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THE SCOPE OF DUE PROCESS IN PHILIPPINE LAW†

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IV. THE STANDARD OF PROCEDURAL DUE PROCESS IN CRIMINAL CASES

THE rule of procedural due process in criminal cases is a reflection of of the norm prevailing in the United States. As stated tersely in one case:[125]

> With reference to the requirements of "due process of law" as applied to criminal procedure, in the language of the Supreme Court of the United States, generally speaking, it may be said that if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law.[126]
>
> The phrase "due process of law," used in the Constitution of the Commonwealth of the Philippines, should receive a comprehensive interpretation, and no procedure should be treated as unconstitutional which makes due provision for the trial of the accused before a court of competent jurisdiction, for bringing the accused into court and notifying him of the cause he is required to meet, for giving him an opportunity to be heard, for the deliberation and judgment of the court, and for an appeal from such judgment to the highest tribunal of the land.[127]

The Bill of Rights of the Philippine Constitution contains the seven fundamental rights to which the accused is entitled in the regular course of the criminal proceeding.[128] Only six rights (presumption of innocence is omitted on the ground that it is self-explanatory) are discussed here because they refer strictly to the accused, while the others scattered in other paragraphs

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[125] People v. Castillo, 76 Phil. 72 (1946).

[126] Rogers v. Peck, 199 U.S. 425 (1905); Twining v. New Jersey, 211 U.S. 78 (1908).

[127] U.S. v. Grant, 18 Phil. 122 (1910).

[128] PHIL. CONST. art. III § 1 (17).

of the Bill, but which are no less important, refer generally, to all persons, citizens as well as aliens. With these latter rights this paper is not concerned.

These rights, for the reason that they are procedural, are also provided for in the Rules of Court, under the title of rights of the accused.[129] The language of the Constitution and the Rules are substantially identical. Thus the rights of the accused in all criminal prosecutions are as follows:

PHILIPPINE CONSTITUTION Article III, Bill of Rights, Section 1, paragraph 17	RULES OF COURT, Rule 111, Section 1
a. to be heard by himself and counsel;	*a.* to be present and defend in person and by attorney at every state of the proceedings;
b. to be informed of the nature and cause of the accusation against him;	*b.* to be informed of the nature and cause of the accusation;
c. not stated, but (c) of the Rules is implied in (a) above, *viz.* to be heard by himself;	*c.* to testify as witness in his own behalf;
d. to meet the witnesses face to face;	*d.* to be confronted at the trial by, and cross-examine the witnesses against him;
e. to have compulsory process to secure the attendance of witnesses in his behalf;	*e.* to have compulsory process issued to secure the attendance of witnesses in his behalf;
f. to have a speedy and public trial.	*f.* to have a speedy and public trial.

a. *The Right To Be Heard by Himself and Counsel:*

1. *By Himself:* The right to be heard means that the accused is entitled to be present and defend himself during the proceedings. At once several questions crop up in connection with this right. Does this mean that the accused has the absolute right to be personally present at every stage of the trial, that is, from the time he is arraigned to the time of the judgment? Can he waive this right?[130] If he was absent during one stage of the proceeding, and at that time certain evidence or testimony was introduced to which he did not object when he reappeared, can he later on appeal raise the point that he was deprived of "due process of law"?

The Court has held that the accused must be present at the arraignment, at the time he makes an answer to the complaint, if his plea is guilty, and at the rendition of sentence.[131] In all these stages of the trial, his presence is required unless he is in custody awaiting trial for an offense carrying a capital punishment.[132]

If the charge is for a felony (*delito*), the defendant must be personally present at the arraignment; but if for a misdemeanor (*falta*), he may appear by counsel.[133] Thus the absence of the defendant at the time of a judgment of conviction was held to be reversible error.[134] The same ruling was held in the case of one found guilty of a felony at the time of arraignment, reading of complaint, or at the stage where the accused should be informed that he had the right to be represented by an attorney.[135] There seems to be much confusion with respect to this point of the presence of the accused, for in a later case,[136] it was held that the defendant is entitled to be present at every stage of the trial in all cases of a complaint for a felony.

The many doubts and conflicts that revolved around the question of the indispensability of the presence of the accused have lately been resolved by the express provision of the present procedural law, the Rules of Court, superseding General Orders No. 58. In all cases of felony, says the new law, the accused must be personally present, but if the charge is a light offense, he may only appear by attorney.[137] When the plea is guilty, however, his presence at the time he pleads cannot be waived.[138] Finally, his presence is also mandatory at the promulgation of judgment if the conviction is for a grave or less grave offense. His presence, however, can be dispensed with if the charge is merely for a light offense.[139] In all these stages — arraignment, plea and judgment — the accused must be present in these cases only where the offense charge is not capital and the accused is not in custody. But, when the offense is capital his presence is indispensable; and when the charge is not capital but he is in custody, his presence nevertheless is demanded by the law.

[129] RULE 111 § 1.

[130] "The provision of Sec. 1 (17), art. III of the Constitution expressly and clearly guarantees to the accused the right to be heard or to present evidence in his defense before being sentenced. Such constitutional right is inviolate. No court of justice under our system of government has the power to deprive him of that right. *If the accused does not waive his right to be heard* but on the contrary invokes that right, and the court denies it to him, the court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defense; and the sentence thus pronounced is void and may be collaterally attacked in habeas corpus proceeding." Abriol v. Homeres, G.R. No. L-2754, Aug. 31, 1949.

[131] People v. Francisco, 46 Phil. 403 (1924); Diaz v. U.S., 223 U.S., 442 (1912).

[132] General Orders No. 58 which embodied the code of criminal procedure in the Islands after the implantation of American rule and which replaced the Spanish law of criminal procedure (*Ley de Enjuiciamiento Criminal Español*) provided: "In all criminal prosecutions the defendant shall be entitled to appear and defend in person and by counsel at every stage of the proceedings." GEN. ORDERS No. 58 § 15 (1900).

[133] *Id. at* § 16 last sentence.

[134] U.S. v. Karelsen, 3 Phil. 223 (1904).

[135] U.S. v. Palisoc, 4 Phil. 207 (1905).

[136] People v. Avanceña, 32 O.G. 713 (1933).

[137] RULE 112 § 2.

[138] RULE 114 § 3.

[139] RULE 116 § 6.

Finally, an important question arises as to whether the presence of the accused is mandatory in the appellate court. Should the same principles enunciated above apply with respect to his presence here? This question was put squarely before the Court in *United States v. Beecham*,[140] and it held that the provisions of the Philippine Bill of Rights and General Orders No. 58 regarding this point are only applicable to the proceedings at the trial court, "and not to appellate proceedings, or proceedings subsequent to the entry of final judgment, looking merely to the execution of the sentence." At present this is also the rule since the Rules are substantially the same as General Orders No. 58 regarding this point.

2. *By counsel:* The assistance of counsel is deemed an essential right of due process so that its denial will lead to the reversal of the verdict of the trial court on the ground of failure to follow the constitutional mandate.

Chief Justice Manuel V. Moran, in *People v. Holgado*,[141] crystallized this right in the following words:

> One of the great principles of justice guaranteed by our Constitution is that "no person shall be held to answer for a criminal offense without due process of law," and that all accused "shall enjoy the right to be heard by himself and counsel." In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the Court to appraise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one *de oficio* for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own.

