

THE AGRICULTURAL CREDIT AND COOPERATIVE FINANCING ADMINISTRATION (ACCFA), PETITIONER, VS. CONFEDERATION OF UNIONS IN GOVERNMENT CORPORATIONS AND OFFICES (CUGCO), ACCFA SUPERVIS...

G.R. No. L-21484. November 29, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

These are two separate appeals by certiorari from the decision dated March 25, 1963 (G.R. No. L-21484) and the order dated May 21, 1964 (G.R. No. L-23605) as affirmed by the resolutions en banc, of the Court of Industrial Relations, in Cases Nos. 3450-ULP and 1327-MC, respectively. The parties, except the Confederation of Unions in Government Corporations and Offices (CUGCO), being practically the same and the principal issues involved related, only one decision is now rendered in these two cases.

The Agricultural Credit and Cooperative Financing Administration (ACCFA) was a government agency created under Republic Act No. 821, as amended. Its administrative machinery was reorganized and its name changed to Agricultural Credit Administration (ACA) under the Land Reform Code (Republic Act No. 3844). On the other hand, the ACCFA Supervisors' Association (ASA) and the ACCFA Workers' Association (AWA), herein-after referred to as the Unions, are labor organizations composed of the supervisors and the rank-and-file employees, respectively, in the ACCFA (now ACA).

G.R. No. L-21484

On September 4, 1961 a collective bargaining agreement, which was to be effective for a period of one (1) year from July 1, 1961, was entered into by and between the Unions and the ACCFA: A few months thereafter, the Unions started pro-testing against alleged violations and non-implementation of said agreement. Finally, on October 25, 1962 the Unions declared a strike, which was ended when the strikers voluntarily returned to work on November 26, 1962.

On October 30, 1962 the Unions, together with its mother union, the Confederation of Unions in Government Corporations and Offices (CUGCO), filed a complaint with the Court of Industrial Relations against the ACCFA (Case No. 3450-ULP) for having allegedly committed acts of unfair labor practice, namely: violation of the collective bargaining agreement in order to discourage the members of the Unions in the exercise of their right to self-organization, discrimination against said members in the matter of promotions, and refusal to bargain. The ACCFA denied the charges and interposed as affirmative and special defenses lack of jurisdiction of the CIR over the case, illegality of the bargaining contract, expiration of said contract and lack of approval by the office of the President of the fringe benefits provided for therein. Brushing aside the foregoing defenses, the CIR in its decision dated March 25, 1963 ordered the ACCFA:

"1. To cease and desist from committing further acts tending to discourage the members of complainant unions

in the exercise of their right to self-organization;

"2. To comply with and implement the provision of the collective bargaining contract executed on September 4, 1961, in-cluding the payment of P30.00 a month living allowance;

"3. To bargain in good faith and expeditiously with the herein complainants."

The ACCFA moved to reconsider but was turned down in a resolution dated April 25, 1963 of the CIR en banc. Thereupon it brought this appeal by certiorari.

The ACCFA raises the following issues in its petition, to wit:

"1. Whether or not the respondent court has jurisdiction over this case, which in turn depends on whether or not the ACCFA exercised governmental or proprietary func-tions.

2. Whether or not the collective bargaining agreement between the petitioner and the respondent union is valid; if valid, whether or not it has already lapsed; and if not, whether or not its (sic) fringe benefits are already enforceable.

3. Whether or not there is a legal and/or factual basis for the finding of the respondent court that the petitioner had committed acts of unfair labor practice.

4. Whether or not it is within the competence of the court to enforce the collective bargaining agreement between the petitioner and the respondent unions, the same having already expired."

G.R. No. L-23605

During the pendency of the above mentioned case (G.R. No. L-21484), specifically on August 8, 1963, the President of the Philippines signed into law the Agricultural Land Reform Code (Republic Act No. 3844), which among other things required the reorganization of the administrative machinery of the Agricultural Credit and Cooperative Financing Adminis-tration (ACCFA) and changed its name to Agricultural Credit Administration (ACA). On March 17, 1964 the ACCFA Supervisors' Association and the ACCFA Workers' Association filed a petition for certification election with the Court of Industrial Rela-tions (Case No. 1327-MC) praying that they be certified as the exclusive bargaining agents for the supervisors and rank-and--file employees, respectively, in the ACA. The trial Court in its order dated March 30, 1964 directed the Manager or Officer-in-Charge of the ACA to allow the posting of said order "for the information of all employees and workers there-of," and to answer the petition. In compliance therewith, the ACA, while admitting most of the allegations in the petition, denied that the Unions represented the majority of the super-visors and rank-and-file workers, respectively, in the ACA. It further alleged that the petition was premature, that the ACA was not the proper party to be notified and to answer the petition, and that the employees and supervisors could not lawfully become members of the Unions, nor be represented by them. However, in a joint manifestation of the Unions dated May 7, 1964, with the conformity of the ACA Administrator and of the Agrarian Counsel in his capacity as such and as counsel for the National Land Reform Council, it was agreed "that the union petitioners in this case represent the majority of the employees in their respective bargaining units" and that only the legal issues raised would be submitted for the resolution of the trial Court.

Finding the remaining grounds for ACA's opposition to the petition to be without merit, the trial Court in its order dated May 21, 1964 certified "the ACCFA Workers' Association and the ACCFA Supervisors' Association as the sole and exclusive bargaining representatives of the rank--and-file employees and supervisors, respectively, of the Agricultural Credit Administration." Said order was affirmed by the CIR en banc in its resolution dated August 24, 1964.

On October 2, 1964 the ACA filed in this Court a petition for certiorari with urgent motion to stay the CIR order of May 21, 1964. In a resolution dated October 6, 1964, this Court dismissed the petition for "lack of adequate allegations," but the dismissal was later reconsidered when the ACA complied with the formal requirement stated in said re-solution. As prayed for, this Court ordered the CIR to stay the execution of its order of May 21, 1964.

In this appeal, the ACA in effect challenges the jurisdiction of the CIR to entertain the petition of the Unions for certification election on the ground that it (ACA) is engaged in governmental functions. The Unions join the issue on this single point, contending that the ACA performs proprietary functions.

