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THE SCOPE OF DUE PROCESS IN PHILIPPINE LAW†

Daniel A. Montilla*

I. INTRODUCTION

THE phrase "due process of law" has been quoted and requoted a countless number of times in hundreds of courtrooms in the Philippines today, as well as in the recent past, since the turn of the century. It has been repeated and re-echoed in the halls of legislative assemblies, and discussed and hotly debated in scores of classrooms where law and political science are the subject matter. It has become a kind of aphorism in many court decisions, and made an indispensable part of any treatise on constitutional law and government. However, for all these voluminous materials on due process, there has not been, so far as the writer is aware, any specific separate treatment of its origin and development in Philippine law where its true meaning set in Philippine conditions has been clearly and rightly understood.

The present work, therefore, is an investigation into the facts of how this constitutional clause originated in the jurisprudence of the Islands and how it was incorporated into the political and social life of the country. But the work concerns more than this. In fact, it concerns chiefly the role of the clause as made applicable to the different branches of legal and political structure of the Philippines. Hence, the main theme evolves into an appraisal or examination of some of its most important features.

This clause is the outgrowth and application of that great United States constitutional provision of the same name. The Philippine provision is a substantial reproduction of the United States "due process of law," and since this is so it behooves the writer to dwell on some of the leading principles necessarily implied in the clause as handed down in court decisions and written in legal commentaries in the United States. These are the principles underlying the great constitutional safeguards of individual lib-

† The author wishes to acknowledge the collaboration of Professor Federico B. Moreno in the preparation of this article which appears in two parts. The second part will appear in the March 1956 issue.

* Professor of Government, Ateneo de Manila. LL.B., University of Santo Tomas, 1947; M.A. in Public Law, Columbia, 1953.

erties, which, after all, formed the basis and bulwark of democracy as it exists today in the United States. In other words, the substantive and procedural parts of a portion of the Bill of Rights will come directly in point for discussion.

The notion in theory and practice of the role of due process in the political and social life of the Philippines, particularly in the field of jurisprudence, is relatively recent. This is due to the fact that it was only at the end of the Spanish-American War that the Philippines became acquainted with this Anglo-American legal maxim, for her form of government under Spain for almost 400 years was monarchical, based solely on Latin-European legal principles and system of law where the essence and form of due process of law, in the sense the Anglo-Saxons understand it, were totally absent. This statement, however, must be qualified by the fact that for brief periods of time the Spanish Constitution was in force in the Islands. And whether a smattering of due process was actually present or not will be taken up later.

Although almost a faithful copy of the United States clause, due process of law, as it came to be practiced and known in the Philippines, had to be acclimated to a new environment, to a different mode of living, to a varied form of temperament and to a different set of traditions and customs, all quite distinct from the political, economic and social conditions found in continental United States. It has nevertheless taken root in the Philippines. Though the clause suffered a few changes and not all the rights connected with it were introduced into the Islands, by and large the substance, interpretation and its application remained the same as practiced in the United States.

This, then, briefly is the object of the present study and the framework upon which it is based. To follow, however, all the sources and implications of due process, even in the Philippines alone, would entail a number of volumes. And this cannot be done within the time and space allowed for this essay. The writer, therefore, fully conscious of the fact that the subject matter of due process of law is so broad and comprehensive, and, according to the opinion expressed in *Gillespie v. People*,¹ may rightly "embrace all our liberties, personal, civil and political," has limited the discussion to certain aspects of the clause, particularly the part it played in proceedings such as civil, criminal, administrative and other phases of the Philippine Government.

II. TERMS DEFINED

Before entering into a discussion, it is sound policy to define the terms embraced in the subject matter. Especially is this true when the terms are not concise, are controversial and often subjected to several definitions

¹ 188 Ill. 176, 52 L.R.A. 283 (1900).

and interpretations. The words within the confines of the due process clause of the Philippine Constitution are of such a nature. Hence in order to grasp the meaning and have an idea at the first instance of the whole context of this paper, it is imperative to begin with the accepted meaning of the contents included in the clause.

1. Meaning of terms

The present Constitution of the Philippines under Article 3, the Bill of Rights, reads:

No person shall be deprived of life, liberty or property without due process of law. (Sec. 1)

No person shall be held to answer for a criminal offense without due process of law. (Sec. 15)

a) *Person* is one according to the rank he holds in society, with all the rights to which the place he holds entitles him, and the duties which it imposes.² But persons, legally speaking, are of two kinds, natural and artificial. Does the constitutional guaranty refer only to natural persons? In one case³ it was held that corporations which are artificial persons and which are legally existing in the Philippines are "persons" within the ambit of the clause, in so far as their property is affected. The term includes entities which have no physical existence such as corporations and associations.⁴

Under the Philippine law, "person" in the juridical sense is defined as any being, physical or moral, real or legal, which is susceptible of rights and obligations, or of being the subject of legal relations.⁵ The term, however, is more extensive than man or human being, for Falcon defines "persons" as man and all associations formed by man.⁶

The guaranty of due process of law is applicable to every person found within the territorial limits of the state without distinction as to race, color or nationality.⁷ This means, therefore, that even aliens and transients come within the group to be protected. According to Professor Burgess⁸ the term "person" is the widest possible term of private law for designating parties who may be affected by any governmental agent or official.

b) *Life* needs no explanation for its meaning is well understood even to the layman. It simply refers, under the guaranty, to the right of the individual to his body in its completeness and without dismemberment; also

² *People v. R. Co.*, 134 N.Y. 506, 31 N.E. 837 (1892).

³ *Smith Bell & Co. v. Natividad*, 40 Phil. 136 (1919).

⁴ 3 BOUVIER'S LAW DICTIONARY 2574 (8th ed. 1914).

⁵ 2 SANCHEZ ROMAN, DERECHO CIVIL ESPAÑOL 110 (1911 ed.).

⁶ 1 FALCON, CODIGO CIVIL ESPAÑOL 103.

⁷ *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

⁸ 1 BURGESS, POLITICAL SCIENCE AND CONSTITUTIONAL LAW 211 (1902 ed.).

to the use of the God-given faculties which make life enjoyable.⁹ "Life" together with liberty, continues Professor Burgess, refers to physical freedom from violence and restraint, inflicted or imposed by government or the agents or officials thereof. How about violence or restraint imposed by private persons? Under the Philippine Constitution no distinction is made as to the state and national prohibitions as obtaining in the United States Federal Constitution under the Fifth and Fourteenth Amendments. The mandate, therefore, should refer to all, for it reads: "No person shall be deprived. . ." which means everybody, including private persons.

c) *Liberty*, the exercise of which nations and individuals for ages past down to the present century have struggled with varying degrees of success to gain, has many flexible but misunderstood definitions. The term as used by the clause, however, means the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying these purposes to a successful conclusion.¹⁰

The principal elements of liberty as defined by the Philippine Supreme Court in this case are the right to contract, the right to choose one's employment, the right to labor and the right to locomotion. Thus the same court in a later case,¹¹ applying this definition, held that the right to contract about one's own affairs is a part of the liberty of the individuals of the state under the constitution; assuming, of course, that the contracts are legal and not against public policy or morals. Included within the right to contract the Court said, there exists the right to contract for personal services or employment, by which labor or other services are exchanged for money or other forms of property.

The liberty protected by the constitutional provision, even within the limits of the principal elements mentioned above, does not contemplate unrestricted freedom to do exactly as one pleases. If such be the case, that is, if everybody merely obeys the dictates of his will, law and order will certainly disappear from the face of the earth. Happily, authorities are numerous to indicate that liberty is freedom regulated by law. Liberty, rightly understood, must be exercised by one consistent with the rights of others. And if this is not done, the law steps in to restrain or regulate its exercise in order to promote the general welfare and common good.

Mr. Justice Harlan, explaining the real meaning of liberty under the United States Constitution, said it does not mean "an absolute right in each person to be, at all circumstances, wholly freed from restraint. There are manifold restraints which every person is necessarily subject to for the com-

⁹ Field v. Illinois, 94 U.S. 113 (1876).

¹⁰ Rubi v. Provincial Board, 39 Phil. 660 (1919).

¹¹ People v. Pomar, 46 Phil. 440 (1924).

mon good. On any other basis, organized society could not exist with safety to its members. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others."¹² At all times, liberty, he continues, is always regulated, and the individuals are ever subordinated to the common good. Furthermore, he declares that:

...In every well-ordered society, charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty may be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.

d) *Property* is commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species or valuable right and interest, and includes easements, franchises, and incorporeal hereditaments.¹³ Under Philippine law, property means all things which are or may be susceptible of appropriation.¹⁴ These two definitions of property, however, are general, and recourse must be made to several cases to understand the meaning of the clause.