Although the Constitution fails to specify at what stage of the proceeding the accused must be defended, the procedural law says at all stages. And, if he fails to provide himself with counsel at the arraignment, it is made the duty of the Court to inform him of his right to have one.[142] And it is also the duty of the Court to assign an attorney *de oficio* in case the accused cannot afford a counselor.[143]

In the light of the above provisions, it has been held that the duty of informing is an affirmative one which the court, on its own motion, must perform,[144] but the accused may waive this right, either expressly or impliedly: expressly, when he makes an open renunciation and impliedly, when he arrives in court and answers the complaint without an attorney,[145] or where he voluntarily submits himself to the jurisdiction of the court and proceeds to the defense.[146]

[140] 23 Phil. 258 (1912).
[141] 47 O.G. 4621 (1950).
[142] RULE 112 § 3.
[143] *Ibid.*

b. *To Be Informed of the Accusation:* This refers to the character and form of the information or complaint presented against the accused.[147] It is not enough that he be informed of the accusation, but more important, he must have understood the true meaning of the nature and cause of the charges brought against him in a manner that a person of ordinary intelligence may understand. To work towards this end is the duty of the court and the prosecution. In *Paraiso v. United States*,[148] appealed to the Supreme Court, the latter held that it was due process of law under the Philippine Bill of Rights if the complaint has been so framed that it is sufficiently clear to the mind of a person of rudimentary intelligence. It must inform the accused of the nature and cause of the accusation and the conviction to be had thereunder.

The purpose of this safeguard is to enable the defendant to prepare for the trial of his case and be able to take advantage of all the possible defenses afforded by the law.[149] The procedural law of the Philippines has implemented the mandate by providing that complaints be "in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment."[150] It also provides, with the same end in view, that only one offense can be charged in the information and that the same should be read to him and a copy delivered to him.[151]

But the accused may be found guilty of any offense necessarily included in the allegations made in the information and fully established by evidence

[144] U.S. v. Binayoh, 35 Phil. 23 (1916).
[145] U.S. v. Santos, 4 Phil. 419 (1905).
[146] U.S. v. Escalante, 36 Phil. 743 (1917) U.S. v. Labial, 27 Phil. 82 (1914).
[147] The proceeding in which the right may be invoked is not exclusive of indirect contempt. See RULE 64 § 3.
Where the defendants, in a contempt charge, requested for a copy of the written charge and for an opportunity to answer said charge before action is taken against them, the action by the court in disregarding both pleas is tantamount to a denial of due process, which may be considered as a grave abuse of discretion. Esparagoza v. Tan, G.R. No. L-6525, April 12, 1954.
[148] 207 U. S. 368 (1907); 11 Phil. 799 (1907).
[149] The accused is allowed two days within which to prepare for trial. In Arnault v. Pecson, 48 O.G. 533 (1952), it was held that while the constitution and the laws of the land do not specify what this opportunity (the preparation of defense as included in the right of due process) is to consist of, beyond stating that the accused shall have not less than two days to prepare for trial (RULE 114 § 7), it is by necessary implication within the court's sound discretion in exceptional cases to allow him, besides time, adequate freedom of action, if the courts are to give form and substance to this guaranty.
[150] RULE 106 § 8.
[151] U.S. v. Salcedo, 4 Phil. 234 (1905).

where he had ample opportunity to defend himself against the charges filed against him.[152]

It is difficult to see how this right to be informed can be waived by the accused in view of the mandatory provisions of the Rules of Court, which direct the court, no less than the prosecution, to comply with the letter and spirit of the fundamental right.

c. *The Right To Testify as Witness in His Own Behalf:* This right seems to be included in (a) above, *i.e.*, to be heard by himself, for certainly if the defendant has the right to testify in his behalf, that is, to be a witness to explain and justify his actions, he should be heard by himself. This can be waived, of course, but if he waives or neglects to make use of it, the waiver or neglect "shall in no manner be used against him, that is, no unfavorable inference may be drawn therefrom."[153]

d. *The Right of Confrontation:* It has been held from time immemorial as a leading axiom of law, both under Anglo-American jurisprudence and Roman Civil Law, that no man shall be prejudiced by the testimony of another unless he has been given the opportunity to face his accuser. The inquisitorial method of trial where defendants are condemned without benefit of facing the accusing witnesses has no place in Philippine justice.

There are two well-known reasons advanced by commentators and notable jurists for the placing of such essential right in the Constitution and in remedial statutes. One reason, the principal one, is to enable the accused to cross-examine the witnesses against him. This insures him against danger of conviction on the mere strength of *ex parte* testimony or affidavits presented in his absence or during his silence.

In *Mattox v. United States*,[154] it was held that the opportunity to cross-examine must be real; a mere formal proffer of an opportunity, where the circumstances are such that the accused cannot effectively avail himself of it, is not sufficient observance of the right. In a Philippine case,[155] it was ruled that to introduce the testimony of a witness, taken in one criminal case, into another criminal case, over the objection of the defendant in the latter, is a violation of his rights, although such defendant may have been present in court when the witness testified.

The second reason, minor in scope, is to afford the court the benefit of observing the behavior and appearance of the witness. It has been held in an infinite variety of cases that the manner in which the witness testifies might help the trial court in weighing the evidence and resolving the issues of the case. Therefore, since the trial court has had this advantage, the

[152] People v. Castillo, 76 Phil. 72 (1946).
[153] 2 MORAN, COMMENTS ON THE RULES OF COURT 622 (2d ed. 1947).
[154] 156 U.S. 237 (1895).
[155] U.S. v. Remigio, 35 Phil. 719 (1916).

appellate courts are hesitant to disturb the findings of fact of the trial court, unless the judgment is based on some distorted fact or does not meet the ends of justice.

This right of confrontation, however, is subjected to exceptions. The procedural law itself prescribes the limitation. In the case where the testimony of a witness has been taken in the presence of the accused, the latter having been afforded the opportunity to cross-examine, such evidence can be introduced later upon proof that the witness is dead, incapacitated to testify, or cannot be located.[156]

The right of confrontation is rooted on that rule of procedure which rejects hearsay testimony. Thus the law of evidence takes away the validity of any act or utterance which is not done or said in the presence of the person against whom the evidentiary material is directed. However, rigid as this principle may be, it still allows other exceptions. Dying declarations is one of them. The reason for this exception is succinctly stated by the court in the case of *United States v. Gil*.[157] It said: "The admission of such declarations subject to certain conditions has long been recognized as proper. Their admission is an exception to the general rules, and can be sustained on other grounds than those of necessity and to prevent the failure of justice."[158] The Rules of Court on the matter of evidence mention many others, but it is unnecessary to mention them here.

This right of confrontation being a personal privilege, can be waived by the accused.[159] In *Diaz v. United States*,[160] it was held that this right "is in the nature of a privilege extended to the accused, rather than a restriction upon him. He is free to assert it or to waive it, as to him may seem advantageous."

e. *To Have Process Issued To Compel the Attendance of Witnesses in His Behalf:* This is another of the means devised by the framers of the Constitution for the protection of the accused. Through this means the accused is afforded the avenue or one of the avenues for proving his innocence. The processes are expressed in the form of subpoenas. He is literally invoking the machinery at the disposal of the court to issue the necessary orders to have witnesses, whether they be recalcitrant or merely fearful, to come and testify in his own behalf. Since this is a matter of constitutional right, the court cannot ignore or refuse to issue the processes and if it does so it is reversible error.

The defendant must however take advantage of this right at the opportune

[156] RULE § 1 (e).
[157] 13 Phil. 530 (1909).
[158] Also cited in U.S. v. Virrey, 37 Phil. 618 (1918); U.S. v. De la Cruz, 12 Phil. 87 (1908).
[159] U.S. v. Anastacio, 6 Phil. 413 (1906).
[160] 223 U.S. 442 (1912).

time as required by the law and the ends of justice. He should, therefore, ask for it before the start of the trial or during its course. The law, however, requires diligent efforts on the part of the accused to secure the presence of witnesses. Consequently, the Court in *United States v. Garcia*[161] held that if the accused failed to use reasonable diligence, he could not on appeal make objection on this ground. And if he went to trial without witnesses, he is deemed to have waived his constitutional right.

f. *To Have a Speedy and Public Trial:* Since a criminal charge over the head of the defendant is like a sword of Damocles, keeping him in suspense and uncertainty, and since delays hamper his opportunity to prove his innocence, the Constitution as well as the procedural law provide that he should have a speedy trial. This means, according to the Court in *Kalaw v. Apostol,*[162] "a trial conducted according to fixed rules and proceedings of law, free from vexatious, capricious and oppressive delays."[163]

Under this principle, justified postponements are allowed even if several have been made,[164] but long, unexplained postponements, especially in the commencement of the prosecution, may not only generate suspicion, but may also directly violate the fundamental maxim of speedy trial. Thus in one case[165] where the defendant, forced to respond to no less than five informations, and having appeared with her witnesses and counsel at hearings on eight different occasions only to have the cause postponed, and having twice been required to come to the Supreme Court for protection, and after more than one year from the time when the first information was filed seeming as far away from a definite resolution as when originally charged, the Court said:

> . . . where a prosecuting officer, without good cause, secured postponements of the trial of the defendant against his protest beyond a reasonable period of time, the accused is entitled to relief by a proceeding in mandamus to compel a dismissal of the information . . . .