Under Section 3 of the Agricultural Land Reform Code the ACA was established, among other governmental agencies,⁺ to extend credit and similar assistance to agriculture, in pursuance of the policy enunciated in Section 2 as follows:

"Sec. 2. Declaration of Policy. - It is the policy of the State:

- (1) To establish owner-cultivatorships and the economic family-size farm as the basis of Philippine agriculture and, as a consequence, divert landlord capital in agriculture to industrial development;
- (2) To achieve a dignified existence for the small farmers free from pernicious institutional restraints and practices;
- (3) To create a truly viable social and economic structure in agriculture conducive to greater productivity and higher farm incomes;
- (4) To apply all labor laws equally and without discrimination to both industrial and agricultural wage earners;
- (5) To provide a more vigorous and systematic land resettlement program and public land distribution; and
- (6) To make the small farmers more independent, self-reliant and responsible citizens, and a source of genuine strength in our democratic society.

The implementation of the policy thus enunciated, insofar as the role of the ACA therein is concerned, is spelled out in Sections 110 to 118, inclusive, of the Land Reform Code. Section 110 provides that "the administrative machinery of the ACCFA shall be reorganized to enable it to align its activities with the requirements and objectives of this Code and shall be known as the Agricultural Credit Administration." Under Section 112 the sum of P150,000,000 was appropriated out of national funds to finance the additional credit functions of the ACA as a result of the land reform program laid down in the Code. Section 103 grants the ACA the privilege of re-discounting with the Central Bank, the Development Bank of the Philippines and the Philippine National Bank. Section 105 directs the loaning activities of the ACA "to stimulate the development of farmers' cooperatives," including those "relating to the production and marketing of agricultural products and those formed to manage and/or own, on a cooperative basis, services and facilities, such as irrigation and transport systems, established to support production and/or marketing of agricultural products." Section 106 deals with the extension by ACA of credit to small farmers in order to stimulate agricultural production. Sections 107 to 112 lay down certain guidelines to be followed in connection with the granting of loans, such as security, interest and supervision of credit. Sections 113 to 118, inclusive, invest the ACA with certain rights and powers not accorded to non-governmental entities, thus:

"SEC. 113. Auditing of Operations. - For the effective supervision of farmers' cooperatives, the head of the Agricultural Credit Administration shall have the power to audit their operations, records and books of account and to issue subpoena and subpoena duces tecum to compel the attendance of witnesses and the production of books, documents and records in the conduct of such audit or of any inquiry into their affairs. Any person who,

without lawful cause, fails to obey such subpoena or sub-poena duces tecum shall, upon application of the head of Agricultural Credit Administration with the proper court, be liable to punishment for contempt in the manner provided by law and if he is an officer of the Association, to suspension or removal from office.

SEC. 114. Prosecution of Officials. ? The Agricultural Credit Administration, through the appropriate provincial or city fiscal, shall have the power to file and prosecute any and all actions which it may have against any and all officials or employees of farmers' cooperatives arising from misfeasance or malfeasance in office.

SEC. 115. Free Notarial Service. - Any justice of the peace, in his capacity as notary ex-officio, shall render service free of charge to any person applying for a loan under this Code either in administering the oath or in the acknowledgement of instruments relating to such loan.

SEC. 116. Free Registration of Deeds. - Any register of deeds shall accept for registration, free of charge any instrument relative to a loan made under this Code.

SEC. 117. Writing-off Unsecured and Outstanding Loans. - Subject to the approval of the President upon recommendation of the Auditor General, the Agricultural Credit Administration may write-off from its books, unsecured and outstanding loans and accounts receivable which may become uncollectible by reason of the death or disappearance of the debtor, should there be no visible means of collecting the same in the foreseeable future, or where the debtor has been verified to have no income or property whatsoever with which to effect payment. In all cases, the writing-off shall be after five years from the date the debtor defaults.

SEC. 118. Exemption from Duties, Taxes and Levies. - The Agricultural Credit Administration is hereby exempted from the payment of all duties, taxes, levies, and fees, including docket and sheriff's fees, of whatever nature or kind, in the performance of its functions and in the exercise of its powers hereunder."

The power to audit the operations of farmers' cooperatives and otherwise inquire into their affairs, as given by Section 113, is in the nature of the visitorial power of the sovereign, which only a government agency specially delegated to do so by the Congress may legally exercise.

On March 19, 1964 Executive Order No. 75 was promulgated. It is entitled: "Rendering in Full Force and Effect the Plan of Reorganization Proposed by the Special Committee on Reorganization of Agencies for Land Reform for the Administrative Machinery of the Agricultural Land Reform Code," and contains the following pertinent provisions:

"Section 3. The Land Reform Project Administration(+) shall be considered a single organization and the personnel complement of the member agencies including the legal officers of the Office of the Agrarian Counsel which shall provide legal services to the LRPA shall be regarded as one personnel pool from which the requirements of the operations shall be drawn and subject only to the civil service laws, rules and regulations, persons from one agency may be freely assigned to positions in another agency within the LRPA when the interest of the service so demands.

"Section 4. The Land Reform Project Administration shall be considered as one organization with respect to the standardization of job descriptions position classification and wage and salary structures to the end that positions involving the same or equivalent qualifications and equal responsibilities and effort shall have the same remuneration.

"Section 5. The Civil Service laws, rules and regulations with respect to promotions, particularly in the consideration of person next in rank, shall be made applicable to the Land Reform Project Administration as a single agency so that qualified individuals in one member agency must be considered in considering promotion to higher positions in another member agency."

The implementation of the land reform program of the government according to Republic Act No. 3844 is most certainly a governmental, not a proprietary, function; and for that purpose Executive Order No. 75 has placed the ACA under the Land Reform Project Administration, together with the other member agencies, the personnel complement of all of which are placed in one single pool and made available for assignment from one agency to another, subject only to Civil Service laws, rules and regulations, position classification and wage structures.

The appointing authority in respect of the officials and employees of the ACA is the President of the Philippines, as stated in a 1st indorsement by his office to the Chairman of the National Reform Council dated May 22, 1964, as follows:

"Appointments of officials and employees of the National Land Reform Council and its agencies may be made only by the President, pursuant to the provisions of Section 79(D) of the Re-vised Administrative Code. In accordance with the policy and practice, such appointments should be prepared for the signature of the Executive Secretary, 'By Authority of the President'."(+).