In *Holden v. Hardy*,¹⁵ it was held that the right of property protected by the due process clause is not merely the right to own and hold property but also to use property for any lawful purpose and to acquire property by any lawful means. Consequently, even the lands of the so-called uncivilized or backward tribes of the Philippines constituted property and thereby were entitled to be safeguarded by the constitutional guaranty.¹⁶ Another species of property which may not be taken away except by due process is a perfected mining claim which may be sold, conveyed and transmitted by will.¹⁷

Not until recently¹⁸ was the right to labor accorded a place among the several constitutional rights protected by the organic law. Such a right was considered to be property within the meaning of the constitutional guarantee of due process, which also embraced, within its scope, the right to earn the daily bread.¹⁹

¹² Jacobson v. Massachusetts, 197 U.S. 11 (1905).

¹³ Samet v. Farmers' & Merchants' Nat'l. Bank, 247 F. 669, 671.

¹⁴ FISHER, CIVIL CODE OF SPAIN 133 (5th ed. 1947).

¹⁵ 169 U.S. 366 (1898).

¹⁶ Cariño v. Insular Gov't., 7 Phil. 132 (1906), *rev'd*, Cariño v. Insular Gov't., 212 U.S. 449 (1909).

¹⁷ McDaniel v. Apacible, 42 Phil. 749 (1922).

¹⁸ Philippine Movie Pictures Workers' Ass'n. v. Premiere Productions Inc., 50 O.G. 1096 (1953); Philippine Education Co. v. CIR, G.R. No. L-7156, May 31, 1955. The latter case held that an employer's right to select his employees and to decide when to engage them "has its limitations after the relation of labor and capital has been established" and that "once this relationship is established, labor has some rights to protect."

¹⁹ National Labor Union v. CIR, 68 Phil. 732 (1939).

Again, as in liberty, the right to property is not an absolute right, but limited and can be regulated in the public interest. Such proprietary right as one may have over a thing must yield, in proper cases, to the power of eminent domain, taxation and even to the police power of the State. Generally, in all these cases, however, certain recognized processes of law must be had before any deprivation is undertaken. Thus it was held that regulation of common carriers, though valid because they are issued to promote public interest, "must not have the effect of depriving an owner of his property without due process of law, nor of confiscating or appropriating private property without just compensation, nor of limiting or proscribing irrevocably vested rights or privileges lawfully acquired under a charter or franchise."²⁰

Private property may not only be regulated but also confiscated. In one case²¹ the court, affirming the verdict of conviction, said: "a person guilty of an offense, under the Internal Revenue Law is liable to have confiscated not only the articles which he uses in violating the law but also the factory, its machinery and contents and the ground upon which the building stands."

Numerous authorities could be cited that hold that property used in the commission of an offense or property acquired by the accused as a result of a felony could be confiscated and the taking by the government itself would constitute "due process of law." In civil cases where the statute authorities allow seizure of properties belonging to the government found in the possession of private individuals, the Court held that the act of seizure constituted due process.²² In other words, the procedure which the government agents followed in conformity with the provisions of the statute — which is no other than the single act of confiscation — is due process law.

e) "Due process of law" is a term²³ the meaning of which is as varied

²⁰ De Villata v. Stanley, 32 Phil. 541 (1915).

²¹ U.S. v. Surla, 20 Phil. 163 (1911).

²² Tan Te v. Bell, 27 Phil. 354 (1914).

²³ Courts do not hesitate to define *due process of law* especially in its procedural aspect, as done in the recent case of Halili v. Public Service Comm'n., 49 O.G. 1827 (1953):

"In a general sense it means the right to be heard before some tribunal having jurisdiction to determine the question in dispute. (Albin vs. Consolidated School District No. 14 of Richardson County, 184 NW 414, 106 Neb. 719, cited in 16 C.J.S., 1143, footnote.)

"By 'due process law' is meant orderly proceeding adopted to the nature of the case, before a tribunal having jurisdiction, which proceeds upon notice, with an opportunity to be heard, with full power to grant relief. (Footnote, 16 C.J.S., 1144.)

"Some legal procedure in which the person proceeded against, if he is to be concluded thereby, shall have an opportunity to defend himself. (Doyle, Petitioner, 16 R.L., 537, 538, 21 Am. Jur., 759, 5 L.R.A., 309, cited in 12 C.J., 1193.)

"A course of proceeding according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. (12 C.J., 1191-92.)"

as it is elusive, for leading commentators and jurists on the matter each have their own idea of what it should embrace and what connotation it should have. Daniel Webster, in the course of his argument in the famous Dartmouth College Case²⁴ before the United States Supreme Court, defines the clause — a definition which has been quoted by many courts of justice, and students of Anglo-American constitutional law as the most clearly intended — "the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

In the case of *United States vs. Ling Su Fan*,²⁵ affirmed on appeal to the United States Supreme Court,²⁶ the Philippine Supreme Court defined the elements of due process of law as:

First, there shall be a law prescribed in harmony with the general powers of the legislative department of the government; second, that this law shall be reasonable in its operation; third, that it is enforceable according to the regular methods of procedure prescribed; and, fourth, that it shall be applicable alike to all citizens of the state, or to all of a class.

Almost akin to this definition, the same Court in the later case of *Banco Español-Filipino v. Palanca*,²⁷ said that due process must imply the existence of a court or tribunal clothed with power to hear and determine the matter before it, that jurisdiction shall be lawfully acquired, that the defendant shall have an opportunity to be heard, and that judgment shall be rendered upon lawful hearing. As we shall see later, this definition applies more aptly and properly to purely judicial proceedings. However, it has been held that to constitute due process, a judicial procedure, as the above definition implies, need not always be conducted.

The United States Supreme Court in a leading case²⁸ laid down the ruling which has been followed in the Philippines in many cases²⁹ that though due process of law generally implies and includes "actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, yet, this is not universally true." The fact of the matter is that there are many cases in Philippine legal jurisprudence which recognize the principle that even without judicial proceedings the

²⁴ 17 U.S. (4 Wheat.) 629 (1819).

²⁵ 10 Phil. 104 (1908).

²⁶ 218 U.S. 302 (1910).

²⁷ 37 Phil. 921 (1918).

²⁸ *Murray v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 372 (1856).

²⁹ Some of them are: *U.S. v. Gomez Jesus*, 31 Phil. 218 (1915); *Tan Te v. Bell*, 27 Phil. 354 (1914); *Forbes v. Chuoco*, 16 Phil. 534 (1910).

requirements of due process have been deemed met.³⁰

In the *Forbes v. Chuoco* case,³¹ the Court defines due process as "the exercise of the powers of the government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." This is the same definition given by Judge Cooley.³² However, the Court in the same case admits that the meaning of due process is not fixed and inflexible, for it depends "on the particular circumstances and varies with the subject matter and the necessities of the situation."

Judge Story in his noted treatise on constitutional law, simply defines due process as "the law in its regular course of administration, through the courts of justice." And in criminal proceedings it has been held that due process does not have any iron-clad meaning and does not necessarily mean a particular procedure. In conformity with this holding, a procedure which gives an adequate and efficient method of protecting the rights of the accused, as well as executing the criminal law by judicial proceedings which give opportunity to be heard by competent tribunals before judgment can be pronounced is due process of law. Or simply, as held in one case,³³ that procedure established by law which fully protects life, liberty and property of the citizens in the State is due process.

However, according to Professor Sinco,³⁴ it is not due process "when the methods followed are whimsical or repugnant to the sense of justice of the community, even though embodied in a legislative enactment." According to Justice Johnson,³⁵ not only every act legislative in form is not due process, but enforcing its edicts arbitrarily, to the injury of the persons and property of the citizens cannot even be classed as law.

III. HISTORICAL BACKGROUND

1. *Due Process in American Law*

"The law of the land" which is synonymous with the concept of due process was expressed for the first time in England in the famous document,

³⁰ Some illustrative examples of due process without judicial ceremony whatsoever are the seizure of army effects in the possession of civilians, which seizure is authorized by statute, *Tan Te v. Bell*, 27 Phil. 354 (1914); the revocation of a doctor's certificate to practice medicine upon conviction of an offense involving immoral conduct, *U.S. v. Gomez Jesus*, 31 Phil. 218 (1915); the collection of internal revenue taxes from a property owner and the non-availability of injunction to restrain the collection, *Sarasola v. Trinidad*, 40 Phil. 252 (1919); the summary deportation of an alien for the domestic tranquility, *Forbes v. Chuoco*, 16 Phil. 534 (1910); and the refusal of immigration authorities after due investigation to admit an alien to enter Philippine territory, *Tan v. Collector of Customs*, 27 Phil. 521 (1914).

³¹ 16 Phil. 534 (1910).

³² COOLEY, CONSTITUTIONAL LIMITATIONS 434 (6th ed. 1903).

³³ *U.S. v. Ocampo*, 18 Phil. 1 (1910).

³⁴ SINCO, PHILIPPINE POLITICAL LAW 455 (2d ed. 1947).

³⁵ *Lopez v. Director of Lands*, 47 Phil. 23 (1924).

the Magna Charta. When it was transplanted to America, due process, from the time of its early development in its new environment, had usually been invoked merely as a protection of rights of a procedural nature, and generally accepted as such. It was used mainly as a weapon against any governmental or judicial procedure which was believed arbitrary and violative of constitutional rights.