The requirement that the trial be at the same time public simply means that no secret trials are allowed under a constitutional system of government such as obtains in the United States and the Philippines. Chief Justice Moran makes the observation that the provision serves a dual purpose,

[161] 10 Phil. 384 (1908).
[162] 64 Phil. 852 (1937).
[163] Speedy trial has been defined as that which "can be had as soon after indictment as the prosecution can with reasonable diligence prepare for it, trial . . . free from vexatious, capricious and oppressive delays." 2 MORAN, *op. cit. supra* note 153 at 638, citing cases. Such right is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice. Esguerra v. Court of First Instance, G.R. No. L-7691, July 31, 1954; People v. Zabala, 47 O.G. 6161 (1950); Talabon v. Provincial Warden, 44 O.G. 4326 (1947); Mercado v. Santos, 66 Phil. 215 (1938).
[164] Manabat v. Provincial Warden, G.R. No. L-6483, Nov. 27, 1953.
[165] Conde v. Rivera, 45 Phil. 650 (1924).

to wit: 1) to enable the public to watch the proceedings and judge thereby whether the defendant is being accorded fairness; and 2) to make the judge conscious of the grave responsibility of his duty to do justice.[166]

Again, as regards most constitutional rights, this right is not absolute, for a limitation is allowed under the law. The public may be excluded if the evidence is such that it may be repulsive to the sense of decency and morals.[167]

V. Due Process in Administrative Cases

1. *General Principles:* Administration, as generally known, is that vast system of executive bureaucracy serving as a separate arm of the government, whose main function is to carry out the minute mandates as outlined in the general scheme laid down by the Legislature. However, the function of administrative bodies is said to be two-fold, for the purposes of the scope of this paper, namely: quasi-legislative and quasi-judicial. It is quasi-legislative because the Legislature has delegated to it the power to lay down rules and policies as guiding norms of conduct for private rights, matters purely in the legislative field, and quasi-judicial because it adjudicates and interprets the law as applicable to certain sets of facts and circumstances, thereby arrogating upon themselves the function of the courts.

According to Judge Cooley, due process of law is not necessarily judicial process; a great deal of the process by which government is conducted, and by which the order of society is carried on is purely executive and administrative. But this fact does not detract from the weight of the principle that administrative action is as much due process of law as is any judicial procedure, though both are different in certain respects. While a day in court is a matter of right in judicial proceedings, in administrative proceedings it is otherwise since they rest upon different principles.[168]

With regard to the other respects in which an administrative tribunal and a regular court of justice differ, it is well to recall Professor Sinco's statement. According to him,[169] administrative bodies do not observe strictly the common-law rules on evidence while the latter, *viz.*, the courts, do. Secondly, administrative bodies decide cases according to governmental policy or discretion, whereas courts settle disputes according to the strict requirements of the law, independent of any governmental policy.

The important issue that arises in the treatment of the constitutional ques-

[166] 2 MORAN, *op. cit. supra* note 153 at 640.
[167] RULE 115 § 15.
[168] Weiner v. Bunbury, 30 Mich. 201 (1874); Den v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272 (1856). The doctrine in these fields relative to administrative cases has been followed in the Philippines in the following decisions: U.S. v. Gomez Jesus, 31 Phil. 218 (1915); Tan Te v. Bell, 27 Phil. 354 (1914); and Forbes v. Chouco Tiaco, 16 Phil. 534 (1910).
[169] SINCO, PHILIPPINE POLITICAL LAW 616 (2d ed. 1947).

tion of due process in relation to the matter of administrative proceeding is whether there is an infringement of the constitutional guaranty when a delegation of legislative discretion to, and an assumption of judicial determination by, the administrative body is involved. Narrowly stated, it is a question of the conformity of the procedure employed by the administrative officials concerned, when acting on the substantial rights of persons, to the due process clause.

It is generally held that when the general rule or general policy has been validly laid down by the Legislature, the delegation by the latter to administrative officers of the task of working out the details of the general plan is proper and constitutional. Again, as discussed previously, the presence or absence of two important parts of due process, namely, notice and hearing, will be the criterion by which the constitutional guaranty is said to have been complied with or not.

When there is need for notice and hearing in order to constitute due process in the administrative proceeding, and when there is no need for them, is often difficult to say. A cut and dried rule cannot be laid down because every case must be judged according to its particular circumstances.

It is the general view in the United States as well as in the Philippines, as reflected in a myriad of court decisions, that in the determination of a case of a quasi-judicial nature, notice and hearing must be had in order to satisfy the requisites of due process. Any summary method employed must nevertheless provide for notice and hearing, even if only in a substantial form. But this rule is subjected to several exceptions as the following pages will imply.

On the other hand, in the determination of a case of a quasi-legislative nature, notice and hearing are not required. If the adjudication is purely ministerial, *viz.*, in the case where the administrative officer must discharge the duty without any exercise of discretion, notice and hearing are of no practical value. Any discussion, therefore, on this point becomes purely academic.

Irrespective, however, of whether notice and hearing were had or not, many courts hold, both in the United States and in the Philippines, that if there has been no abuse of discretion by the administrative body in applying the legislative scheme of policy nor fraud in its procedure and weighing of the facts, and its action was clearly done within the authority conferred by the statute, the decision of the body is constitutional and final.

That decisions of such tribunals must necessarily be final is lucidly explained by the United States Supreme Court in *Reetz v. Michigan*.[170] It said: "We know of no provision in the Federal Constitution which forbids a state from granting to a tribunal or a board of registration, the final determination of a legal question." If this is true in the United States, it should necessarily be true in the Philippines, for a close examinaton of the Philippine Constitution will reveal no prohibition against the power of the State to grant administrative tribunals finality of decisions, either expressly or impliedly. Neither is there any statute which provides for a general prohibition.

[170] 188 U.S. 505 (1903).

Following the doctrine laid down in many United States and Philippine cases, it is generally held that although notice and hearing are always considered integral parts of due process, their absence in an administrative proceeding would still permit the latter to conform to the constitutional safeguard, provided the statute under which the action is authorized mentions nothing about notice and hearing.

Several reasons can be advanced to explain why this form of procedure is acceptable. Courts, hampered by technical rules of procedure and evidence, are naturally slow in the resolution of judicial questions. Whereas administrative bodies, not bound by such fixed rules, can work with greater speed and dispatch. The facilities at the disposal of courts for ascertaining the truth, by way of experts and highly-skilled testimony, are poor indeed compared with those of administrative bodies which are often staffed with men of learning, trained for the particular task at hand and especially qualified for scientific work and research.

In view of the modern complicated problems in labor, immigration, public utilities, fixing of rates in transportation and communication and in executive administration, all of which need rapid procedure for their resolution, such long-winded judicial methods of determination which presuppose notice and hearing, and which sometimes occasion delays at every turn, are not conducive to meet the best interests of the public. In this respect, therefore, administrative tribunals are better equipped than the courts. Be this as it may, courts may still subject such decisions to judicial review on the grounds of patent or grave abuse of authority and lack of jurisdiction.