When the Agricultural Reform Code was being considered by the Congress, the nature of the ACA was the subject of the following exposition on the Senate floor:

"Senator Tolentino: x x x "The ACA is not going to be a profit making institution. It is supposed to be a public service of the government to the lessees and farmer-owners of the lands that may be bought after expropriation from owners. It is the government here that is the lender. The government should not exact a higher interest than what we are telling a private landowner now in his relation to his tenants if we give to their farmers a higher rate of interest x x x ." (pp. 17 & 18, Senate Journal No. 16, July 3, 1963)

"The reason is obvious, to pinpoint responsibility for many losses in the government, in order to avoid irresponsible lending of government money -- to pinpoint responsibility for many losses x x x."

"Senator Manglapus: "x x x But assuming that hypothesis, that is the reason why we are appropriating P150,000,000.00 for the Agricultural Credit Administration which will go to intensified credit operations on the barrio level x x x" (p. 3, Senate Journal No. 7)

"That it is the reason why we are providing for the expansion of the ACCFA and the weeding out of the cooperative activity of the ACCFA and turning this over to the Agricultural Productivity Commission, so that the Agricultural Credit Administration will concentrate entirely on the facilitation of credit on the barrio level with the massive support of 150 million provided by the government. x x x" (pp. 4 & 5 of Senate Journal No. 7, July 3, 1963)

"x x x But by releasing them from this situation, we feel that we are putting them in a much better condition than that in which they are found by providing them with a business-like way of obtaining credit, not depending on a paternalistic system but one which is business-like--that is to say, a government office, which on the barrio level will provide them that credit directly x x x". (p. 40, Senate Journal No. 7, July 3, 1963 (underscoring supplied)).

The considerations set forth above militate quite strongly against the recognition of collective bargaining powers in the respondent Unions within the context of Republic Act No. 875, and hence against the grant of their basic petition for certification election as proper bargaining units. The ACA is a government office or agency engaged in governmental, not proprietary functions. These functions may not be strictly what President Wilson described as "constituent" (as distinguished from "ministrant"),(++) such as those relating to the maintenance of peace and the prevention of crime, those regulating property and property rights, those relating to the administration of justice and the determination of political duties of citizens, and those relating to national defense and foreign relations. Under this traditional classification, such constituent functions are exercised by the State as attributes of sovereignty, and not merely to promote the welfare, progress and prosperity of the people - these latter functions

being ministrant, the exercise of which is optional on the part of the government.

The growing complexities of modern society, however, have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only "because it was better equipped to administer for the public welfare than is any private individual or group of individuals,"+ continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the in-creasing social challenges of the times. Here as almost every-where else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course this deve-lopment was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice.

It was in furtherance of such policy that the Land Reform Code was enacted and the various agencies, the ACA among them, established to carry out its purposes. There can be no dispute as to the fact that the land reform pro-gram contemplated in the said Code is beyond the capabilities of any private enterprise to translate into reality. It is a purely governmental function, no less than, say, the es-tablishment and maintenance of public schools and public hospitals. And when, aside from the governmental objectives of the ACA, geared as they are to the implementation of the land reform program of the State, the law itself declares that the ACA is a government office, with the formulation of policies, plans and programs vested no longer in a Board of Governors, as in the case of the ACCFA, but in the National Land Reform Council, itself a government instrumentality; and that its personnel are subject to Civil Service laws and to rules of standardization with respect to positions and salaries, any vestige of doubt as to the governmental character of its functions disappears.

In view of the foregoing premises, we hold that the respondent Unions are not entitled to the certification election sought in the Court below. Such certification is admittedly for purposes of bargaining in behalf of the employees with respect to terms and conditions of employ-ment, including the right to strike as a coercive economic weapon, as in fact the said unions did strike in 1962 against the ACCFA (G.R. No. L-21824).+ This is contrary to Section 11 of Republic Act No. 875, which provides:

"SEC. 11 Prohibition Against Strike in the Government. - The terms and condi-tions of employment in the Government, in-cluding any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purposes of securing changes or modification in their terms and conditions of employment. Such em-ployees may belong to any labor organiza-tion which does not impose the obligation to strike or to join in strike: Provided, However, that this section shall apply only to employees employed in governmen-tal func-tions of the Government including but not limited to governmental corporations."++

With the reorganization of the ACCFA and its conversion into the ACA under the Land Reform Code and in view of our ruling as to the governmental character of the functions of the ACA, the decision of the respondent Court dated March 25, 1963, and the resolution en banc affirming it, in the unfair labor practice case filed by the ACCFA, which deci-sion is the subject of the present review in G.R. No. L--21484, has become moot and academic, particularly insofar as the order to bargain collectively with the respondent Unions is concerned.

What remains to be resolved is the question of fringe benefits provided for in the collective bargaining contract of September 4, 1961. The position of the ACCFA in this regard is that the said fringe benefits have not become enforceable because the condition that they should first be approved by the Office of the President has not been complied with. The Unions, on the other hand, contend that no such condi-tion existed in the bargaining contract, and the respondent Court upheld this contention in its decision.

It is to be noted that under Section 3, Article XIV, of the agreement, the same "shall not become effective unless and until the same is duly ratified by the Board of Governors of the Administration." Such approval was given even before the formal execution of the agreement, by virtue of "Resolution No. 67, Regular Meeting No. 7, FY 1960-61, held August 17, 1961," but with the proviso that "the fringe benefits contained therein shall take effect only if approved by the office of the President." The condition is, therefore, deemed to be incorporated into the agreement by reference.

On October 23, 1962 the Office of the President, in a letter signed by the Executive Secretary, expressed its approval of the bargaining contract "provided the salaries and benefits therein fixed are not in conflict with applicable laws and regulations, are believed to be reasonable considering the exigencies of the service and the welfare of the employees, and are well within the financial ability of the particular corporation to bear."