In 1856, the United States Supreme Court, reflecting the prevailing opinion in the case of *Murray's Lessee v. Hoboken Land and Improvement Co.* so construed it.³⁶ But this attitude began to change. It was not until about the last quarter of the 19th century, however, that the Supreme Court began to apply the clause in defense of substantive rights, although the theory as a safeguard of substantial rights had already appeared as early as 1817.³⁷

At this time, the states were fast expanding their commerce as well as their industries. Labor was demanding more protection in the way of higher wages, better working conditions and shorter hours of work. There was need of restraint against untrammelled state action in these spheres. But it was not only the states whose powers were checked, but federal encroachments on personal rights as well. Hence the Fifth and Fourteenth Amendments were interpreted and more rigorously applied in such a manner that both state and federal governments were restrained in their actions against curtailment of civil liberties. Thus the Court, speaking through Justice Miller, held that the due process clause was a substantial check on the power of state legislation.³⁸ It was likewise held that due process can be effectively availed of as a guaranty against violation of substantive rights.³⁹

For about half a century, the idea of due process as a substantive safeguard stood. But by 1925, the clause underwent an expansion in the field of civil liberties. There was particularly a striking development of the clause as a guaranty of freedom of speech, press, assembly, of contract to labor and of religion under the First Amendment. These rights were so construed and made applicable in order to give meaning to the concept of "liberty" found in the Fourteenth Amendment.

By 1930, however, due process experienced a great shrinkage as a substantive restraint, not only in social legislation but also in economic regulation, particularly in taxation, rate-making and in the fields of regulatory action generally.

But the expansion that began in 1925 went on pretty much unchecked, i.e., as to freedom of speech, press, assembly and religion; the use of due

³⁶ See note 28 *supra*.

³⁷ *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 629 (1919).

³⁸ *Davidson v. New Orleans*, 96 U.S. 97 (1877).

³⁹ *Barbier v. Connolly*, 113 U.S. 27 (1884); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Santa Clara v. Southern Pac. Ry. Co.*, 118 U.S. 394 (1886).

process as a restraint on the power of states to regulate economic matters was curtailed after the early thirties.

Thus the Court⁴⁰ upheld the state statute providing for a minimum wage regulation for women workers. The statute was attacked as constituting a deprivation of freedom of contract, allegedly included in the due process clause of the Fourteenth Amendment. The Court, however, held that in the interest of public welfare, liberty to contract is subject to the restraints of the police power, "and regulation which is reasonable in relation to its subject and adopted in the interests of the community is due process." Along the same line of reasoning, the Court, in a prior case,⁴¹ sustained a state statute which regulated and fixed the prices of milk.

But despite the expansion of substantive due process in the field of civil liberties while confined generally to procedural matters, there has neither been an expansion nor contraction of criminal due process in terms of all the guarantees found from the Second to the Eighth Amendments. The United States Supreme Court has consistently declined to define what criminal due process is in terms of the above guarantees, thus leaving the application of the clause flexible in this phase.

As a result of this, the states have been allowed a lot of leeway to provide for their own conception what right to counsel, for instance, or search without warrant would consist of, or any of the traditional safeguards in criminal cases. In other words, procedural due process has been more and more availed of in order to provide greater protection to persons accused of crime. But in administrative cases, the courts have been very strict in requiring the accepted rules of administrative due process to be followed, such as hearing, notice and substantial evidence upon the record as a whole.

In recapitulation, it can be said that, judging from what has been decided, the present frame of mind of the Supreme Court has been a return to the old notion of due process as a procedural guaranty and an implied recognition of the weakening of its substantial force. This, of course, takes into account the exceptions in civil liberties and the standards of judicial procedure in criminal cases. This has been the position assumed by the Court since 1937. But whether it would revert to its attitude in the 19th century and the first quarter of the 20th century, only the future will tell.

2. Due Process During the Spanish Regime

Spanish constitutional history is generally regarded as having begun in 1808 (as distinguished from the Philippines), and ever since that date, Spain has had liberal constitutions which contained a Bill of Rights, similar, in content and form, to the usual provisions of English and American Bill of Rights. The Bill of Rights and the principles of due process, however,

⁴⁰ West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937).

⁴¹ Nebbia v. New York, 291 U.S. 502 (1934).

are scattered in the Spanish constitution, under title I particularly and the provisions of the law of civil procedure, otherwise known as Ley de Enjuiciamiento Civil.

The years 1810-1813, 1820-1823 and 1823-1837 are memorable in the annals of Philippine constitutional history, or what amounted to a crude beginning, for during those short periods of time the Spanish constitution was extended to the Islands. But in addition to the Spanish constitution, there were the usual codes — civil and criminal — and laws of Spain made applicable to the Archipelago which embodied many fundamental principles intended for the safeguard of civil and personal rights. These codes and laws were enforced all the time Spanish sovereignty was present.

That the latter statement is true is corroborated by Mr. Justice Malcolm who says that there are "many provisions declaratory or protective of personal rights, to be found scattered through the Spanish codes in force in the Philippines, corresponding in effect to the ideals of American constitutional law."⁴² However, in so far as this claim refers to any exercise of due process or the extension of the Bill of Rights to the Islands during the Spanish time, the same is contradicted and rejected by Mr. Jose C. Abreu who, writing on the merging of the American common law and the Spanish Roman civil law in the Island, asserts that "the most superficial comparison of the old with the recent laws shows that personal rights have been strengthened with more effective guaranties, the benefits of which had never before been enjoyed."⁴³

This argument is further reinforced by the words of President McKinley's Instruction to the Second Philippine Commission, April 8, 1900, implying clearly its denial:

. . . . the people of Islands should be made plainly to understand, that there are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us

We have also the words of Mr. Justice Day who, referring to the Bill of Rights embodied in the Instructions of the President, said: "These principles were not taken from the Spanish law; they were carefully collated from our Constitution, and embody, almost verbatim, safeguards of that instrument for the protection of life and property."⁴⁴

In the light of the above assertions it can be safely concluded that although Spanish laws, containing guaranties against arbitrary curtailment of individual rights, were in force together with the extension of the Spanish

⁴² MALCOLM, THE CONSTITUTIONAL LAW OF THE PHILIPPINE ISLANDS 320.

⁴³ Abreu, *The Blending of Anglo-American Common Law with the Spanish Civil Law of the Philippine Islands*, 3 PHIL. L. REV. 290 (1914).

⁴⁴ Kepner v. U.S., 195 U.S. 100 (1904).

constitution for brief periods, the principles of due process of law never found effective expression in the Philippines in the mode and manner the Anglo-Americans use them.

3. *The Sources of the Philippine Provisions*

In 1897, in the course of the rebellion against Spanish rule, the leaders of the movement felt that in the event they were successful in establishing an independent government, a constitution was an imperative necessity, not only to embody the form of government they professed to establish, incorporate the rights and ideals for which they were fighting, and serve as a repository of final authority for their actions in the formulations of a government responsive to the needs and mandates of the people, but also to demonstrate to the world that they were capable of governing themselves through a constitutional and republican form of government.

They named this instrument the Constitution of Biac-Na-Bato, a document similar in form and substance to the Constitution of Spain and South American countries whose organic laws they were quite familiar with. It was, however, specifically patterned after the revolutionary constitution of Cuba. The only traces of due process of law, both in civil and criminal cases, and in the substantive and procedural senses, are found in Articles 24 and 25, which provide:

... No person, whatever may be his nationality, shall be imprisoned or held except by virtue of an order issued by a competent court, provided that this shall not apply to crimes which concern the Revolution, the government or the Army.

Neither can any individual be deprived of his property or his domicile, except by virtue of judgment passed by a court of competent authority.⁴⁵

This constitution, however, did not last long enough to have its provisions applied and its influence felt, for it was meant, at best, merely to serve as a provisional one. So the revolutionary government, in order to meet the needs of the time, promulgated through its Congress another instrument which was approved by the President in 1899. Because the seat of the Revolutionary Congress was at Malolos, and it was there that the Constitution was drafted, the instrument passed into Philippine history as the Malolos Constitution. Its life lasted for three years, or until 1902, when the last vestige of insurrection against the United States died down.

This fundamental law which is basically Spanish and South-American in form and substance, and whose general outline was borrowed, according to Mr. Justice Malcolm,⁴⁶ from Costa Rica, Chile and Spain, includes a Bill of Rights which provides for many of the principles of American due process of law. Specifically, substantive and procedural due process

⁴⁵ KALAW, DEVELOPMENT OF PHILIPPINE POLITICS, Appendix (1926 ed.).

⁴⁶ MALCOLM, *op. cit.* *supra* note 42 at 115.

are found in the Fourth Title under the heading of National and Individual Rights. The following pertinent provisions touch quite intimately the very essence of due process — life, liberty and property:

Art. 9 — No person can become a prisoner unless by virtue of the mandate of a competent judge.

