REFERENCE DIGEST

Administrative Law — The Office of the Solicitor General— The Law Office Of The Government. — The creation of the Office of the Solicitor General dates back to the passage of Act No. 136 of the Philippine Commission approved June 1, 1901 to assist the Attorney General in the performance of all his duties. The Administrative Code of 1917 changed the Office of the Attorney General to the Bureau of Justice. The Reorganization Law of 1932, Act No. 4007, changed the title of the head of the office from Attorney General to Solicitor General. The Bureau of Justice was changed to its present name — Office of the Solicitor General — by Executive Order No. 4 dated Oct. 4, 1947.

Its main duty as the law office of the government is to defend the legality of the acts of the government bureaus, offices and all other officials acting in the performance of their public functions. Specifically, its duties are: (a) the preparations of drafts for contracts, forms and other writings for official use; (b) to represent the government and its public officers in their official capacity in all civil and special proceedings; in the appellate courts; (c) to prosecute or defend in the Supreme Court unless otherwise provided all causes in which a province may be a party; (d) to institute or prosecute actions on bonds and breaches of contracts; (e) to pursue the collection of any claim or judgment in favor of the government outside of the Philippines; (f) to institute or prosecute actions to enforce penalties or forfeitures under the laws of the United States in force in the Philippines; (g) to appear in any action in which the validity of any law, ordinance, treaty or executive order or regulation is challenged; (h) to institute suits in cases of usurpation of office or franchises and to appear for the government in any petition for a change of name; (i) to appear for the government in naturalization proceedings.

Other duties assigned to it are: (1) general supervision and control over provincial and city fiscals with the exception of the City of Manila; (2) the duty to prepare rules for their conduct; (3) to oversee the conduct of public business of the different courts and to gather data concerning all other matters relating to the administration of justice in said courts; (4) the Clark Field Reservation Project and the Camp Wallace and Subic Bay Projects are units under it.

The Solicitor General is assisted by six Assistant Solicitor Generals, who must have the qualifications of a judge of the Court of First Instance, and thirty solicitors. This article also contains a complete list of the heads of the office from the first Attorney General to the present Solicitor General. (Jorge R. Coquia, *The Office Of The Solicitor General — The Law Office Of The Government.* XXV Lawyers Journal No. 12 at 358-359. ₱3.00 at R-508 Samanillo Bldg., Escolta, Manila).

Constitutional Law — The Goemetry of Our Constitution. — The Charter is what the people want and say it should be. The Constitution is a living, pulsating thing. The people and their fundamental law must grow together. Although frequent and untried changes are to be avoided, laws and institutions must go hand in hand with the progress of the human mind. This is the correct and patriotic attitude towards the attempts to change certain portions of the Constitution.

The basic framework of government established under our Constitution consists in three branches exercising separate powers — Legislative, Executive and Judicial. But for all its merits and good intentions, the theory of separation of powers is relative, not absolute. There is more truism and actuality in interdependence among the branches of government than in total or absolute separation of powers. It is not possible to lay down the lines "with mathematical precision and divide the three branches into watertight compartments."

The three branches of government are co-equal, coordinate and interdependent. The Charter itself ordains that all bills passed by Congress be submitted to the President who may approve, veto or allow a bill, by inaction, to lapse into law. A vetoed bill may still become a law by the Congress' over-riding vote. A law may be declared by the Supreme Court as unconstitutional, hence null and void.

The power to appoint is inherently an executive function, but the President must submit to Congress, for confirmation by the Commission on Appointments, his nominations to certain positions, as provided in the Constitution and other laws. The Supreme Court may nullify the President's acts by declaring them unconstitutional. All these do not indicate superiority of one branch of government over another. They are merely the fiscalization of possible abuses by human institutions.

In our existing govermental setup, not all constitutional agencies are circumscribed within the three circles of Legislative, Executive and Judicial. The Commission on Elections and the General Auditing Office are constitutionally independent offices, but even as to them the system of checks and balances applies with full force and vigor.

May the geometry of the Constitution be modified, altered or revised? The people can change the pattern any time. "They may amend the figures or obliterate them completely by wiping them away with a mere brush, nay with one full sweep of their sovereign hand." (Delfin Fl. Batacan, *The Geometry of Our Constitution.* III UE Law Journal No. 3 at 339 — 349 (1961) ₱3.00 at the Law Building, University of the East.)

Constitutional Law — The Problems of Municipal Taxation. — The necessity of an adequate system of municipal taxation is founded on the theory that the stability of states depends upon that of the component members — the municipal corporations. In the Philippines at present there is no code of municipal taxation. Municipal taxation consists merely in a conglomeration of tax ordinances. This system leads to the imposition of unequal rates and the classification of the subjects of municipal taxes which is unjust, unreasonable, unequal and arbitrary. Fear of a subsequent declaration of illegality has fostered reluctance to enact tax measures, thus maintaining the unwholesome dependence of municipalities on the national government to supplement their revenues.

