

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. SIMEON N. FERRER (IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF TARLAC, BRANCH I), FELICIANO CO ALIAS LEONCIO CO ALI...

G.R. Nos. L-32613-14. December 27, 1972

Ponente: CASTRO, J.

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CASTRO, J.:

Posed in issue in these two cases is the constitutionality of the Anti-Subversion Act,[1] which outlaws the Communist Party of the Philippines and other "subversive associations," and punishes any person who "knowingly, willfully and by overt acts affiliates himself with, becomes or remains a member" of the Party or of any other similar "subversive" organization.

On March 5, 1970 a criminal complaint for violation of section 4 of the Anti-Subversion Act was filed against the respondent Feliciano Co in the Court of First Instance of Tarlac. On March 10 Judge Jose C. de Guzman conducted a preliminary investigation and, finding a prima facie case against Co, directed the Government prosecutors to file the corresponding information. The twice-amended information, docketed as Criminal Case No. 27, recites:

"That on or about May 1969 to December 5, 1969, in the Municipality of Capas, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, feloniously became an officer and/or ranking leader of the Communist Party of the Philippines, an outlawed and illegal organization aimed to overthrow the Government of the Philippines by means of force, violence, deceit, subversion, or any other illegal means for the purpose of establishing in the Philippines a totalitarian regime and placing the government under the control and domination of an alien power, 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 Philip-pines.

"That in the commission of the above offense, the following aggravating circumstances are present, to wit:

“(a) That the crime has been committed in contempt of or with insult to public authorities;

“(b) That the crime was committed by a band; and

“(c) With the aid of armed men or persons who insure or afford impunity."

Co moved to quash on the ground that the Anti-Subversion Act is a bill of attainder.

Meanwhile, on May 25, 1970, another criminal com-plaint was filed with the same court, charging the respondent Nilo Tayag and five others with subversion. After preliminary investigation was had, an information was filed, which, as amended, reads:

"The undersigned Provincial Fiscal of Tarlac and State Prosecutors duly designated by the Secretary of Justice

to collaborate with the Provincial Fiscal of Tarlac, pursuant to the Order dated June 5, above entitled case, hereby accuse Nilo S. Tayag, alias Romy Reyes alias TABA, ARTHUR GARCIA, RENATO (REY) CASIPE, ABELARDO GARCIA, MANUEL ALAVADO, BENJAMIN BIE alias COMMANDER MELODY and several JOHN DOES, whose identities are still unknown, for violation of REPUBLIC ACT No. 1700, otherwise known as the Anti-Subversion Law, committed as follows:

"That in or about March 1969 and for sometime prior thereto and thereafter, in the Province of Tarlac, within the jurisdiction of this Honorable Court, and elsewhere in the Philippines, the above-named accused knowingly, willfully and by overt acts organized, joined and/or remained as officers and/or ranking leaders, of the KABATAANG MAKABAYAN, a subversive organization as defined in Republic Act No. 1700; that BENJAMIN BIE alias COMMANDER MELODY, in addition thereto, knowingly, willfully and by overt acts joined and/or remained as a member and became an officer and/or ranking leader not only of the Communist Party of the Philippines but also of the New People's Army, the military arm of the Communist Party of the Philippines; and that all the above-named accused, as such officers and/or ranking leaders of the aforestated subversive organizations, conspiring, confederating and mutually helping one another, did then and there knowingly, willfully and feloniously commit 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 by force, violence, deceit, sub-version and/or other illegal means, among which are the following:

"1. On several occasions within the province of Tarlac, the accused conducted meetings and/or seminars wherein the said accused delivered speeches instigating and inciting the people to unite, rise in arms and overthrow the Government of the Republic of the Philippines, by force, violence, deceit, subversion and/or other illegal means; and toward this end, the said accused organized, among others a chapter of the KABATAANG MAKABAYAN in barrio Motrico, La Paz, Tarlac for the avowed purpose of undertaking or -promoting an armed revolution, subversive and/or seditious propaganda, conspiracies, and/or riots and/or other illegal means to discredit and over-throw the Government of the Republic of the Philippines and to establish in the Philippines a Communist regime.

"2. The accused NILO TAYAG alias ROMY REYES alias TABA, together with FRANCISCO PORTEM alias KIKO Gonzales and others, pursued the above subversive and/or seditious activities in San Pablo City by recruiting members for the New People's Army, and/or by instigating and inciting the people to organize and unite for the purpose of overthrowing the Government of the Republic of the Philippines through armed revolution, deceit, subversion and/or other illegal means, and estab-lishing in the Philippines a Communist Government.

"That the following aggravating circumstances attended the commission of the offense: (a) aid of armed men or persons to insure or afford impunity; and (b) craft, fraud, or disguise was employed."

On July 21, 1970 Tayag moved to quash, impugning the validity of the statute on the grounds that (1) it is a bill of attainder; (2) it is vague; (3) it embraces more than one subject not expressed in the title thereof; and (4) it denies him the equal protection of the laws.

Resolving the constitutional issues raised, the trial court, in its resolution of September 15, 1970, declared the statute void on the grounds that it is a bill of attainder and that it is vague and overbroad, and dismissed the informations against the two accused. The Government appealed. We resolved to treat its appeal as a special civil action for certiorari.

II. Is the Act a Bill of Attainder?

Article III, section 1 (11) of the Constitution states that "No bill of attainder or ex-post facto law shall be enacted."^[2] A bill of attainder is a legislative act which inflicts punish-ment without trial.^[3] Its essence is the

substitution of a legislative for a judicial determination of guilt.[4] The constitutional ban against bills of attainder serves to implement the principle of separation of powers[5] by confining legislatures to rule-making[6] and thereby forestalling legislative usurpation of the judicial function.[7] History in perspective, bills of attainder were employed to suppress unpopular causes and political minorities,[8] and it is against this evil that the constitutional prohibition is directed. The singling out of a definite class, the imposition of a burden on it, and a legislative intent, suffice to stigmatize a statute as a bill of attainder.[9]

In the case at bar, the Anti-Subversion Act was, condemned by the court *aquo* as a bill of attainder because it "tars and feathers" the Communist Party of the Philippines as a "continuing menace to the freedom and security of the country; its existence, a 'clear, present and grave danger to the security of the Philippines.'" By means of the Act, the trial court said, Congress usurped "the powers of the judge," and assumed "judicial magistracy by pronouncing the guilt of the CPP without any of the forms or safeguards of judicial trial." Finally, according to the trial court, "if the only issue [to be determined] is whether or not the accused is a knowing and voluntary member, the law is still a bill of attainder because it has expressly created a presumption of organizational guilt which the accused can never hope to overthrow."

1. When the Act is viewed in its actual operation, it will be seen that it does not 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 the purposes of the prohibition, stated in section 4, against membership in the outlawed organization. The term "Communist Party of the Philippines" is used solely for definitional purposes. In fact the Act applies not only to the Communist Party of the Philippines but also to "any other organization having the same purpose and their successors." Its focus is not on individuals but on conduct.[10]

This feature of the Act distinguishes it from section 504 of the U.S. Federal Labor-Management Reporting and Disclosure Act of 1959[11] which, in *U.S. vs. Brown*,[12] was held to be a bill of attainder and therefore unconstitutional. Section 504 provided in its pertinent parts as follows:

"(a) No person who is or has been a member of the Communist Party * * * shall serve:

"(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization * * *

* * * * *

during or for five years after the termination of his membership in the Communist Party * * *

"(b) Any person who willfully violates this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both."

This statute specifies the Communist Party, and imposes disability and penalties on its members. Membership in the Party, without more, ipso facto disqualifies a person from becoming an officer or a member of the governing body of any labor organization. As the Supreme Court of the United States pointed out:

"Under the line of cases just outlined, sec. 504 of the Labor Management Reporting and Disclosure Act plainly constitutes a bill of attainder. Congress undoubtedly possesses power under the Commerce Clause to enact legislation designed to keep from positions affecting interstate commerce persons who may use of such positions to bring about political strikes. In sec. 504, however, Congress has exceeded the authority granted it by the Constitution. The statute does not set forth a generally applicable rule decreeing that any person who commits certain acts or possesses certain characteristics (acts and characteristics which, in Congress' view,

make them likely to initiate political strikes) shall not hold union office, and leaves to courts and juries the job of deciding what persons have committed the specified acts or possessed the specified characteristics. Instead, it designates in no uncertain terms the persons who possess the feared characteristics and therefore cannot hold union office without incurring criminal liability — members of the Communist Party.