Art. 14 — No person shall be prosecuted nor sentenced unless by a judge or tribunal to whom by virtue of the laws which precede the crime, is delegated its cognizance, and in the form which the latter prescribe.

Art. 15 — Any person detained or imprisoned, without the legal formalities, unless in the cases provided in this constitution, shall be discharged upon their petition.

Art. 16 — No person shall be deprived temporarily or permanently of his property or rights, nor disturbed in the possession of them, unless by virtue of a judicial sentence.⁴⁷

As a result of the implantation of American sovereignty over the Islands in 1898, upon the signing of the Treaty of Paris terminating the Spanish-American War, American political ideas, laws and principles of government, particularly constitutional law, came to be enforced in the Philippines, at first slowly and gradually, but later on rapidly.

As early as December 21, 1898, even while the insurrection was still in progress, we find the first signs in the utterances of President McKinley urging the extension of the Bill of Rights to the Islands and exhorting the military administration, in his Proclamation of that date, to "win the affection of the inhabitants of the Philippines by assuring them in every possible way that full measure of individual rights and liberties which is the heritage of free peoples..."

Here we find the first germ, so to speak, of due process transplanted to the conquered territory. Later on this "germ" assumed the proportion of regulations and directives. Thus by an executive order of January 20, 1899, President McKinley appointed the First Philippine Commission headed by Jacob G. Shurman to "secure with the least possible delay the benefits of a wise and generous protection of life and property to the inhabitants." And in one of its "regulative principles," April 4, 1899, the Commission clearly enunciated that:

3. The civil rights of the Philippine people will be guaranteed and protected to the fullest extent...

As time wore on, these directives became more emphatic and were concretized into positive statements and declarations. On April 7, 1900, therefore, even while the native armed resistance against the United States was in a full-blown and critical stage, President McKinley gave his famous in-

⁴⁷ See note 45 *supra*.

structions to the Taft Commission, the first Civil Commission sent to the Islands. This instrument was in effect an execution of the transfer of control of the military authorities to civilian hands.

In this great document, the President laid down the rules which were to guide the conduct of the Commission, defining and limiting the latter's powers and duties. But the most important part of the Instructions and that which was uppermost in the mind of the President was the portion which expressed his desire to extend to the people of the Islands the Bill of Rights. To this end he directed the Commission to uphold, and the people of the Philippines to embrace, those "great principles of government which have been made the basis of our governmental system which we deem essential. . . to the maintenance of individual freedom," and urged them to adopt those "practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law."

He, therefore, directed that "upon every division and branch of the Government of the Philippines must be imposed these inviolable rules:

That no person shall be deprived of life, liberty or property without due process of law [Here follows an enumeration of all the procedural rights of due process afforded to any person by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution].

Furthermore, the President emphasized in this document the paramount role of the due process clause in the protection of property rights. Along these lines he declares:

That the Treaty of Paris, pledging the United States to the protection of all the rights of property in the Islands, and as well as the principle of our Government which prohibits the taking of private property without due process of law, shall not be violated; that the welfare of the people shall be attained consistently with this rule of property right; that if it becomes necessary for the public interest of the people of the Islands to dispose of claims to property which the Commission finds to be not lawfully acquired and held, disposition shall be made by due legal procedure, in which there shall be full opportunity for fair and impartial hearing and judgment.

Here at last was the first real unmistakable sign of the implantation of the due process principle in the Philippine soil. And because this document embodied those "great principles and practical rules of government" for the protection of private rights, as well as the guiding norm of official conduct; and, because it contained a general outline of the form of the Philippine government, it has become the first organic law for the Philippines.

Heretofore, the Philippines had been governed by the President through his authority as commander-in-chief of the armed forces and through the war power implied in that authority of governing and providing for conquered territory. However, this was only as long as war lasted or the

emergency under which the power may be exercised, existed. Upon the cessation of hostilities and the restoration of peace, it fell within the power and province of the United States Congress to govern the Philippines through its constitutional power "to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States."⁴⁸

Congress asserted its right to govern the Islands when it passed the Spooner Amendment, which was in the form of a rider to the Army appropriation Bill passed on March 2, 1901. It provided for the exercise of military, civil and judicial powers over the Islands by the President until Congress shall provide otherwise. Although it looked as if the power of Congress over the Philippines under the United States Constitution was absolute, actually it was limited by "those fundamental principles for the protection of life, liberty and property of the individual which are the basis of all free governments and upon which the American nation was built."⁴⁹ These principles, whether expressly stated in the Constitution or not, were held to constitute restrictions upon the exercise of the authority of Congress over the Philippines.

From another quarter we find the authority of Congress to govern the Philippines. Article IX of the Treaty of Paris, by which Spain ceded the Philippines to the United States, expressly provided that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

The first real action, however, by Congress to govern the Islands was manifested in the enactment of the Act of July 1, 1902, otherwise known as the "Philippine Organic Act," or simply, "The Philippine Bill." As its title indicated, it was an act temporarily to provide for the administration of the affairs of civil government in the Islands. Nevertheless, it was more than an act for the government of the Islands. It incorporated almost all the provisions of the American Bill of Rights, along with the due process clause.

Section 5, paragraph 1, of this Act contains the clause providing:

That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law.

Because paragraph 2 of the same Section 5 contain the procedural due process in criminal cases, it seems to indicate that paragraph 1 applies generally, to due process in substantive and civil cases. Paragraph 3 of the same section provides that "no person shall be held to answer for a criminal offense without due process of law." It will be noted that the language of the due process here is almost identical with that found in the

⁴⁸ U.S. CONST. art. IV § 3.

⁴⁹ Balzao v. People of Puerto Rico, 258 U.S. 298 (1922).

Instructions of the President. In it, too, as we have seen, was found almost all the procedural rights of due process as provided by the United States Constitution.

In view of the great agitation on the part of the people of the Philippines for more participation in their own governmental affairs, Congress in response to this desire, and in partial fulfillment of the American people's promise to grant eventual independence to the Islands, passed Public Act Number 240, known as the Philippine Autonomy Act, or otherwise known as the Jones Law in August 29, 1916. As stated in its title, it was an act to declare the purpose of the people of the United States as to the future political status of the Philippines, and to provide a more autonomous government for the Islands.

Again Congress, considering the vital importance of those "great principles and practical rules of government" to the people of the Islands, reproduced almost *in toto* the American Bill of Rights, except the right to jury trial, the right to keep and bear arms, and security of the dwelling from the quartering of soldiers in time of peace. And to demonstrate the observance and strict adherence by the United States to the constitutional mandate of due process, it was placed among the first sections of the Act, in Section 3, precisely; paragraph 1 for substantive and civil cases, and in paragraphs 2 and 3 of the same section for the procedural rights of the accused.

The American people, though their President, made the stability of government in the Islands and the attainment by the natives of sufficient qualification for self-rule as conditions, before complete independence could be granted. In line with this promise, the Jones Law was passed as a preparatory step. When, however, these conditions were fulfilled in 1934, another law had to be passed by Congress to provide for the much-desired independence. That law was the Tydings-McDuffie Act, otherwise known as the Philippine Independence Act, which provided for the final emancipation.

Under the Constitution adopted by the people of the Philippines, in pursuance of these "great principles and rules of government" embodied in the United States Constitution and underlying the basis and framework of the latter's government, the Philippine Constitutional Convention deemed it imperative to incorporate the American Bill of Rights. Article 3, paragraph 1, section 1 embodies due process, taken almost bodily, in form and phraseology, from the American Constitution.

The reason for such reproduction is explained by the framers, the Committee on Bill of Rights, in the following language: "modification or changes were avoided whenever possible because the principles must remain couched in a language expressive of their historical background, nature, extent and

limitation, as construed and expounded by the great statesmen and jurists that have vitalized them."⁵⁰

For this reason the provision on due process, as it stands today, is a faithful copy from the United States Federal constitution, the Instructions to the Commission, the Philippine Bill of 1902 and the Jones Law. It also follows the phraseology of corresponding provisions of many American state constitutions.

4. Trends of Philippine Due Process Since 1900

In the Philippines, although the trends followed by the Supreme Court of the United States in the application of the due process clause were not paralleled since conditions were different, certain general patterns have been observed since the implantation of the clause.

In civil cases the traditional canons of due process — notice, hearing, some sort of judicial ceremony and decision on the merits of the facts of the case — were scrupulously followed. In these cases, the strict procedural phase has been practically, if not totally, disregarded. In other words, provided there was some sort of a notice and hearing, due process was deemed complied with. It was in criminal cases, however, where the procedural matter came to be invoked more religiously as a matter of right. In these cases, justice is deemed met only if there has been a full compliance with all the standards provided in the Constitution and procedural laws.

