private parties."

D. *Sovereign Immunity and Constitutional Limitations.* — In *Amigable v. Cuenca*[20] the Court affirmed an earlier ruling[21] that the doctrine of sovereign immunity does not bar a suit for recovery of possession of, or compensation for, lands taken without the benefit either of expropriation proceedings or of negotiated sale. For "the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen." In *Amigable,* the Court found that in 1925 the National Government had taken 6,167 square meters of plaintiff's land in Cebu City. The taking was made for the construction of two avenues without prior expropriation proceedings or negotiated sale. In 1958 the plaintiff wrote the President requesting payment, but the Auditor General, to whom the request was referred, disapproved the claim. An action brought to recover possession of the land, compensatory damages as a result of the illegal occupation of her land, moral damages and attorney's fees, was dismissed by the Court of First Instance of the ground of sovereign immunity from suit. On appeal, the Supreme Court reversed. Through Mr. Justice Makalintal it held that there was taking of property but that, because of the use to which plaintiff's land had been put, it was not feasible to order restitution. Relief took the form of compensation on the basis of the value of the land at the time of taking, plus interest at the legal rate, and attorney's fees.[22] No damages were awarded.

A dilemma is presented whenever the doctrine of sovereign immunity is invoked. The philosophic justification for such doctrine, as Holmes put it, is that "there can be no legal right as against the authority that

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[20] L-26400, Feb. 29, 1972, 43 SCRA 360.

[21] Ministerio v. Court of First Instance, L-21635, Aug. 31, 1971, 40 SCRA 464.

[22] The Court cited Alfonso v. Pasay City, 106 Phil. 1017 (1960) in support of its ruling that where private property is taken for public use without prior expropriation proceeding and restoration of possession to its owners is "neither convenient nor feasible" because of the lapse of time and the devotion of the property to public use, the measure of just compensation is the value of the property at the time of the taking and not its enchanced value at the time of filing the suit. The ruling in Alfonso v. Pasay City, *supra,* was affirmed in Municipality of La Carlota v. The Spouses Baltazar and Gan, L-30138, May 30, 1972, 45 SCRA 235.

makes the law on which the right depends."[23] On the other hand, the Bill of Rights, which prohibits, among other things, the deprivation of property without due process of law, embodies the idea of constitutional limitations on official power. In American Constitutional Law, an attempt to accommodate these competing principles is made by distinguishing between suits to enforce rights against the State and those to restrain the invasion of interests by individuals claiming to act under a legislative authority which could afford no protection because contrary to constitutional limitations. The accommodation is symbolized by *Ex parte Young*[24] in which it was held that an officer who interferes with the property rights of an individual by seeking to enforce an unconstitutional statute is doing an illegal act for which his representative character affords him no protection. The suit is in theory brought to enjoin the individual wrong and is therefore not against the State. Without avowing it, some Philippine cases follow this rationalization. For example, in *Festejo v. Fernando*[25] the Supreme Court upheld the right of a private party to bring a suit against the Director of Public Works for the recovery of possession of lands illegally taken for irrigation purposes, or for the payment of compensation, with damages in either case. Again, in *Director of the Bureau of Telecommunications v. Aligaen*[26] the Court sustained an injunctive suit against the Director of the Bureau of Telecommunications to prevent the establishment of a telephone system which would compete with the telephone system of a private party, in violation of his franchise, the Court stating that "the State authorizes only legal acts by its officers."

Amigable v. Cuenca presented a different problem. The action was against the Government. The taking of plaintiff's property for the construction of roads was made by the Government in the exercise of the State's power of eminent domain. The decision in this case could be more firmly grounded on the State's consent to be sued. For the taking of property gave rise to an implied agreement on the part of the State to compensate the plaintiff.[27] To the extent that plaintiff sought the payment of compensation, the Court could have held the action to be one for the enforcement of this implied agreement, and, since by virtue of Act No. 3083 the government has consented to be sued in cases arising "from contract, expressed or implied," the defense of sovereign immunity was clearly unavailing. Indeed, the doctrine of sovereign immunity has gener-

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[23] Kawananakoa v. Polyblank, 205 U.S. 349, 353 (1907). Compare the statement in Santos v. Santos, 92 Phil. 281, 283 (1952) that "the principle that the state or its government cannot be sued without its consent has its root in the juridical and practical notion that the state can do no wrong."

[24] 209 U.S. 123 (1908).

[25] 94 Phil. 504 (1954).

[26] L-31135, May 29, 1970, 33 SCRA 368.

[27] Peabody v. United States, 231 U.S 530 (1913).

ally been waived in actions for recovery of compensation for property taken for public use in recognition of the Constitution as a limitation on official power. Thus, in *Dugan v. Rank*,[28] the United States Supreme Court, while upholding the defense of sovereign immunity in an injunctive suit seeking to prevent the Government from storing and diverting waters from a river, at the same time pointed to an action for compensation as the appropriate proceeding that a party could bring against the Government. The Court said: "Rather than a stoppage of the government project, this [*i.e.*, action for compensation] is the avenue of redress open to the respondent."

On the other hand, to the extent that recovery of possession and damages were sought as alternative reliefs, the plaintiff's action was a suit against the State. As the State had not given its consent to such kind of suit, the relief prayed for could not be granted.

II. INDIVIDUAL RIGHTS

A. *Freedom of Expression, The Ban on Bills of Attainder, and Substantive Due Process*

1. The Constitutionality of the Anti-Subversion Act. — In the Anti-Subversion Act,[29] approved on June 20, 1957, Congress found the Communist Party of the Philippines to be "an organized conspiracy to overthrow the Government of the Republic of the Philippines for the purpose of establishing in the Philippines a totalitarian regime . . . under the control and domination of an alien power."[30] Accordingly, it provided for the punishment of anyone who "knowingly, willfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines."[31] But members who renounced their membership within thirty days from the date of approval of the Act were exempted from criminal liability under the Act.[32]

In *People v. Hernandez*,[33] decided in 1964, and *People v. Lava*,[34] decided in 1969, the Supreme Court, in holding the Act inapplicable on the ground that the acts for which the appellants were prosecuted had been

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[28] 372 U.S. 609 (1963).

[29] Rep. Act No. 1700, 12 LAWS & RES. 102 (1957).

[30] *Id.*, sec 2, and preamble.

[31] *Id.*, sec. 4.

[32] *Id.*, sec. 8.

[33] L-6025-26, May 30, 1964, 11 SCRA 223 (Prosecution for rebellion, insurrection and conspiracy to commit rebellion).

[34] L-4974-78, May 16, 1969, 28 SCRA 72 (Prosecution for rebellion and common crimes).

committed prior to the enactment of the statute, implied that had it been otherwise, the conviction of the appellants for "mere membership" in the Communist Party of the Philippines would have been affirmed. In *Hernandez* the Court held:

> On the other hand, Rep. Act 1700, known as the Anti-Subversion Act, which penalizes membership in any organization or association committed to subvert the Government, cannot be applied to the appellants because said Act was approved on June 20, 1957 and was not in force at the time of the commission of the acts charged against appellants (committed 1945-1950); the Anti-Subversion Act punishes participation or membership in an organization committed to overthrow the duly constituted Government, a crime distinct from that of actual rebellion with which appellants are charged.[35]

This was quoted with approval in *Lava.*

Reviewing the *Lava* case in the pages of this Journal three years ago, I commented:

> While the finding as to the purpose of the CPP may well foreclose the question whether the legislative declaration in the Anti-Subversion Act that the CPP is an organized conspiracy for the overthrow of the government, constitutes a bill of attainder, still it is doubtful whether mere membership in the CPP, as the Court strongly implied, can sustain a conviction under the Act. To be sure, the Act speaks of "knowingly, willfully and by overt act" affiliating or maintaining membership in the CPP. Membership alone, as the Court itself noted with respect to the crime of rebellion, "merely implies advocacy of abstract theory or principle without any action being induced thereby."[36]

These considerations were at the center of the controversy on the validity of the Anti-Subversion Act. In *People v. Ferrer*,[37] decided last year, the Supreme Court upheld the validity of the Act against claims that it was a bill of attainder, denied private respondents due process, and infringed their right of association.