"Communist Party vs. Subversive Activities Control Board, 367 US 1, 6 L ed 2 d 625, 81 S CT 1357, lends support to our conclusion. That case involved an appeal from an order by the Control Board ordering the Communist Party to register as a 'Communist-action organization,' under the Subversive Activities Control Act of 1950, 64 Stat 987, 50 USC sec. 781 etseq. (1958 ed). The definition of 'Communist-action organization' which the Board is to apply is set forth in sec. 3 of the Act:

" '[A]ny organization in the United States * * * which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement * * *' 64 Stat 989, 50 USC sec. 782 (1958 ed.)

"A majority of the Court rejected the argument that the Act was a bill of attainder, reasoning that sec. 3 does not specify the persons or groups upon which the deprivations set forth in the Act are to be imposed, but instead sets forth a general definition. Although the Board has determined in 1953 that the Communist Party was a 'Communist-action organization,' the Court found the statutory definition not to be so narrow as to insure that the Party would always come within it:

"In this proceeding the Board has found, and the Court of Appeals has sustained its conclusion, that the Communist Party, by virtue of the activities in which it now engages, comes within the terms of the Act. If the Party should at any time choose to abandon these activities, after it is

once registered pursuant to sec. 7, the Act provides adequate means of relief. (367 US, at 87, 6 L ed 2d at 683)"

Indeed, were the Anti-Subversion Act a bill of attainder, it would be totally unnecessary to charge Communists in court, as the law alone, without more, would suffice to secure their punishment. But the undeniable fact is that their guilt still has to be judicially established. The Government has yet to prove at the trial that the accused joined the Party knowingly, willfully and by overt acts, and that they joined the Party, knowing its subversive character and with specific intent to further its basic objective, i.e., to overthrow the existing Government by force, deceit, and other illegal means and place the country under the control and domination of a foreign power.

As to the claim that under the statute organizational guilt is nonetheless imputed despite the requirement of proof of knowing membership in the Party, suffice it to say that that is precisely the nature of conspiracy, which has been referred to as a "dragnet device" whereby all who participate in the criminal covenant are liable. The contention would be correct if the statute were construed as punishing mere membership devoid of any specific intent to further the unlawful goals of the Party.[13] But the statute specifically requires that membership must be knowing or active, with specific intent to further the illegal objectives of the Party. That is what section 4 means when it requires that membership, to be unlawful, must be shown to have been acquired "knowingly, willfully and by overt acts." [14] The ingredient of specific intent to pursue the unlawful goals of the Party must be shown by "overt acts." [15] This constitutes an element of "membership" distinct from the ingredient of guilty knowledge. The former requires proof of direct participation in the organization's unlawful activities, while the latter requires proof of mere adherence to the organization's illegal objectives.

2. Even assuming, however, that the Act specifies individuals and not activities, this feature is not enough to render it a bill of attainder. A statute prohibiting partners or employees of securities underwriting firms from serving as officers or employees of national banks on the basis of a legislative finding that the persons mentioned

would be subject to the temptation to commit acts deemed inimical to the national economy, has been declared not to be a bill of attainder.[16] Similarly, a statute requiring every secret, oath-bound society having a membership of at least twenty to register, and punishing any person who becomes a member of such society which fails to register or remains a member thereof, was declared valid even if in its operation it was shown to apply only to the members of the Ku Klux Klan.[17]

In the Philippines the validity of section 23 (b) of the Industrial Peace Act,[18] requiring labor unions to file with the Department of Labor affidavits of union officers "to the effect that they are not members of the Communist Party and that they are not members of any organization which teaches the overthrow of the Government by force or by any illegal or unconstitutional method," was upheld by this Court.[19]

Indeed, it is only when a statute applies either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial does it become a bill of attainder.[20] It is upon this ground that statutes which disqualified those who had taken part in the rebellion against the Government of the United States during the Civil War from holding office,[21] or from exercising their profession,[22] or which prohibited the payment of further compensation to individuals named in the Act on the basis of a finding that they had engaged in subversive activities,[23] or which made it a crime for a member of the Communist Party to serve as an officer or employee of a labor union,[24] have been invalidated as bills of attainder.

But when the judgment expressed in legislation is so universally acknowledged to be certain as to be "judicially noticeable," the legislature may apply its own rules, and judicial hearing is not needed fairly to make such determination.[25]

In *New York ex rel. Bryant vs. Zimmerman*,[26] the New York legislature passed a law requiring every secret, oath-bound society with a membership of at least twenty to register, and punishing any person who joined or remained a member of such a society failing to register. While the statute did not specify the Ku Klux Klan, in its operation the law applied to the KKK exclusively. In sustaining the statute against the claim that it discriminated against the Ku Klux Klan, while exempting other secret, oath-bound organizations like masonic societies and the Knights of Columbus, the United States Supreme Court relied on common knowledge of the nature and activities of the Ku Klux Klan. The Court said:

"The courts below recognized the principle shown in the cases just cited and reached the conclusion that the classification was justified by a difference between the two classes of associations shown by experience, and that the difference consisted (a) in a manifest tendency on the part of one class to make the secrecy surrounding its purposes and membership a cloak for acts and conduct inimical to personal rights and public welfare, and (b) in the absence of such a tendency on the part of the other class. In pointing out this difference one of the courts said of the Ku Klux Klan, the principal association in the included class: 'It is a matter of common knowledge that this organization functions largely at night, its members disguised by hoods and gowns and doing things calculated to strike terror into the minds of the people;' and later said of the other class: 'These organizations and their purposes are well known, many of them having been in existence for many years. Many of them are oath-bound and secret. But we hear no complaint against them regarding violation of the peace or interfering with the rights of others.' Another of the courts said: 'It is a matter of common knowledge that the association or organization of which the relator is concededly a member exercises activities tending to the prejudice and intimidation of sundry classes of our citizens. But the legislation is not confined to this society;' and later said of the other class 'Labor unions have a recognized lawful purpose. The benevolent orders mentioned in the Benevolent Orders Law have already received legislative scrutiny and have been granted special privileges so that the legislature may well consider them beneficial rather than harmful agencies.' The third court, after recognizing 'the potentialities of evil in secret societies,' and observing that 'the danger of certain organizations has been judicially demonstrated,' — meaning in that state, said: 'Benevolent orders, labor unions and college fraternities have existed for many years, and, while not immune from hostile

criticism, have on the whole justified their existence."

"We assume that the legislature had before it such information as was readily available, including the published report of a hearing, before a committee of the House of Representatives of the 57th Congress relating to the formation, purposes and activities of the Ku Klux Klan. If so it was advised — putting aside controverted evidence — that the order was a revival of the Ku Klux Klan of an earlier time with additional features borrowed from the Know Nothing and the A.P.A. orders of other periods; that its membership was limited to native-born, gentile, protestant whites; that in part of its constitution and printed creed it proclaimed the widest freedom for all and full adherence to the Constitution of the United States; in another exacted of its members an oath to shield and preserve 'white supremacy;' and in still another declared any person actively opposing its principles to be 'a dangerous ingredient in the body politic of our country and an enemy to the weal of our national commonwealth;' that it was conducting a crusade against Catholics, Jews, and Negroes, and stimulating hurtful religious and race prejudices; that it was striving for political power and assuming a sort of guardianship over the administration of local, state and national affairs; and that at times it was taking into its own hands the punishment of what some of its members conceived to be crimes." [27]

In the Philippines the character of the Communist Party has been the object of continuing scrutiny by this Court. In 1932 we found the Communist Party of the Philippines to be an illegal association. [28] In 1969 we again found that the objective of the Party was the "overthrow of the Philippine Government by armed struggle and to establish in the Philippines a communist form of government similar to that of Soviet Russia and Red China." [29] More recently, in *Lansang vs. Garcia*, [30] we noted the growth of the Communist Party of the Philippines and the organization of Communist fronts among youth organizations such as the *Kabataang Makabayan (KM)* and the emergence of the *New People's Army*. After meticulously reviewing the evidence, we said: "We entertain, therefore, no doubts about the existence of a sizeable group of men who have publicly risen in arms to overthrow the government and have thus been and still are engaged in rebellion against the Government of the Philippines."