In administrative cases, contrary to the trend followed in the United States, the courts have not been very strict⁵¹ in requiring the accepted rules of administrative due process, such as: a formal hearing, notice and decision based on the substantial evidence of the record as a whole. This was clearly reflected in the leading case of *Cornejo v. Gabriel*.⁵² But though the procedural phases of the clause have not been followed generally in these cases, the substantive portion has always been adhered to. Thus in immigration and deportation cases, the defendant or deportee has always been afforded some kind of a hearing. A strong reason why the standards of procedural due process have generally been dispensed with in these cases is, it will be noted later, the desire to achieve administrative efficiency.⁵³ This trend also found expression in other administrative cases dealing with labor and public utilities.⁵⁴

⁵⁰ 1 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 150 (1949 ed.).

⁵¹ Although a formal hearing has not been required due to unfettering of administrative tribunals of the strict rules of judicial procedure and evidence, the courts do recognize and enforce the due process of law guaranty of notice and opportunity to be heard. See *Halili v. Public Service Comm'n.*, 49 O.G. 1827 (1953); *Philippine Movie Pictures Workers' Ass'n. v. Premiere Productions Inc.*, 50 O.G. 1096 (1953).

⁵² 41 Phil. 188 (1920).

⁵³ *Edwards v. McCoy*, 22 Phil. 598 (1912).

⁵⁴ See notes 38 and 39 *supra*.

Under the Philippine Bill of 1902, from this date to 1916, due process as a substantive safeguard had remained static. There had been no case of far-reaching importance applying the clause substantively. But under the reign of the Jones Law, from 1916 to 1935, certain profound changes have been noted. In social legislation, due process as a substantive safeguard was expanded to protect the "liberty" in Section 1, Bill of Rights of the said law. *People v. Pomar*⁵⁵ reflected the change. In this case, the liberty to contract labor, deemed included in the clause, was upheld, and the statute which contemplated its destruction was declared unconstitutional. From that time on, the substantive phase continued to expand, until 1935, when it started to contract. By this time the Philippine Constitution had already been promulgated, the document which included among its novel provisions the mandate that the promotion of social justice should be the concern of the State. In conformity with this policy, the individual rights of Section 1 of its Bill of Rights came to be more restricted in order to protect the well-being and economic security of the working man. Several statutes were passed, such as the Employer's Liability Act and the Workmen's Compensation Act, and many cases decided applying this "new" social policy. But the cases adjudicated in favor of labor were generally justified under the still undefined police power, but always giving effect to the social justice concept. In short, there was a merger of the conception of the public welfare aspect of the police power with the rights of the laboring man to a minimum wage and better working conditions.⁵⁶

But as the substantive phase contracted, the procedural aspect expanded in taxation, corporation and other civil cases. This change, however, has been going on since the reign of the Philippine Bill, about 1915, and continues until the present time.⁵⁷

From 1935 until the present time this has been the position of the Supreme Court of the Philippines. And if the future can be predicted by judging the cases decided from 1935, it can safely be stated that the liberties concerning personal and proprietary rights which are guaranteed in Section 1, Bill of Rights of the Philippine Constitution will come more and more to be curtailed in the face of the fast changing social and economic scene in the Philippines. As commerce and industry continue to expand they will bring in their train many complex labor and capital problems which for their solution will claim the greater attention of the courts.

⁵⁵ See note 11 *supra*.

⁵⁶ Some of the important cases penned during this period are: *Liwanag v. Tolaram*, 72 Phil. 410 (1941); *People v. Cayat*, 68 Phil. 12 (1939); *Manila Trading & Supply Co. v. National Labor Union*, 71 Phil. 124 (1940); and *Pangasinan Trans. Co. v. Public Service Comm'n.*, 70 Phil. 221 (1940).

⁵⁷ The following cases, reflecting substantially this expansion, are representative of the three periods: The Philippine Bill of 1902, The Jones Law of 1916, and the Philippine Constitution from 1935 on: *Churchill v. Rafferty*, 32 Phil. 580 (1915); *Lopez v. Director of Lands*, 47 Phil. 23 (1924) and *Manila Gas Corp. v. Collector of Int. Rev.*, 62 Phil. 895 (1936).

In the light of the vigorous prosecution of the social justice program by the government, the courts will construe the pertinent laws and cases before them in such a way as to give effect to the social justice provision of the Constitution. This means that personal and proprietary rights will have to yield to the rights of the larger portion of the community, *viz.*, the working men, tenants and small farmers, thus enlarging further the protection that purports to be embraced in the police power.

IV. DUE PROCESS IN JUDICIAL PROCEEDINGS

Due process of law, as required by the Fourteenth Amendment, means, when applied to judicial proceedings, "a course of legal proceedings according to these rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights."⁵⁸

What these "rules and principles" are is not easy to gather and be put in one place. They are all scattered in a vast number of court decisions; they are found, in explicit and implicit terms, in the laws and codes of civil and criminal procedure; they are parts of the knowledge of noted jurists and leading legal writers as they are unraveled in their numerous works; finally, they form the underlying fundamentals of the American Constitution.

In fact, the work becomes doubly difficult when we consider that these "rules and principles" were borrowed and brought to America from England. Professor Burgess,⁵⁹ states that the requirements of "due process of law" are met by legal proceedings which accord to those rules and principles definitely contained in the provisions of the constitution and if not found there, the course of legal proceedings must be according to those "rules and principles existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country."

What these "rules and principles" of due process are, as applicable to the Philippines, we shall see as we enter the discussion of what constitutes due process in civil, criminal, taxation, administrative and military commission cases, the subject-matter of this paper.

1. *Civil Cases*: It is generally admitted in many jurisdictions, in the Philippines as well as in the United States, that notice and hearing are the two primary elements of due process in civil cases. The absence of either or both of these elements has been held, in proper cases, as sufficient ground to void the proceedings and annul the judgment.⁶⁰

⁵⁸ *Pennoyer v. Neff*, 95 U.S. 714 (1878).

⁵⁹ 1 BURGESS, *op. cit. supra* note 8 at 188-89.

⁶⁰ *Azurin v. Quitarano*, 46 O.G. (1s) 44 (1948).

a. *Notice Generally Required:* In the case of abatement of nuisances, for example, the Court always makes a distinction with regard to nuisance *per accidens* and nuisance *per se*. If the nuisance is of the former class, its abatement summarily, even without previous notice and hearing is deemed due process. The reason given by the Court is the undefined law of necessity, for such nuisance affect the immediate safety of persons and property.⁶¹ However, if it is of the latter class, then it is not due process if the abatement is done without reasonable notice to the person alleged to be maintaining the nuisance and hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance.⁶² The nuisance here, the Court ruled, being a question of fact, cannot be abated without notice and hearing in order to determine its existence. Consequently, whether the property or act complained of is a direct menace to the health and welfare of the people, so that its immediate condemnation is necessary, depends on certain circumstances.

At this juncture, it should be asked what constitutes notice under Philippine Law in order to satisfy the requirements of due process. Notice can be made either by publication or by mail. In case of sale of property on execution, the notice could be posted in public places where the sale is to take place, or by publishing a copy of the notice in some newspaper of general circulation.⁶³ Consequently, substituted service through publication in lieu of notice through the mail is valid.⁶⁴

The following cases illustrate the importance of notice. In one case, the court voided a judgment against the heirs on the ground that they were not notified.⁶⁵ However, statutory provisions relative to notice in the form of publication to a non-resident defendant are deemed complied with and held to be due process when the Court made an order to the clerk to mail the summons and complaint to the defendant at the latter's last known residence, irrespective of whether the clerk failed in his duty or not, provided publication was regularly made in the newspaper as required by law.⁶⁶ It has also been held that notice to counsel of defendant is deemed notice to the defendant himself.⁶⁷

In the case of probation of wills, publication of the Court's order is sufficient to bind persons wherever they are residing. And in the absence of fraud, the fact that the Court did not appoint a date for probate sufficiently far in the future to permit presence of petitioner who was then in a foreign country cannot be held as an infringement of "due process of law."⁶⁸

⁶¹ *Monteverde v. Generoso*, 52 Phil. 123 (1928).

⁶² *Iloilo Ice & Cold Storage Co. v. Municipal Council*, 24 Phil. 471 (1913).

⁶³ RULE 39 § 16.

⁶⁴ *In re Estate of Johnson*, 39 Phil. 156 (1918).

⁶⁵ *Government v. La Asociacion Cooperativa de Credito Agricola de Paorama*, 69 Phil. 130 (1939).

⁶⁶ *Banco Español-Filipino v. Palanca*, 37 Phil. 921 (1918).

⁶⁷ *Mabunay v. Balleza*, 72 Phil. 109 (1941).

⁶⁸ See note 64 *supra*.

Notice, however, is not essential to the plaintiff in writs of preliminary injunction *ex parte* issued by a court of first instance, since it has been held that this is merely one of the incidents of the case which is under the control of the judge on whose discretion the dissolution depends.⁶⁹

Nor is it necessary that the court itself orders a motion which already contained notice to the adverse party to be set for hearing, as a prerequisite therefor. So that if the motion is heard after this notice, it can not be said that the hearing was held without due process of law, for what the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard.⁷⁰

In the case of judicial sale of property by an administrator approved by the Court, allegation of lack of notification, however, will not avail petitioners who were neglectful in filing the proper remedy of appeal.⁷¹ In other words, the Court in effect held that even without notice to the petitioners (the heirs in this case) relative to the sale of their property by a judicial administrator, there is held to have been due process. The remedy available to them was appeal, and since they were negligent to take advantage of this remedy provided by law in these cases, *i.e.*, administration of intestate property, they cannot complain later that they have been deprived of property without "due process of law."