The case arose from the respondents' prosecution in 1970 for violation of the Act. The information against Leoncio Co charged that during the period May 1969 to December 5, 1969 "[he] feloniously became an officer and/or ranking leader of the Communist Party of the Philippines . . . by being an instructor in the Mao Tse Tung University, the training school of recruits of the New People's Army, the military arm of the said Communist Party of the Philippines." On the other hand, the information

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[35] 11 SCRA at 250.
[36] Mendoza, *Annual Survey of Constitutional Law*, 45 PHIL. L. J. 61, 75 (1970).
[37] L-32613-14, Dec. 27, 1972, 48 SCRA 382.

against Nilo S. Tayag, Arthur Garcia, Renato Casipe, Abelardo Garcia, Manuel Alavado, Benjamin Bie and several John Does charged that in March 1969 the accused "knowingly, willfully and by overt acts organized, joined and/or remained as officers and/or ranking leader of the *Kabataang Makabayan,* a subversive organization as defined in Republic Act No. 1700." The information charged further that the accused committed "subversive and/or seditious acts, by inciting, instigating and stirring the people to unite and rise publicly and tumultuously and take up arms against the government, and/or engage in rebellious conspiracies and riots to overthrow the government of the Republic of the Philippines . . ."

On motion of the respondents, the Court of First Instance of Tarlac dismissed the informations after declaring the Anti-Subversion Act unconstitutional. The Government appealed.

Treating the Government's appeal as a special civil action of certiorari, the Supreme Court 7 to 1, with two members[38] abstaining, sustained the validity of the Act and remanded the case for trial. Through Mr. Justice Castro, it held that the Act did not violate the Bill of Attainder Clause, because "it does not [actually] specify the Communist Party of the Philippines or the members thereof for the purpose of punishment. What it does is simply to declare the Party to be an organized conspiracy for the overthrow of the Government for purposes of the prohibition . . . against membership in the outlawed organization." Taking note of its own decisions from the 1932 prosecution of Communist[39] to the 1971 Habeas Corpus cases,[40] the Court held that the legislative finding that the CPP was a subversive organization is so "universally acknowledged to be certain . . . [that] judicial hearing is not needed fairly to make such determination." In addition, the Court ruled that since the objection to bills of attainder is that thereby Congress assumes judicial function, it is necessary that the statute must apply retroactively and reach past conduct. It was pointed out that the prohibition of the Anti-Subversion Law applied only to acts committed after its approval.

Drawing on Professor Freund's paper,[41] the Court distinguished legislative facts from adjudicative facts:

> [L]egislative facts — those facts which are relevant to the legislative judgment — will not be canvassed save to determine whether there is a rational basis for believing that they exist, while adjudicative

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[38] Makasiar and Antonio, *JJ.* abstained. The Chief Justice concurred "in the result." Justice Fernando dissented.

[39] People v. Evangelista, 57 Phil. 375 (1932).

[40] Lansang v. Garcia, L-33864, Dec. 11, 1971, 42 SCRA 448.

[41] Freund, *Review of Facts in Constitutional Cases,* in SUPREME COURT AND SUPREME LAW 47 (Cahn ed. 1954).

> facts — those which tie the legislative enactment to the litigant — are to be demonstrated and found according to the ordinary standards prevailing for judicial trials.[42]

In the case of the Anti-Subversion statute the legislative finding regarding the subversive character of the CPP was the product of extensive congressional investigations.

The Subversive Activities Control Act of 1950 of the United States contains a similar finding that "there exists a world Communist movement . . . whose purpose it is, by treachery, deceit, infiltration . . ., espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world . . ."[43] "Communist-action organizations" are required to register with the Attorney General. If an organization fails to register, its officers are required to register for it and furnish the required information; upon their failure to do so individual members must register their names. Penalties are provided for failure to register. Various consequences attach after registration. For example, members may not hold nonelective offices in the U.S. Government or employment in defense facilities or labor unions. In *Communist Party of the United States v. Subversive Activities Control Board*[44] the United States Supreme Court upheld the validity of the registration requirement against the claim that it contravened the Bill of Attainder prohibition of the U.S. Constitution. It held that the Act was not aimed at the outlawry of a particular organization but of a class of activities. The fact that the Act regulated only present conduct was said to save it from the objection that it was designed to attaint a small number of persons as identified by their past conduct. In the case of the Anti-Subversion Act, the incidence of punishment fell on defined activities (*i.e.*, joining or maintaining membership in the CPP after the effectivity of the Act) and not on individuals.

In *Ferrer* the Court also rejected the respondents' claim that the Act denied them due process. The prohibition against membership in the CPP, according to the Court, was justified by the congressional finding of the subversive objective of the CPP. "[T]he constitutionality of the Act would be open to question if, instead of making these findings [as to the illegal character of the CPP] in enacting the statute, Congress omitted to do so."

Finally, the Court found the interest in freedom of expression and association so insubstantial as to be outweighed by the interest in national

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[42] *Id.* at 47-48.
[43] Sec. 2(1), 64 Stat. 987, 50 U.S.C. sec. 781(1) (1958).
[44] 367 U.S. 1 (1961).

security. The Act does not punish mere membership in the CPP, but knowing membership, with intent to further the aims of the Party. The requirement of specific intent requires "proof of direct participation in the organization's unlawful activities, while . . . [the requirement of guilty knowledge] requires proof of mere adherence to the organization's illegal objectives." Such membership, as held in *Scales v. United States*,[45] "constitutes a purposeful form of complicity in a group engaging in . . . forbidden advocacy" or action. The ruling in *Ferrer* on this aspect of the issue is hardly a drastic one. In *Hernandez* the Court, finding the HMB to be a conspiracy to commit rebellion, held that membership in it "implies participation in an actual uprising or rebellion"[46]

The *Ferrer* Court laid down the following guidelines for prosecution under the Act:

> The Government, in addition to proving such circumstances as may effect liability, must establish the following elements of the crime of joining the Communist Party of the Philippines or any other subversive association:
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> (1) In the case of subversive organizations other than the Communist Party of the Philippines, (a) that the purpose of the organization is to overthrow the present Government of the Philippines and to establish in this country a totalitarian regime under the domination of a foreign power; (b) that the accused joined such organization; and (c) that he did so knowingly, willfully and by overt acts; and
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> (2) In the case of the Communist Party of the Philippines, (a) that the CPP continues to pursue the objectives which led Congress in 1957 to declare it to be an organized conspiracy for the overthrow of the Government by illegal means for the purpose of placing the country under the control of a foreign power; (b) that the accused joined the CPP; and (c) that he did so willfully, knowingly and by overt acts.
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> We refrain from making any pronouncement as to the crime of remaining a member of the Communist Party of the Philippines or of any other subversive association; we leave this matter to future determination.[47]

Mr. Justice Fernando dissented.[48] For him, the invalidity of the statute as a bill of attainder was evident "from the very title of the Anti-Subversion Act, to outlaw the Communist Party of the Philippines and similar associations,' not to mention other specific provisions". He also

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[45] 367 U.S. 203 (1961).
[46] *Supra*, note 33 at 244.
[47] *Supra*, note 37 at 415-416.
[48] *Supra*, note 37 at 416.

found the statute so broadly drawn that it invaded the area of protected freedom:

> It is difficult for me to accept the view that resort to outlawry is indispensable, that suppression is the only answer to what is an admitted evil. There could have been a greater exposure of the undesirability of the communist creed, its contradictions and arbitrariness, its lack of fealty to reason, its inculcation of disloyalty, and its subservience to centralized dictation that brooks no opposition.

Motions for reconsideration were filed in this case.

2. *Freedom of Expression on the Campus.* — In *Laxamana v. Borlaza*,[49] the Supreme Court failed to clarify the scope of students' right of expression because of what it considered were problems of prematurity and mootness. Actually, as I shall argue later, the problem was one of standing.

As a result of the publication in *The Torch* and *The Torch Newsettes*, student mouthpieces at the Philippine Normal College, of certain items which he viewed unkind, discourteous and unfair to senior members of the faculty who were referred to as "old maids," school president Emiliano C. Ramirez on August 27, 1964 issued a memorandum to the plaintiff in her capacity as Director of Publications, requesting that more care be exercised in supervising students in the preparation of editorials and articles and suggesting that the page proofs of articles "be gone over before they are finally printed, by Mr. Edilberto Dagot (a representative of the PNC President) who will then take up with her (the Director of Publications) such suggestions as this Office may find it necessary to make from time to time." This last suggestion was withdrawn on August 31, 1964, the school president noting in his memorandum that the proferred "help [in supervising student writing] does not seem to be welcome." On October 14, 1964 the PNC President issued another memorandum, requesting the early convening of the board of management of *The Torch* —

> to restudy the policies of the Torch affecting its editorial and reportorial practices and business management taking into consideration the instructions of this Office to the Director of Publications dated August 29, 1961, with particular attention to the following items:
>
> 1. As a matter of policy, the Director of Publications is held responsible for the contents of published materials in the student organ. Controversial issues, especially those that attack the administration of the government and of the College, are of course to be avoided.