3. Nor is it enough that the statute specify persons or groups in order that it may fall within the ambit of the prohibition against bills of attainder. It is also necessary that it must apply retroactively and reach past conduct. This requirement follows from the nature of a bill of attainder as a legislative adjudication of guilt. As Justice Frankfurter observed, "frequently a bill of attainder was * * * doubly objectionable because of its ex-post facto features. This is the historic explanation for uniting the two mischiefs in one clause — 'No Bill of Attainder or ex-post facto law shall be passed.' * * * Therefore, if [a statute] is a bill of attainder it is also an ex-post facto law. But if it is not an ex-post facto law, the reasons that establish that it is not are persuasive that it cannot be a bill of attainder." [31]

Thus in *Gardner vs. Board of Public Works*, [32] the U.S. Supreme Court upheld the validity of the Charter of the City of Los Angeles which provided:

"* * * [N]o person shall hold or retain or eligible for any public office or employment in the service of the City of Los Angeles, in any office or department thereof, either elective or appointive, who has within five (5) years prior to the effective date of this section advised, advocated, or taught, or who may, after this section becomes effective, become a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches or has within said period of five (5) years advised, advocated, or taught the overthrow by force or violence of the Government of the United States of America or of the State of California."

In upholding the statute, the Court stressed the prospective application of the Act to the petitioner therein, thus:

"* * * Immaterial here is any opinion we might have as to the charter provision insofar as it purported to apply retrospectively for a five-year period to its effective date. We assume that under the Federal Constitution the Charter Amendment is valid to the extent that it bars from the city's public service persons who, subsequently

to its adoption in 1941, advise, advocate, or teach the violent overthrow of the Government or who are or become affiliated with any group doing so. The provisions operating thus prospectively were a reasonable regulation to protect the municipal service by establishing an employment qualification of loyalty to the State and the United States.

"* * * Unlike the provisions of the charter and ordinance under which petitioners were removed, the statute in the Lovett case did not declare general and prospectively operative standards of qualification and eligibility for public employment. Rather, by its terms it prohibited any further payment of compensation to named individuals or employees. Under these circumstances, viewed against the legislative background, the statute was held to have imposed penalties without judicial trial."

Indeed, if one objection to the bill of attainder is that Congress thereby assumes judicial magistracy, then it must be demonstrated that the statute claimed to be a bill of attainder reaches past conduct and that the penalties it imposes are inescapable. As the U.S. Supreme Court observed with respect to the U.S. Federal Subversive Activities Control Act of 1950:

"Nor is the statute made an act of 'outlawry' or of attainder by the fact that the conduct which it regulates is described with such particularity that, in probability, few organizations will come within the statutory terms. Legislatures may act to curb behaviour which they regard as harmful to the public welfare, whether that conduct is found to be engaged in by many persons or by one. So long as the incidence of legislation is such that the persons who engage in the regulated conduct, be they many or few, can escape regulation merely by altering the course of their own present activities, there can be no complaint of an attainder." [33]

This statement, *mutatis mutandis*, may be said of the Anti-Subversion Act. Section 4 thereof expressly states that the prohibition therein applies only to acts committed "After the approval of this Act." Only those who "knowingly, willfully and by overt acts affiliate themselves with, become or remain members of the Communist Party of the Philippines and/or its successors or of any subversive association" after June 20, 1957, are punished. Those who were members of the Party or of any other subversive association at the time of the enactment of the law, were given the opportunity of purging themselves of liability by renouncing in writing and under oath their membership in the Party. The law expressly provides that such renunciation shall operate to exempt such persons from penal liability. [34] The penalties prescribed by the Act are therefore not inescapable.

III. The Act and the Requirements of Due Process

1. As already stated, the legislative declaration in section 2 of the Act that the Communist Party of the Philippines is an organized conspiracy for the overthrow of the Government is intended

not to provide the basis for a legislative finding of guilt of the members of the Party but rather to justify the proscription spelled out in section 4. Freedom of expression and freedom of association are so fundamental that they are thought by some to occupy a "preferred position" in the hierarchy of constitutional values. [35] Accordingly, any limitation on their exercise must be justified by the existence of a substantive evil. This is the reason why before enacting the statute in question Congress conducted careful investigations and then stated its findings in the preamble, thus:

"* * * [T]he Communist Party of the Philippines, although purportedly a political party, is in fact an organized conspiracy to overthrow the Government of the Republic of the Philippines not only by force and violence but also by deceit, subversion and other illegal means, for the purpose of establishing in the Philippines a totalitarian regime subject to alien domination and control;

"* * * [T]he continued existence and activities of the Communist Party of the Philippines constitutes a clear, present and grave danger to the security of the Philippines;

"* * * [I]n the face of the organized, systematic and persistent subversion, national in scope but international in direction, posed by the Communist Party of the Philippines and its activities, there is urgent need for special legislation to cope with this continuing menace to the freedom and security of the country."

In truth, the constitutionality of the Act would be open to question if, instead of making these findings in enacting the statute, Congress omitted to do so.

In saying that by means of the Act Congress has assumed judicial magistracy, the trial court failed to take proper account of the distinction between legislative fact and adjudicative fact. Professor Paul Freund elucidates the crucial distinction, thus:

"* * * A law forbidding the sale of beverages containing more than 3.2 per cent of alcohol would raise a question of legislative fact, i.e., whether this standard has a reasonable relation to public health, morals, and the enforcement problem. A law forbidding the sale of intoxicating beverages (assuming it is not so vague as to require supplementation by rule-making) would raise a question of adjudicative fact, i.e., whether this or that beverage is intoxicating within the meaning of the statute and the limits on governmental action imposed by the Constitution. Of course what we mean by fact in each case is itself an ultimate conclusion founded on underlying facts and on criteria of judgment for weighing them.

"A conventional formulation is that legislative 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 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." [36]

The test formulated in *Nebbia vs. New York*, [37] and adopted by this Court in *Lansang vs. Garcia*, [38] is that "if laws are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio." The recital of legislative findings implements this test.

With respect to a similar statement of legislative findings in the U.S. Federal Subversive Activities Control Act of 1950 (that "Communist-action organizations" are controlled by the foreign government controlling the world Communist movement and that they operate primarily to "advance the objectives of such world Communist movement"), the U. S. Supreme Court said:

"It is not for the courts to reexamine the validity of these legislative findings and reject them. * * * They are the product of extensive investigation by Committees of Congress over more than a decade and a half. Cf. *Nebbia vs. New York*, 291 U.S. 502, 516, 530. We certainly cannot dismiss them as unfounded or irrational imaginings. * * * And if we accept them, as we must, as a not unentertainable appraisal by Congress of the threat which Communist organizations pose not only to existing government in the United States, but to the United States as a sovereign, independent Nation. * * we must recognize that the power of Congress to regulate Communist organizations of this nature is extensive." [39]

This statement, *mutatis mutandis*, may be said of the legislative findings articulated in the Anti-Subversion Act.

That the Government has a right to protect itself against subversion is a proposition too plain to require elaboration. Self-preservation is the "ultimate value" of society. It surpasses and transcends every other value, "for if a society cannot protect its very structure from armed internal attack, * * * no subordinate value can be protected." [40] As Chief Justice Vinson so aptly said in *Dennis vs. United States*: [41]

"Whatever theoretical merit there may be to the argument that there is a 'right' to rebellion against dictatorial governments is without force where the existing structure of government provides for peaceful and orderly change. We reject any principle of governmental helplessness in the face of preparation for revolution, which

principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the government by force and violence."

2. By carefully delimiting the reach of the Act to conduct (as explicitly described in section 4 thereof), Congress reaffirmed its respect for the rule that "even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." [42] The requirement of knowing membership, as distinguished from nominal membership, has been held as a sufficient basis for penalizing membership in a subversive organization. [43] For, as has been stated:

"Membership in an organization renders aid and encouragement to the organization; and when membership is accepted or retained with knowledge that the organization is engaged in an unlawful purpose, the one accepting or retaining membership with such knowledge makes himself a party to the unlawful enterprise in which it is engaged." [44]

3. The argument that the Act is unconstitutionally overbroad because section 2 merely speaks of "overthrow" of the Government and overthrow may be achieved by peaceful means, misconceives the function of the phrase "knowingly, willfully and by overt acts" in section 4. Section 2 is merely a legislative declaration; the definitions of and the penalties prescribed for the different acts proscribed are stated in section 4 which requires that membership in the Communist Party of the Philippines, to be unlawful, must be acquired "knowingly, willfully and by overt acts." Indeed, the first "whereas" clause makes clear that the overthrow contemplated is "overthrow not only by force and violence but also by deceit, subversion and other illegal means." The absence of this qualification in section 2 appears to be due more to an oversight rather than to deliberate omission.