In a motion for execution of judgment, the same was denied by the trial court on the ground that the defendant was not notified. Upon elevation to the Supreme Court on a writ of mandamus, the latter held that, in accordance with Article 9, Rule 27, Philippines Rules of Court, defendant who was declared in default is not entitled to notice unless motion was presented for the lifting of the order of default.⁷² Failure to notify the holder of a quota which corresponds to land planted to sugar in a civil case involving the transfer of these quotas to the defendant constitutes deprivation of property without "due process of law," even if such holder possesses the land merely in the capacity of a lessee.⁷³

In the sense⁷⁴ that a public office is not property under the due process clause, suspension of a public officer without notice is not a deprivation of property without due process, since it has been held in an infinite variety of cases that a public office is a trust and the occupant may be removed by the head of the state to protect such trust from legally disqualified men who may endanger the interest of the community. This ruling has been laid down in *Cornejo v. Gabriel*⁷⁵ which ruling has followed many American decisions on the question of suspension of a public officer.⁷⁶ However,

⁶⁹ *Cine Ligaya v. Labrador*, 66 Phil. 659 (1938).

⁷⁰ *Embate v. Penolio*, 49 O.G. 3850 (1953).

⁷¹ *Profeta v. Gutierrez David*, 71 Phil. 582 (1941).

⁷² *Manila Motor Co. v. Endencia*, 72 Phil. 130 (1941).

⁷³ *Macalindog v. De la Rosa*, 72 Phil. 163 (1941).

⁷⁴ *Salcedo v. Carpio*, G.R. No. L-4495, June 6, 1951.

⁷⁵ See note 52 *supra*.

⁷⁶ *Taylor v. Beckham*, 178 U.S. 548 (1900).

such suspension is valid only if the statute under which it is authorized does not provide for notice and hearing.

b. *Hearing Generally Required:* It has been held that a third party whose property has been seized without any hearing and who later files his claim in accordance with the law should be restored to possession since he was deprived of his property without due process.⁷⁷ Also it has been ruled that a party litigant without malice or fault is denied due process when the court fails to grant him sufficient opportunity to prepare for trial.⁷⁸

Supposing a person obtains a license to operate a cockpit under an ordinance passed by a municipal council. Later on, however, another council taking the place of the old one, suspends the ordinance granting the license and passes another one. Can the operator of the license claim that the second ordinance has deprived him of his property or vested rights without due process? It was held, however, that a license authorizing operation of a cockpit is not property under the due process clause of the Constitution, but a mere privilege which may be revoked when public interest so requires.⁷⁹

Although the Court in the above case did not say it, it can be said as an irrefutable argument that "it is a legal truism that there can in the nature of things be no vested right in an existing law which would preclude its change or repeal."⁸⁰ Moreover, there is no constitutional right to have all general propositions of law once adopted remain unchanged.⁸¹

Hearing on the motion in the absence of the movant, without fault on his part, and decision thereon is denial of the right to appear, to be heard and to adduce evidence. The court in this case⁸² declared that "the oath appended to a motion does not stand for the absolute, but only the presumed, truth of the facts therein alleged, to permit their consideration and compel the opposite party to answer them. The evidence which the parties introduce at the trial is what determines the existence of that truth and the decision of the court should be based thereon."

And where the claimants of contested lots in a cadastral case were not notified of the hearing despite the fact that they had duly filed their answers and the lots stood contested in the records of the case, the hearing had in their absence was considered to be a deprivation of their day in court. Here,⁸³ the following propositions were held to be unquestionable:

⁷⁷ *Uy Piac v. Osmeña*, 9 Phil. 299 (1907). In the same way is a garnishee deprived of property without due process of law where he is compelled by the court to deposit an amount of money in his possession notwithstanding his claim thereto. *Bucra Corp. v. Macadaeg*, 47 O.G. 729 (1949).

⁷⁸ *Cing Hong so v. Tan Boon Kong*, 53 Phil. 437 (1929).

⁷⁹ *Pedro v. Provincial Board*, 56 Phil. 123 (1931).

⁸⁰ *Marquez v. Board of Medical Examiners*, 47 Phil. 761 (1925).

⁸¹ *Patterson v. Colorado*, 205 U.S. 454 (1907); *American Railway Express Co. v. Kentucky*, 273 U.S. 269 (1927).

⁸² *Director of Lands v. Philippine Nat'l. Bank*, 67 Phil. 531 (1939).

⁸³ See note 60 *supra*.

- (1) That no court has jurisdiction to deprive a litigant of due process of law;
- (2) That to hear and determine a case without notice to a litigant who has not defaulted is to deprive him of due process of law;
- (3) That judgment rendered under such circumstances is null and void *ab initio* for being violative of the Bill of Rights; and
- (4) That if such judgment is rendered in a cadastral proceedings any decree of registration and certificate of title issued on the strength and basis of such judgment are likewise void *ab initio*.

It is clear, therefore, that to constitute due process, there must be appearance by the parties, they must be heard and they must be given the opportunity to present their evidence. Also, and this goes back to the very heart of judicial proceedings, it has been held that this evidence must be considered by the court, otherwise the decision is in vain, being without basis, and the proceeding is void, as not conformable to "due process of law."⁸⁴

Philippine jurisprudence abounds in cases where the decision of the trial court has been declared void on account of denial of a hearing. The following examples are a few of them:

1. An order of a court, which directs the respondent to be placed in possession of land different from that described in the complaint;⁸⁵
2. A court, after granting a motion for a new trial, does not set aside its decision or order the reopening of the case or the holding of a new trial, but proceeds to consider the documentary evidence attached to the motion without previous hearing of the parties, and amends its decision in accordance with said evidence, sentencing defendant to pay an amount greater than that which he had been sentenced to pay in the original decision.⁸⁶
3. A proceeding wherein a person in the possession of his land has been deprived of it without being heard.⁸⁷
4. The order of the court which dismissed the application for a probate of a will without any hearing to prove the due execution of the original will and its loss or destruction.⁸⁸
5. When the heirs had been excluded from any hearing relative to the distribution of the estate through fraud and concealment.⁸⁹

In all these judicial proceedings, the lack of a hearing was fatal, for the decision was declared a nullity on the ground of violation of the constitutional interdiction.

This requirement however does not apply to parties who are in fact

⁸⁴ See *Edwards v. McCoy*, 22 Phil. 598 (1912).

⁸⁵ *Tamayo v. Jose*, 67 Phil. 536 (1939).

⁸⁶ *Buendia v. Sotto*, 68 Phil. 31 (1939).

⁸⁷ *Suguitan-Aguilar v. Josefa-Aguilar*, 72 Phil. 215 (1941).

⁸⁸ *Lipana v. CFI*, 70 Phil. 365 (1940).

⁸⁹ *Fule v. Abad Santos*, 72 Phil. 339 (1941).

privies of the defendant, in subsidiary or accessory position in regard to him. They cannot claim separate and independent process than the one duly accorded to their principal and cannot, therefore, complain of having been deprived of the constitutional protection of due process of law.⁹⁰

2. *Criminal Cases*: The right of the accused to due process of law in criminal cases is guarded so zealously that the farmers of the Constitution, both in the United States and in the Philippines, have placed them among the front rank of rights to be protected. Under Philippine law, these rights are also found, by way of implementation, in Section 1, Rule 111, Rules of Court. The elements constituting due process in criminal cases are considered in the following discussion.

Substantive due process in criminal cases is found in paragraph 15, Section 1, Article III of the Philippine Constitution, which reads: "No person shall be held to answer for a criminal offense without due process of law." However, the constitution goes no further to define what this consists of. Recourse, therefore, must be had to find out the elements of due process in the findings of the courts themselves, in regard to criminal cases.

In one case,⁹¹ the Court held that if the accused had notice of the hearing, was present in person, was represented by an attorney, testified in his own behalf, and was allowed to introduce evidence, this was substantial compliance with the "due process of law."

At first blush it seems that the requirements of due process in civil cases are identical with those in criminal cases. In a way this is true since the two most important elements of the clause in civil cases are notice and hearing, and these two must always be present in criminal cases if the proceeding is to conform to the constitutional provision. However, the due process in criminal cases, by its very nature, as we shall see later, has more procedural requisites, although in substantial sense both are on the same footing with respect to protection of individual rights, and both have the same substantial requirements, *i.e.*, notice and hearing.