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[49] L-26965, Sept. 20, 1972, 47 SCRA 29.

> 2. Articles that border on indecency are not to be given space in the publication.
>
> 3. The Torch is not to be a forum for airing personal grievances. In case of doubt one way or the other, materials should be referred to this Office for appraisal or comment.

On December 4, 1964, plaintiff sought in the Court of First Instance of Manila the nullification of the two memoranda, dated August 27, 1964 and October 14, 1964, on the ground that they "abridge the fundamental liberties of thought, speech and press, unburden the State from the obligation to patronize arts and letters, deny the Philippine Normal College the right to enjoy academic freedom, and relieve it from the duty to develop moral character, personal discipline, and civic conscience and to teach the duties of citizenship to its students."

On January 13, 1965, before the defendant PNC President's answer was filed, Laxamana was relieved as Director of Publications and advised to take a full-time teaching assignment in the English department of the college, without any change in professorial rank and salary. Thereafter, the plaintiff filed supplemental complaints seeking damages for what she termed the PNC President's "oppressive" acts.

On October 4, 1966 the court upheld the validity of the disputed directives, as measures to insure the orderly management of the college and the preservation of discipline therein. The court also upheld plaintiff's relief as Director of Publications, on the ground that since she was not appointed, but merely designated, as Director of Publications, she could be replaced any time.

On appeal the Supreme Court affirmed. The withdrawal of the suggestion that page proofs be submitted to an assistant of the President for review before publication was considered by the Court as having rendered the constitutional issue raised academic. As to the second memorandum dated October 14, 1964, the Court said it was "nothing more than a request for the newly constituted board of management of the *Torch*, chaired by Laxamana as Director of Publications to convene so that the existing policies of the student organs might be restudied with an eye towards improving the editorial and reportorial policies . . . we fail to see how such a request, coming as it did from the head of the institution, could be considered as an abridgment of the fundamental liberties of throught, speech, press and academic freedom. The restudy suggested was designed to improve certain phases of editorial and reportorial practices which, the PNC President felt and made clear in memorandum of August

27, 1964, did not come up to acceptable standards of fairness. At that stage anyway there was yet no actionable violation, or even threat of violation, of the constitutional liberties so assiduously sought to be guarded." Nor did the Court find anything wrong with petitioner's relief as Director of Publications. She was merely designated to perform the duties of such office in addition to her duties as professor.

Moreover, the Court held that —

> Evidently, the differences between the plaintiff, as Director of Publications, and the administration of the Philippine Normal College, through its President and Board of Trustees, involved a question of policy in respect of the student publications in said college. On this score, it appearing that such differences were nigh irreconcilable, the policy-determining body must prevail.

Mr. Justice Fernando concurred but expressed concern over "a tendency to impose censorship or to predicate liability for its exercise." He urged that "there . . . be . . . no restraint imposed in advance on the communication of views or liability to be incurred whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent." He stressed:

> Nowhere should there be greater respect for its commands than in educational institutions. It would make a mockery of academic freedom if there is the gnawing fear on the part of those competent to contribute with their knowledge gained through years of study and research that what they say, or what they write, if displeasing to the powers that be, could be visited with retribution. Nor is it a fine example for students if such an atmosphere would infect the campus. While there is no particular right of petitioner violated in the light of the facts as duly found, what did transpire bodes ill for the spirit of free inquiry which should permeate campus life.

The scope of freedom of speech and expression on the campus has yet to be defined. In the United States, despite its holding that state colleges and universities are not "enclaves immune from the sweep of the First Amendment" and that students and teachers "do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the Supreme Court has nevertheless given recognition to the "special characteristics of the school environment" as justifying the imposition of limitation which, in other context, might constitute impermissible restraints on freedom of expression. The Court has affirmed "the comprehensive authority of the State and of school officials, consistent with

fundamental constitutional safeguards, to prescribe and control conduct in the school."[50]

Indeed, as Mr. Justice Rehnquist pointed out in his concurring opinion in a recent case, *Healy v. James*,[51] the cases in this area suggest that constitutional limitations on the Government acting as administrator of a college differ from the limitations on the Government acting as a sovereign to enforce its criminal laws. As he put it:[52]

> Prior cases dealing with First Amendment rights are not fungible goods, and I think the doctrine of these cases suggests two important distinctions. The government as employer or school administrator may impose on students rules and regulations that would be impermissible if imposed by the government upon all citizens. And there can be a constitutional distinction between the infliction of criminal punishments on the one hand, and the imposition of milder administrative and disciplinary sanctions, on the other, even though the same First Amendment interest is implicated in each.

Thus, in *Pickering v. Board of Education*[53] the Supreme Court emphasized the need for "evaluating the conflicting claims of First Amendment protection and the need for orderly school administration." The Court upheld the right of a teacher to criticize his school's proposal for tax increase after noting that no question of maintaining either discipline by immediate superiors or harmony among co-workers was involved. "Appellant's employment relationship with the Board and, to a somewhat lesser extent, with the superintendent are not the kind of close working relationships for which it can persuasively be claimed that personal loyalty and confidence are necessary to their proper functioning."

On the other hand, in *Meehan v. Macy*[54] the District of Columbia Court of Appeals held that an employee, who printed and distributed intemperate, contemptuous and defamatory lampoon of the Canal Zone Government, in which he was employed, could be discharged. The Court held:[55]

> To ensure a basic efficiency in public service a limitation may be imposed as a condition of Government employment that is broader than the standard that defines the wrongdoing that subjects a private citizen to penalty or damage action. . . .

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[50] Healy v. James, 408 U.S. 169 (1972), 33 L.Ed. 2d 266 (denial of campus recognition to the SDS chapter held unconstitutional); Tinker v. Des Moines Independent School Dist., 393 U.S. 503 (1969) (wearing of black armbands by high school students protesting the Vietnam war held to be constitutionality protected expression.)

[51] 33 L.Ed. 2d at 291.

[52] 33 L.Ed. 2d at 292.

[53] 391 U.S. 563 (1968).

[54] 392 F.2d 822 (1968).

[55] *Id.* at 833-834.

> Loyalty to the Government employer cannot be held to compel servility of thought and expression, but it does set a limit on channels and methods available to indicate disagreement with superior official.

The issue of how far an employee or student may be allowed to exercise his right of expression consistent with the requirement of the office or of the school was at the center of the controversy at the Philippine Normal College in 1964. Despite the withdrawal of the requirement that materials for publication be submitted for review by an assistant of the school President, there remained the constitutional question whether the school could prohibit the publication of items critical of the Government or the school. The second memorandum dated October 14, 1964, did not merely urge a restudy of the editorial policies of *The Torch*. It enjoined compliance with the previous instruction of the PNC head to the Director of Publications that "controversial issues, especially those that attack the administration of the government and of the College are of course to be avoided."

This question called for the articulation of criteria by which free speech interests and the interest in the maintenance of discipline and order in colleges and universities are to be judged and evaluated. But these were problems which made this case unsuitable as a vehicle for securing judicial determination of the problem of speech on the campus. The petitioner was hardly the party to question the constitutionality of the system of school censorship. As Director of Publications, she was part of the system of censorship. She was the school's representative to enforce the censorship code on the campus. In taking issue with the school policy in respect of student publications, petitioner in effect repudiated her employment as school censor. Her differences with the administration of the PNC concerned policy matters, and while that disagreement might have been based on free speech principles, it was clear she was asserting not her constitutional rights but those of the students. It is noteworthy that while the student editors were joined in the petition filed with the Philippine Press Institute, these students, who had a real interest in the controversy, were not made parties in the ensuing litigation. Indeed, it was not clear from the complaint filed in the Court of First Instance whose interest petitioner was vindicating.

On the other hand, invocation of academic freedom in the context of the case was patently trivial. Petitioner's rights as a teacher or scholar were not involved. The record was unsatisfactorily abstract on this point, and judicial determination of the question was simply impossible.

B. *Due Process of Law*

1. *Denial of Hearing and its Remedies.* — Generally, the denial of the right of a party to be heard can only result in the nullification of the decision that might have been rendered and the remand of the case for further hearing.[56] But in *Villanos v. Subido*,[57] the Court, while in the main adhering to the procedure of remand, strongly recommended termination of the proceedings to obviate the injustice to the party and to relieve him from what one Justice described "an intolerable situation."