The primary problems in establishing a just and uniform municipal tax system are: (1) the ambiguous and conflicting provisions of the Local Autonomy Act (Rep. Act No. 2264) with regard to the extent and limitations of the grant of the taxing power to municipalities; (2) the individual members of the municipal councils in this country lack knowledge of the guiding principles of public finance, taxation and constitutional law; (3) the absence of a national coordinating agency with adequate powers and facilities to assume leadership in the study and formulation of municipal tax legislation and fiscal policies.

The municipal corporations have no inherent power to tax. They are empowered under a general grant of powers which is of specific enumeration. With the limitations imposed therein the only field open to municipal taxation is taxes upon business and occupation through proper and reasonable classification of all businesses and occupations and imposing graduated rates of tax on each class, based upon gross receipts or gross value of the articles used in the business and whether or not manufactured articles are sold within or without the municipality.

The confusion existing on the extent of the taxing power of municipal corporations is illustrated by the author by: (a) a comparison of the grant of powers under sec. 2307 of the Administrative Code and sec. 3 of Com. Act No. 472 and sec. 2 of Rep. Act No. 2264; (b) showing the ambiguous and contradictory provisions of Rep. Act No. 2264 and their effect upon established jurisprudence on the matter. Thus, the Autonomy Law allows the imposition of percentage and specific taxes with certain exceptions, which are altogether prohibited by the other laws and established jurisprudence. Moreover, the exercise of these enlarged powers under the Autonomy Law will result in the realization of very little revenue, unjust and unequal taxation, and the curtailment of the taxing power.

The author makes the following suggestions: (1) the repeal of the Autonomy Law; (2) the study of municipal taxation under the leadership of the national government; and (3) the formation of a coordinating agency within the Department of Finance with powers to approve and disapprove municipal tax ordinances. (Guillermo B. Blanco, *The Problems of Municipal Taxation.* I San Beda Law Journal No. 4 at 18-40. ₱—— at San Beda College, Manila.)

Legal and Judicial Ethics — Morals in Judicial Processes. —

This subject deals with the principles of right conduct or sense of duty to be followed by the lawyer and the judge. Should the lawyer as an officer of the Court be restrained by morals in the discharge of his professional duties? Should the judge as the presiding officer of the Court be guided by morals in the exercise of his judicial functions?

According to the author, morals and law used to be so linked together that lawyers and judges regarded the one as an indispensable counterpart of the other. But there has been a change in the attitude of lawyers and judges because of the juristic philosophy of Justice Holmes who believed that the essence of law is physical force.

Law cannot be divorced from morals because a human law, to be just, must flow from the principle of the natural law which requires the observance of the moral order. Law is essentially based on morals. A lawyer commits a moral evil if he prosecutes a civil case which is clearly unjust. If a lawyer has accepted a case, thinking it to be just, and later discovers that it is really unjust, he should withdraw from that case, because he cannot honestly cooperate with iniquity.

In a criminal case, a lawyer may not prosecute a clearly innocent accused. But the defense of an accused is not unjust even though he is really guilty because both the natural and positive laws give him the right of defense. A lawyer may conceal the truth but he may not employ perjury in the defense of an accused. A lawyer is morally bound to respect his client's confidence and observe professional secrecy. But when he knows that his client is planning to commit a crime, he is obliged to warn his client to desist, and if the client would not desist, he should warn the police authorities.

A lawyer should observe the moral principles on compensation for services rendered and restitution. The wealth of a client does not justify excessive charge. It is a moral evil not to return exhorbitant fees or to drag out a case for additional fees, or not to refund what he has received from a client before withdrawing from a case.

A judge must know the law and be a lover of justice. He must have such intellectual and moral qualifications to render decisions honestly and impartially. A judge must bear in mind that an accused has a right to be held innocent until reasonable moral certainty of his guilt has been established. A judge may not use his extra-judicial knowledge as a basis for his decision.

If a law is manifestly evil, a judge should resign rather than render a sentence under such a law which would command the commission of an intrinsically and grievously evil act. A judge must be above suspicion and so he must not use his office for the promotion of his private interest.

The author winds up by referring in particular to the moral obligations of a Catholic judge in the application, interpretation, and construction of the law. Let morality, he says, be the beacon light that should guide the lawyer and the judge in their joint duty of dispensing justice both to the poor and to the rich. (Justice Ramon R. San Jose, *Morals in Judicial Processes.* XI The Law Review No. 4 at 365-373 (1961). ₱2.00 Office of the Faculty of Civil Law, University of Santo Tomas.)