

A Hard Look at the ANTI-RED LAW

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AS MEN WHO claim to live in a free society it is well that we ask ourselves from time to time, how free are we?

If we find we have enough freedom, there would be some sense in believing that we are in a Republic. On the other hand, if we find we are not free this will provide us ground for complaint that may later motivate action for freedom. Knowing our condition would not always help, of course, as when we find ourselves in a strait-jacket. But there is always an advantage in knowing where we really are, so that we will not feed on moonbeams and so

that we can start the struggle for the greater mobility that we need.

A law passed last year invites such an inquiry. Its official designation is "Republic Act No. 1700" and it outlaws the Communist Party of the Philippines.

On the surface, this law raises no problems. It worries no one save the communists and few would be anxious for their mental composure. The great number of our people have not heard of the law; even if they have, it is doubtful whether they would care. There are few who know better but these peo-

ple value the law for a variety of motives and their voices are loud enough to pass for popular sentiment. Public opinion, as a consequence, is said to applaud the law.

Outlawry serves the communists right. For it is obvious that they seek to replace our democracy with a totalitarian government and make us all slaves. This is a change that must not be allowed to happen. Democracy is good — especially for those who get more than enough to eat under it; all other forms of polity are evil. Surprisingly, some of those who say this profess an admiration for Franco but this can be excused because Franco has the appropriate religious views. With the communists, it is different, so we are constantly told.

And so a law is adopted outlawing the Communist Party and declaring its members prospective inmates of the calaboose. Unfair? Of course no. The Republic has both the power and the right to take care that it is not replaced by something worse. At least, it is entitled to maintain and preserve its own existence. Such is authorized by the fundamental laws of nature.

Those who like the law argue thus and it cannot be said that their reasoning is unsound. But it misleads because it leaves out one big question.

How does freedom fare under the Act?

This question is legitimate because individual liberty is among the chief aims of the Republic. At least, that is the fair inference to be gathered from our fundamental law. If our Constitution is to have meaning, it is not to be taken that the sole aim of the government is to preserve itself against threats to its safety; it is equally important that whatever it does, it preserve its republican character.

A Republic, to be true to its nature, should take care that enough freedom remains to make it democratic. It cannot always seek safety in suppression, for suppression carried too far would annihilate freedom.

Our government then has the duty to maintain individual rights as far as it can. This was recognized by the CAFA itself in its warning against subversion "emanating from those who in their sincere desire to fight communism would go so far as to do away with the very freedoms which we are supposed to defend against the communists themselves."

So we are back to Lincoln's dilemma once more. Is our government too strong for the liberties of its people or is it too weak to maintain its own existence? The opposition is between the safety of the State and the liberty of the indivi-

dual. The problem is how to have enough of both.

It is not always true that a sharp anti-thesis obtains between governmental stability and individual freedom. A government that respects the liberties of its citizens is not necessarily weak. In the long run, it is more stable than a tyrannical government because it can count on such popular support as comes with giving its citizens the multitude of opportunities we call freedom. Justice Jackson has shown as much in his decision in a famous flag-salute case.

BUT WHAT HAPPENS when sharp conflict occurs? Naturally, the demand of the State for safety is preferred. It cannot be otherwise. Its existence is a precondition of liberty. Freedom is founded on law and there can be no law without some government. It is idle to talk about constitutional rights unless there is a government not only democratic enough to respect them but also strong enough to enforce them.

But when is the sacrifice of freedom necessary? So that freedom may receive enough protection, necessity should be the sole test. Freedom must not be abridged except when the danger to the government arising from the exercise of freedom is at least clear and

probable. Such is the logic of constitutionalism. Such is the theory of our Constitution which establishes not just a government but a government burdened with the duty to provide a maximum of liberty to its citizens.

Let us now particularise. Has Republic Act No. 1700 clashed with this logic and with this theory? Is the vise on civil liberty tighter than what is clearly needed for the safety of the Republic?

The answer depends on how the courts will rule as to what its provisions mean. The pivotal point is whether this law permits the Communist Party of the Philippines to seek control of the government through legal means. If our courts say it can, there is no quarrel. This law would be consistent with the democratic hypothesis. But if our courts say it cannot, the law thus interpreted immediately clashes with the theory of the Constitution and the clash is serious.

Let us investigate this latter possibility. The thesis of this brief paper is that Republic Act No. 1700 would in such a case have unreasonably abridged political liberty.

The argument may be briefly outlined thus. Political freedom is, in essence, tolerance of anti-democratic creeds and ideas. To be real and effective,

such freedom includes not merely the freedom to think and speak one's mind on public questions but also the freedom to seek political power through lawful means so as to implement belief as to what is good and proper for the country. If our courts should then forbid the Communist Party from taking part in elections even in a lawful manner, there would be a denial of this freedom. It is not sufficient to argue that the Communist Party seeks power so as to change the government from a democratic one to a despotism. No Republic can be true to its nature if it declares illegal the ambition of a group to amend the Constitution through legal means. It would render the amending clause in the Constitution without significance.

