SUPREME COURT AND THE RULE OF LAW*

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We are pleased to think that the Philippines being a Republican State, ours is indeed "a government of laws and not of men." But we like to think further that this government of laws must forever recognize the supremacy of the Rule of Law.

The Supreme Court, by common consent, is recognized as the last bulwark of democracy, the guardian of our civil liberties, the arbiter of constitutional controversies. As the Highest Tribunal of the land it is ordained by the constitution to interpret the law. It is the indestructible bastion of the rule of law in our country.

But let us not look at the Supreme Court as if it were a paragon of perfection, or that it is a body composed of supermen incapable of committing errors. Let us not worship the members of our Supreme Court as gods with supernatural powers or, better still, as sacred cows who are beyond the reach of human touch and beyond reproach. Rather let us look at our Supreme Court as a body of men with feelings, affected by prejudices, possessed of caprices and susceptible to other frailties of human nature, whose imperfections are often reflected, wittingly or unwittingly, in their judicial pronouncements.

Guided by this realization and at the risk of being misunderstood by some sectors of our society, I have taken it upon myself as a public duty to expose what I consider the abuses of the Supreme Court committed in the name of judicial supremacy. Let me give the assurance, however, that I am not motivated by any personal or ulterior design as I have, in fact, the highest respect for the individual members of the Court as men of integrity, probity and competence. What motivates me, here and now, is a genuine desire to awaken our people from the passive thinking verging on blind submission which has taken the better hold of them and make them adopt a more aggressive trend of thinking conducive to active sovereign participation in public affairs and the molding of a militant and vigilant public opinion. Neither is it my intention to undermine the people's faith in the Supreme Court; rather, I should like to arouse our people, in the name of free speech, to break away from the kind of sub-conscious indoctrination which seeks to perpetuate a seemingly popish image of infallibility in the Supreme Court in matters of law and justice — a myth of invincibility and untouchability certainly obnoxious to the letter and spirit of the Constitution.

Judicial supremacy does not imply and much less mean the subordination of the executive and the legislative to the judiciary. It does not envision a judiciary higher than, and superior to, the other two co-ordinate and co-equal branches of the government in the manner of a hierarchical system. It does not import aristocracy. But rather, it means the power of judicial review, or the authority to declare statutes and other governmental acts invalid when these are repugnant to the Constitution. It is the power to interpret the law and not to reform the law through judicial amendment.

Much has been said of the excesses of the executive and the legislative branches of our government, but strange as it may seem, little or none has been said of the excesses of the Supreme Court and the other courts of the land. Recent events, however, indicate that the Supreme Court has, time and again, perpetrated a veiled assault on purely executive functions, thereby abusing its power of judicial review. It is strange that while in many

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In cases which cropped up because of the proclamation, the Supreme Court justices, for lack of the requisite votes, were not able to rule squarely on the effect of the suspension of the privilege of **habeas corpus** on the right to bail accused persons.

In a long line of cases, the tribunal has likewise imprinted in bold letters the spirit and intent of the organic law. The tribunal has set the pace in the nationalistic movement by upholding the government's move to nationalize not only the retail trade but also the labor in retail establishments. It has zealously protected the right of Filipinos in the acquisition of public agricultural lands and has closed the door to aliens desirous of securing the Filipinos' privilege under the Constitution. Further blaring out the nationalistic tone, the tribunal has parried attempts by alien-opportunists for naturalization.

During the past years, the tribunal has underscored its judicial power as it declared as unconstitutional the redistricting law, a congressional brainwork, which reapportioned the various congressional districts.

Chief Justice Bengzon and his ten learned associates have to slosh through legal perplexities and dilemma many times in transforming into realities the noble and lofty exhortations woven in the Constitution's priceless fabric.

No matter how alert and vigilant is the Supreme Court in safekeeping the Constitution, the noble ideals and revered traditions and institutions enmeshed in this living instrument will be meaningless if the people themselves will not be as active and ever watchful.

The late U.S. Justice Robert H. Jackson forcefully lectured on the role of both the people and the courts in guarding individual liberties: "If an organized society wants the kind of justice that an independent, professional judicial establishment is qualified to administer, our judiciary is certainly a most effective instrument for applying law and justice to individual cases and for cultivating public attitudes which rely upon law and seek justice. But I know of no modern instance in which any judiciary has saved a whole people from the currents of intolerance, passion, usurpation and tyranny which have threatened liberty and free institutions."