Moreover, the word "overthrow" sufficiently connotes the use of violent and other illegal means. Only in a metaphorical sense may one speak of peaceful overthrow of governments, and certainly the law does not speak in metaphors. In the case of the Anti-Subversion Act, the use of the word "overthrow" in a metaphorical sense is hardly consistent with the clearly delineated objective of the "overthrow," namely, "establishing in the Philippines a totalitarian regime and place [sic] the Government under the control and domination of an alien power." What this Court once said in a prosecution for sedition is apropos: "The language used by the appellant clearly imported an overthrow of the Government by violence, and it should be interpreted in the plain and obvious sense in which it was evidently intended to be understood. The word 'overthrow' could not have been intended as referring to an ordinary change by the exercise of the elective franchise. The use of the whip [which the accused exhorted his audience to use against the Constabulary], an instrument designed to leave marks on the sides of adversaries, is inconsistent with the mild interpretation which the appellant would have us impute to the language." [45]

IV. The Act and the Guaranty of Free Expression

As already pointed out, the Act is aimed against conspiracies to overthrow the Government by force, violence or other illegal means. Whatever interest in freedom of speech and freedom of association is infringed by the prohibition against knowing membership in the Communist Party of the Philippines, is so indirect and so insubstantial as to be clearly and heavily outweighed by the overriding considerations of national security and the preservation of democratic institutions in this country.

The membership clause of the U.S. Federal Smith Act is similar in many respects to the membership provision of the Anti-Subversion Act. The former provides:

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliated with, any such society, group or assembly of persons, knowing the purpose

thereof -

"Shall be fined not more than \$20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction. * * *"[46]

In sustaining the validity of this provision, the Court said in *Scales vs. United States*:^[47]

"It was settled in *Dennis* that advocacy with which we are here concerned is not constitutionally protected speech, and it was further established that a combination to promote such advocacy, albeit under the aegis of what purports to be a political party, is not such association as is protected by the first Amendment. We can discern no reason why membership, when it constitutes a purposeful form of complicity in a group engaging in this same forbidden advocacy, should receive any greater degree of protection from the guarantees of that Amendment."

Moreover, as was held in another case, where the problems of accommodating the exigencies of self-preservation and the values of liberty are as complex and intricate as in the situation described in the legislative findings stated in the U.S. Federal Subversive Activities Control Act of 1950, the legislative judgment as to how that threat may best be met consistently with the safeguards of personal freedoms is not to be set aside merely because the judgment of judges would, in the first instance, have chosen other methods.^[48] For in truth, legislation, "whether it restrains freedom to hire or freedom to speak, is itself an effort at compromise between the claims of the social order and individual freedom, and when the legislative compromise in either case is brought to the judicial test the court stands one step removed from the conflict and its resolution through law."^[49]

V. The Act and its Title

The respondent Tayag invokes the constitutional command that "no bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill."^[50]

What is assailed as not germane to or embraced in the title of the Act is the last proviso of section 4 which reads:

"And provided, finally, That one who conspires with any other person to overthrow the Government of the Republic of the Philippines, or the government of any of its political subdivisions by force, violence, deceit, subversion or illegal means, for the purpose of placing such Government or political subdivision under the control and domination of any alien power, shall be punished by prison correccional to prison mayor with all the accessory penalties provided therefor in the same code."

It is argued that the said proviso, in reality, punishes not only membership in the Communist Party of the Philippines or similar associations, but as well "any conspiracy by two persons to overthrow the national or any local government by illegal means, even if their intent is not to establish a totalitarian regime, but a democratic regime, even if their purpose is not to place the nation under an alien communist power, but under an alien democratic power like the United States or England or Malaysia or even an anti-communist power like Spain, Japan, Thailand or Taiwan or Indonesia."

The Act, in addition to its main title ("An Act to Outlaw the Communist Party of the Philippines and Similar Associations, Penalizing Membership Therein, and for Other Purposes"), has a short title. Section 1 provides that "This Act shall be known as the Anti-Subversion Act." Together with the main title, the short title of the statute unequivocally indicates that the subject-matter is subversion in general which has for its fundamental purpose the substitution of a foreign totalitarian regime in place of the existing Government and not merely subversion by Communist conspiracies.

The title of a bill need not be a catalogue or an index of its contents, and need not recite the details of the Act.^[51]

It is a valid title if it indicates in broad but clear terms the nature, scope, and consequences of the proposed law and its operation.[52] A narrow or technical construction is to be avoided, and the statute will be read fairly and reasonably in order not to thwart the legislative intent. We hold that the Anti-Subversion Act fully satisfies these requirements.

VI. Conclusion and Guidelines

In conclusion, even as we uphold the validity of the Anti-Subversion Act, we cannot overemphasize the need for prudence and circumspection in its enforcement, operating as it does in the sensitive area of freedom of expression and belief. Accordingly, we set the following basic guidelines to be observed in any prosecution under the Act. The Government, in addition to proving such circumstances as may affect liability, must establish the following elements of the crime of joining the Communist Party of the Philippines or any other subversive association:

(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

(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.

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.

ACCORDINGLY, the questioned resolution of September 15, 1970 is set aside, and these two cases are hereby remanded to the court *aquo* for trial on the merits. Costs *deoficio*.

Makalintal, Zaldivar, Teehankee, Barredo, and Esguerra, JJ., concur.

Concepcion, C.J., concurs in the result.

Fernando, J., dissents in a separate opinion.

Makasiar and Antonio, JJ., took no part.

[1] Rep. Act No. 1700, 12 Laws & Res. 102 (1957). The text of the statute is hereunder reproduced in full:

“AN ACT TO OUTLAW THE COMMUNIST PARTY OF THE PHILIPPINES AND SIMILAR ASSOCIATIONS, PENALIZING MEMBERSHIP THEREIN, AND FOR OTHER PURPOSES.

"WHEREAS, the Communist Party of the Philippines, although purportedly a political party, is in fact an organized conspiracy to overthrow the Government of the Republic of the Philippines not only by force and violence but also by deceit, subversion and other illegal means, for the purpose of establishing in the Philippines a totalitarian regime subject to alien domination and control;

"WHEREAS, the continued existence and activities of the Communist Party of the Philippines constitutes a clear, present and grave danger to the security of the Philippines; and

"WHEREAS, in the face of the organized, systematic and persistent subversion, national in scope but international in direction, posed by the Communist Party of the Philippines and its activities, there is urgent

need for special legislation to cope with this continuing menace to the freedom and security of the country: Now, therefore, "Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

"SECTION 1. This Act shall be known as Anti-Subversion Act.

"SECTION 2. The Congress hereby declares 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 and place the Government under the control and domination of an alien power. The said party and any other organization having the same purpose and their successors are hereby declared illegal and outlawed.

"SECTION 3. As used in this Act, the term 'Communist Party of the Philippines' shall mean and include the organizations now known as the Communist Party of the Philippines and its military arm, the Hukbong Mapagpalaya ng Bayan, formerly known as HUKBALAHAPS, and any successors of such organizations.

"SECTION 4. After the approval of this Act, whoever knowingly, willfully and by over acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines and/or its successor or of any subversive association as defined in section two hereof, shall be punished by the penalty of arresto mayor and shall be disqualified permanently from holding any public office, appointive and elective, and from exercising the right to vote; in case of a second conviction, the principal penalty shall be prision correccional, and in all subsequent convictions the penalty of prision mayor shall be imposed; and any alien convicted under this Act shall be deported immediately after he shall have served the sentence imposed upon him: Provided, That if such member is an officer or a ranking leader of the Communist Party of the Philippines or of any subversive association as defined in section two hereof, or if such member takes up arms against the Government, he shall be punished by prision mayor to death with all the accessory penalties provided therefor in the Revised Penal Code: And provided, finally, That one who conspires with any other person to overthrow the Government of the Republic of the Philippines or the government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means, for the purpose of placing such Government or political subdivision under the control and domination of any alien power, shall be punished by prision correccional to prision mayor with all the accessory penalties provided therefor in the same Code.