In line with this policy, therefore, the Philippine Supreme Court has invariably held that decisions of provincial boards and municipal executive bodies exercising delegated legislative and judicial discretion, in the absence of notice and hearing, are deemed to be consistent with due process, and as a result, many Philippine courts are generally reluctant in disturbing the findings of these bodies. Many of these cases involve the constitutionality of statutes whereby certain elective officials like provincial governors and municipal presidents are suspended or removed by such boards without any formal hearing or any form of opportunity to present their defense.

Applying the above-mentioned principles, the Supreme Court of the Philippines in *Cornejo v. Gabriel*,[171] decided what constitutes due process in ad-

[171] 41 Phil. 188 (1920).

ministrative cases. The case involved the suspension of a municipal president without any notice and hearing. The municipal president claimed the office he was holding was a form of property and therefore entitled to protection against deprivation. The Court, however, held, following the doctrine expressed in an infinite variety of United States cases on the matter, that a public office is not property within the meaning of the Constitution, but a public trust which the State may withdraw from the holder at any time.[172] The Court further held that notice and hearing are not prerequisite to suspension unless required by the statute on the ground of public necessity and safety of the state "from the highest motives of public policy to prevent the danger to the public interests which might arise from leaving such great powers and responsibilities in the hands of men legally disqualified."[173]

But a later case[174] decided by the Court of Appeals, rejected this principle laying down a distinction between property in a technical sense and property in a broad sense,[175] and holding that the transfer of a public high school principal, under regular apointment to a provincial high school, to another school without his consent, amounted to a removal from office without legal cause,[176] thus violating the due process clause of the Constitution. There, the right to hold public office was clearly established as property within the constitutional guaranty.[177]

In another leading case, *Rubi v. Provincial Board of Mindoro*,[178] involving the necessity of notice and hearing, the Court held that the statute was valid and the action done by the administrative body pursuant to its provisions was deemed due process. The case concerned the liberty of persons belonging to certain non-Christian tribes of the Islands. The statute in question authorized the provincial governor, with the approval of the provincial board members, all administrative officials under the supervision and regulatory control of the Secretary of Interior, to segregate them in a reservation for the purpose of securing greater peace, and to better promote the welfare of Christians as well as non-Christians. The law did not provide for any notice or hearing, but it was held that there was due process of law because the proceeding conducted by the governor was valid, being in itself due process. The Court, defining the validity of actions of public

[172] See Taylor v. Beckham, 178 U.S. 548 (1900).
[173] Griner v. Thomas, 101 Tex. 36 (1907); Wilson v. North Carolina, 169 U.S. 586 (1898).
[174] Alzate v. Mabutas, (CA) 51 O.G. 2452 (1954).
[175] Ekern v. McGovern, 46 L.R.A.(n.s.) 796, 834 (1913).
[176] Cometa v. Andanar, 50 O.G. 3594 (1954); Rodriguez v. Del Rosario, 49 O.G. 5427 (1953); Jover v. Borra, 49 O.G. 2765 (1953); Lacson v. Roque, 49 O.G. 92 (1953).
[177] 42 AM. JUR., *Public Officers* § 9, at 887-88.
[178] 39 Phil. 660 (1919).

officers as due process, cited the opinion expressed in *Hurtado v. California*,[179] in support of its decision, to wit: "any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the public good, which regards and preserves these principles of liberty and justice must be held due process of law."

In this connection, if the public official is an appointive officer, there will be no complication as regards notice and hearing, since he can be suspended or removed by the President of the Philippines pending investigation.[180] Section 695 of the same Code provides for administrative discipline by the Commissioner of Civil Service of any subordinate official of the Philippine government, by way of suspension, removal or reduction of salary, for "neglect of duty or violation of reasonable office regulations." Since this law is silent on notice and hearing, it is clear that the Commissioner of Civil Service may remove or suspend any subordinate government official even without notice and hearing and the same would constitute due process under the Constitution.

There are still several cases which, by their nature, do not require notice and hearing in the resolution of judicial questions before an administrative body. Examples of these summary administrative proceedings under Philippine law affecting the life, liberty or property of individuals are the following:

1. distraint of property in tax cases;
2. the granting of preliminary injuction *ex parte;*
3. the suspension of government officers or employees pending investigation by the Governor-General, before the independence of the Islands, and by the President, after independence.

Exemplifying many of the principles mentioned, particularly the dual role function, certain Philippine administrative tribunals, like the Board of Special Inquiry in immigration cases, the Court of Industrial Relations in capital-labor controversies, and the Public Service Commission in utility and transportation cases, are taken into consideration in the following pages.

2. *Boards of Special Inquiry:* It is an admitted fact that the State may exclude certain individuals, even its own citizens, from its shores and refuse admission to foreigners. In other words, it is within the unrestricted discretion of the State to deport certain persons whom it has decided to be undesirable on grounds of safety, health, and promotion of the general welfare, and also to deny any alien entry on the same grounds. This power of any State is predicated on the basis of self-preservation and integrity of its dominion and its sovereignty.

[179] 110 U.S. 516 (1884).
[180] REV. ADM. CODE § 694.

In the Philippines, the administration of immigration laws is by its very nature entrusted to the supreme executive head who is empowered to execute all laws by virtue of organic acts vesting in him the executive authority.[181]

This authority of the head of the state to deport, expel, exclude or repatriate subjects of foreign powers upon prior investigation is found in section 69 of the Philippine Administrative Code. Once the Chief Executive has acted and decided on the matter, his decision is final and conclusive. This is the holding in the leading case of *In re McCulloch Dick*.[182] And by virtue of the doctrine of separation of powers, the courts are powerless to intervene.

At the present time, this power which is inherently quasi-judicial, is delegated by the President to the Collector of Customs who acts and decides through administrative tribunals called boards of special inquiry whose determinations are not, as just stated, subject to review by the judiciary. Under present law these boards are under the immediate control and supervision of the Commission on Immigrations.

The nature of the trials conducted under these boards, which are no more than investigations inquiring into the rights of certain aliens to enter into or stay in the country, are summary. But since the issues that come before these bodies present questions of justiciable character, the persons affected are usually afforded the opportunity of a fair hearing and the occasion for the presentation of defenses. All this means that they must be given sufficient time to prepare for trial, to be represented by a lawyer, to present witnesses in their behalf, present their proofs and cross-examine the witnesses that may be offered against them. Also, in order to complete the proceedings, the evidence must be weighed and considered in arriving at a decision, the board being required to support it with sufficiently reasonable evidence derived from the findings; otherwise the decision would be a mere farce and without merit. All this is necessary to make the whole procedure conform with the due process clause.[183]

By the recitation of the afore-mentioned procedural rights of due process the impression is gathered that the proceeding, though essentially summary, has all the earmarks of a criminal trial. However, it has been held that deportation proceedings under a statute are not criminal in their nature.[184]

Consequently, under such investigations there is no such thing as an offense, a trial, and a sentence for a crime. Since this is so, it must follow that the defendant is not entitled to the procedural rights of due process of the same nature as the accused in criminal cases.

[181] These organic laws are: The President's Instructions to the Commission of April 21, 1900; The Executive Order of the President of June 21, 1901; The Spooner Amendment attached to the Act of Congress of July 1, 1902; and The Act of Congress of August 23, 1916.

[182] 38 Phil. 41 (1918).

[183] Bayani v. Collector of Customs, 37 Phil. 408 (1918); U.S. v. Lao Chuoco, 37 Phil. 53 (1917); Edwards v. McCoy, 22 Phil. 598 (1912).

[184] Guevara v. Collector of Customs, 34 Phil. 394 (1916); U.S. v. Ang, 34 Phil. 44 (1916); U.S. v. De los Santos, 33 Phil. 397 (1916); U.S. v. Tan Yak, 25 Phil. 116 (1913).