Our inquiry will thus center on the implications of the democratic hypothesis. We propose to answer two questions. First, does the democratic hypothesis provide freedom for anti-democrats in their peaceful bid for control of the government? Second, if so, what means are constitutionally open to them?

Answer to the first is made difficult, not because tolerance is not an explicit democratic principle, but because the tolerance of anti-democrats does not fit our natural feelings. It goes against human nature to

allow freedom to ideas which oppose ours, ideas we deeply feel to be mistaken.

NEVERTHELESS, WE provide freedom for these heresies for a number of reasons. We have to allow a man some chances of getting the government to follow a policy of which he is enamoured; for to deny him lawful advocacy is frustrate him badly and thus sow the seeds of revolution. This is in the interest of peace and stability.

A better reason than simply giving him a chance to speak out the mind is that he might have something important to say. Freedom here is given in the interest of truth.

But much better than these two reasons is that the people are entitled to know whatever a man has to say on public questions. There are a hundred opinions as to what is good and proper for the country but perhaps the hundred-and-first might be the best. We cannot then forbid any man his free voice, for the crucible of free discussion may later prove his opinion to be the wiser. Freedom here is in the interest of a wise choice of policy for the government.

But ultimately, faith in the toughness of democracy to survive opposition is the basis of its tolerance of anti-democratic ideas. Republicans are so sure

that very few reasonable men will refuse to share their ideals if given a choice, that radical theories may be allowed free voice and propagation without much danger. There is little reason to fear defeat at the polls by ideas admittedly futile because inferior. It is this faith in its own invincibility, its belief in the irresistibility of its appeal, its confidence in its power to fire the imagination of men and keep their loyalties, which makes democracy willing to give the adherents of totalitarian creeds a chance to be heard.

We go to the second question. What means remain open under the Constitution to proponents of radical views for securing control of the government?

The Constitution sanctions only lawful and peaceful methods of seeking political power and introducing change. There are two. If change in the administration is sought, the way to do it is through the elective process. This means organizing a party, putting up candidates who believe in the platform, convincing the electorate of the wisdom of their ideas and getting enough of the people's votes to win.

If the change is in the structure or purpose of the government, the way to it is by amendment as provided for in the

Constitution. This means getting the Congress to consider amendments or to call a convention for that purpose, securing the passage of proposals to amend through either of these bodies and convincing the electorate to ratify the proposed amendments. These two methods of change exclude all others.

VIOLENCE THEN AS A means of reform is frowned upon. The theory of the Constitution is clear. Where the battlefield is the mind of men, democracy as an idea is given a better than even chance of winning. Its victory is assured where appeal to reason through free discussion is the only instrument in political struggle. This is part of the democratic faith.

But where a rival creed like communism appeals no longer to reason, no more to the mind of citizens, but to brute force and the power of arms, democracy loses its advantage. It may win or fall not on its merits as free reasonable men would see them, but through the accidents of war. It then uses the army to defeat radical groups which resort to violence and similar techniques; and for this it cannot be blamed because the competing creed by appealing to arms forfeits the right to be rationally considered. You cannot answer with

mere words and still expect to win against the advocate who uses bullets. When the Communist Party of the Philippines then used the Huks in its attempt to overthrow the Republic, the government committed no constitutional breach in meeting fire with fire. It was not obliged to become a victim by using reason when its enemies were using force, by using only weapons of debate as against weapons of steel.

Our Constitution then allows change but it must be peaceful change and according to procedures provided for. It does not dogmatise its perfection and instead grants freedom to those who think it can be improved. It thus allows the communists, among other radicals, the freedom to propagate their ideas through free discussion, the freedom to secure political power through elections and the freedom to establish a communist state under the Constitution by appropriate amendment of its provisions. This is not fool-hardiness. It grants freedom because it is convinced of the futility of the attempts of such creeds to gain power through peaceful means.

But what does the law say? Section 2 declares as illegal and outlawed the Communist Party of the Philippines and any other organization having the same purposes, after finding that the

former "is 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 a foreign power."

No mention, it may be noted, is made as to the means, the technique, the method, by which the anticipated capture of the government would be attempted. The preamble of the Act makes a finding of fact and states that the Communist Party seeks its goal "by force, violence, deceit, subversion and other illegal means," but the law itself makes no distinction between constitutional and improper ways of seeking power. This would enable our courts to deny the Communist Party the right to work for the control of the government even through legal or parliamentary means. The communists will be prevented, whatever means they use, from legitimately aspiring for political power.