On July 1, 1963 the ACCFA management and the Unions entered into an agreement for the implementation of the decision of the respondent Court concerning the fringe benefits, thus:

"In the meantime, only Cost of Living Adjustment, Longevity Pay, and Night Differential Benefits accruing from July 1, 1961 to June 30, 1963 shall be paid to all employees entitled thereto, in the following manner:

(A) The sum of P180,000 shall be set aside for the payment of:

1) Night differential benefits for Security Guards.

2) Cost of Living Adjustment and Longevity Pay.

3) The unpaid balance due employees on Item A (1) and (2) this paragraph shall be paid in monthly installments as finances permit but not beyond December 20, 1963.

3. All benefits accruing after July 1, 1963, shall be allowed to accumulate but payable only after all benefits accruing up to June 30, 1963, as per CIR decision hereinabove referred to shall have been settled in full; provided, however, that commencing July 1, 1963 and for a period of only two (2) months thereafter (during which period the ACCFA and the Unions shall negotiate a new Collective Bargaining Agreement) the provisions of the September 4, 1961 Collective Bargaining Agreement shall be temporarily suspended, except as to Cost of Living Adjustment and "political" or non-economic privileges and benefits thereunder."

On July 24, 1963 the ACCFA Board of Governors ratified the agreement thus entered into, pursuant to the provision thereof requiring such ratification, but with the express qualification that the same was "without prejudice to the pending appeal in the Supreme Court...in Case No. 3450-ULP." The payment of the fringe benefits agreed upon, to our mind, shows that the same were within the financial capability of the ACCFA then, and hence justifies the conclusion that this particular condition imposed by the Office of the President in its approval of the bargaining contract was satisfied.

We hold therefore that insofar as the fringe benefits already paid are concerned, there is no reason to set aside the decision of the respondent Court, but that since the respondent Unions have no right to the certification election sought by them nor, consequently, to bargain collectively with the petitioner, no further fringe benefits may be demanded on the basis of any collective bargaining agreement.

The decisions and orders appealed from are set aside and/or modified in accordance with the foregoing pronouncements. No costs.

Concepcion, C.J., Reyes, Dizon, Sanchez, Castro, Teehankee, and Barredo, JJ., concur.

Zaldivar, JJ., in the result.

Fernando, J., concurs in a separate opinion.

+ Land Authority, Land Bank, Agri-cultural Productivity Commission; Office of the Agrarian Counsel.

(+) The Land Reform Project Administration is the organization through which the field operations of member agencies (of which the ACA is one) shall be undertaken by their respective personnel under a unified administration. (Section 2 of Article 1, Executive Order No. 75)

(+) Section 79(D) of the Revised Administrative Code provides in part: "The Department Head, upon the recommendation of the chief of bureaus or office concerned, shall appoint all subordinate officers and employees whose appointments is not expressly vested by law in the President of the Philippines, x x x."

(++) Bacani vs. National Coconut Corporation, G.R. No. L-9657, Nov. 29, 1956, 53 O.G. p. 2800.

+ Malcolm, The Government of the Philippines, pp. 19-20; Bacani vs. National Coconut Corporation, supra.

+ It must be stated, however, that we do not here decide the question - not at issue in this case - of whether or not a labor organization composed of employees discharging governmental functions, which is allowed under the legal provision just quoted provided such organization does not impose the obligation to strike or to join in strike, may petition for a certification election and compel the employer to bargain collectively with it for purposes other than to secure changes or modifications in the terms and conditions of their employment. Withal, it may not be amiss to observe, albeit obiter, that the right to organize thus allowed would be meaningless unless there is a correlative right on the part of the organization to be recognized as the proper representative of the employees and to bargain in their behalf in relation to matters outside the limitations imposed by the statute, such as those provided for in Section 28(b) of Republic Act No. 2260, concerning complaints and grievances of the employees.

++ Reenacted in Sec. 28(c) of the Civil Service Act of 1959, R.A. No. 2260.

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CONCURRING OPINION

FERNANDO, J.:

The decision reached by this Court so ably given expression in the opinion of Justice Makalintal, characterized with vigor, clarity and precision, represents what for me is a clear tendency not to be necessarily bound by our previous pronouncements on what activities partake of a nature that is governmental.[1] Of even greater significance, there is a definite rejection of the "constituent-ministrant" criterion of governmental functions, followed in Bacani v. National Coconut Corporation.[2] That indeed is cause for gratification. For me at least, there is again full adherence to the basic philosophy of the Constitution as to the extensive and vast power lodged in our government to cope with the social and economic problems that even now sorely beset us. There is therefore full concurrence on my part to the opinion of the Court, distinguished by its high quality of juristic craftsmanship. I feel however that the matter is of such vital importance that a separate concurring opinion is not inappropriate. It will also serve to give expression to my view, which is that of the Court likewise, that our decision today does not pass upon the rights of labor employed in instrumentalities of the state discharging governmental functions.

1. In the above Bacani decision, governmental functions are classified into constituent and ministrant. "The former are those which constitute the very bonds of society and are compulsory in nature; the latter are those that

are undertaken only by way of advancing the general interests of society, and are merely optional. President Wilson enumerates the constituent functions as follows: (1) The keeping of order and providing for the protection of persons and property from violence and robbery. (2) The fixing of the legal relations between man and wife and between parents and children. (3) The regulation of the holding, transmission, and interchange of property, and the determination of its liabilities for debt or for crime. (4) The determination of contract rights between individuals. (5) The definition and punishment of crime. (6) The administration of justice in civil cases. (7) The determination of the political duties, privileges, and relations of citizens. (8) Dealings of the state with foreign powers: the preservation of the state from external danger or encroachment and the advancement of its international interests." [3]

The ministrant functions were then enumerated, followed by a statement of the basis that would justify engaging in such activities. Thus: "The most important of the ministrant functions are: public works, public education, public charity, health and safety regulations, and regulations of trade and industry. The principles determining whether or not a government shall exercise certain of these optional functions are: (1) that a government should do for the public welfare those things which private capital would not naturally undertake and (2) that a government should do these things which by its very nature it is better equipped to administer for the public welfare than is any private individual or group of individuals." [4]

Reference is made in the Bacani decision to the first of the many publications of Justice Malcolm on the Philippine government, which appeared in 1916, [5] adopting the formulation of the then Professor, later President, Woodrow Wilson of the United States, in a textbook on political science the first edition of which was published in 1898. The Wilson classification reflected the primacy of the dominant laissez faire concept carried into the sphere of government.