In *Villanos* the petitioner, a public school teacher with a long record of efficient service, was prosecuted for libel and administratively charged with gross discourtesy and notoriously disgraceful language, for having written on April 1, 1957 a libelous letter to her co-teachers, Mrs. Esperanza F. Sebastian and Miss Anacleta Faypon. The criminal cases was decided on March 6, 1961, resulting in her conviction, but the administrative case dragged for years and gave rise to this litigation. The administrative case was heard on September 23, 1957 before District Supervisor Severo Lucero. On February 12, 1958 another hearing was held during which Mrs. Sebastian concluded her testimony. Another hearing was set for February 25, 1958, but none was actually held on that date. Two years later on March 1, 1960, the petitioner wrote the investigator and asked for another investigator either from the Bureau of Public Schools or from the Bureau of Civil Service. Petitioner's request was prompted by the fact that she had filed administrative charges of bribery and corruption against the superintendent of schools and therefore she feared that an investigator from the Office of the Division Superintendent of Schools would not be impartial. The Bureau of Public Schools, to which her request was apparently referred, informed the petitioner that her request could not be granted because of a "dearth of personnel" in the main office. Instead the continuation of the hearing was ordered. And so another hearing was scheduled for August 8, 1960, but the investigation was not held on the ground that the petitioner had a pending request in the Civil Service Commission for another investigator to hear not only the administrative case against her but also those she had filed against the Superintendent of Schools and another person and against Mrs. Sebastian and Miss Faypon.

For a long time no action was taken on petitioner's request for a new investigator. The Schools Superintendent in turn indorsed the case to the Director of Public Schools, stating that petitioner had "refused to submit to the investigation." When the matter was in turn indorsed by

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[56] *See. e.g.*, Halili v. Public Service Commission, 92 Phil. 1036 (1953); Sicat v. Reyes, 100 Phil. 505 (1956).

[57] L-23169, May 31, 1972, 45 SCRA 299.

the Assistant Director of Public Schools to the Secretary of Education, this statement (that petitioner "refuse to submit to the investigation") was repeated. He recommended that petitioner be transferred to another station and reprimanded, warning that commission of the same offense in the future would be dealt with severely. The recommendation was approved by the Secretary of Education, but the respondent Civil Service Commissioner disregarded it and found petitioner guity of the charge and accordingly ordered her dismissed from the service.

Thereupon, the petitioner brougt an action for certiorari and prohibition in the Court of First Instance of Manila, which on March 2, 1964 rendered judgment nullifying the order of dismissal. The Civil Service Commissioner appealed to the Supreme Court. In the meantime petitioner reached the age of compulsory retirement and education officials were confronted with the question whether she could be allowed to receive her retirement benefits pending decision of the administrative case.

The Supreme Court affirmed the judgment of the lower court. Through Mr. Justice Barredo it held:

> Undoubtedly, [petitioner] had a right to request for a different investigator and to await the outcome of such request. That the authorities concerned allowed years to pass without even acting thereon cannot be counted against her. At the stage in which the investigation was at the time when the Superintendent indorsed the records to higher authorities, only one witness of the complainants had testified, so, even the complainants' side had not rested; more importantly, the respondent therein, herein petitioner-appellee had not yet presented any evidence. We hold, therefore, that the action of the education authorities and the respondent-appellant of considering the case submitted for decision is unwarranted. It is obvious that said action constitutes denial to petitioner-appellee of her right to due process, hence the decision of respondent-appellant is null and void.
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> . . . A condemnatory decision in a criminal case, even if final, by itself alone, cannot serve as basis for a decision in an administrative case involving the same facts, for the simple reason that matters that are material in the administrative case are not necessarily relevant in the criminal case. . . . At any rate, it is settled in this jurisdiction that even where criminal conviction is specified by law as a ground for suspension or removal of an official or employee, such conviction does not *ex proprio vigore* justify automatic suspension without investigation and hearing as to such conviction.

The Court went further and considered the merits of the administrative charge against petitioner, and, while disclaming any intention of passing upon her guilt, observed that the crime (libel) of which the petitioner had been convicted "had no direct relation to her work," that the libelous

statements were contained in a letter and could not have posed a danger to young minds, and that petitioner had a long record of efficient service. The Court gave the observation by way of providing the "perspective" from which petitioner's case should be considered. The Court added:

> . . . [I]f the education authorities feel that it is best for all concerned to earlier put an end to the case against petitioner-appellee, the Court sees no insurmountable objection to their adopting the course of action suggested in the above communication of Secretary Corpuz, which would naturally mean that, upon the resumption of the proceedings as a consequence of this decision, the administrative case against petitioner-appellee shall be immediately dismissed, without regard to the merits of the charge therein made and she will be granted all the benefits of retirement, if only to compensate the denial to her of due process that we have found above, which would be in the same fashion in essence to the dismissal of a criminal case without regard to the possible guilt or innocence of the accused when it appears that said accused is being denied speedy trial, which, to be sure, could be said not to be any more objectionable than the lengthy wait that petitioner-appellee was made to suffer in the case.

Justice Teehankee, joined by Justice Makasiar, concurred and urged that relief take the form of a direction from the Court to the respondent to accept the recommendation of the Secretary of Education that petitioner be merely reprimanded and then allowed to receive her retirement pay. For Justice Fernando, who was joined by Justice Castro, the situation had become so intolerable the only way to relieve it was for the Court to declare the matter terminated.

Reference to a "right to speedy administrative investigation" in implementing the idea of due process, with consequences similar to those which follow the denial of the right to speedy trial in criminal cases,[58] has its parallel in the Warren Court's technique of deriving the meaning of the Due Process Clause from a consideration of the "more specific" provisions of the first ten Amendments. In *Klofer v. North Carolina*,[59] for instance, it was held that in light of its history and its reception into the colonies, the Sixth Amendment right to speedy trial was "as fundamental as any of the other rights" secured by that Amendment (*e.g.*, right to be confronted with the witnesses against one) and therefore was binding on the several states through the Fourteenth Amendment Due Process Clause.

2. The Requirement of Hearing in Administrative Rulemaking. — Does the Due Process Clause require prior notice and hearing in adminis-

[58] People v. Castañeda, 63 Phil. 480 (1936); Conde v. Rivera, 45 Phil. 650 (1924).
[59] 386 U.S. 213 (1967).

trative agency proceedings looking toward the making of rules rather than the adjudication of claims? In *Central Bank v. Cloribel*[60] the Central Bank issued a circular governing the payment of interest on bank deposits. With respect to savings deposits, the circular fixed a maximum of 5¾ per cent per annum, "compounded quarterly." With respect to time deposits, the circular provided that "interest on time deposits shall not be paid in advance." In 1964 Banco Filipino adopted a policy whereby interests on savings deposits at the maximum rate fixed by the CB were compounded monthly instead of quarterly, while interests on time deposits were to be paid in advance. When required to comply with the circular of the CB, Banco Filipino brought an action in the Court of First Instance and succeeded in obtaining an injunction against the enforcement of the disputed circular. Thereupon, the CB filed a petition for certiorari and prohibition in the Supreme Court. In its answer Banco Filipino argued that the disputed circular and the resolution of the Monetary Board, by virtue of which it was issued, were null and void because they were issued without previous notice and hearing. The Supreme Court, in an opinion written by the Chief Justice, rejected the claim of Banco Filipino and upheld the validity of the circular and the resolution. The Court said:

> . . . [T]he Central Bank is supposed to gather relevant data and make the necessary study, but has no legal obligation to notify and hear anybody, before exercising its power to fix the maximum rates of interest that banks may pay on deposits or any other obligations. Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a *past* act or event which has to be established or ascertained. It is *not* essential to the validity of *general* rules or regulations promulgated to govern *future* conduct of a *class* of persons or enterprises, unless the law provides otherwise, and there is no statutory requirement to this effect, insofar as the fixing of maximum rates of interest payable by banks is concerned.

In the context of the case, denial of the claim of a right to a hearing, especially to a trial-type of hearing, was justified. The CB circular did not depend for its validity on the existence of a factual foundation of record. Indeed, as the Chief Justice noted, the legality or wisdom of the maximum rates established was not in dispute. What was questioned was the power of the Monetary Board to prescribe the manner of computing the interest, and it was in fact on this point that five justices[61] dissented. In the absence of a statute that commands a particular agency to confine its

[60] L-26971, April 11, 1972, 44 SCRA 307.