But if they are not criminal, are they then civil? In one case[185] it was held that deportation proceedings and inquiries into the right of aliens to stay are civil actions where the laws of evidence pertaining to civil action govern. But, whether they are criminal, civil or purely administrative, the proceedings are simply an ascertainment, by legal means, of the fact whether the conditions set by Congress relative to the right of an alien of a certain class to remain within the territory of the United States exists.[186] To this end, therefore, any method as to the expulsion or deportation undertaken in the "official judgment and good conscience of the Chief Executive acting through the administrative body, is valid."[187]

The true nature of these proceedings and the function of these administrative tribunals, however, is best explained by Justice Carson in *United States v. Tan Yak*.[188] He said that "they are not ordinary civil actions in the sense in which that word is used in these provisions of the Code of Civil Procedure whereby such actions are brought to this Court for review by bills of exception. They are rather in the nature of special administrative investigations instituted and conducted by the Government whereby a judicial hearing is provided."[189] That the said tribunals are not required to follow the ordinary rules of judicial procedure is clear from his statement that "while the submission of the proceedings has all the essential elements of a civil case — a complaint, a defendant and a judge — *actor, reus et judex*, — nevertheless it is very clear that under the statute, the hearing may be had without regard to the technical formalities prescribed in the case of the actions and special proceedings contemplated in the code."

It is clear, therefore, that the formal requisites of due process as found in judicial and criminal proceedings cannot be applied to the procedure conducted by the Board of Special Inquiry. Neither is it strictly governed by rules of civil law and procedure since it is not exactly a civil proceeding. But whatever procedure the administrative body may have adopted, if the conclusions reached are based upon some evidence, it has been held that the same is due process, and the decision is final and not reviewable by the courts.[190]

However, although the proceedings of the board are not hamstrung by

[185] Guevara v. Collector of Customs, 34 Phil. 394 (1916).

[186] U.S. v. Ang, 34 Phil. 44 (1916).

[187] Forbes v. Chuoco Tiaco, 16 Phil. 534 (1910), *aff'd*, 40 Phil. 1122 (1913).

[188] 25 Phil. 122 (1913).

[189] Cited also in Fong Yu Ting v. U.S., 149 U.S. 698 (1893).

[190] This has been the holding in an unbroken line of decisions, particularly: Molden v. Collector of Customs, 34 Phil. 493 (1916); Guevara v. Collector of Customs, 34 Phil. 394 (1916); Leung Guen v. Collector of Customs, 31 Phil. 417 (1915); and Loo Sing v. Collector of Customs, 27 Phil. 491 (1914).

any cumbersome and fixed procedural rules which govern ordinary judicial cases, this does not mean that the customs authorities, acting through the board, act arbitrarily or capriciously in accepting or rejecting the proof offered. And in passing upon the evidence adduced before it, the department of customs acts, more or less, as a jury in determining the facts in the first instance.[191] Thus, in a case[192] it was held that the due process clause has been palpably violated because the defendant was not given a fair hearing since he was not afforded a chance to examine an important piece of evidence, *viz.*, an affidavit, which was the basis of the decision against him.

Nevertheless, though the findings of both facts and law of the board are final, and not subject to judicial review, it has been consistently held that the courts may still intervene and assume jurisdiction over the case, affirm, modify or reverse the decision of the board, in order to meet the ends of the due process clause, but only in the event any of the following facts occur:

1. error or abuse of power and discretion;
2. refusal of a fair hearing;
3. no evidence to sustain the findings;
4. application of wrong principles of law to conceded or undisputed facts;
5. disregard of evidence.

In the case of *Ang Eng Chong v. Collector of Customs*,[193] it has been ruled that an abuse of authority exists, making the decision of the board amenable to judicial cognizance, in the following cases: a) when a person has been denied admission into territory of the United States, who, seeking admission, has not been given a full, fair and free hearing; b) when a person has been denied admission into a territory of the United States who does not belong to any of the excluded classes as mentioned in the statute; c) when there has been no proof at all presented against the right of the applicant seeking admission.

Stripped of all the incidental principles discussed, the naked essentials of the conception of due process have always been held to inhere in such administrative proceedings before a board of special inquiry. And these elements are notice and fair hearing on the evidence presented consonant with the principles earlier elucidated. But a fair hearing includes not merely going through the formalities of a trial; it necessarily implies a fair opportunity to present evidence in defendant's favor to the extent that he also be appraised of the evidence against him, that he be able to examine and contradict it, and that the decision must have been based on the proofs adduced in the hearing. In the absence of any of these elements there is

[191] Tan Puy v. Collector of Customs, 36 Phil. 900 (1917).
[192] Yu Se Guioc v. Collector of Customs, 61 Phil. 152 (1935).
[193] 23 Phil. 614 (1912).

sufficient reason for courts to take cognizance, and void the proceedings as not conforming to due process.

3. *The Court of Industrial Relations:* This court, which is of statutory origin, occupies quite a unique place in the constitutional set-up of the Philippine Government today. This is on account of its dual role in the administration of justice, a role which is more marked here than that played by the other administrative agencies. Although a part of the judicial system, it is more of an administrative arbitration body because, acting as an arm of the executive department, it investigates and regulates the relations between capitalist and laborer, employer and employee, and landlord and tenant.

It has also the power, by virtue of this administrative duty, to make a study of the conditions in any industry, with a view of adopting a minimum wage for laborers or maximum rentals to be paid by tenants. Helping this tribunal are commissioners and expert lawyers whose duty is to gather and examine the facts which later will serve as the basis of the court's decision. This is in line with what was said earlier of the need for speed and efficiency in solving recent complex problems of economic society.

But in addition to these administrative duties, this tribunal exercises semi-judicial power, for it settles industrial and agricultural disputes such as strikes, lockouts and tenancy conflicts. Towards this end, it receives evidence, hears the testimony of parties to a case, summons witnesses and requires them to testify, compels persons within its jurisdiction to produce books and documents, makes an award or renders a decision on the basis of the findings, and performs any other functions which a regular court of justice may do.

This is, therefore, the true nature and function of the Court of Industrial Relations — a body having an admixture of judicial and administrative powers, an arrangement which, as in other government agencies of this type, is a departure from the traditional theory of separation of powers. But whether it is an administrative or judicial body is not fundamentally material in the face of the bigger problem of what constitutes due process of law in proceedings of this nature.

In a uniform line of decisions, the Philippine Supreme Court has held that this tribunal is not restrained in the determination of legal and economic questions before it by technical rules of procedure. The Supreme Court has held that the tribunal should "act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable."[194]

[194] Ang Tibay v. CIR, 69 Phil. 635 (1940); Goseco v. CIR, 68 Phil. 444 (1939).

But although the Court of Industrial Relations, in the determination of any question or controversy, may adopt its own rules of procedure and may act according to justice and equity without regard to technicalities or rules of evidence, it cannot ignore or disregard the fundamental requirements of due process in trials and investigations brought before it.[195]

The phrase "according to justice and equity" is quite vague and general. What concrete principles of due process should apply in the determination of labor disputes brought before the tribunal? In the first place, notice and hearing are indispensable. This is plainly obvious from the very nature of the presentation of the controversy and the action to be taken upon it. Other primary and cardinal rights which by their nature inhere in due process should be examined in a number of cases.

Mr. Chief Justice Hughes in *Morgan v. United States,*[196] said that one of these rights is for the administrative tribunal to consider the evidence presented, and not only to afford opportunity to the defendant to present his case and adduce evidence tending to establish the rights which he asserts. Philippine cases admit the existence of this right. In the case of *Edwards v. McCoy*[197] the Court ruled, "the right to adduce evidence, without the corresponding duty, on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

In this latter case, another primary right of due process is implied. Quoting once again from the words of the Court:

> . . . While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, at least when directly attacked.

The Court in *City of Manila v. Agustin,*[198] finding support in many United States cases involving the same point, advanced the fundamental tenet that not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." Substantial evidence means more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[199] This same doctrine has been followed in a number of cases by the Philippine Supreme Court.