⁹⁰ Brodett v. De la Rosa, 77 Phil. 752 (1946). Thus an order of eviction against the tenant affects the sub-tenants, even if the latter had not been sued in the detainer litigation. Go King v. Geronimo, 46 O.G. (1s) 227 (1948); Ng Siu Tam v. Amparo, 45 O.G. 4920 (1948). The same rule would apply with equal, if not stronger, force to house guests after the tenant has vacated the rented house. Their right to stay in the premises is subsidiary to that of the tenant. De la Cruz v. Roxas, 75 Phil. 457 (1945).

The case should be distinguished from a possessor in good faith of the premises, who has not been heard. A judgment rendered in such proceedings cannot be validly executed against him, the nature of the action being *in personam* as to him. Galang v. Uytiepo, 48 O.G. 5256 (1952). See also Gozon v. De la Rosa, 77 Phil. 919 (1947); Santiago v. Sheriff, 77 Phil. 740 (1946).

⁹¹ People v. Claudett Scott, 62 Phil. 553 (1935). See Abiol v. Homeres, G.R. No. L-2754, Aug. 31, 1949.

Is it possible to have only notice without hearing, and yet be considered "due process of law?" Or only hearing without notice?

It is obvious that without a hearing, even though there may be notice, there cannot be due process, save in those exceptions which we shall see later, as for instance in certain administrative and criminal proceedings.⁹² (Some of the latter kind cited *supra*.) This must be so because a hearing is the act which operates to deprive a person of the right to life, liberty or property. Without this act, how could we say the person is entitled or not to a certain civil or proprietary right or rights under the criminal law? Hence the mere withholding of a hearing may automatically operate to deprive one of life, liberty or property, and this is precisely what the Constitution forbids. It can be said that notice alone, save in certain cases as aforesaid, is not sufficient to constitute "due process."

There are other exceptions to the rule that notice and hearing are necessary requisites for due process. One case⁹³ concerns a statute which authorizes the seizure by the government of intoxicating beverages and punishes its mere possession among the non-Christian tribes of the Philippines. Another case⁹⁴ is that a person's property may be seized by the government in payment of taxes without judicial hearing. Still another is the case⁹⁵ of property constituting *corpus delicti*. In this type of cases the seizure by the government and the punishment provided by law to be inflicted for its violation are in themselves "due process of law."

The court in the same case⁹⁶ defined what constitutes due process in criminal cases. According to its definition, there is due process when 1) there is a law prescribed in harmony with the general powers of the Legislature; 2) that it is reasonable in its operation; 3) it is enforceable according to the regular methods of procedure prescribed; and 4) it is applicable alike to all citizens of the state or to all of a class.⁹⁷

It should be observed, however, that the definition speaks of the existence of a law.

Another definition of due process in criminal cases was given by the Court in *Ong Chong Wing v. U.S.*⁹⁸ wherein it held that an accused has not

⁹² Cornejo v. Gabriel, 41 Phil. 188 (1920); U.S. v. Gomez Jesus, 31 Phil. 218 (1915); Tan Te v. Bell, 27 Phil. 354 (1914); U.S. v. Surla, 20 Phil. 163 (1911); Forbes v. Chuoco, 16 Phil. 534 (1910).

⁹³ People v. Cayat, 63 Phil. 12 (1939).

⁹⁴ See note 35 *supra*.

⁹⁵ Moreno v. Ago Chi, 12 Phil. 439 (1909).

⁹⁶ See note 93 *supra*.

⁹⁷ This definition of due process has also been laid down in the earlier case of *United States v. Ling Su Fan*, 10 Phil. 104 (1908), which was affirmed on appeal to the United States Supreme Court, 218 U.S. 302 (1910). In the instant case, the Court, in order to arrive at its conclusion that due process was not violated, simply fitted the statute complained of into the frame of the above definition. It has also been held that the law under which one is being charged must be clear and certain. *People v. Padilla*, 71 Phil. 261 (1941).

⁹⁸ 218 U.S. 272 (1910).

been denied the constitutional clause if "he has been heard in a court of competent jurisdiction, proceeded against under the orderly process of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard and a judgment awarded with the authority of a constitutional law."

In other words, if we analyze the components of due process in criminal cases, the following should be present: a competent court, procedure prescribed for trying the accused, notice, hearing, and decision based on the evidence.

a. *Preliminary Investigation*: Is the right to a preliminary investigation a constitutional right so fundamental that its denial would constitute deprivation of life or liberty without "due process of law?" In one of the leading cases in the Philippines, the Court held that preliminary investigation is not a creation of the Constitution.⁹⁹ Its origin is statutory and the right thereto can be invoked only when so established and granted by law. Its denial, however, would still constitute a violation of due process because Philippine laws on the matter so provide.¹⁰⁰

Nevertheless, in cases of special laws under which the accused is charged, if no provision is made for a preliminary investigation, the court has discretion to grant or not to grant it. This is true even with respect to treason cases where the danger to the accused, due to the heavy penalty attached, is much greater than in many other cases. Thus the Court in a treason case¹⁰¹ ruled, "in view of the great number of prisoners and the length of time and amount of labor that would be consumed if so many prisoners were allowed to have preliminary investigation, . . . it was not an unwise measure which dispensed with such investigation."

b. *Right to Appeal*: Is the right of appeal an essential part of due process as provided in the Constitution? If withheld, could it be considered as reversible error in such a manner that the judgment of conviction may be annulled? In none of the organic laws of the Philippines — President McKinley's Instruction, the Philippine Bill, and the Jones Law — is the right of appeal mentioned, nor is it indicated in the present Philippine Con-

⁹⁹ *Marcos v. Cruz*, 68 Phil. 96 (1939). Preliminary investigation is not a fundamental right guaranteed by the Constitution. *People v. Carlos*, 78 Phil. 535 (1947).

¹⁰⁰ Sections 13 and 14 of General Orders No. 58, the old Code of Criminal Procedure, as amended by Act No. 4178 (now RULE 108, §§ 1 and 11) provide for its holding. The general provisions contained in section 13 of General Orders No. 58 provide that when a complaint is laid before a magistrate, he must make a preliminary investigation, and if he is satisfied that the crime complained of has been committed and there is reasonable ground to believe that the party charged has committed it, he must take the action the law requires. Thus, when an accused is brought to trial without this right being allowed, it is "prejudicial error in that it subjects the accused to the loss of life, liberty or property without due process of law." *U.S. v. Marfori*, 35 Phil. 666 (1916).

¹⁰¹ *People v. Carlos*, 78 Phil. 535 (1947).

stitution. The silence of the Constitution and organic laws on the matter leaves us no other conclusion than that it was never meant to be a constitutional right, but merely a statutory right, to be granted at the discretion of the government. That it is not a constitutional right, nor meant to be, is clearly revealed by the fact that an attempt was made, according to Professor Aruego, at the Constitutional Convention in 1934 to include the right of appeal in the present Constitution, but failed because the framers believed it should be best provided for in ordinary legislation,¹⁰² leaving the Constitution more flexible and more comprehensive. In two cases¹⁰³ the Court held that the right to appeal is not an essential part of due process, and added that neither was it a constitutional mandate at common law.

Be all this as it may, the Rules of Court, the procedural statute, passed long after the decision in the above cases, provide for the unrestricted use¹⁰⁴ of appeal from the Courts of First Instance to the Court of Appeals and the Supreme Court.¹⁰⁵ Consequently, it would not constitute reversible error and be subject to annulment if a judgment denied¹⁰⁶ the right to appeal on the ground that it is inconsistent with the constitutional safeguard.

3. *Taxation*: It is generally accepted that the power to tax is broad and unlimited. Since the power is legislative, it is within the unimpaired discretion of the legislature to define its scope, determine the classes and subjects of taxation and fix the amount to be paid, unhampered by any provision of law, statutory as well as constitutional. In other words, the law-making body has complete control of its subject-matter, including all its incidents, and can do with it whatever it will. The unlimited scope of the taxing power is best described in Judge Cooley's words:

. . . the power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercise it. It reaches to every trade or occupation; to every object of industry, use or enjoyment; to every species of possession; and it imposes a burden which in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervad-

¹⁰² 1 ARUEGO, *op. cit. supra* note 50 at 185.

¹⁰³ *Duarte v. Pade*, 32 Phil. 36 (1935); *U.S. v. Gomez Jesus*, 31 Phil. 218 (1915).

¹⁰⁴ 2 MORAN, *COMMENTS ON THE RULES OF COURT* 771 (1952 ed.).

"In all criminal prosecutions, the defendant shall be entitled: . . . (h) To have the right to appeal in all cases authorized by law." RULE 111 § 1.

¹⁰⁵ RULE 118 § 1.

¹⁰⁶ It need not be a denial. The mere dismissal of the appeal by the Court of Appeals, on the ground of abandonment, without notice to the accused or without requiring him or his counsel to appear and show cause, if any, why the appeal should not be declared abandoned, deprives the accused of his right to be heard before conviction. *Taylor v. Court of Appeals*, 51 O.G. 2361 (1955).