[61] Teehankee, *J.*, joined by Makalintal, Castro, Fernando and Villamor, *JJ.*

consideration to the record made in the course of a public hearing, an agency, when engaged in formulating a rule, "may act not only on the basis of the comments received in response to its notice of rule making, but also upon the basis of information available in its own files, and upon the knowledge and expense of the agency."[62] In The Assigned Car cases,[63] the United States Supreme Court said in respect of the Interstate Commerce Commission that when it is establishing a rule of general application, it is not a condition of its validity that there be adduced evidence of its appropriateness in respect of every railroad to which the rule will apply. "[T]he Commission, like the legislature, may reason from the particular to the general."

3. *Arbitrary Dismissal of Criminal Actions.* — In a number of cases decided in 1972 the Court reversed the arbitrary dismissal of criminal cases by lower court judges and ordered the immediate trial of the defendants. Implicit in the decisions in these cases is the idea that justice is due the State no less than the defendants.

In *People v. Surtida*[64] postponements of the trial were granted at the instance of the defense, but when the Provincial Fiscal was not able to appear on the date of trial to present the evidence for the prosecution because he had left the province, the trial court, on motion of the defense, provisionally dismissed the case. The Court found the Fiscal's absence excusable. He had gone to Bataan to participate, as member of the Government Prosecutor's League, in the unveiling of Chief Justice Abad Santos' marker, and he sent a special prosecutor to inform the court of his inability to come for trial.

In *People v. Ayson*,[65] jointly decided with the *Surtida* case, the trial court dismissed the case and acquitted the defendants on the ground that they were entitled to a speedy trial. As in *Surtida*, there was a delay in the trial of the case due principally to defense request for postponement. On the date set for trial, the prosecution and the witnesses arrived in court 30 minutes late. By then the court had dismissed the case and acquitted the defendant. It appeared that the prosecution and the witnesses had come from Angeles City, while the trial was held in San Fernando, Pampanga, and that traffic on that date was heavy.

In both cases the Court, through the Chief Justice, made it clear that the remand of the cases for trial would not place the defendants in double jeopardy, in *Surtida* because the dismissal was provisional and ordered at

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[62] California Citizens Bar Ass'n v. United States, 375 F.2d 43, 54 (9th Cir.).
[63] 274 U.S. 564 (1927).
[64] L-24420, Jan. 26, 1972, 43 SCRA 29.
[65] L-24686, Jan. 26, 1972, 43 SCRA 29.

the instance of the defendants; and in *Ayson* because the acquittal of the defendants in disregard of due process was a nullity.

In *People v. Mencias*[66] disregard of the State's right to fairness was even more gross. The Court, through Mr. Justice Fernando, found not only "glaring misinterpretation" of the scope of certain constitutional guarantees made in order to favor the defendant but also "inexplicable behavior of the lower court of dismissing five separate criminal informations, two of which were not even docketed in its sala when such motion to quash was filed only and solely in behalf of one of the accused, now respondent Juan J. Claravall, [and] considering . . . that the informations quashed did, on their face, show that the offense charged in each of them . . . was not identical with that on which private respondents were them being proceeded against." Five cases for malversation through falsification of public documents were filed in the Court of First Instance of Rizal on January 2, 1963. Two criminal cases were assigned to then Judge Cecilia Muñoz Palma, while the rest were assigned to the respondent judge. In all these cases, respondent Juan J. Claravall was one of the defendants. On March 20, 1963, Claravall moved to quash the informations in all the five cases on the ground that the informations did not conform to the prescribed form and that the defendant was placed in double jeopardy of being punished for the same offense. On October 18, 1963, the lower court dismissed not only the criminal cases pending before it but also those assigned to another branch of the court. The lower court went further by dismissing the cases as to all the defendants, of which there were 35, and not only with respect to Claravall. The prosecution thereupon filed a petition for certiorari and mandamus in the Supreme Court, which set aside the order of the trial court and ordered the immediate trial of the defendants.

The claim of double jeopardy was untenable in light of the evidence that the transactions involved in one case were "ghost" purchases of lumber from a "ghost" company, while the transactions involved in five other cases involved "ghost" purchases from certain named companies of electrical, plumbing and hardware supplies. It was evident that the defendants were being prosecuted for different offenses. It may be added that even granting that the defendants were being prosecuted in the various cases for one and same offense, there was no basis for the plea of double jeopardy because there had been no prior conviction, acquittal or dismissal in any of the cases.

[66] L-23572, July 29, 1972, 46 SCRA 88.

With respect to the claim that the informations did not fully inform the defendants of the charges against them, the Court said: "Whatever else may be said against the five-page, single-spaced informations filed, it cannot be truthfully asserted that private respondents, after reading them, would not be cognizant of why [the information] were filed."

4. *An Impartial judge.* — In *People v. Angcap*[67] it was held that the trial judge questioning of a witness during cross-examination by defense counsel was not an evidence of partiality. The case was a prosecution for rape. During the cross-examination of the offended party by the defense counsel, the following colloquy between judge and witness took place:

> Q: You did not feel anything?
> A: I felt the pain.
> Q: You told us you did not feel anything, which is true?
> A: I felt the pain the third time.
> Q: So your statement that you did not feel is not correct?
> A: Yes.
> Q: What did you feel after the first penetration?
> A: I feel the pain.
> Q: So you are now trying to correct the previous answer you made that you did not feel anything?
> A: Yes.

The defendant was convicted. He appealed, contending among other things that the incident at the trial showed the judge's prejudice against him. The Supreme Court affirmed. Through Mr. Justice Fernando, it held that the judge's questioning of the witness was simply an effort to elicit the truth and do justice to the parties and not to help the cause of the prosecution.

5. *Transfer of Communal Property from Municipality to Another Agency of the Government not a Deprivation of Property without Due Process of Law.* — In *Salas v. Jarencio*[68] the Supreme Court held that while a municipality may not be deprived of patrimonial property without just compensation, Congress may, in the exercise of its power to classify lands of the public domain, transfer the communal lands of the municipality to an agency of the Government to implement the social justice provision of the Constitution. The City of Manila was granted title to a parcel of land in 1919. In 1960 its Municipal Board passed a resolution requesting the President to declare the land the patrimonial property of

[67] L-28748, Feb. 29, 1972, 43 SCRA 437.
[68] L-29788, Aug. 30, 1972, 46 SCRA 734.

the city for the purpose of dividing it into small lots and thereafter reselling them to the actual occupants. The resolution was transmitted to the President, but before any action could be taken on the resolution Congress passed a law (Republic Act No. 4118) converting the land into "disposable or alienable land of the State, to be placed under the disposal of the Land Tenure Administration." The law provided for the subdivision of the property into small lots for resale on installment basis to tenants or bona fide occupants thereof. To implement the statute, the Land Authority, which had succeeded the Land Tenure Administration, wrote the Mayor of Manila, furnishing him a copy of the proposed subdivision plan. The Mayor replied that his office had no objection to the implementation of the law and in fact the certificate of title of the city was delivered to the Land Authority and the latter office obtained a title in its name. For reasons that do not appear in the record, however the City Mayor filed an action in the Court of First Instance to prohibit and enjoin the Land Authority and the Register of Deeds from taking further steps to implement Republic Act No. 4118. On September 23, 1968, the court declared the statute unconstitutional on the ground that it deprived the City of Manila of property without due process of law. On appeal, the Supreme Court reversed. Through Mr. Justice Esguerra, it held that, excepting lands acquired by municipality in its corporate capacity, all lands in its possession are to be considered held by it in trust for the State for the benefit of its inhabitants and that it holds, such lands subject to the paramount power of Congress to dispose of them. The Court stated further:

> . . . There is no quarrel over this rule [of compensation] if it is undisputed that the property sought to be taken is in reality private or patrimonial property of the municipality or city. But it would be simply begging the question to classify the land in question as such. The property, as has been previously shown, was not acquired by the City of Manila with its own funds in its private or proprietary capacity. That it has in its name a registered title is not questioned, but this title should be deemed to be held in trust for the State as the land covered thereby was part of the territory of the City of Manila granted by the sovereign upon its creation. That the National Government, through the Director of Lands, represented by the Solicitor General, in the cadastral proceedings did not contest the claim of the City of Manila that the land is its property, does not detract from its character as State property and in no way divests the legislature of its power to deal with it as such, the state not being bound by the mistakes and/or negligence of its officers.