[195] Philippine Movie Pictures Workers' Ass'n. v. Premiere Productions, 50 O.G. 1096 (1953).
[196] 298 U.S. 468 (1936).
[197] 22 Phil. 598 (1912).
[198] 65 Phil. 144 (1937).
[199] Appalachian Electric Power Co. v. NLRB, 93 F.2d 985 (4th Cir. 1938); NLRB v. Thompson Products, 97 F.2d 13 (6th Cir. 1938); Ballston-Stillwater Knitting Co. v. NLRB, 98 F.2d 758 (2d Cir. 1938).

In a series of American cases[200] it has been held that the rules of evidence prevailing in courts of law and equity shall not be controlling. The obvious purpose of this and similar provisions, according to the Court, is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. This doctrine has also been observed by Philippine courts in the application of the rudimentary principles of due process in labor conflicts brought to them on appeal from the Court of Industrial Relations. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.[201]

Another principle of due process that should be observed in the resolution of labor conflicts, and for that matter in the determination of any case presenting a justiciable controversy, is that the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.[202] The Court held that only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them.

The Court, however, pointed out that it should not detract from their duty actively to see that the law is enforced, and, for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. This, therefore, according to the Court, means that the judges of the latter (administrative tribunal) must act on their independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

Lastly, as an integral part of due process and at the same time inseparable from the statutory authority granted it, the tribunal should, in all controversial questions, render its decision in such a manner that the parties to such proceedings can know the various issues involved, and the reasons for the decisions rendered.[203]

In the light of these conceptions of due process always applicable to proceedings before the Court of Industrial Relations, the latter's decisions are

[200] Interstate Commerce Comm'n. v. Baird, 194 U.S. 25 (1904); Interstate Commerce Comm'n. v. Louisville & N.R. Co., 227 U.S. 88 (1913); Tagg Bros. v. U.S., 280 U.S. 420 (1930); U.S. v. Abilene & S.R. Co., 265 U.S. 274 (1924).
[201] Consolidated Edison Co. v. NLRB, 305 U.S. 197 (1938).
[202] Ang Tibay v. CIR, 69 Phil. 635 (1940).
[203] *Ibid.*

not subject to revision or reversal by the Supreme Court even if it fails to observe the technicalities of court trial and rules of evidence established by the procedural laws, unless there has been an abuse of discretion or authority.

Generally, the abuse of discretion would consist in unwarranted orders of the tribunal in either requiring employers to reinstate ousted employees or approving the action of employers in dismissing their employees, or in unlawfully refusing to assume jurisdiction over the case although it is clearly within its authority. When in a case before a tribunal, the principal question to be determined is whether the dismissal of the employees is justified or not, and the tribunal rules contrary to the obvious facts of the case, whether in favor of the employer, or the employees, then the judgment predicated on this order is subject to reversal. All these, however, would depend on the particular facts and circumstances involved. It is impossible here to define in one sweep what constitutes an abuse of discretion.

On two important but broad grounds, therefore, would the decision of the tribunal be subject to revision, modification or reversal by the higher court. One is for failure to observe due process of law; the other is an abuse of discretion or authority.

4. *Public Service Commission:* This is another of those great administrative bodies which exercise quasi-legislative and quasi-judicial functions,[204] and whose authority generally is founded on the police power. Its important function, as it is known both in the United States and in the Philippines, is closely allied to the field of economics since a large portion of its work is concerned with the fixing of utility and transportation rates, the granting of certificates of public convenience, and the regulation of the operations of large companies dealing with the supply of fuel and communication to the general public.

These are the businesses "affected with a public interest," and the regulatory power of the Commission is based on the principle that private property devoted to public use necessarily becomes subjected to regulations by the State for the public benefit.

The Commission discharges quasi-legislative duties because it is empowered under the law to make policies, promulgate rules and lay down certain schemes governing the management of the private companies. It can impose conditions before a grant of public convenience certificate is conceded by way of limiting the number of years the private enterprise can operate, or revoke any certificate when deemed in the public interest.

It performs semi-judicial functions since it issues summons to parties and witnesses, conducts hearings, receives evidence, compels persons to produce books and documents and so on. In fine, it can do all the functions of a regular court of justice, if doing so enables it to fulfill its mission of protecting the public interest. Thus, the same principles of due process must necessarily apply in the resolution of the questions brought before it as those before the Court of Industrial Relations and Boards of Special Inquiry when the questions are in the nature of justiciable controversy.

[204] Everett Steamship Corp. v. Chuahiong, G.R. No. L-2933, Sept. 26, 1951.

It is with the question of notice and hearing, as primary phases of due process, that the Commission and the Philippine Supreme Court are most often confronted. That there must be notice and hearing is clear. The whole controversy, however, centers on the issue as to whether, in the granting or revocation of certificates of public convenience, all the necessary requisites and conditions of notice and hearing as required by regular courts must be present.

Needless to state, resort to the enabling statute must be done to resolve the conflict.[205] But there are certainly some problems which apparently touch the outer fringes of unconstitutionality, requiring a probe into the elements of due process.[206]

Another important phase which has continually plagued the Commission and the Supreme Court is the matter as to whether these certificates should be treated as property or privilege.

In one case,[207] it was held that the interlocutory order issued by the Commission revoking a certificate of public convenience does not require such notice and hearing as contemplated in a court of justice. However, in a strong dissenting opinion it was ruled that this is unconstitutional since it violates the due process clause.

Hearing is so indispensable in this type of cases that failure to hold it would mean the setting aside of the order of the Commission by the Supreme Court. This is the ruling laid down in a uniform line of decisions.[208] As

[205] C.A. No. 146 §§ 16 & 17 as amended.

[206] In Halili v. Public Service Comm'n., 49 O.G. 1827 (1953), the amendment of an alleged error by the Commission in the original decision fixing the routes, without proper notice to and opportunity on the part of the opposing party to be heard, was held to violate the latter's right not to be deprived of his property without due process of law, as differentiated from the power of the Commission to issue permits provisional in nature, without hearing, for new services.

Thus, the Commission may grant a temporary permit to operate a public service where the case cannot be decided at once or where the hearing is beset with various motions for postponements and there is urgent public need for the continuance or readjustment of old services. Biñan Trans. Co. v. Prieto, G.R. No. L-5193, July 25, 1952; Ablaza Trans. Co. v. Ocampo, G.R. No. L-3563, March 29, 1951; Javellana v. La Paz Ice Plant & Cold Storage Co., 64 Phil. 894 (1937). See also: Silva v. Ocampo, G.R. No. L-5162, Jan. 31, 1952.

[207] Orlanes v. Public Service Comm'n., 57 Phil. 634 (1932).

[208] In particular: A. L. Ammen Trans. Co. v. Public Service Comm'n., 72 Phil. 459 (1941); Pangasinan Trans. Co. v. Public Service Comm'n., 70 Phil. 221 (1940); De Mondia v. Public Service Comm'n., 65 Phil. 708 (1938); San Miguel Brewery v. Espiritu, 60 Phil. 745 (1934); Northern Luzon Trans. Co. v. Valera, 59 Phil. 96 (1933); Valera v. Rural Transit Co., 59 Phil. 93 (1933); Cebu Transit v. Jereza, 58 Phil. 760 (1933); Northern Luzon Trans. Co. v. Sambrano, 58 Phil. 35 (1933); Meralco v. Pasay Trans. Co., 57 Phil. 894 (1933); Bohol Land Trans. Co. v. Jureidini, 53 Phil. 560 (1929); Batangas Trans. Co. v. Orlanes, 52 Phil. 445 (1928); National Coal Co. v. Public Utility Comm'n., 47 Phil. 356 (1925).

to what constitutes a fair hearing in administrative bodies possessing the attributes of a judicial court, the rule is the same in public utility cases — presentation, consideration and judgment.

Although there are many rulings, both in the United States and in the Philippines, holding that certificates of public convenience and necessity are contracts and franchises granting the holder rights of property, the majority of the cases hold that they are merely licenses or privileges conferring no proprietary rights. And in view of the provisions of the Constitution[209] empowering the Philippine Congress to amend, alter or repeal any franchise or right granted to public utilities at any time when the public interest so requires, it is now settled that since a certificate of public convenience and necessity is a form of franchise, its regulation, modification or revocation by the Public Service Commission, which is a creation and an agent of the Legislature in this respect, is not a deprivation of property without due process of law.