A most spirited defense of such a view was given by former President Hadley of Yale in a series of three lectures delivered at Oxford University in 1914. According to President Hadley: "I shall begin with a proposition which may sound somewhat startling, but which I believe to be literally true. The whole American political and social system is based on industrial property right, far more completely than has ever been the case in any European country. In every nation of Europe there has been a certain amount of traditional opposition between the government and the industrial classes. In the United States no such tradition exists. In the public law of European communities industrial freeholding is a comparatively recent development. In the United States, on the contrary, industrial freeholding is the foundation on which the whole social order has been established and built up." [6]

The view is widely accepted that such a fundamental postulate did influence American court decisions on constitutional law. As was explicitly stated by Justice Cardozo, speaking of that era: "Laissez faire was not only a counsel of caution which statesmen would do well to heed. It was a categorical imperative which statesmen as well as judges, must obey." [7] For a long time, legislation tending to reduce economic inequality foundered on the rock that was the due process clause, enshrining as it did the liberty of contract. To cite only one instance, the limitation of employment in bakeries to sixty hours a week and ten hours a day under a New York statute was stricken down for being tainted, with a due process objection in *Lochner v. New York*. [8] It provoked one of the most vigorous dissents of Justice Holmes, who was opposed to the view that the United States Constitution did embody laissez faire. Thus: "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word 'liberty,' in the 14th Amendment, is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need

research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss." It was not until 1908, in *Muller v. Oregon*,^[9] that the American Supreme Court held valid a ten-hour maximum for women workers in laundries and not until 1917 in *Bunting v. Oregon*^[10] that such a regulatory ten-hour law applied to men and women passed the constitutional test.

Similarly, state legislation fixing minimum wages was deemed offensive to the due process clause in a 1923 decision in *Adkins v. Children's Hospital*.^[11] Only in 1937, in the leading case of *West Coast Hotel v. Parrish*,^[12] was the *Adkins* case overruled and a minimum wage law New York statute upheld. The same unsympathetic attitude arising from the *laissez faire* concept was manifest in decisions during such period, there being the finely-spun distinctions in the *Wolff Packing Co. v. Court of Industrial Relations*^[13] decision, as to when certain businesses could be classified as affected with public interest to justify state regulation as to prices. After eleven years, in 1934, in *Nebbia v. New York*,^[14] the air of unreality was swept away by this explicit pronouncement from the United States Supreme Court: "The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good."

It is thus apparent that until the administration of President Roosevelt, the *laissez faire* principle resulted in the contraction of the sphere where governmental entry was permissible. The object was to protect property even if thereby the needs of the general public would be left unsatisfied. This was emphatically put forth in a work of former Attorney General, later Justice, Jackson, citing an opinion of Judge Van Orsdel. Thus: "It should be remembered that of the three fundamental principles which underlie government, and for which government exists, the protection of life, liberty, and property, the chief of these is property * * *."^[15] The above excerpt from Judge Van Orsdel forms part of his opinion in *Children's Hospital v. Adkins*, when decided by the Circuit Court of Appeals.^[16]

Nonetheless, the social and economic forces at work in the United States to which the new deal administration of President Roosevelt was most responsive did occasion, as of 1937, greater receptivity by the American Supreme Court to a philosophy less rigid in its obedience to property rights. Earlier legislation deemed offensive to the *laissez faire* concept had met a dismal fate. Their nullity during his first term could, more often than not, be expected.^[17]

As a matter of fact, even earlier, in 1935, Professor Coker of Yale, speaking as a historian, could already discern a contrary drift. Even then he could assert that the range of governmental activity in the United States had indeed expanded. According to him: "Thus both liberals and conservatives approve wide and varied governmental intervention; the latter condemning it, it is true, when the former propose it, but endorsing it, after it has become a fixed part of the status quo, as so beneficial in its effects that no more of it is needed. Our history for the last half-century shows that each important governmental intervention we have adopted has been called socialistic or communistic by contemporary conservatives, and has later been approved by equally conservative men who now accept it both for its proved benefits and for the worthy traditions it has come to represent. Both liberal and conservative supporters of our large-scale business under private ownership advocate or concede the amounts and kinds of governmental limitation and aid which they regard as necessary to make the system work efficiently and humanely. Sooner or later, they are willing to have government intervene for the purpose of preventing the system from being too oppressive to the masses of the people, protecting it from its self-destructive errors, and coming to its help in other ways when it appears not to be able to take care of itself."^[18]

At any rate, by 1943, the United States was reconciled to laissez faire having lost its dominance. In the language of Justice Jackson in the leading case of *West Virginia State Board of Education v. Barnette*[19] "We must transplant these rights to a soil in which the laissez-faire concept or principle of non-interference has withered at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls."

2. The influence exerted by American constitutional doctrines unavoidable when the Philippines was still under American rule notwithstanding, an influence that has not altogether vanished even after independence, the laissez faire principle never found full acceptance in this jurisdiction, even during the period of its full flowering in the United States. Moreover, to erase any doubts, the Constitutional Convention saw to it that our fundamental law embodies a policy of the responsibility thrust on government to cope with social and economic problems and an earnest and sincere commitment to the promotion of the general welfare through state action. It would thus follow that the force of any legal objection to regulatory measures adversely affecting property rights or to statutes organizing public corporations that may engage in competition with private enterprise has been blunted. Unless there be a clear showing of any invasion of rights guaranteed by the Constitution, their validity is a foregone conclusion. No fear need be entertained that thereby spheres hitherto deemed outside government domain have been encroached upon. With our explicit disavowal of the "constituent-ministrant" test, the ghost of the laissez faire concept no longer stalks the juridical stage.

As early as 1919, in the leading case of *Rubi v. Provincial Board of Mindoro*,[20] Justice Malcolm already had occasion to affirm: "The doctrines of laissez faire and of unrestricted freedom of the individual, as axioms of economic and political theory, are of the past. The modern period has shown a wide-spread belief in the amplest possible demonstration of governmental activity. The Courts unfortunately have sometimes seemed to trail after the other two branches of the Government in this progressive march."