That the City of Manila had asked the President to declare the land in question its patrimonial propery was considered a "decisive fact" regarding the character of the land.

C. *The Protection Against Unreasonable Searches and Seizures*

The Validity of a Search Warrant. — In *Villanueva v. Querubin*[69] it was held that where property seized by virtue of a warrant is not deposited in court but is returned to the persons from whom it was taken on his promise that he will, when required, deposit the property in court, no new warrant is necessary to seize the property if the person later refuses to comply with his promise. On March 14, 1966 Philippine Constabulary men raided petitioner's house where gambling was being held, arrested eight persons found therein, and seized gambling paraphernalia consisting of money in the amount ₱10,570. The eight were subsequently prosecuted for, and convicted of, gambling, but on motion of the City Fiscal only the amount of ₱220 was ordered forfeited in favor of the Government. The balance of ₱10,350 was returned to the petitioner who issued a receipt promising to return the money if required by "higher authorities." On April 23, 1966 the City Fiscal filed a motion for the deposit of the money in court, and the court, in an order dated June 1, 1966 directed petitioner to return and deliver to the PC Provincial Commander the amount of ₱10,350. Petitioner filed an action for certiorari and prohibition in the Supreme Court, contending that the order of the lower court amounted to an unreasonable search and seizure of his property. The Supreme Court denied the petition.

Writing for the Court, Mr. Justice Fernando pointed out that the return of the money to the petitioner was irregular because it should have been deposited in court as required by section 11 of Rule 126 of the Rules of Court. The subsequent claim of ownership made by petitioner could not defeat the court's order designed precisely to secure compliance with the Rules of Court. "It cannot be correctly maintained then that just because the money seized did belong to the petitioner, its return to the court that issued the search warrant could be avoided when precisely what the law requires is that it be deposited therein. As a matter of fact, what lacks the element of legality is the continued possession by petitioner."

Under section 9 of Rule 126 a search warrant is valid for ten days only. Within that period, the search and seizure of property should be made, otherwise the warrant would lapse and any search and seizure subsequently conducted would be unreasonable. In the *Villanueva* case there was in effect an extension of the life of the search warrant by virtue of which the amount of money involved was seized as, again in effect, the Court held that no new warrant was required to compel the deposit of the money previously seized and then returned. The decision rests on

[69] L-26177, Dec. 27, 1972, 48 SCRA 345.

the irregularity, let alone illegality, of the return of the money to the petitioner and on the obligation assumed by the petitioner to deposit the money in court when required by "higher authorities."

D. *The Protection Against Double Jeopardy*

No Reopening of Final Judgments. — *Bustamante v. Maceran*[70] affirmed the rule[71] that after its decision has become final either by the expiration of the time for appealing or by the acceptance of the judgment by the defendant who commences the service of his sentence, the court cannot thereafter set aside the decision and render a new sentence. In this case petitioner, as defendant in a criminal case, pleaded guilty to the charge of murder and was sentenced to one year of imprisonment in view of the presence of a privileged mitigating circumstance and three ordinary mitigating circumstances, and to indemnify the offended party in the amount of ₱12,000. He began service of sentence on December 14, 1970. However, three days later, the fiscal asked the court to modify the sentence. Upon receipt of his motion, petitioner's counsel in turn filed a "Motion for Withdrawal of Plea of Guilty and Waiver of Commitment." On February 1, 1971, the petitioner was arraigned and tried again, February 28, 1972 judgment was rendered against petitioner sentencing him to suffer an indeterminate penalty of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal,* as maximum, to indemnify the heirs of the offended party in the sum of ₱12,000 and to pay the costs. Petitioner filed a motion for reconsideration questioning the jurisdiction of the trial court to try him again after he had fully served the original sentence and, failing to get relief, he filed a petition for certiorari in the Supreme Court. His petition was granted. The Court, through Mr. Justice Fernando, held:

> . . . With the judgment of conviction not only promulgated but actually carried out with petitioner having started to serve his sentence, no such order reopening the case should have been issued by Judge Coquia. That was not in accordance with the controlling doctrine on the constitutional right against being twice put in jeopardy. It is true that petitioner had in fact contributed to bringing about such a judicial deviation from the correct norm. That did not forfeit though his right to a remedy to which he is entitled.

III. GOVERNMENTAL POWERS

A. *Congress*

Immunity from Arrest of Members of Congress. — The 1935 Constitution provided in part:[72]

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[70] L-35101, Nov. 24, 1972, 48 SCRA 155.
[71] Rule 20, sec. 7. Gregorio v. Director of Prisons, 43 Phil. 650 (1922).
[72] 1935 CONST. art. VI, sec. 15.

> The Senators and Members of the House of Representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of the Congress and in going to and returning from the same. . .

On the other hand, the Revised Penal Code provided in part as follows:

> ART. 145 — *Violation of parliamentary immunity*. . . . . The penalty of *prision correccional* shall be imposed upon any public officer or employee who shall, while the Assembly is in regular or special session, arrest or search any member thereof except in case such member has committed a crime punishable under this Code by a penalty higher than *prision mayor*. (As amended by Com. Act No. 264)

The 1971 Constitutional Convention Act[73] extended the parliamentary immunity of members of Congress to the delegates to the Constitutional Convention and provided that "the penalties imposed in Article . . . one hundred forty-five of the Revised Penal Code . . . shall . . . apply if such offense are committed against . . . the delegates . . ."

In *Martinez v. Morfe*[74] and *Bautista v. Chanco*,[75] jointly decided last year, the Supreme Court held that the Constitution did not exempt members of Congress from arrest and therefore the delegates to the Constitutional Convention could claim no greater immunity. Petitioner in the first case was accused of falsification of public document in the Court of First Instance of Manila. The information charged that he falsely stated in his certificate of candidacy for the Constitutional Convention that he was born on June 20, 1946, when the truth was that the date of his birth was June 20, 1945. Ordered arrested, he moved to quash the order on the ground that, as delegate to the Constitutional Convention, he was privileged from arrest, but the respondent judge denied petitioner's motion. On September 6, 1971, petitioner was arrested while on his way to attend a session of the Constitutional Convention, and then confined in the City Jail of Manila. He petitioned the Supreme Court for writs of habeas corpus and certiorori. On September 11, 1971, he was released on bail on order of the Court.

On the other hand, petitioner in the second case was accused of violation of the Election law[76] in two separate informations filed with the Court of First Instance of Baguio and Benguet. The charge was that on two occasions, while campaigning for a seat in the Constitutional Con-

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[73] Rep. Act No. 6132, sec. 15.
[74] L-34022, March 24, 1972, 44 SCRA 22.
[75] L-34046, March 24, 1972, 44 SCRA 22.
[76] REV. ELECTION CODE sec. 51, now ELECTION CODE OF 1971, sec. 55.

vention, petitioner gave free food, drinks and cigarettes to the people. He claimed "immunity from arrest and search pursuant to Sec. 15 of Republic Act No. 6132." After hearing, the court denied his claim and ordered his arrest. Petitioner filed a petition for certiorari and prohibition, raising a question similar to that of the petition in the first case.

Mr. Justice Fernando, who wrote the opinion of the Court, relied on the language of article VI, section 15 which, while declaring members of Congress privileged from arrest "in all cases," nevertheless excepts "treason, felony, and breach of the peace" from the privilege. He also cited the proceedings of the 1934 Constitutional Convention which show that the original proposal was to the following effect:

> The Members of the National Assembly shall in all cases except treason, open disturbance of public order, or other offense punishable by death or imprisonment of not less than six years, be privileged from arrest during their attendance at the sessions of the National Assembly, and in going to and returning from the same.

On motion of Delegate Aldeguer, however, the Convention retained the provision of the Jones Law, which excepted from the grant of privilege arrest in cases of "treason, felony and breach of the peace." A similar provision of the U.S. Constitution[77] was held to exclude all crimes from the operation of the parliamentary privilege and therefore to leave that privilege to apply only to prosecutions of a civil nature.[78]

In *Martinez* and in *Bautista* the Court ruled that article 145 of the Revised Penal Code, which took effect on January 1, 1932, became inoperative[79] upon the effectivity of the Constitution on November 15, 1935:

The Court then concluded:

> There is, to be sure, a full recognition of the necessity to have members of Congress, and likewise delegates to the Constitutional Convention, entitled to the utmost freedom to enable them to discharge their vital responsibilities, bowing to no other force except the dictates of their conscience. Necessarily the utmost latitude in free speech should be accorded them. When it comes to freedom from arrest, however, it would amount to the creation of a privileged class, without justification in reason, if notwithstanding their liability for a criminal offense, they would be considered immune during their attendance in Congress and in going to and returning from the same.