Continuing with this thesis, Justice Jackson said: "It is not idle speculation to inquire which comes first, either in time of importance, an independent and enlightened judiciary or a free and tolerant society. Must we first maintain a system of free political government to assure a free judiciary, or can we rely on an aggressive, activist judiciary to guarantee free government? While each undoubtedly is a support for the other, and the two are frequently found together, it is my belief that the attitude of a society and of its organized political forces, rather than its legal machinery, is the controlling force in the character of free institutions."

Justice Jackson, summing up, emphasized: "However well the court and its bar may discharge their tasks, the destiny of this court is inseparably linked to the fate of our democratic system of representative government. Judicial functions, as we evolved them, can be discharged only in that kind of society which is willing to submit its conflict to adjudication and to subordinate power to reason. The future of the court may demand more upon the competence of the executive and legislative branches of government to solve their problems adequately and in time than upon the merit which is its own."

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previous cases, the Supreme Court has consistently assumed a hands-off policy when called upon to decide questions involving legislative acts in deference to the theory of Separation of Powers, the anxiety to poke "its finger on the pie" when it came to executive acts has apparently developed into a "magnificent obsession." The most recent examples of what may be called, for lack of a better term, as judicial exuberance are the cases of Dr Paulino Garcia and Mr. Perfecto Faypon.

We will recall that Dr. Garcia was appointed chairman of the National Science Development Board during the administration of President Garcia and was suspended by President Macapagal in February pending his investigation on charges of dishonesty and electioneering. On May 5, 1962, the 76th day of his suspension, Dr Garcia brought suit with the Supreme Court for his immediate reinstatement invoking Section 35 of the Civil Service Act which provides for the lifting of preventive suspension 60 days after date of suspension pending administrative investigation by the Commissioner of the Civil Service. Under Section 33, those removable by order of the Commissioner of Civil Service are officials and employes of subordinate rank and not presidential appointees. Dr. Garcia, a presidential appointee, was then being investigated not by the Commissioner of Civil Service but by a committee created by the President for that purpose. Preceding Section 35 which was invoked by Dr. Garcia is the provision of Section 34 which empowers the President to suspend any officer appointed by him pending administrative investigation but which does not provide for any time limit of suspension. The only issue then before the Supreme Court was very simple, namely, **whether or not the 60-day limit of suspension was applicable to presidential appointees.**

Unfortunately, the Supreme Court did not decide this sole issue. According to the decision, some members of the Court were of the opinion that the 60-day period was applicable to "a presidential appointee" as accordingly, Section 35 "evinces a legislative policy." "Other justices," however, were of the opinion that "while said period may not apply strictly to cases of presidential appointees facing administrative charges to be decided by the President, the preventive suspension shall nevertheless be limited to a reasonable period." Evidently, it is the view of such other "justices" which prevailed. Here is a positive dictum by "other justices" that the 60-day period of preventive suspension did not apply to presidential appointees and yet, in the same breath, the Supreme Court found the period to be unreasonable at the time that it promulgated its decision on Sept. 13, 1962. I wonder if the Supreme Court would have found the period of suspension unreasonable if it had promptly promulgated its decision in the month of May when the case was submitted to it for decision. By its inaction in deciding the case after the lapse of **four months** from submission for decision, the Supreme Court had in effect created a factual situation by which a ruling of unreasonableness of the presidential suspension has become possible. The four months' delay which the Supreme Court had allowed to lapse without the issuance of a writ of mandatory injunction for reinstatement — which it could have issued in May if it deemed then that the period of suspension was unreasonable — must have lured the executive into a sense of belief and confidence in the validity of the suspension. The delay in deciding had slowly formed the trap for the President. People in a democracy are generally a patient people — but they often wonder why it takes the High Court such a long time to decide.

But apart from this consideration, the more fundamental factor is the abuse by the Supreme Court of its power of judicial review. In the Garcia case, the Supreme Court found it convenient to skirt the sole issue; whether or not the 60-day period provided for in Section 35 of the Civil Service Act applies to presidential appointees. Instead, it delved into the vague realm of **propriety**, — because what is reasonable or unreasonable in the absence of a clear legislative standard borders indeed, on **propriety**. While the Supreme Court had to recognize the authority of the President to suspend a presidential appointee, significantly, nowhere in its lengthy decision did it rule that the period of suspension had became **illegal**. Of course, the Supreme Court could not have called the period of suspension illegal because there was nothing in the law which expressly or impliedly limited the period of suspension of a presidential appointee. In making a finding of unreasonableness of the period of suspension without any legal justification whatsoever to support its conclusion, the Court had manifestly gone out of legal bounds.