"SECTION 5. No prosecution under this Act shall be made unless the city or provincial fiscal, or any special attorney or prosecutor duly designated by the Secretary of Justice as the case may be, finds after due investigation of the facts, that a prima facie case for violation of this Act exists against the accused, and thereafter presents an information in court against the said accused in due form, and certifies under oath that he has conducted a proper pre-liminary investigation thereof, with notice, whenever it is possible to give the same to the party concerned, who shall have the right to be represented by counsel, to testify, to have compulsory process for obtaining witnesses in his favor, and to cross-examine witnesses against him. Provided, That the preliminary investigation of any offense defined and penalized herein by prision mayor to death shall be conducted by the proper Court of First Instance.

"SECTION 6. Any person who knowingly furnishes false evidence in any action brought under this Act shall be punished by prision correccional.

"SECTION 7. No person shall be convicted of any of the offenses penalized herein with prision mayor to death unless on the testi-mony of at least two witnesses to the same overt act or on confes-sion of the accused in open court.

"SECTION 8. Within thirty days after the approval of this Act, any person who is a member of the Communist Party of the Philip-pines or of any such association or conspiracy, who desires to renounce such membership, may do so in writing and under oath before a municipal or city mayor, a provincial governor, or a person

authorized by law to administer oaths. Such renunciation shall exempt such person or persons from the penal sanction of this Act, but the same shall in no way exempt him liability for criminal acts or for any violation of the existing laws of the Republic of the Philippines committed before this Act takes effect.

"SECTION 9. Nothing in this Act shall be interpreted as a restriction to freedom of thought, of assembly and of association for purposes not contrary to law as guaranteed by the Constitution.

"SECTION 10. This Act shall take effect upon its approval.

"Approved. June 20, 1957."

[2] Delegate Jose P. Laurel (of the 1934 Constitutional Convention) referred to the Anglo-American origin of this right, thus:

"No ex post facto law or bill of attainder shall be enacted. This provision is found in the American Federal Constitution (Art. 1, Sec. 9) and is applicable to the States (id Sec. 10). An ex-post facto law is a law which makes an act punishable in a manner in which it was not punishable when committed. It creates or aggravates the crime or increases the punishment, or changes the rules of evidence for the purpose of conviction. The prohibition against the passage of ex-post facto laws is an additional bulwark of personal security protecting the citizen from punishment by legislative act which has a retrospective operation.

"The phrase ex-post facto has a technical meaning and refers to crimes and criminal proceedings. It is in this sense that it was used in England. It was in this sense that the convention of 1787 understood it. (*Calder vs. Bull*, supra; *Watson vs. Mercer*, 8 Pet. 88, 110; *Suterlee vs. Mathewson*, 2 Peters, 380; *Kring vs. Missouri*, 107 U.S. 221.) This interpretation was upheld by our Supreme Court (*U.S. vs. Ang Ken Ko*, 6 Phil. 376.)

"A bill of attainder is a legislative act which inflicts punishment without judicial trial. (*Cummings vs. United States*, 4 Wall. 277, 18 L ed 356.) In England, the Bill of Attainder was an act of Parliament by which a man was tried, convicted and sentenced to death without a jury, without a hearing in court, without hearing the witnesses against him and without regard to the rules of evidence. His blood was attainted or corrupted, rendering him devoid of all heritable quality — of acquiring and disposing property by descent. (*Ex Parte Garland*, 4 Wall. 333, 18 L ed 366.) If the penalty imposed was less than death, the act was known as a "bill of pains and penalties." Bills of attainder, like ex-post facto laws, were favorite methods of Stuart oppression. Once, the name of Thomas Jefferson was included in a bill of attainder presented to Parliament because of his reform activities.

"Often, such bills were 'stimulated by ambition or personal resentment, and vindictive malice.' (*Calder vs. Bull*, supra.) A well known case illustrating the ruthless manner in which a bill of attainder was resorted to was that of Thomas Wentworth, chief adviser of Charles I. He was brought to impeachment charged with attempting to subvert the liberties of England. He defended himself so ably that his enemies, fearing his acquittal, withdrew the impeachment and a bill of attainder was passed instead. Wentworth was beheaded. Bills of attainder were also passed in the Colonies (North, *The Constitution of the U.S., its Sources and Applications*, p. 85.) The prohibition in the Bill of Rights, therefore, seeks to prevent acts of violence and injustice brought about by the passage of such bills." (3 J. Laurel, *Proceedings of the Constitutional Convention* 661-662 [1966].)

[3] *Cummings vs. United States*, 4 Wall. (71 U.S.) 277 (1867); accord, *Ex parte Garland*, 4 Wall. (71 U.S.) 333 (1867). This definition was adopted by this Court in *People vs. Carlos*, 78 Phil. 535, 544 (1947) and in *People vs. Montenegro*, 91 Phil. 883, 885 (1952).

[4] *De Veau vs. Braisted*, 363 U.S. 144, 160 (1960); *United States vs. Lovett*, 328 U.S. 303, 315 (1946).

[5] Chief Justice Warren referred to the Bill of Attainder Clause as an implementation of the separation of powers, "a general safeguard against legislative exercise of judicial function, or more simply, trial by legislature." *United*

States vs. Brown, 381 U.S. 437 (1964).

[6] "It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." Fletcher vs. Peck, 6 Cranch (10 U.S.) 87, 136 (1810).

[7] "The legislative body in enacting bills of attainder exercises the powers and office of judge, it pronounces upon the guilt of the party, without any of the forms or safeguards of trial * * * it fixes the degree of punishment in accordance with its own notions of the enormity of the offense." Cummings vs. Missouri, supra note 3.

[8] Bills of this sort, says Mr. Justice Story, have been most usually passed in England in times of rebellion or gross subserviency to the crown, or of violent political excitements; periods, in which all nations are most liable (as well as free as the enslaved) to forget their duties, and to trample upon the rights and liberties of others." Comm. sec. 1344, in re Young Sing Hee, 36 Fed. 347, 440. During the American revolution legislative punishments had been continued by state legislatures when numerous bills of attainder were enacted against the Tories. 1 C. Artieu, Modern Constitutional Law 425.

[9] C. Artieu, supra note 8 at 423.

[10] The Supreme Court of the United States said in Fleming vs. Nestor, 363 U.S. 603, 613-14 (1960): "In determining whether legislation which bases a disqualification on the happening of a certain past event imposes a punishment, the Court has sought to discern the objects on which the enactment in question was focused. Where the source of legislative concern can be thought to be the activity or status from which the individual is barred, the disqualification is not punishment even though it may bear harshly upon one affected."

[11] 73 Stat. 536, 29 U.S.C. sec. 504 (1958 ed. Supp. IV).

[12] 381 U.S. 437 (1965) (5-4 vote).

[13] Keyishian vs. Board of Regents, 385 U.S. 589 (1967); Elfbrandt vs. Russell, 384 U.S. 11 (1966).

[14] Cf. Scales vs. United States, 367 U.S. 203 (1961); Noto vs. United States, 367 U.S. 290 (1961).

[15] During the Senate deliberations on the bill, Senator Cea remarked: "I have inserted the words 'overt acts' because we are punishing membership in the Communist Party. I would like that membership to be proved by overt acts, by positive acts, because it may happen that one's name may appear in the list of members." Senate Cong. Rec. May 22, 1957, p. 1900.

[16] Board of Governors of Federal Reserve System vs. Agnew, 329 U.S. 441.

[17] New York ex rel. Bryant vs. Zimmerman, 278 U.S. 63 (1928).

[18] Repealed by Rep. Act 4241.

[19] Philippine Ass'n of Free Labor Unions vs. Secretary of Labor, Feb. 27, 1969, 27 SCRA 40.

[20] United States vs. Lovett, 328 U.S. 303 (1946).

[21] Cummings vs. Missouri, 4 Wall. (71 U.S.) 277 (1867).

[22] Ex parte Garland, 4 Wall. (71 U.S.) 333 (1867).

[23] United States vs. Lovett, 328 U.S. 303 (1946).

[24] United States vs. Brown, 381 U.S. 437 (1965).

[25] The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause, 72 Yale L.J. 330, 351-54 (1962).

[26] 278 U.S. 63 (1928).

[27] Id. at 75-77.