VI. Due Process and the Police Power

1. *Nature of the Police Power:* Together with eminent domain and taxation, the police power of the state form the basic powers of any government. Chief Justice Taney describes it as the power of any government inherent in every sovereignty to the extent of its dominions.[210]

Its function is broad and comprehensive for it embraces almost everything that the government, acting through the legislature, can regulate for the public interest.

The exercise, however, of police power is justified and grounded on those two well-known Latin maxims, *sic utere tuo ut alienum non laedas* and *salus populi est suprema lex*.

The power is indeed so broad that it defies any clearcut definition, and for this reason attempts to set its limits have so far failed. Nevertheless, it has been generally defined, as the Latin phrase implies, as the power of promoting the public welfare by restraining and regulating the use of liberty and property; specifically to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity.[211]

2. *Limitations:* Broad and far-reaching as this fundamental power is, yet it cannot be said that it admits of no limitations. We find authority in the words of Justice Brown in *Lawton v. Steele*,[212] where he affirmed: the

[209] Phil. Const. art. XIV § 8.
[210] License Cases, 46 U.S. (5 How.) 504 (1847).
[211] Barbier v. Connoly, 113 U.S. 27 (1885).
[212] 152 U.S. 133 (1894).

Legislative determination as to what is a proper exercise of its police powers is not final but is subject to the supervision of the courts.

The question to be asked then is, under what conditions and circumstances may courts subject to scrutiny the action of the Legislature purported to have been made to protect such matters affecting the safety, morals and health of the people?

The first rule that courts apply in the determination as to whether an exercise of police power by the legislature falls within the province of judicial review is the question of public interest as against private or group interest. The United States Supreme Court succinctly stated that to justify the State in the exercise of its sovereign police power, it must appear, first that the interests of the public generally, as distinguished from those of a particular class, require such interference.[213]

The second rule is to find out if there has been a real or substantial relation between the act and the valid objects or purposes of police power. If there is such a relation, courts will refrain from inquiring and the action of the Legislature will be upheld. Thus Justice Harlan, in *Jacobson v. Massachussetts*,[214] said:

> If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is, beyond all question, a plain palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.

The Philippine Supreme Court, in *Churchill v. Rafferty*,[215] applying the same rule and deciding the question along the same lines, said:

> An act of the legislature which is obviously and undoubtedly foreign to any of the purposes of the police power, and interferes with the ordinary enjoyment of property, would, without doubt, be held to be invalid. But where the act is reasonably within a proper consideration of and care for the public health, safety, or comfort, it should not be disturbed by the courts. The courts cannot substitute their own views of what is proper in the premises, for those of the legislature.

In another case,[216] the Court, implying the necessity of such valid connection, upheld a law whose object it was to penalize any able-bodied citizen who refused to do patrol service in the apprehension of robbers and bandits in the community. That the due process clause is not violated, nor any law, when a government acts to restrict individual liberty in order to

[213] *Ibid.*
[214] 197 U.S. 11 (1905).
[215] 32 Phil. 580 (1915).
[216] U.S. v. Pompeya, 31 Phil. 245 (1915).

preserve order and prevent individual offenses against the state, the Court said:

> There is nothing in the law, organic or otherwise, in force in the Philippines, which prohibits the central Government, or any governmental entity connected therewith, from adopting or enacting rules and regulations for the maintenance of peace and good government. The people may be called upon, when necessary, to assist in any reasonable way, to rid the state and each community thereof, of disturbing elements.

The third rule to be used in order to justify judicial interference is whether the means employed are reasonably necessary for the accomplishment of the purpose. But what are reasonable means still greatly depend on the circumstances and facts of the particular case. As in many instances, a sweeping general rule applying this principle in the exercise of police power, cannot be made. The Philippine Supreme Court in *United States v. Villareal*,[217] applying this test of "reasonableness" decided that a regulation penalizing the carrying of concealed weapons was a reasonable police measure in order to abate lawlessness and achieve greater security. The Court ruled that the regulation was well calculated to restrict the too frequent resort to such weapons in moments of anger and excitement. The strict enforcement of such a regulation would tend to increase the security of life and limb and to suppress crime and lawlessness in any community wherein the practice prevails, and this without being unduly oppressive upon the individual owners of these weapons.

Using almost the same reasoning, the Court in another case[218] decided that the quarantine, isolation, and even the slaughter of cattle suffering from infectious or contagious diseases are reasonable measures executed under the police power to insure the public against ravages of epidemics.

A good example of the rule of "reasonableness" of means, although restrictive of liberty or proprietary rights is expressed in the decision of *Kwong Sing v. City of Manila*.[219] In this case the Municipal Council of the city enacted an ordinance requiring receipts in duplicate in English and Spanish, duly signed showing the kind and number of articles delivered by laundries. The object of the legislation was clearly the promotion of peace and good order and the prevention of fraud. The Court, upholding the ordinance, explained the tests of "reasonableness" and ruled that to meet the test the legislation must not be oppressive, nor unjust, or unequal.

But when the law, ordinance or regulation is unreasonable, or when it is oppressive and in the course of its enforcement it causes great and irreparable injury, the courts are duty bound to void the legislation as not only

[217] 28 Phil. 390 (1914).
[218] Punzalan v. Feriola, 19 Phil. 214 (1911).
[219] 41 Phil. 103 (1920).

an improper exercise of the police power but as violative of the due process clause.

Some illustrative instances of unreasonable laws declared void by the Supreme Court are the following:

1. A law which requires a property owner to make constant repairs at short intervals of time in the sanitary fixtures of his building at great expense to himself.[220]

2. A statute requiring all owners of factories to provide vacation leave with pay to pregnant women workers, which not only impaired the right to enter freely into contracts, but also deprived one of his rights without due process of law.[221]

A specific example of the exercise of the police power is the abatement of nuisances. Our New Civil Code defines[222] and then distinguishes nuisances into public and private nuisances[223] and provides the remedies for the abatement of each.[224] However, another distinction is usually made: as a nuisance per se or a nuisance per accidens.[225] Nuisances per se are "those that are such at all times and under any circumstances, regardless of location or surroundings," while nuisances per accidens are "those which become nuisances by reason of circumstances or surroundings."[226] As to their abatement, these questions arise: Is there need of any notice and hearing before a person's property, which constitutes a nuisance, may be abated? Would the lack of such notice and hearing constitute a deprivation of property without due process of law?

Our Supreme Court has consistently held that a nuisance per se may be abated summarily without necessity of any notice and hearing while a nuisance per accidens may be abated only upon previous notice and hearing. Thus the Court in the leading case of *Iloilo Ice & Cold Storage Co. v. Municipal Council*[227] held:

> A nuisance which affects the immediate safety of persons or property, or which constitutes an obstruction to the streets and highways under circumstances presenting an emergency, may be summarily abated under the undefined law of necessity.
>
> . . .
>
> If no compelling necessity requires the summary abatement of a nuisance, the municipal authorities, under their power declare and abate nuisances, do not have the right to compel the abatement of a particular thing or act as a

[220] Case v. Board of Health, 24 Phil. 250 (1913).
[221] People v. Pomar, 46 Phil. 440 (1924).
[222] Art. 694 CIVIL CODE OF THE PHILIPPINES (hereinafter cited as NEW CIVIL CODE).
[223] Art. 695 NEW CIVIL CODE.
[224] Arts. 699-706 NEW CIVIL CODE.
[225] 2 FRANCISCO, CIVIL CODE OF THE PHILIPPINES 868 (1956 ed.).
[226] *Ibid.*
[227] 24 Phil. 471 (1913).

nuisance without reasonable notice to the person alleged to be maintaining or doing the same of the time and place of hearing before a tribunal authorized to decide whether such a thing or act does in law constitute a nuisance.