In the case of Dr. Garcia, the Supreme Court found the period of seven months of suspension as unreasonableness. In the case of Mr. Faypon, the Supreme Court declared a suspension of 3-1/2 months as unreasonable and ordered reinstatement in a writ of mandatory injunction which, as previously pointed out, could have likewise been done in the case of Dr. Garcia. But by what yardstick did the Supreme Court arrive at its varied conclusion? By what basic value would such fluctuating and equally indefinite pronouncements become justified? Even the driver of a car would know when he is overspeeding because he sees a 60-mile limit on the road. By such variable, is not the Supreme Court attempting to impose under the guise of judicial review the 60-day limit of suspension on presidential appointees? And by what "rule of law," may I ask, can the Supreme Court do this?

According to the decision, there was unanimity of opinion among the members of the Court that the period of suspension of public officers, be they presidential appointees or not, cannot be indefinite. And yet, while they cannot agree on whether or not the 60-day limit of suspension for subordinate officials should apply to presidential appointees as well, the Court has found the period of suspension to be unreasonable. It seems that the only basis for the finding of unreasonableness is predicated on **indefiniteness of suspension.** The decision itself reflects a secret longing for the filling up of an omission left void by the legislature. If the Supreme Court believes that the legislature should have made the period of suspension of presidential appointees definite, why point its accusing finger at the executive. Why blame the President for the failure of the legislature to fix in the law the period of suspension of presidential appointees? The "rule of law" directs the President to execute the law only as his conscience and sound judgment dictate and the same "rule of law" will not countenance any attempt of the Supreme Court to censure in the guise of judicial supremacy, an act of the President done faithfully and pursuant to that law.

The act of the Supreme Court in its unprecedented action in the Garcia and Faypon cases constitutes an encroachment on legislative and executive prerogatives. When the Court imposes a time-limit on the suspension of presidential appointees through a resort to so-called legislative policy where the legislature had provided for no period at all, it clearly transgresses on a purely legislative function. And when the legislature has deemed it proper, by a conspicuous omission of any such time-limit on presidential appointees, to leave the matter to the sound discretion of the President, who under the Constitution has plenary control and supervisions over all executive officials, the Supreme Court in effect trenches upon a purely executive function when it tries to peg the President to a time-limit of suspension by substituting its own opinion in place of executive discretion. It goes without saying that when the Supreme Court encroaches on executive or legislative power, it does violence to the system of checks and balances and offends the Rule of Law which it is supposed to uphold by deed, by precept and example as the highest tribunal of the land.

It is our good fortune that we have a President who has expressly and publicly declared that he would comply with the decisions of the Supreme Court, whatever may be his personal

convictions to the contrary. And yet, it has been written that the origin of government may be traced to a monarch in the forest who, weary of his responsibilities "delegated some of them to followers who eventually became 'courts,' and shared others with a more numerous body of subjects who in due time organized themselves into a 'legislature.' And the indefinite residium, called 'executive power,' he kept for himself" (Corwin, The President).

From then on, the prestige and dignity of the Office of the Presidency developed through the ages into a traditional concept. The President is said to be "the representative of no constituency, but of the whole people." As the "people's choice," he embodies the sovereign authority and symbolizes the nation. In the words of Woodrow Wilson, "His is the **only** national voice in affairs."

It is on this concept of the dignity, prestige, and responsibility of the Office of the Presidency that we must advance the proposition that if the President ever abuses his prerogatives, let him be censured and crucified by the people who have elected him to public office. Let not the members of the Supreme Court, take unto themselves the right and the power to judge the reasonableness or unreasonableness of the acts of their President—because in a democracy this right and power belong exclusively to the sovereign people.