It was to be expected then that when he spoke for the Court in *Government of the Philippine Islands v. Springer*,[21] a 1927 decision, he found nothing objectionable in the government itself organizing and investing public funds in such corporations as the National Coal Co., the Phil. National Bank, the National Petroleum Co., the National Development Co., the National Cement Co. and the National Iron Co. There was not even a hint that thereby the laissez faire concept was not honored at all. It is true that Justice Malcolm concurred with the majority in *People v. Pomar*,[22] a 1924 opinion, which held invalid under the due process clause a provision providing for maternity leave with pay thirty days before and thirty days after confinement. It could be that he had no other choice as the Philippines was then under the United States, and only recently the year before, the above-cited case of *Adkins v. Children's Hospital*,[23] in line with the laissez faire principle, did hold that a statute providing for minimum wages was constitutionally infirm on the same ground.

Our Constitution which took effect in 1935, upon the inauguration of the Commonwealth of the Philippines, erased whatever doubts there might be on that score. Its philosophy is antithetical to the laissez faire concept. Delegate, later President, Manuel Roxas, one of the leading members of the Constitutional Convention, in answer precisely to an objection of Delegate Jose Reyes of Sorsogon, who noted the "vast extensions in the sphere of governmental functions" and the "almost unlimited power to interfere in the affairs of industry and agriculture as well as to compete with existing business" as "reflections of the fascination exerted by [the then] current tendencies" in other jurisdictions,[24] spoke thus: "My answer is that this constitution has a definite and well defined philosophy, not only political but social and economic. A constitution that in 1776 or in 1789 was sufficient in the United States, considering the problems they had at that time, may not now be sufficient with the growing and ever-widening complexities of social and economic problems and relations. If the United States of America were to call a constitutional convention today to draft a constitution for the United States, does any one

doubt that in the provisions of that constitution there will be found definite declarations of policy as to economic tendencies; that there will be matters which are necessary in accordance with the experience of the American people during these years when vast organizations of capital and trade have succeeded to a certain degree to control the life and destiny of the American people? If in this constitution the gentleman will find declarations of economic policy, they are there because they are necessary to safeguard the interests and welfare of the Filipino people because we believe that the days have come when in self-defense, a nation may provide in its constitution those safeguards, the patrimony, the freedom to grow, the freedom to develop national aspirations and national interests, not to be hampered by the artificial boundaries which a constitutional provision automatically imposes." [25]

Delegate Roxas continued further: "The government is the creature of the people and the government exercises its powers and functions in accordance with the will and purposes of the people. That is the first principle, the most important one underlying this document. Second, the government established in this document is, in its form, in our opinion, the most adapted to prevailing conditions, circumstances and the political outlook of the Filipino people. Rizal said, 'Every people has the kind of government that they deserve.' That is just another form of expressing the principle in politics enunciated by the French philosophers when they said: 'Every people has the right to establish the form of government which they believe is most conducive to their welfare and their liberty.' Why have we preferred the government that is established in this draft? Because it is the government with which we are familiar. It is the form of government fundamentally such as it exists today; because it is the only kind of government that our people understand; it is the kind of government we have found to be in consonance with our experience, with the necessary modification, capable of permitting a fair play of social forces and allowing the people to conduct the affairs of that government." [26]

One of the most prominent delegates, a leading intellectual, former President Rafael Palma of the University of the Philippines, stressed as a fundamental principle in the draft of the Constitution the limitation on the right to property. He pointed out that the then prevailing view allowed the accumulation of wealth in one family down to the last remote descendant, resulting in a grave disequilibrium and bringing in its wake extreme misery side by side with conspicuous luxury. He did invite attention to the few millionaires at one extreme with the vast masses of Filipinos deprived of the necessities of life at the other. He asked the Convention whether the Filipino people could long remain indifferent to such a deplorable situation. For him to speak of a democracy under such circumstances would be nothing but an illusion. He would thus emphasize the urgent need to remedy the grave social injustice that had produced such widespread impoverishment, thus recognizing the vital role of government in this sphere. [27]

Another delegate, Tomas Confesor of Iloilo, was quite emphatic in his assertion for the need of a social justice provision which is a departure from the laissez faire principle. Thus: "Take the case of the tenancy system in the Philippines. You have a tenant. There are hundred of thousands of tenants working day in and day out, cultivating the fields of their land-lords. He puts all his time, all his energy, the labor and the assistance of his wife and children, in cultivating a piece of ground for his landlord but when the time comes for the partition of the products of his toil what happens? If he produces 25 cavanos of rice, he gets only perhaps five and the twenty goes to the landlord. Now can he go to court? Has he a chance to go to court in order to secure his just share of the products of his toil? No. Under our present regime of law, under our present regime of justice, you do not give that to the poor tenant. Gentlemen, you go to the Cagayan Valley and see the condition under which those poor farmers are being exploited day in and day out. Can they go to court under our present regime of justice, of liberty, or democracy? The other day, workmen were shot by the police just because they wanted to increase or they desired that their wages be increased from thirty centavos a day to forty or fifty centavos. Is it necessary to spill human blood just to secure an increase of ten centavos in the daily wages of an ordinary laborer? And yet under our

present regime of social justice, liberty and democracy, these things are happening; these things, I say, are happening. Are those people getting any justice? No. They cannot get justice now from our courts. For this reason, I say it is necessary that we insert 'social justice' here and that social justice must be established by law. Proper legal provisions, proper legal facilities must be provided in order that there be a regime not of justice alone, because we have that now and we are seeing the oppression arising from such a regime. Consequently, we must emphasize the term 'social justice'." [28]

Delegate Ventenilla of Pangasinan reflected the attitude of the Convention as to why laissez faire was no longer acceptable. After speaking of times having changed, he proceeded: "Since then new problems have arisen. The spiritual mission of government has descended to the level of the material. Then its function was primarily to soothe the aching spirit. Now, it appears, it must also appease hunger. Now that we may read history backwards, we know for instance, that the old theory of 'laissez faire' has degenerated into 'big business affairs' which are gradually devouring the rights of the people - the same rights intended to be guarded and protected by the system of constitutional guaranties. Oh, if the Fathers were now alive to see the changes that the centuries have wrought in our life! They might contemplate the sad spectacle of organized exploitation greedily devouring the previous rights of the individual. They might also behold the gradual disintegration of society, the fast disappearance of the bourgeois - the middle class, the backbone of the nation - and the consequent drifting of the classes toward the opposite extremes - the very rich and the very poor." [29]