Such construction would negate political liberty. It would present a new version of freedom. It offends the democratic hypothesis because it says in effect that the democrats have no right to work through lawful process for the changes they want; that unpopular ideas are to be denied the chance to get

embodied in the Constitution through amendment; that only the friends of freedom are free to secure power. It translates the principle of tolerance into intolerance of minority ideas. Its effect on the amending clause in the Constitution is especially hard. It is restricted to mean that changes can legally be proposed only when such are not serious. The Constitution is closed to amendments which would alter its republican character.

If freedom here is still to have meaning, this interpretation must be avoided. The Communist Party should be accorded the right to seek power as long as the means are lawful. I am not unmindful of the risk. I do not underestimate the danger which communism poses to our democratic institutions. But if we are to remain a democracy, we cannot behave as totalitarians do. We have to accord freedom "not for the thought that agrees with us but freedom for the thought that we hate."

I T SEEMS to me we have not much to fear. If violence is resorted to, the army may be utilized. If preaching of violence as the way to power continues, we can penalize them for conspiracy to rebel. If they use infiltration and deceit and other illegal means, we can give

full publicity to such. We can keep a strict watch on their activities through various agencies like the N.B.I., the M.I.S. and the N.I.C.A. We can even forbid the appointment of known communists to governmental positions. As long as they and other radicals use illegal means, the full terrors of the law should be brought to bear upon them. This is not only understandable, it is laudable; it is consistent with the democratic hypothesis.

It should be otherwise when their way of seeking power is legal. It matters not that their attachment to the constitutional process is not sincere, that they resort to it because it is the only feasible means under the circumstances. What is important is that the lawful way prevails. Freedom in such a case should be accorded them. They should be permitted to seek through debate and the ballot in the same open manner as do the Nacionalista and Liberal parties. They should be tolerated if our constitutional craftsmanship is not to go away.

Outlawing the Communist Party even when it takes legal action has been defended as consistent with the requirements of freedom. What is made illegal is the Communist Party and not communism, the instrument for power and not the ideology. It is then claimed

that tolerance is observed. Though a communist is forbidden to act, he is free to believe.

This distinction is not convincing. Freedom would not be real. For ideas are not entertained in a vacuum. They are instruments of action. They are held as imagined possibilities of what can be realized in the world of fact. They are as futile as dreams if not allowed a program of political action—legal, if you will, but action.

If our Constitution grants only the right to believe it would give only the same quantum of freedom which fascistic societies give, and no more. What is bestowed as liberty of thought is a farce. Whether it likes what is conceived or not, law cannot control thought and therefore has to allow it since it cannot effectively forbid. Our law thus conceived would say, in the manner of Stalin and Hitler: You can believe in communism or syndicalism or fascism but you cannot express your ideas through a party, you cannot work for a change in the political system, you cannot be allowed to persuade people to vote for your program of government. Your mind is free but this is all. The government cannot reach into your brain and control your thought; but it can restrict what you do.

This seems to me strangling freedom in the effort to pre-

serve freedom. So evil a result can be avoided if we do not hearken too much to our fears. Democracy has its toughness and its appeal. We need not fear that democracy will be defeated in the agoras of opinion. If communism is a sham, why do we have to be afraid? We have enough safeguards against subversion through violence and other illegal means. Against communism's insidious propaganda, we have the weapons of freedom. A thorough airing in the halls of public discussion would make short work of its claims. Exposure is our remedy, for repression would lend to it the color of truth when there is none.

FEAR IS entertained that freedom could end in disaster for democracy. I do not share this pessimism. I do know that unless we grant enough freedom to the radicals in our midst, democracy as we know it would disappear. My bet then is still on freedom. We can both be free and secure. For freedom for the communists does not mean their victory. I doubt whether our people would by their ideological wares. I doubt whether they could steal the allegiance of our people to our democratic traditions. As we have said, democracy has also its appeal and in the clash of opinions, we need

have no fear but that it would appear more palatable.

Freedom, of course, involves a gamble. The attachment of our people to democratic ideals may be much less than I suppose. My faith might be misplaced. Nevertheless, I would insist on their fullest liberty. Our Constitution makes our people king. They are free, I think, to vote communism into its provisions. It would be a

most unhappy turn of events were that to hapen, but it would be lawful. Our Constitution not only declares our people sovereign, it provides for them the freedom to experiment. The only significance of the amending clause is that the sovereign people have the power and the right to change their minds through the ballots as to what form of government shall most likely effect their safety and their happiness.

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Elaboration on Dinner

Does the Asiatic anteater capture his ants with his tongue?

Not a first. When the Asiatic anteater finds a swarm of ants, he plumps himself down on them, opens his scales and gives the ants a chance to crawl under them. Then he snaps his scales shut and shuffles off and into the nearest stream. There he opens the plates and allows the ants to rise on top of the water. Then while they float about on the surface, he licks them up with his tongue.

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