[28] People vs. Evangelista, 57 Phil. 375 (1932); seealso People vs. Evangelista, 57 Phil. 372 (1932); People vs. Capadocia, 57 Phil. 364 (1932); People vs. Evangelista, 57 Phil. 354 (1932); People vs. Feleo, 57 Phil. 451 (1932); People vs. Nabong, 57 Phil. 455 (1932).

[29] People vs. Lava, L-4974-78, May 16, 1969.

[30] L-33864, Dec. 11, 1971, 42 SCRA 448.

[31] United States vs. Lovett, 328 U.S. 303, 318 (1946).

[32] 341 U.S. 716 (1951).

[33] Communist Party vs. Subversive Activities Control Board, 367 U.S. 1 (1960).

[34] Sec. 8.

[35] E.g., Kovacs vs. Cooper, 336 U.S. 77 (1949); Vera vs. Arca, L-25721, May 26, 1969, 28 SCRA 351.

[36] Freund, Review of Facts in Constitutional Cases, in Supreme Court and Supreme Law 47-48 (Cahn ed. 1954).

[37] 291 U.S. 502, 537 (1934).

[38] L-33964, Dec. 11, 1971, 41 SCRA 448.

[39] Communist Party vs. S.A.C. Board, 367 U.S. 94 (1961).

[40] Dennis vs. United States, 341 U.S. 494, 509 (1951).

[41] Id. at 501.

[42] Shelton vs. Tucker, 364 U.S. 479 (1960).

[43] Scales vs. United States, 367 U.S. 203 (1961); seealso Noto vs. United States, 367 U.S. 290 (1961).

[44] Frankfeld vs. United States, 198 F 2d. 879 (4th Cir. 1952).

[45] People vs. Nabong, 57 Phil. 455, 458 (1932)

[46] 18 U.S.C. sec. 2385. (*italics supplied*)

[47] 367 U.S. 203 (1961).

[48] Communist Party vs. Subversive Activities Control Board, 367 U.S. 1 (1961).

[49] P.A. Freund, The Supreme Court of the United States 75 (1961).

[50] Const., art. VI, Sec. 21 (1).

DISSENTING OPINION

FERNANDO, J.:

It is with regret that I find myself unable to join the rest of my brethren in the decision reached upholding the validity of the Anti-Subversion Act.[1] It is to be admitted that the learned and scholarly opinion of Justice Castro has the impress of conscientious and painstaking scrutiny of the constitutional issues raised. What is more, the stress in the concluding portion thereof on basic guidelines that will assure in the trial of those prosecuted under such Act respect for their constitutional rights is to be commended. Nonetheless, my own reading of the decisions cited, interpreting the bill of attainder clause[2] coupled with the fears, perhaps induced by a too-latitudinarian construction of the guarantees of freedom of belief and expression[3] as well as freedom of association[4] as to impermissible inroads to which they may be exposed, compels a different conclusion. Hence this dissent.

1. There is to be sure no thought on my part that the equally pressing concern of state safety and security should be ignored. The political branches of the government would lay themselves open to a justifiable indictment for negligence had they been remiss in their obligation to safeguard the nation against its sworn enemies. In a simpler era, where the overthrow of the government was usually through the rising up in arms, with weapons far less sophisticated than those now in existence, there was no constitutional issue of the magnitude that now confronts us. Force has to be met with force. It was as clear-cut as that. Advances in science as well as more subtle methods of inducing disloyalty and weakening the sense of allegiance have introduced complexities in coping with such problems. There must be then, and I am the first to recognize it, a greater understanding for the governmental response to situations of that character. It is in that light that the validity of the Anti-Subversion Act is to be appraised. From my standpoint, and I am not presumptuous enough to claim that it is the only perspective or that is the most realistic, I feel that there was an insufficient appreciation of the compulsion of the constitutional commands against bills of attainder and abridgment of free speech. I am comforted by the thought that even had my view prevailed, all that it would mean is that a new legislation, more in conformity to my way of thinking to what is ordained by the fundamental law, would have to be enacted. No valid fear need be entertained then that a setback would be occasioned to legitimate state efforts to stem the tide of subversive activities, in whatever form manifested.

2. The starting point in any inquiry as to the significance of the bill of attainder clause is the meaning attached to it by the Constitutional Convention of 1934 and by the people who adopted it. As was explained by the then Delegate, later Justice, Jose P. Laurel in his address on November 19, 1934 as Chairman of the Committee on the Bill of Rights quoted in the opinion of the Court: "A bill of attainder is a legislative act which inflicts punishment without judicial trial. (*Cummings vs. United States*, 4 Wall. 277, 18 L ed 356). In England, the Bill of Attainder was an act of Parliament by which a man was tried, convicted and sentenced to death without a jury, without a hearing in court, without hearing the witnesses against him and without regard to the rules of evidence. His blood was attainted or corrupted, rendering him devoid of all heritable quality — of acquiring and disposing property by descent. (*Ex parte Garland*, 4 Wall. 333, 18 L ed. 366) If the penalty imposed was less than death, the act was known as a 'bill of pains and penalties.' Bills of attainder, like ex-post facto laws, were favorite methods of Stuart oppression. Once, the name of Thomas Jefferson was included in a bill of attainder presented to Parliament because of his reform activities." [5] Two American Supreme Court decisions were thus in the minds of the framers. They are *Cummings vs. Missouri* [6] and *Ex parte Garland*. [7] They speak unequivocally. Legislative acts, no matter what their form, that apply either to named individuals or easily ascertainable members of a group in such a way as to inflict on them punishment amounting to a deprivation of any right, civil or political, without judicial trial are bills of attainder prohibited by the Constitution. [8]

Cummings vs. Missouri[9] was a criminal prosecution of a Catholic priest for refusing to take the loyalty oath required by the state Constitution of Missouri of 1865. Under such a provision, lawyers, doctors, ministers, and other professionals must disavow that they had ever, "by act or word," manifested a "desire" for the success of the nation's enemies or a sympathy" with the rebels of the American Civil War. If they swore falsely, they were guilty of perjury. If they engaged in their professions without the oath, they were criminally liable. The United States Supreme Court condemned the provision as a bill of attainder, identified as any legislative act inflicting punishment without judicial trial. The deprivation of any right, civil or political, previously enjoyed, amounted to a punishment. Why such a conclusion was unavoidable was explained in the opinion of Justice Field thus: "A bill of attainder is a legislative act, which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the textbooks, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense. * * * If the clauses of the 2d article of the Constitution of Missouri, to which we have referred, had in terms declared that Mr. Cummings was guilty, or should be held guilty, of having been in armed hostility to the United States, or of having entered that state to avoid being enrolled or drafted into the military service of the United States and, therefore, should be deprived of the right to preach as a priest of the Catholic church, or to teach in any institution of learning, there could be no question that the clauses would constitute a bill of attainder within the meaning of the Federal Constitution. If these clauses, instead of mentioning his name, had declared that all priests and clergymen within the state of Missouri were guilty of these acts, or should be held guilty of them, and hence be subjected to the like deprivation, the clauses would be equally open to objection. And further, if these clauses had declared that all such priests and clergymen should be so held guilty, and be thus deprived, provided they did not, by a day designated, do certain specified acts, they would be no less within the inhibition of the Federal Constitution. In all these cases there would be the legislative enactment creating the deprivation, without any of the ordinary forms and guards provided for the security of the citizen in the administration of justice by the established tribunals." [10]

On the very same day that the ruling in Cummings was handed down, Ex parte Garland[11] was also decided. That was a motion for leave to practice as an attorney before the American Supreme Court. Petitioner Garland was admitted to such bar at the December term of 1860. Under the previous rules of such Court, all that was necessary was that the applicant have three years practice in the state courts to which he belonged. In March 1865, the rule was changed by the addition of a clause requiring that an oath be taken under the Congressional acts of 1862 and 1865 to the effect that such candidate for admission to the bar had never voluntarily borne arms against the United States. Petitioner Garland could not in conscience subscribe to such an oath, but he was able to show a presidential pardon extended on July 15, 1865. With such act of clemency, he moved that he be allowed to continue in practice contending that the test oath requirement was unconstitutional as a bill of attainder and that at any rate, he was pardoned. The same ruling was announced by the Court again through Justice Field. Thus: "In the exclusion which the statute adjudges, it imposes a punishment for some of the acts specified which were not punishable at the time they were committed; and for other of the acts it adds a new punishment to that before prescribed, and it is thus brought within the further inhibition of the Constitution against the passage of an ex post facto law. In the case of Cummings vs. Missouri, just decided, * * we have had occasion to consider at length the meaning of a bill of attainder and of an ex-post facto law in the clause of the Constitution forbidding their passage by the states, and it is unnecessary to repeat here what we there said. A like prohibition is contained in the Constitution against enactments of this kind by Congress; and the argument presented in that case against certain

clauses of the Constitution of Missouri is equally applicable to the act of Congress under consideration in this case." [12]