It may be argued that without the Court's interference, the President is liable to abuse his powers. But what power of government is not susceptible to abuse? As the Supreme Court has significantly declared in Angara vs. Electoral Commission, "the possibility of abuse is not an argument against the concession of the power as there is no power that is not susceptible of abuse." The only basic and, mind you, vital difference, besides the system of checks and balances as provided for in the Constitution, is that the abuses committed by the political agencies of the government, President and members of Congress, are passed upon by the sovereign authority, the electorate, while those committed by the Supreme Court are not. The members of the court can go on a spree of abuse in wielding their judicial power and yet continue to remain secure with Olympian equanimity atop their ivory towers until they reach the constitutional retirement age of 70. Is it therefore fair for the Supreme Court to arrogate unto itself an excess of judicial power over the two other branches of government simply because such political agencies do not possess an effective check against the Tribunal's decisions and have no recourse but to enforce them, notwithstanding personal or official belief to the contrary? Is not the better part of judicial prudence and statemanship that in case of doubt, a controversial issue be resolved in favor of the exercise of the power belonging to the other branches of government? In the language of the late Justice Malcolm, **"To doubt is to sustain."**

What I cannot understand is why the Supreme Court can easily find the faults and mistakes of the other branches of government but does not seem to see its own. How many more questions involving life, liberty and property of citizens are awaiting decisions by the Supreme Court? Has anyone ever condemned as unreasonable the long years of delay in deciding cases by the Supreme Court involving as they do more basic private rights than the alleged right to a public office? If the Supreme Court has felt free to condemn as unreasonable the period of 7 months or 3½ months' suspension for presidential appointees through a declaration of legislative policy in the Civil Service Law which limits to 60-day the period of suspension for subordinate officials and employes who are not presidential appointees, may we not likewise feel free to condemn as unreasonable the long years, not merely months, of delay in the decision of cases long pending before the Supreme Court through a similar appeal to legislative policy as embodied in the Judiciary Act of 1948, which limits to 90 days the period for promulgating decisions by the Courts of First Instance and other inferior courts? If the Supreme Court could make the sweeping conclusion that the unreasonable suspension of Paulino Garcia and Faypon was tantamount to a virtual removal from office without cause, may we not likewise conclude that the unreasonable delay in the decision of cases by the Supreme Court, especially those of detained prisoners who may yet be acquitted amounts to a deprivation of life, liberty and property without due process of law?

And yet, paradoxically in our scheme of government, the very Court which is called upon to check the so-called executive and legislative abuses, cannot in turn be checked in the commission of its own. Except for the pardoning power of the President which is available only after final conviction and in criminal cases, there appears to be no effective power that can stop judicial abuses. If, out of sheer respect and recognition of a purely judicial prerogative the executive or the legislative has politely refrained from denouncing as unreasonable the long delay in the decision of cases by the Supreme Court may we not expect from the Court the same token of statesmanship, propriety and courtesy for the co-equal branches of the government borne out of a similar respect and recognition of constitutional prerogatives? At this juncture, may I be allowed to recall the biblical account of how an unruly multitude had chased Mary Magdalene to the wall and when they were about to stone her, Christ intervened and cried, "Let him who is without sin cast the first stone." No one dared to do so.

I dread to see the day when the Supreme Court would virtually run the affairs of government under the guise of judicial review for then the Court will cease to be the ultimate court of law and become a third "political agency," and thereby "break away from these checks and balances of government which were meant, under our system of government, to be **checks of cooperation and not of antagonism or mastery."** (Abueva et al. vs. Wood et al. 45 Phil. 612). To be sure, the Constitution never contemplated nor intended a Supreme Court that would virtually lord it over all. The penumbra of the Supreme Court which Justice Holmes speaks of in describing the powers of government should not cast a shadow which engulfs if not completely obliterates the constitutional sphere assigned to the other branches of the government.

In the ultimate analysis, therefore, the only limit to the Supreme Court's inordinate use of its power may be found in the Court itself. An enlightened sense of self-restraint can alone provide a check on the exercise of the very delicate power of judicial review and enjoin the Court from extending the borders of its competence. It is in this light that I envision, along with that great American jurist, Justice Frankfurter, a Supreme Court whose members are endowed with breadth of vision, with imagination, with capacity for disinterested judgment with power to discover and to suppress their own prejudices. I like to believe that the Supreme Court justices have the capacity to transcend the boundaries of their own individual feelings and to foresee the harmful consequences that the immoderate flow of judicial power may bring.

And so it is that, in the words of the eminent Frankfurter, "the men who are given this ultimate authority over the legislature and the executive, whose vote may determine the well-being of millions and affect the country's future, should be subjected to the most vigorous scrutiny before being given that power. In theory, judges wield the people's power. Through the effective exertion of public opinion, the people should determine to whom that power is entrusted. The country's well-being depends upon a farsighted and statesmanship Court. And the Court's ultimate dependence is upon the confidence of the people."

Indeed, if ours is "a government of laws and not of men" and "the law is what the judges say it is," then it is not perhaps too much to ask that they interpret and apply the law as **men in the government** but under the Rule of Law.