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[77] U.S. CONST. art. 1, sec. 6.
[78] Williamson v. United States, 207 U.S. 425 (1907) (subornation of perjury).
[79] CONST. Art. XVI, sec. 2.

> There is likely to be no dissent from the proposition that a legislator or a delegate can perform his functions efficiently and well without the need for any transgression of the criminal law. . . .

Actually, even before the decision in these cases came down, Philippine text writers, (among them Mr. Justice Fernando) had viewed the constitutional provision in question as conferring no more than an exemption from civil arrests.[80] Like the Court, these writers relied for their view on *Williamson v. United States*[81] in which it was held:

> . . . The question therefore arises whether the exception of treason, felony, or breach of the peace, being stated in express terms in these constitutions, is to be understood strictly and confined to cases coming within the technical definitions of those offenses, or whether it is used as a compendious expression to denote all criminal cases of every description. In favor of the latter opinion, it may be said, first, there can be no doubt that the framers of these constitutions intended to secure the privilege in question upon as reasonable and intelligible a foundation as it existed by the parliamentary and common law of England; . . . and, second, that the word "felony", which alone gives rise to any doubt, has derived so many meanings from so many parts of the common law, and so many statutes in England, and has got to be used in such a vast number of different senses, that it is now impossible to know precisely in what sense we are to understand it; and, consequently, that unless it is allowed to have such a signification as, with the other words of the exception, it will cover the whole extent of criminal matters, it must be rejected altogether for uncertainty, or, at least, restricted to a very few cases. These reasons, alone though others might be added, are sufficient to establish the point that the terms "treason, felony, and breach of the peace," as used in our constitutions, embrace all criminal cases and proceedings whatsoever. In the Federal government, therefore, and in the states above referred to, the privilege of exemption from legal process may be considered the same as it is in England.
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> [I]t follows that the term "treason, felony, and breach of the peace," as used in the constitutional provision relied upon, excepts from the operation of the privilege all criminal offenses. . . .

Article 145 of the Penal Code purports to complement a grant of immunity from arrest by providing a penal sanction, because such immunity was formerly given to members of the legislative department of the Government. Such privilege has been withdrawn and therefore article 145 must now be deemed abrogated.

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[80] *E.g.*, V. SINCO, PHILIPPINE POLITICAL LAW 184 (11th ed. 1962); L. TAÑADA & E. FERNANDO, CONSTITUTION OF THE PHILIPPINES 870 (4th ed. 1953); GUEVARRA, COMMENTARIES ON THE REVISED PENAL CODE 217 (5th ed. 1957); 2 A. PADILLA, CRIMINAL LAW 162 (1960); V. SINCO & F. CAPISTRANO, REVISED PENAL CODE 56-60 (1932).

[81] *Supra*, note 78 at 445-46.

Act No. 1581,[82] which provided for the calling of the first election in the Philippines, introduced for the first time this privilege in this country. Thus, section 3 of that Act provided in part:

> Members of the Philippine Legislature, in all cases except treason, breach of the peace, and felony which for the purpose of this Act, shall be considered a crime punishable by death or imprisonment for four years or more, shall be privileged from arrest during their attendance at the session of the legislature. . .

This provision was superseded by the Administrative Code of 1916[83] which expanded the privilege by providing as follows:

> SEC. 111. *Privilege of members from arrest.* Members of the Philippine Legislature, in all cases except treason, open disturbance of public order, or other offenses punishable by death or imprisonment for not less than six years, shall be privileged from arrest during their attendance at the session of the Legislature and in going to and in returning from the same; and for any speech or debate in either House they shall not be questioned in any place.

The Act of Congress of August 29, 1916[84] popularly known as the Jones Law, adopting the phraseology of article I, section 6 of the U.S. Constitution, restricted the privilege. Section 18 of that Act provided —

> that the Senators and Representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses and in going to and returning from the same. . . .

In effect, therefore, this provision of the Jones Law, as the organic law of the Philippines at the time, abrogated section 111 of the Administrative Code of 1916. But, whether through oversight or deliberately, when the Administrative Code of 1916 was revised, its provision on parliamentary immunity was not changed so as to reflect this provision of the Jones Law. Instead, section 93 of the Administrative Code of 1917[85] merely reproduced verbatim the provisions of section 111 of the 1916 Code.

At all events, as the Court noted in these cases, when the 1935 Constitution was drafted, the Constitutional Convention went back to the phraseology of the Jones Law in preference to that of the Administrative Code of 1917. The Convention rejected the proposal, based on section 93 of the Administrative Code, to except from the grant of privilege "treason, open disturbance of public order or imprisonment of not less than

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[82] 6 PUB. LAWS 47 (1907).
[83] Act No. 2657.
[84] 12 PUB. LAWS 237.
[85] Act No. 2711.

six years," and instead substituted the phraseology of the Jones Law: "treason, felony and breach of the peace."

Delegate Aldeguer gave three reasons why the crimes of "treason, felony and breach of the peace" should be excepted from the privilege granted: (1) Members of the United States Congress and those of the Parliament of England enjoyed no more than immunity from civil arrest and yet were able to discharge their functions to the utmost. (2) To exempt members of Congress from criminal arrests would be to make them a class of privileged citizens above the law. (3) Congress is merely the agent of the State. Any crime is an affront to the authority of the State; therefore, when a member of Congress commits a crime, he should not be exempt from arrest. He concluded his speech with the observation that "the history of parliamentary immunity shows that it was never to exempt members of the National Assembly from criminal arrest."[86]

Thus, the Constitution abrogated section 93 of the Administrative Code of 1917, and, *pro tanto*, rendered inoperative article 145 of the Revised Penal Code.

Indeed, the right to bail, the guarantee against being imprisoned for debt, and the fact that the presence of petitioners in court was a matter of right rather than of duty, considering the crimes charged, argued strongly against their claim that unless exempted from arrest, their work in the Constitutional Convention would suffer. They could go on bail to secure their release. Their presence in court was required only in two instances: (a) at the arraignment[87] and (b) at the promulgation of the sentence, should the judgment be one of conviction.[88] The continuation of the criminal proceedings could hardly inconvenience them.

It is to be noted, however, that under the 1973 Constitution members of the National Assembly are privileged from arrest where the penalty for the offense with which they are charged does not exceed six years. Thus, article VIII, section 9 provides:

> A Member of the National Assembly shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest during his attendance at its sessions, and in going to and returning from the same; but the National Assembly shall surrender the Member involved to the custody of the law within twenty-four hours after its adjournment for a recess or for its next session, otherwise such privilege shall cease upon its failure to do so. A Member

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[86] 4 J. LAUREL, PROCEEDINGS OF THE PHILIPPINE CONSTITUTIONAL CONVENTION 522-25 (1966).

[87] RULES OF COURT, Rule 116, sec. 2.

[88] *Id.*, Rule 120, sec. 6.

> shall not be questioned nor held liable in any other place for any speech or debate in the Assembly or in any committee thereof.

This provision constitutes an overruling of the decision in *Martinez* and *Morfe*. The question now is whether article 145 of the Penal Code, which was declared inoperative in these cases, may be considered revived, considering that it is a criminal statute. Moreover, even if the decision is to provide a penal sanction for the privilege thus granted, article 145 may have to be amended so as to limit the privilege to cases where the charge is for a crime punishable by a penalty not higher than *prision correccional*.

B. *The Courts*

Judges' Duty to Disclose Basis of their Decisions. — In *De Espiritu v. Court of First Instance*[89] the Court expressed disapproval of the practice of some judges of adopting by reference counsel's arguments, instead of making independent findings of fact and law as basis for their decisions. In this case petitioners brought an action in court to compel the private respondents to make in her favor a deed of sale of two parcels of land. In their answer the respondents denied that they had sold the lands to the petitioner and contended that their contract was one of antichresis. They moved to dismiss the complaint on the ground that petitioner's action had prescribed. The court granted the motion in an order which stated: "Finding the said motion to dismiss to be well-taken for the reasons stated therein, this Court grants the same and the complaint, dated October 16, 1964, is hereby dismissed with costs against the plaintiff." On certiorari, the Supreme Court, through Mr. Justice Barredo, held that there was substantial compliance with the constitutional requirement as the motion to dismiss stated the facts and the law. Nonetheless "judges [said the Court] are advised that mere general reference should be avoided . . . for a closer adherence to the obvious spirit and reason behind the requirement." Mr. Justice Fernando filed a separate concurring opinion stressing the same point.