There was a reiteration of the Cummings and Garland doctrine in *United States vs. Lovett*, [13] decided in 1946. There it was shown that in 1943 the respondents, Lovett, Watson, and Dodd, were and had been for several years working for the government. The government agencies, which had lawfully employed them, were fully satisfied with the quality of their work and wished to keep them employed on their jobs. Over their protest, Congress provided in Section 304 of the Urgent Deficiency Appropriation Act of 1943, by way of an amendment attached to the House Bill, that after November 15, 1943, no salary or compensation should be paid respondent out of any money then or thereafter appropriated except for services as jurors or members of the armed forces, unless they were prior to November 15, 1943, again appointed to jobs by the President with the advice and consent of the Senate. Notwithstanding such Congressional enactment, and the failure of the President to reappoint the respondents, the agencies kept all the respondents at work on their jobs for varying periods after November 15, 1943, but their compensation was discontinued after that date. Respondents brought this action in the Court of Claims for the salaries to which they felt entitled. The American Supreme Court stated that its inquiry was thus confined to whether the action in the light of proper construction of the Act presented a justiciable controversy, and, if so, whether Section 304 is a bill of attainder insofar as the respondents were concerned.

After holding that there was a justiciable view, the American Supreme Court in an opinion by Justice Black categorically affirmed: "We hold that Section 304 falls precisely within the category of Congressional actions which the Constitution barred by providing that 'No Bill of Attainder or ex post facto Law shall be passed.' In *Cummings vs. State of Missouri*, * * * this Court said, 'A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death; the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties.' * * * On the same day the Cummings case was decided, the Court, in *Ex parte Garland*, also held invalid on the same grounds an Act of Congress which required attorneys practicing before this Court to take a similar oath. Neither of these cases has ever been overruled. They stand for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution. Adherence to this principle requires invalidation of Section 304. We do adhere to it." [14]

United States vs. Brown [15] a 1965 decision was the first case to review a conviction under the Labor-Management Reporting and Disclosure Act of 1959, making it a crime for a member of the Communist Party to serve as an officer or, except in clerical or custodial positions, an employee of a labor union. Respondent Brown, a longshoreman on the San Francisco docks, and an open and avowed Communist, for more than a quarter of a century was elected to the Executive Board of Local 10 of the International Longshore-men's and Warehousemen's Union for consecutive one-year terms in 1959, 1960, and 1961. On May 24, 1961, respondent was charged in a one-count indictment returned in a district court of California with serving as a member of an executive board of a labor organization while a member of the Communist Party, in willful violation of the above provision. The question of its validity under the bill of attainder clause was thus properly raised for adjudication. While convicted in the lower court, the Court of Appeals for the Ninth Circuit reversed. It was sustained by the American Supreme Court. As noted in the opinion by Chief Justice Warren, "the wide variation in form, purpose and effect of ante-Constitution bills of attainder indicates that the proper scope of the Bill of Attainder Clause, and its relevance to contemporary problems, must ultimately be sought by attempting to discern the reasons for its inclusion in the Constitution, and the evils it was designed to eliminate. The best available evidence, the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an imple-mentation of the

separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply — trial by legislature." [16] Then after referring to *Cummings*, *Garland*, and *Lovett*, Chief Justice Warren continued: "Under the line of cases just outlined, Sec. 504 of the Labor Management Reporting and Disclosure Act plainly constitutes a bill of attainder. Congress undoubtedly possesses power under the Commerce Clause to enact legislation designed to keep from positions affecting interstate commerce persons who may use such positions to bring about political strikes. In Sec. 504, however, Congress has exceeded the authority granted it by the Constitution. The statute does not set forth a generally applicable rule decreeing that any person who commits certain acts or possesses certain characteristics (acts and characteristics which, in Congress' view, make them likely to initiate political strikes) shall not hold union office, and leave to courts and juries the job of deciding what persons have committed the specified acts or possessed the specified characteristics. Instead, it designates in no uncertain terms the persons who possess the feared characteristics and therefore cannot hold union office without incurring criminal liability — members of the Communist Party." [17]

Even *Communist Party vs. Subversive Activities Control Board*, [18] where the provision of the Subversive Activities Control Act of 1950 requiring the Communist Party of the United States to register was sustained, the opinion of Justice Frankfurter for the Court, speaking for a five-man majority, did indicate adherence to the *Cummings* principle. Had the American Communist Party been outlawed, the outcome certainly would have been different. Thus: "The Act is not a bill of attainder. It attaches not to specified organizations but to described activities in which an organization may or may not engage. The singling out of an individual for legislatively prescribed punishment constitutes an attainder whether the individual is called by name or described in terms of conduct which, because it is past conduct, operates only as a designation of particular persons. * * * The Subversive Activities Control Act is not of that kind. It requires the registration only of organizations which, after the date of the Act, are found to be under the direction, domination, or control of certain foreign powers and to operate primarily to advance certain objectives. This finding must be made after full administrative hearing, subject to judicial review which opens the record for the reviewing court's determination whether the administrative findings as to fact are supported by the preponderance of the evidence. Present activity constitutes an operative element to which the statute attaches legal consequences, not merely a point of reference for the ascertainment of particular persons ineluctably designated by the legislature." [19]

The teaching of the above cases, which I find highly persuasive considering what appeared to be in the minds of the framers of the 1934 Constitutional Convention yields for me the conclusion that the Anti-Subversion Act falls within the ban of the bill of attainder clause. It should be noted that three subsequent cases upholding the *Cummings* and *Garland* doctrine were likewise cited in the opinion of the Court. The interpretation accorded to them by my brethren is, of course, different but I am unable to go along with them especially in the light of the categorical language appearing in *Lovett*. This is not to lose sight of the qualification that for them could deprive such a holding of its explicit character as shown by this excerpt from the opinion of the Court: "Indeed, were the Anti-Subversion Act a bill of attainder it would be totally unnecessary to charge communists in court, as the law alone, without more, would suffice to secure their conviction and punishment. But the fact is that their guilt still has to be judicially established. The Government has yet to prove at the trial that the accused joined the Party knowingly, willfully and by overt acts, and that they joined the Party knowing its subversive character and with specific intent to further its objective, i.e., to overthrow the existing Government by force, deceit, and other illegal means and place it under the control and domination of a foreign power." [20] While not implausible, I find difficulty in yielding acceptance. In *Cummings*, there was a criminal prosecution of the Catholic priest who refused to take the loyalty oath. Again in *Brown*, there was an indictment of the labor leader who, judging by his membership in the Communist Party, did transgress the statutory provision subsequently found offensive to the bill of attainder clause. If the construction I would place on the oft-repeated pronouncement of the American

Supreme Court is correct, then the mere fact that a criminal case would have to be instituted would not save the statute. It does seem clear to me that 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, the taint of invalidity is quite marked. Hence, my inability to concur in the judgment reached as the statute not suffering from any fatal infirmity in view of the Constitutional prohibition against bills of attainder.

3. This brings me to the question of the alleged repugnancy of the Anti-Subversion Act to the intellectual liberty safeguarded by the Constitution in terms of the free speech and free association guarantees.[21] It is to be admitted that at the time of the enactment of Republic Act No. 1700, the threat that Communism, the Russian brand then, did pose was a painful reality for Congressional leaders and the then President. Its shadow fell squarely across the lives of all Subversion then could neither be denied nor disparaged. There was, in the expert opinion of those conversant with such matters, a danger to our national existence of no mean character. Nonetheless, the remedies to ward off such menace must not be repugnant to our Constitution. We are legally precluded from acting in any other way. The apprehension justly felt is no warrant for throwing to the discard fundamental guarantees. Vigilant we had to be, but not at the expense of constitutional ideals.