Shortly after the establishment of the Commonwealth, the then Justice Jose P. Laurel, himself one of the foremost delegates of the Constitutional Convention, in a concurring opinion, later quoted with approval in the leading case of *Antamok Goldfields Mining Co. v. Court of Industrial Relations*, [30] decided in 1940, explained clearly the need for the repudiation of the laissez faire doctrine. Thus: "It should be observed at the outset that our Constitution was adopted in the midst of surging unrest and dissatisfaction resulting from economic and social distress which was threatening the stability of governments the world over. Alive to the social and economic forces at work, the framers of our Constitution boldly met the problems and difficulties which faced them and endeavored to crystalize, with more or less fidelity, the political, social and economic propositions of their age, and this they did, with the consciousness that the political and philosophical aphorism of their generation will, in the language of a great jurist, 'be doubted by the next and perhaps entirely discarded by the third. * * * Embodying the spirit of the present epoch, general provisions were inserted in the Constitution which are intended to bring about the needed social and economic equilibrium between component elements of society through the application of what may be termed as the *justitia communis* advocated by Grotius and Leibnitz many years ago to be secured through the counterbalancing of economic and social forces and opportunities which should be regulated, if not controlled, by the State or placed, as it were, in *custodia societatis*. 'The promotion of social justice to insure the well-being and economic security of all the people' was thus inserted as vital principle in our Constitution. * * *." [31] In the course of such concurring opinion and after noting the changes that have taken place stressing that the policy of laissez faire had indeed given way to the assumption by the government of the right to intervene although qualified by the phrase "to some extent", he made clear that the doctrine in *People v. Pomar* no longer retain "its virtuality as a living principle." [32]

3. It must be made clear that the objection to the "constituent-ministrant" classification of governmental functions is not to its formulation as such. From the stand-point of law as logic, it is not without merit. It has neatness and symmetry. There are hardly any loose ends. It has the virtue of clarity. It may be said in its favor likewise that it reflects all-too-faithfully the laissez faire notion that government cannot extend its operation outside the maintenance of peace and order, protection against external security, and the administration of justice, with private rights, especially so in the case of property, being safeguarded and a hint that the general welfare is not to be entirely ignored.

It must not be lost sight of though that logic and jural symmetry while undoubtedly desirable are not the prime consideration. This is especially so in the field of public law. What was said by Holmes, almost nine decades ago, carry greater conviction now. "The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed." [33] Then too, there was the warning of Geny cited by Cardozo that undue stress or logic may result in confining the entire system of positive law, "within a limited number of logical categories, predetermined in essence, immovable in basis, governed by inflexible dogmas," thus rendering it incapable of responding to the ever varied and changing exigencies of life. [34]

It is cause enough for concern if the objection to the Bacani decision were to be premised on the score alone that perhaps there was fidelity to the requirements of logic and jural symmetry carried to excess. What appears to me much more deplorable is that it did fail to recognize that there was a repudiation of the laissez faire concept in the Constitution. As was set forth in the preceding pages, the Constitution is distinguished precisely by a contrary philosophy. The regime of liberty if provided for, with the realization that under the then prevalent social and economic conditions, it may be attained only through a government with its sphere of activity ranging far and wide, not excluding matters hitherto left to the operation of free enterprise. As rightfully stressed in our decision today in line with what was earlier expressed by Justice Laurel, the government that we have established has as a fundamental principle the promotion of social justice. [35] The same jurist gave it a comprehensive and enduring definition as "the promotion of the welfare of all the people, the adoption by the government of measures calculated to insure economic stability of all the component elements of society, through the maintenance of a proper economic and social equilibrium in the inter-relations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers under-lying the existence of all governments in the time-honored principle of *salus populi est suprema lex*." [36]

There is thus from the same distinguished pen, this time writing for the Court, a reiteration of the view of the laissez faire doctrine being repugnant to the fundamental law. It must be added though that the reference to extra-constitutional measures being allowable must be understood in the sense that there is no infringement of specific constitutional guarantees. Otherwise, the judiciary will be hard put to sustain their validity if challenged in an appropriate legal proceeding.

The regime of liberty contemplated in the Constitution with social justice as a fundamental principle to reinforce the pledge in the preamble of promoting the general welfare reflects traditional concepts of a democratic polity infused with an aware-ness of the vital and pressing need for the government to assume a much more active and vigorous role in the conduct of public affairs. The framers of our fundamental law were as one in their strongly-held belief that thereby the grave and serious infirmity then confronting our body-politic, on the whole still with us now, of great inequality of wealth and mass poverty, with the great bulk of our people ill-clad, ill-housed, ill-fed, could be remedied. Nothing else than communal effort, massive in extent and earnestly engaged in, would suffice.

To paraphrase Laski, with the necessary modification in line with such worthy constitutional ends, we look upon the state as an organization to promote the happiness of individuals, its authority as a power bound by subordination to that purpose, liberty while to be viewed negatively as absence of restraint impressed with a positive aspect as well to assure individual self-fulfillment in the attainment of which greater responsibility is thrust on government; and rights as boundary marks defining areas outside its domain. [37] From which it would follow as Laski so aptly stated that it is the individual's "happiness and not its well-being [that is] the criterion by which its behavior [is] to be judged. His interests, and not its power, set the limits to the authority it [is] entitled to

exercise."^[38] We have under such a test enlarged its field of competence.

4. With the decision reached by us today, the government is freed from the compulsion exerted by the Bacani doctrine of the "constituent-ministrant" test as a criterion for the type of activity in which it may engage. Its constricting effect is consigned to oblivion. No doubts or misgivings need assail us that governmental efforts to promote the public weal, whether through regulatory legislation of vast scope and amplitude or through the undertaking of business activities, would have to face a searching and rigorous scrutiny. It is clear that their legitimacy cannot be challenged on the ground alone of their being offensive to the implications of the laissez faire concept. Unless there be a repugnancy then to the limitations expressly set forth in the Constitution to protect individual rights, the government enjoys a much wider latitude of action as to the means it chooses to cope with grave social and economic problems that urgently press for solution. For me, at least, that is to manifest deference to the philosophy of our fundamental law. Hence my full concurrence, as announced at the outset.