But if the accused flees after the case has been submitted for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him. *People v. Ang Gioc*, 73 Phil. 566 (1941).

ing, and at no point does the power of the government affect more constantly and intimately all the relations of life than through the exactions made under it.¹⁰⁷

However broad and powerful indeed the power of the government to tax, that Mr. Chief Justice Marshall claimed carries the power to destroy,¹⁰⁸ it is no less circumscribed with limitations than the great police power and the power of eminent domain. The limitations are found in those principles of freedom and justice upon which true government rests, more particularly in the due process and equal protection clauses of the United States and Philippine Constitutions, either expressly or impliedly.

Mr. Justice Malcolm summarizes these limitations into the following rules; 1) that either the person or property taxed shall be within the jurisdiction of the government levying the tax; 2) that the tax shall be for a public purpose; 3) that it shall operate uniformly upon those subject to it; 4) that no export duties shall be levied or collected upon exports from the Philippines;¹⁰⁹ and 5) that in the assessment and collection of the tax, certain guaranties against injustice to individuals, especially by way of notice and opportunity for hearing, shall be provided. It is, of course, understood that these limitations, because of their nature and applicability to the purposes of taxation, are also the requirements for a valid tax.

Under Philippine law, in accordance with the Instructions, taxes should be simple, and not repressive, and their subject-matter should be such that the burden of distribution will be general. The Philippine Bill rules that taxation shall be uniform, and the Jones Law provides that taxation shall be for governmental purposes. The only limitation specified by the present Constitution, as in the Philippine Bill, is that it should be uniform.

The immediate problem is whether there is deprivation of property without "due process of law" on the ground that the tax imposed is confiscatory or unjustly discriminatory. To arrive at a satisfactory answer it is imperative to consider the legal concepts of the two primary rules of the taxing power: uniformity and public purpose. Both are important since they form the corner-stone of due process in the taxing power.

Although uniformity is expressly provided in the Constitution, what it means is left to statutory construction and judicial interpretation. It means, according to the opinion rendered in the case of *De Villata v. Stanley*,¹¹⁰ that all taxable articles or kinds of property, of the same class, shall be taxed at the same rate. Therefore it has been held, following this definition, that regulations, presumably in the form of a tax, or intended to be such,

¹⁰⁷ COOLEY, *op. cit. supra* note 32, at 587.

¹⁰⁸ McCulloch v. Maryland, 17 U.S. (4 Wheat.) 579 (1819).

¹⁰⁹ The present Philippine Constitution has removed the prohibition on export taxes.

¹¹⁰ 32 Phil. 541 (1915).

imposed on vessels and directing the latter to carry mails as a condition for enjoyment of franchise, do not violate the rule of uniformity because the tax (regulations) is imposed on all members of the class, which in this case, are all coastwise trading vessels. And the owner of the vessel is not deprived of property without due process because he has consented to be subjected to the regulations by the mere fact of entering into the business of coastwise trading.

However, under the rule of uniformity, the classification must not be arbitrary but must rest on just and reasonable grounds.¹¹¹ This principle is almost literally followed by Philippine courts.

According to Mr Black¹¹² uniformity does not mean that land, chattels, securities, incomes, occupations, franchise, privileges, necessities, and luxuries, shall be assessed at the same rate. Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times. And according to the opinion expressed in the *State Railroad Tax Cases*,¹¹³ a tax is uniform when it operates with the same force and effect in every place where the subject of it is found.

In the light of the above principles, the Philippine Supreme Court held that a statute imposing a tax per square-meter upon every electric sign and billboard wherever found in the Philippines complies with the constitutional rule of uniformity. The Court rejected the contention of the plaintiff that taxes, in order to be constitutionally uniform should be graded according to the value of the subjects upon which they are imposed.¹¹⁴

The rule that taxation shall be for a public purpose means that the government should destine the proceeds for the welfare and interests of the people in general. If it does it for the benefit of private parties the exaction is a deprivation of the property of citizens without due process.

It is difficult, however, to draw the line between public and private objects. In fact, both objects may exist in the legislator's mind at the time of the enactment. Yet this is generally held to be valid by the court:

So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes cannot invalidate congressional action.¹¹⁵

But in the end whether it is public or private would depend on the circumstances of the particular case involved. In *Fallbrook Irrigation District v. Bradley*,¹¹⁶ the Court held:

¹¹¹ *Southern Railway v. Greene*, 216 U.S. 400 (1910).

¹¹² BLACK, CONSTITUTIONAL LAW 292 ().

¹¹³ 92 U.S. 575 (1876).

¹¹⁴ *Churchill v. Concepcion*, 34 Phil. 969 (1916).

¹¹⁵ *Hampton v. U.S.*, 276 U.S. 394 (1928).

¹¹⁶ 164 U.S. 112 (1896).

A resolution of the case frequently depends upon local conditions and facts and circumstances concerning the particular subject matter, in regard to which the character of the use is question.

The rule that any property liable to be taxed, either personal, real or intangible, should be within the jurisdiction of the State, is amenable to exception. Under United States law, it is generally held that when a tax is levied on real property or on tangible personal property the actual situs determines its taxability, irrespective of the owner's residence at the time the tax is imposed. However, a debt evidenced by note or bond, and secured by a mortgage on lands, may be taxed at the domicile of the creditor, without regard to the fact that the lands lie in another State.¹¹⁷

Another exception to the rule is found in the case of succession and inheritance whereby following the principle of *mobilia sequuntur personam* personal property is deemed transferred to the domicile of the testator, though the property may be found elsewhere.¹¹⁸ But dividends and interests paid by a resident corporation to its stockholders whose residences are outside the territorial jurisdiction of the Philippines are subject to tax by the latter because such income is considered as having a situs in the Philippines.¹¹⁹

The court, in the case of *Churchill v. Concepcion*,¹²⁰ defined the criterion by which the imposition of taxes would constitute confiscation. It said that the tax would be confiscatory if there was "a showing that the exercise thereof on the part of the Legislature was so abused as to make it clear that the power had been exercised for the sole purpose of destroying rights which could not be rightfully destroyed consistently with the principles of freedom and justice."

A form of deprivation of property without due process of law through taxation occurs when a holder of a lien on landed property is excluded from a tax sale, and whose lien is thus foreclosed without notice and hearing. Thus the Court, in *Lopez v. Director of Lands*,¹²¹ declared null and void the judgment of the trial court wherein the mortgage lien in question was foreclosed. However, a provision in an internal revenue law prohibiting the courts from enjoining the collection of an internal revenue tax is not invalid as opposed to the due process clause.¹²²

But when the tax sale was highly irregular because the description of the property in controversy was inadequate, as stated in the tax roll and notice of sale, it was deemed that the deprivation was without due process. And the burden of proof regarding the regularity of all proceedings leading

¹¹⁷ *Kirtland v. Hotchkiss*, 100 U.S. 491 (1879).

¹¹⁸ *Eidman v. Martinez*, 184 U.S. 578 (1902).

¹¹⁹ *Manila Gas Corp. v. Collector of Int. Rev.*, 62 Phil. 895 (1936).

¹²⁰ 34 Phil. 969 (1916).

¹²¹ 47 Phil. 23 (1924).

¹²² *Churchill v. Rafferty*, 32 Phil. 580 (1915).

up to the tax sale is placed upon the purchaser at the sale in order to satisfy the requirements of due process.¹²³

Although due process generally implies and includes notice, hearing and other legal procedures, in many taxation cases it has been held that all these proceedings may be dispensed with, and the imposition would not be considered as impugning the constitutional provision. In short, the officer charged with the collection of taxes is authorized to seize and sell the property of delinquent taxpayers without applying to the courts for assistance.¹²⁴

The obvious reason for these holdings lies in the fact that since the government depends for its support, its very existence, on tax revenues, any interference and long delay in the collection, by way of injunctions, hearings or trials before collection could legally allowed, would seriously hamper the operations of the government, and even prevent it from fulfilling its functions. Hence the collection of taxes must necessarily be summary and any judicial proceedings must be done away with, at least until after the payment, for the taxpayer can always bring an action to recover unlawful taxes.

By virtue of the principles laid down in these decisions which must be harmonized, and at several points reconciled, in view of their apparent conflict, some conclusions could be reached in answer to the question, viz., when is a person deprived of his property without "due process of law" on the ground that the tax is confiscatory. By way of recapitulation, under Philippine law a tax to be valid must be uniform and intended for a public purpose. Also, as mentioned by Mr. Justice Malcom, the taxing authority should have under its jurisdiction the person or property to be taxed. However, these principles, as we have seen, have exceptions, and their applicability will depend on the circumstances of the particular case. The requirements of hearing and notice are not necessary in order to constitute the act of exacting as due process. Nevertheless, this is only true in the course of collection, since afterwards the regular machinery of justice could be invoked as a matter of right to recover taxes paid under protest.

¹²³ *Valencia v. Jimenez*, 11 Phil. 492 (1908).

¹²⁴ *City of Philadelphia v. Diehl*, 72 U.S. (5 Wall.) 720 (1867); *Nicholl v. U.S.*, 74 U.S. (7 Wall.) 125 (1869).