One of them, certainly highly-prized of the utmost significance, is the right to dissent. One can differ, even object; one can express dissatisfaction with things as they are. There are times when one not only can but must. Such dissent can take the form of the most critical and the most disparaging remarks. They may give offense to those in authority, to those who wield power and influence. Nevertheless, they are entitled to constitutional protection. Insofar as the content of such dissent is concerned, the limits are hardly discernible. It cannot be confined to trivial matters or to such as are devoid of too much significance. It can reach the heart of things. Such dissent may, for those not so adventurous in the realm of ideas, possess a subversive tinge. Even those who oppose a democratic form of government cannot be silenced. This is true especially in centers of learning where scholars competent in their line may, as a result of their studies, assert that a future is bleak for the system of government now favored by Western democracies. There may be doubts entertained by some as to the lawfulness of their exercising this right to dissent to the point of advocacy of such a drastic change. Any citizen may do so without fear that thereby he incurs the risk of a penal sanction. That is merely to affirm the truth of this ringing declaration from Jefferson: "If there be any among us who would wish to dissolve this union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." [22] As was so well put by the philosopher, Sidney Hook: "Without holding the right to the expression of heresy at any time and place to be absolute — for even the right to non-heretical speech cannot be absolute — it still seems wise to tolerate the expression even of Communist, fascist and other heresies, lest in outlawing them we include other kinds of heresies, and deprive ourselves of the opportunity to acquire possible sounder ideas than our own." [23]

The line is to be drawn, however, where the words amount to an incitement to commit the crime of sedition or rebellion. The stage has been reached, to follow the formula-tion of Cardozo, where thought merges into action. Thus is loyalty shown to the freedom of speech or press ordained by the Constitution. It does not bar the expression of views affecting the very life of the state, even if opposed to its fundamental presuppositions. It allows, if it does not require as a matter of fact, that unorthodox ideas be freely ventilated and fully heard. Dissent is not disloyalty.

Such an approach is reinforced by the well-settled constitutional principle "that even though the governmental purposes be legitimate and substantial, they cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. For precision of regulation is the touchstone in an area so closely related to our most precious freedoms." [24] This is so for "a governmental purpose to control or prevent

activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." [25] It is indispensable then that "an overbreadth" in the applicability of the statute be avoided. If such be the case, then the line dividing the valid from the constitutionally infirm has been crossed. That for me is the conclusion to be drawn from the wording of the Anti-Subversion Act.

There is to my mind support for the stand I take in the dissent of Justice Black in the Communist Party case discussed above. What is to be kept in view is that a legislative measure certainly less drastic in its treatment of the admittedly serious communist problem was found in the opinion of this noted jurist offensive to the First Amendment of the American Constitution safeguarding free speech. Thus: "If there is one thing certain about the First Amendment it is that this Amendment was designed to guarantee the freest interchange of ideas about all public matters and that, of course, means the interchange of all ideas, however such ideas may be viewed in other countries and whatever change in the existing structure of government it may be hoped that these ideas will bring about. Now, when this country is trying to spread the high ideals of democracy all over the world – ideals that are revolutionary in many countries – seems to be a particularly inappropriate time to stifle First Amendment freedoms in this country. The same arguments that are used to justify the outlawry of the ideas of democracy in other countries." [26] Further he stated: "I believe with the Framers of the First Amendment that the internal security of a nation like ours does not and cannot be made to depend upon the use of force by Government to make all the beliefs and opinions of the people fit into a common mold on any single subject. Such enforced conformity of thought would tend only to deprive our people of the bold spirit of adventure and progress which has brought this Nation to its present greatness. The creation of public opinion by groups, organizations, societies, clubs, and parties has been and is a necessary part of our democratic society. Such groups, like the Sons of Liberty and the American Corresponding Societies, played a large part in creating sentiment in this country that led the people of the Colonies to want a nation of their own. The Father of the Constitution — James Madison — said, in speaking of the Sedition Act aimed at crushing the Jefferson Party, that had that law been in effect during the period before the Revolution, the United States might well have continued to be 'miserable colonies, groaning under a foreign yoke.' In my judgment, this country's internal security can better be served by depending upon the affection of the people than by attempting to instill them with fear and dread of the power of Government. The Communist Party has never been more than a small group in this country. And its numbers had been dwindling even before the Government began its campaign to destroy the Party by force of law. This was because a vast majority of the American people were against the Party's policies and overwhelmingly rejected its candidates year after year. That is the true American way of securing this Nation against dangerous ideas. Of course that is not the way to protect the Nation against actions of violence and treason. The Founders drew a distinction in our Constitution which we would be wise to follow. They gave the Government the fullest power to prosecute overt actions in violation of valid laws but withheld any power to punish people for nothing more than advocacy of their views." [27]

With the sentiments thus expressed uppermost in my mind and congenial to my way of thinking, I cannot share the conclusion reached by my brethren as to the Anti-Subversion Act successfully meeting the test of validity on free speech and freedom of association grounds.

4. It could be that this approach to the constitutional questions involved arises from an appraisal of the challenged statute which for me is susceptible of an interpretation that it does represent a defeatist attitude on the part of those of us, who are devotees at the shrine of a liberal-democratic state. That certainly could not have been the thought of its framers; nonetheless, such an assumption is not devoid of plausibility for why resort to this extreme measure susceptible as it is to what apparently are not unfounded attacks on constitutional grounds? Is this not to ignore what previously was accepted as an obvious truth, namely that the light of liberalism sends its shafts in many

directions? It can illuminate, and it can win the hearts and minds of men. It is difficult for me to accept the view then that a 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. It is thus, in a realistic sense, a manifestation of the fear of free thought and the will to suppress it. Far better, of course, is the propaganda of the deed. What the communists promise, this government can fulfill. It is up to it then to take remedial measures to alleviate the condition of our countrymen whose lives are in a condition of destitution and misery. It may not be able to change matters radically. At least, it should take earnest steps in that direction. What is important for those at the bottom of the economic pyramid is that they are not denied the opportunity for a better life. If they, or at least their children, cannot even look forward to that, then a constitutional regime is nothing but a mockery and a tragic illusion. Such a response, I am optimistic enough to believe, has the merit of thinning, if not completely eliminating, the embattled ranks and outposts of ignorance, fanaticism and error. That for me would be more in accordance with the basic proposition of our polity. This is not therefore to preach a doctrine of abject surrender to the forces apparently bent on the adoption of a way of life so totally opposed to the deeply felt traditions of our people. This is, for me at least, an affirmation of the vitality of the democratic creed, with an expression of regret that it could not have been more impressively set forth in language worthy of the subject.

It is in the light of the views above expressed that I find myself unable to yield concurrence to the ably-written opinion of Justice Castro for the Court sustaining the validity of the Anti-Subversion Act.

[1] Rep. Act No. 1700 (1957).

[2] According to Art. III, Sec. 1, par. 11: "No ex post facto law or bill of attainder shall be enacted."

[3] According to Art. III, Sec. 1, par. 8: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

[4] According to Art. III, Sec. 1, par. 4: "The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired."

[5] Footnote 2, p. 74 of Opinion of the Court.

[6] 4 Wall. 277 (1867).

[7] 4 Wall. 333 (1867).

[8] Cf. *United States vs. Lovett*, 328 US 303 (1946).

[9] 4 Wall. 277 (1867).

[10] *Ibid*, 323, 325.

[11] 4 Wall. 333 (1867).

[12] *Ibid*, 377-378.

[13] 328 US 303.

[14] *Ibid*, 315-316.

[15] 381 US 437.

[16] Ibid, 442.

[17] Ibid, 449-450.

[18] 367 US 1 (1961).

[19] Ibid, 86-87.

[20] Opinion of the Court, p. 15.

[21] According to Art. III, Sec. 1, par. 6: "The right to form associations or societies for purposes not contrary to law shall not be abridged." Paragraph 8 of this section reads as follows: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

[22] Jefferson's First Inaugural Address, March 4, 1801, in Padover, ed., The Complete Jefferson, 385 (1943).

[23] Hook, Heresy, Yes-Conspiracy, No. 71 (1953).

[24] Gonzalez vs. Commission on Elections, 27 SCRA 835, 871 (1969) citing Shelton vs. Tucker, 364 US 479 (1960) and NAACP vs. Button, 371 US 415 (1963).

[25] NAACP vs. Alabama, 377 US 288 (1964).

[26] Communist Party vs. Subversive Activities Control Board, 367 US 1, 148.

[27] Ibid, 167-168.

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