5. The opinion of Justice Makalintal contains this footnote: "It must be stated, however, that we do not here decide the question-not at issue in this case of whether or not a labor organization composed of employees discharging governmental functions, which is allowed under the legal provision just quoted, provided such organization does not impose the obligation to strike or to join in strike, may petition for a certification election and compel the employer to bargain collectively with it for purposes other than to secure changes or conditions in the terms and conditions of employment."

With such an affirmation as to the scope of our decision, there being no holding on the vexing question of the effects on the rights of labor in view of the conclusion reached that the function engaged in is governmental in character, I am in full agreement. The answer to such a vital query must await another day.

[1] National Coal Co. v. Collector, 46 Phil. 583 (1924); Govt. of P.I. v. Springer, 50 Phil. 259 (1927); Govt. of P.I. v. China Banking Corp., 54 Phil. 845 (1930.); Asociacion Cooperativa de Credito Agricola de Miagao v. Monteclaro, 74 Phil. 281 (1943); Abad Santos v. Auditor General, 79 Phil. 190 (1947); National Airports Corp. v. Teodoro, 91 Phil. 203 (1952); GSIS v. Castillo, 98 Phil. 876 (1956); Price Stabilization Corp., 102 Phil. 515 (1957); Boy Scouts of Phil. v. Araos, 102 Phil. 1080 (1958); Naric Worker's Union v. Alvendia, 107 Phil. 404 (1960); GSIS Employees Asso. v. Alvendia, L-15614, May 30, 1960; National Dev. Co. v. Tobias, 7 SCRA 692 (1963); SSS Employees Asso. v. Soriano, 7 SCRA 1016 (1963); PAL Employees' Asso. v. Phil. Airlines, Inc., 11 SCRA 387 (1964); Nawasa v. NWSA Consolidated Unions, 11 SCRA 766 (1964); Phil. Mfg. Co. v. Manila Port Service, 16 SCRA 95 (1966) and Phil. Postal Savings Bank v. Court, 21 SCRA 1330 (1967).

[2] 100 Phil. 468 (1956).

[3] Ibid, p. 472.

[4] Ibid.

[5] Malcolm, The Government of Philippine Islands.

[6] The Constitutional Position of the Property Owner in 2 Selected Essays on Constitutional Law, p. 2 (1938).

[7] Cardozo, The Nature of Judicial Process, p. 77 (1921).

[8] 98 US 45 (1905).

[9] 208 US 412.

[10] 243 US 426.

[11] 261 US 525. Again there was a vigorous dissent from Holmes.

[12] 300 US 379.

[13] 262 US 522.

[14] 291 US 502.

[15] Jackson, *Struggle for Judicial Supremacy*, p. 74, (1941).

[16] 284 Fed. 613 (1922).

[17] As was stated in the above work of Jackson: "But in just three years, beginning with the October 1933 term, the Court refused to recognize the power of Congress in twelve cases. Five of these twelve decisions occurred during a single year: that is, the October 1935 term; four of the five, by a sharply divided court." Jackson, *op. cit.* p. 41.

[18] 2 *Selected Essays on Constitutional Law*, *op. cit.*, p. 27.

[19] 319 US 624.

[20] 39 Phil. 660, 717-718.

[21] 50 Phil. 259.

[22] 46 Phil. 440.

[23] 261 US 525.

[24] III *Proceedings of the Philippine Constitutional Convention*, Laurel ed., pp. 173-174 (1966).

[25] *Ibid*, pp. 177-178.

[26] *Ibid*, p. 178.

[27] Cf. *Ibid*, pp. 227-228. To quote from Delegate Palma: "Uno de los principios constitucionales es el referente a la limitacion de la propiedad individual. Por que se va a limitar la adquisicion de la propiedad? Ese es otro de los prejuicios y preocupaciones que tenemos nosotros, cuando en realidad el mundo esta sufriendo actualmente por causa de las teorias antiguas sobre la propiedad. Ya he dicho aqui, o no se si en otra parte, que la nocion actual sobre propiedad es la vinculacion perpetua de todos los bienes que se pueden acumular por una familia, hasta el ultimo de sus mas remotos descendientes, ha producido ese enorme desnivel de riqueza que se nota en todas partes del mundo, la extrema miseria al lado del extremo lujo. Una docena de enormes millonarios, al lado de millones y millones de seres desprovistos de lo mas elemental y rudimentario, para satisfacer las necesidades ordinarias. Y que? Vamos a permanecer indiferentes antes que ante nues-tra propia situacion? Hablamos tanto de democracia, de prosperidad para el gran numero hacemos algo a favor de ese gran numero que constituye la fuerza de la nacion? No vamos siquiera a dedicar un momento de nuestra atencion a la gran injusticia social que

supone el resultado de una ex-trema miseria y de un lujo extremo? Fue Henry George el primero que llamo la atencion del mundo sobre este problema. Toda la bendicion de nuestra civilizacion, las enormes con-quistas que el mundo ha realizado en el orden cientifico, han tendido solamente a producir la felicidad de unos pocos y la miseria de las grandes muchedumbres. Creo que este problema es digno de atencion en todas partes del mundo, y a menos que nosotros pongamos las medidas que han de atajar los peligros del futuro, nuestra sociedad estara siempre sujeta a las alarmas que puedan producir las muchedumbres hambrientas y deseosas de su propio bienestar."

[28] Ibid, pp. 293-294.

[29] Ibid, I, Laurel ed., pp. 471-472.

[30] 70 Phil. 340.

[31] Ibid, pp. 356-357.

[32] Ibid, p. 360.

[33] Holmes, The Common Law, p. 1 (1881).

[34] Cardozo, op. cit., p. 47.

[35] Art. II, Sec. 5, Constitution.

[36] Calalang v. Williams, 70 Phil. 726 734-735 (1940).

[37] Laski, The State in Theory and Practice, p. 35 (1935).

[38] Ibid, at p. 36.

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