The Constitutional requirement[90] that a decision should state the facts and the law on which it is based is a safeguard against the impetuosity of the judge. As Professor Freund has written:[91]

> Rationality . . . is a term of commendation, though not of ultimate praise; a decision may be rational and yet not command approval as

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[89] L-30486, Oct. 31, 1972, 47 SCRA 354.

[90] 1935 CONST. art. VIII, sec. 12.

[91] Freund, *Rationality in Judicial Decisions*, in RATIONAL DECISIONS 109, 110 (C. Friedrich ed. 1964).

> a necessary truth or even as right. It is set off against non-rational modes like will, power, caprice, or emotion, against irrational modes, like recklessness of means or ends or their relation, against rapacity or opacity. It is a warrant not so much of the soundness of a decision as of the course pursued — that the course of inquiry has been kept open and operating in appropriate ways and within appropriate termini.

For Justice Brandeis it is said that craftsmanship was the best warrant a judge could give that he would be worthy of the immense power and responsibility with which he has been vested.[92] And so Brandeis set himself the probably super-human task of persuading even the losing counsel, and when a petition for rehearing was filed in a case where he had written the opinion, it is said that he felt a sense of failure.[93]

IV. THE PARITY AMENDMENT

Right of American Citizens to Acquire Private Lands in the Philippines. — In *Republic v. Quasha*[94] the Supreme Court held that under the Parity Amendment[95] to the Constitution, citizens of the United States and corporations and business enterprises owned or controlled by them could not acquire and own, except by hereditary succession, private agricultural lands in the Philippines and that all other rights acquired by them under the Amendment would expire on July 3, 1974. The reference to all other rights was obviously to the right to acquire public lands and to the right to operate public utilities in the Philippines to which, according to the Court, the Amendment is limited.

The respondent, an American citizen, bought on November 26, 1954 a 2,616 – square meter residential land in Forbes Park, Makati, Rizal. In 1968, he filed a petition in the Court of First Instance of Rizal, alleging that the Republic of the Philippines, through its officials, had claimed that, upon the expiration of the Parity Agreement on July 3, 1974, rights acquired by American citizens would cease and be of no further force and effect; that because of such claim there was uncertainty as to the status of his property after July 3, 1974, which affected the value thereof. He, therefore, sought a declaration that his ownership continued notwithstanding the termination of the Amendment. The Solicitor General, representing the Republic of the Philippines, contended that the parity Amendment did not give citizens of the United States equal right in the

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[92] P.A. FREUND, THE SUPREME COURT OF THE UNITED STATES 141 (1961).
[93] *Id.*, at 140.
[94] L-30299, Aug. 17, 1972, 46 SCRA 160.
[95] Ordinance Appended to the Constitution.

acquisition of private lands but only in that of public lands, and that even granting the validity of respondent's acquisition, his right would terminate on July 3, 1974, and would be subject to escheat or reversion proceedings at the instance of the Government. The Court of First Instance rendered judgment declaring respondent's acquisition valid and upholding his right to continue even beyond July 3, 1974. The Supreme Court reversed.

The issue in *Quasha* arose in the context of the following constitutional provisions:

> Art. XIII, section 1:
>
> All agricultural, timber, and mineral lands of the public domain . . . belong to the State and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens . . . Natural resources, with the exception of public agricultural land, shall not be alienated. . .
>
> *Id.* section 5:
>
> Save in cases of hereditary succession no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.
>
> Art. XIV, section 8:
>
> No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires.

The Parity Amendment provides:

> Notwithstanding the provision of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coals, petroleum, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the

> United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines.

In holding that the Amendment gave equal rights to American citizens and corporations only with respect to public lands, Mr. Justice Reyes, who wrote the Court's opinion, relied primarily on the language of the Amendment which "only establishes an express exception to two (2) provisions of our Constitution, to wit: (a) Section 1, Article XIII, re disposition, exploitation, development and utilization of argricultural, timber and mineral lands of the public domain and other natural resources of the Philippines; and (b) Section 8, Article XIV, regarding operation of public utilities," Respondent's argument, that the reference in section 5 of article XIII allowing the transfer of private lands to individuals, corporations, or associations "qualified to acquire or hold lands of public domain in the Philippines" necessarily included American citizens and corporations by virtue of the Parity Amendment, was considered as resting on mere inference. "If it was ever intended to create also an exception to section 5 of Article XIII, why was mention [in the Parity Amendment] made only of Section 1 of Article XIII and Section 8 of Article XIV and of no other?" Justice Reyes asked.

Nor was the Court persuaded by the argument that when the Constitution was adopted in 1935 citizens of United States were already qualified to acquire public lands and that consequently section 5 of article XIII must be understood as permitting the transfer or assignment of private lands to Americans. The Court pointed out that they were qualified to acquire lands at that time only because section 17 of the original Ordinance[96] gave Americans such right during the period of the Commonwealth, without regard to whether the land was public or private. Such right, however, expired when the Commonwealth ended on July 4, 1946. "Which explains the need of introducing the 'Parity Amendment' of 1946."

The Court ruled further that on the assumption that respondent's purchase was valid, his ownership would nevertheless expire on July 3, 1974. For this purpose the Court again relied on the language of the Amendment that rights granted to American citizens under it would last "during the effectivity of the Executive Agreement entered into by the

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[96] Section 17 of the original Ordinance to the Constitution provided that: "Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof."

President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty six . . . but in no case to extend beyond the third of July, nineteen hundred and seventy-four."

Under the original Ordinance of the Constitution, as the Court noted, citizens and corporations of the United States were given the right to acquire public and private lands in the Philippines during the Commonwealth regime. Did their ownership likewise expire on July 4, 1946 upon the inauguration of the Republic?

With respect to rights acquired under the Parity Amendment which were held to terminate on July 3, 1974, the Court in *Quasha* said: "The law making power has until that date full power to adopt the apposite measures, and it is expected to do so." The Court did not say what remedy was available in the case of transfers of private lands which it held violated the Constitution, although in *Rellosa v. Gaw Chee Hun*,[97] which involved the sale of private land to a Chinese citizen, the Court held that only the State could recover the land illegally transferred by means of escheat or reversion proceedings, and expressed the hope that Congress would "without much delay" approve "a law laying down a policy and the procedure to be followed in connection with transactions affected by our doctrine in the Krivenko [v. Register of Deeds] case [79 Phil. 461 (1947)]." The Court denied recovery by the Filipino vendor on the principle of pari delicto.

But in *Philippine Banking Corporation v. Lui She*[98] the Court somewhat departed from its ruling in *Gaw Chee Hun*. It held that —

> It does not follow from what has been said, however, that because the parties are in *pari delicto* they will be left where they are, without relief. For one thing, the original parties who were guilty of a violation of the fundamental charter have died and have since been substituted by their administrators to whom it would be unjust to impute their guilt. For another thing, and this is not only cogent but also important, article 1416 of the Civil Code provides, as an exception to the rule on *pari delicto*, that "When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered." The Constitutional provision that "Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines" is an expression of public policy to conserve lands for the Filipinos.[99]

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[97] 93 Phil. 827 (1953). *Accord*, Bautista v. Uy Isabelo, 93 Phil. 843 (1953); Talento v. Makiki, 93 Phil. 855 (1953); Caoile v. Yu Chiao Peng, 93 Phil. 861 (1953).

[98] L-17587, Sept. 12, 1967, 21 SCRA 52.

[99] 21 SCRA 65 (1967).

This holding in the *Lui She* case has raised anxious questions in some quarters with the promulgation of the decision in *Republic v. Quasha.* Can Filipino vendors recover private lands sold to American citizens in violation of section 5 of article XIII? The new Constitution provides in article XVII (Transitory Provisions):

> **Sec. 11. The rights and privileges granted to citizens of the United States or to corporations or associations owned or controlled by such citizens under the Ordinance appended to the nineteen hundred and thirty-five Constitution shall automatically terminate on the third day of July, nineteen hundred and seventy-four. Titles to private lands acquired by such persons before such date shall be valid as against other private persons only.**

It would seem from the last sentence of this provision that only the State may recover private lands acquired by United States citizens or corporations in situations similar to that presented by the *Quasha* case.