This express ruling has been followed meticulously in the cases of *Monteverde v. Generoso*[228] and *Salao v. Santos*.[229]

The aspect of due process with respect to the abatement of nuisances came up again very recently in the case of *Sitchon v. Aquino*.[230] The petitioners in the case constructed houses on certain portions of the streets in Manila and others on the beds of certain rivers. The respondent City Engineer wanted to demolish them on the ground that they constitute public nuisances and nuisances per se. The petitioners thus sought to enjoin the City Engineer from carrying out his threat on the ground that in trying to demolish their houses without notice and hearing, he would be depriving them of their property without due process of law. The Supreme Court dismissed this contention, saying that:

> . . . houses constructed, without governmental authority, on public streets and waterways, obstruct *at all times* the free use by the public of such streets and waterways, and accordingly, constitute nuisances per se, aside from public nuisances. As such, the summary removal thereof, without judicial process or proceedings may be authorized by the statute or municipal ordinance, despite the due process clause.

The Court went on to say that "in the exercise of the police power the state may authorize its officers summarily to abate public nuisances without resort to legal proceedings and without notice or a hearing."[231]

3. *Due Process As a Limiting Factor:* For centuries the concept of the police power as an unshackled attribute of sovereignty in any government reigned supreme, unlimited in its extent and exercise. The courts were slow to recognize any limitation, for it was universally acknowledged that the power must be completely unfettered if the government is to be allowed to perform all its legitimate functions in the protection of the rights of the people and the promotion of their welfare. This was true in the United States where the theory that the due process clause is a limiting factor to the police power developed slowly.

In fact, the development of this concept was greatly hampered by the United States courts' either refusing to acknowledge its existence or ignoring it altogether. This attitude was expressed in several decisions of the United States Supreme Court. Thus, Justice Field, in *Barbier v. Connolly*,[232] said that ". . . neither the 14th Amendment — broad and comprehensive

[228] 52 Phil. 123 (1928).
[229] 67 Phil. 547 (1939).
[230] 52 O.G. 1399 (1956).
[231] *Id.* at 1404, citing 39 AM. JUR., *Nuisances* § 184, at 455-56.
[232] 113 U.S. 27 (1885).

as it is — nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power."

This attitude, however, gradually changed. Later, we find the statement of Chief Justice Waite, in *Stone v. Farmers' Loan & Trust Co.*,[233] that "this power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulation of fares and freights, the state cannot require a railroad corporation to carry persons or property without reward, neither can it do that which in law amounts to a taking of private property for public use without due process of law."

In a much later case Justice Harlan sustained this doctrine when he said: "Undoubtedly the state, when providing, by legislation, for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument."[234] Again in *Reagan v. Farmers' Loan & Trust Co.*,[235] the Court affirmed the same concept when it ruled a state police regulation as unconstitutional because it was inconsistent with the due process of law as a substantive requirement.

In the Philippines, however, this doctrine was early recognized and applied in a number of cases, beginning at the turn of the century. At the time of the Islands' acquisition by the United States, the doctrine as stated was fairly well-developed and already accepted to a great extent in the latter country, and the Philippines being largely influenced by many American principles and legal practices, readily accepted the same.

Thus we find that a statute enacted under the police power which restricted the freedom of employers with respect to the conditions and termination of the labor contract was declared void on the ground that it violated the due process clause of the Philippine Constitution when it required employers to provide vacation leave with pay to their pregnant women employees.[236]

In another case, the petitioner for an application for an increase of units in his transportation line was granted the right, but under the conditions, as stated under the statute, that the right would be limited to twenty-five years and that his business enterprise may be taken over by the government anytime upon payment of the purchase price. The Supreme Court ruled however, that although laws passed for the regulation of public utilities are proper exertions of the police power, there are certain cardinal and primary rights which must be respected, namely, the due process clause in the Constitution.[237]

[233] 116 U.S. 307 (1886).
[234] Mugler v. Kansas, 123 U.S. 623 (1887).
[235] 154 U.S. 362 (1894).
[236] People v. Pomar, 46 Phil. 440 (1924).
[237] Pangasinan Trans. Co. v. Public Service Comm'n., 70 Phil. 221 (1940).

VII. Due Process and Martial Rule

1. *Nature of Martial Rule:* Martial rule is commonly defined as the regime instituted by the army commander on the field whose will, expressed in orders, commands and proclamations, is regarded as law. This will is really one belonging to the head of the state, who delegates its exercise to the commander. Under constitutional principles obtaining in the United States, the President's power to proclaim martial rule is extra-constitutional, but it is implied from his so-called war powers and from his position as commander-in-chief of the armed forces. In the Philippines, the Constitution expressly provides for such power to be lodged in the President.

It is, of course, well-understood that martial law may only be installed in times of emergency, particularly during war, rebellion, insurrection, or any other occasion presenting imminent danger to the safety and security of the state. The rule, therefore, becomes an act of self-defense springing from the very power of sovereignty, making it the only effective way to ward off the enemy attack.

Many authors and legal thinkers, however, do not call the resulting situation as a reign of law since the executive proclamation supplants all law, suspends the operation of the constitution and prevents the courts from performing their lawful judicial functions in the area of martial law. The constitutional guarantees of personal liberties are thereby abrogated, at least temporarily. It is of the essence of martial rule that the duly constituted civil authorities are subordinated to, if not totally superseded by, the will and unrestricted discretion of the military administration.

Many legal commentators vigorously contend that martial law simply degenerates into a situation where virtual despotism and dictatorship may hold undisputed sway. Thus Mr. Edward Ingersoll, a well-known constitutionalist, writing nearly a hundred years ago, said, "It is a cessation of law; when from military necessity, within the reach of the military arm and for a short and undefined time, the constitution and the laws are disobeyed and disregarded."[238] Another noted writer on the subject, Sir Mathew Hale concisely defines martial law as "not law, but something indulged rather than allowed as a law: the necessity of government, order, and discipline in the army, is that only which can give those laws a countenance, *quod enim necessitas cogit defendi*."[239]

Mr. Justice Holmes in the famous case of *Mayer v. Peabody*,[240] writes of the overwhelming necessity to warrant the subrogation of the judiciary by the President or governor to insure the existence of the state. Thus he declares:

[238] Ingersoll, Personal Liberty and Martial Law 31 (1862).
[239] 1 Hale 413.
[240] 212 U.S. 78 (1909).

> When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment. Public danger warrants the substitution of the executive process for judicial process.

Decisions are conflicting and authorities are contradictory as to whether the mere cessation of war operations is the test, or an official declaration terminating the war emanating from the President or Legislature is the criterion, or a treaty of peace as the accepted standard for considering the war and martial law at an end. However, this is another matter and not germane to the subject under consideration for purposes of discussing the role of the due process clause under conditions obtaining in a martial rule. Suffice it to say, therefore that the question to be decided is whether or not the due process clause is applicable in a regime of martial law.

2. *The Application of Due Process in Martial Rule:* In the Philippines, unlike in the United States, the Philippine Constitution expressly provides that the President may declare martial law when the public safety requires it, but only whenever there is an invasion, insurrection, rebellion or imminent danger of any of these events happening. And as incidents to this power, he may suspend the writ of habeas corpus and call out the armed forces to suppress lawless violence.[241] The suspension of the writ and calling out the armed forces may take place even without any declaration of martial law.

Aware of the real nature of martial rule, it seems plainly obvious that since a declaration of this kind supplants all laws and suspends the functioning of the Constitution, due process cannot be had. For how could there be even a semblance of due process, a constitutional right, when the very constitution from which it emanates is suspended?

A plausible answer to this dilemma is found in the opinion of jurists and legal thinkers who claim that the lawful commands and decisions of army commanders are in themselves due process. Thus the Court, in *Hatfield v. Graham*,[242] said, "The Governor's proclamation, warrants and orders are such due process of law as the judgment of the court." According to Mr. Rankin, there is really no conflict between martial law and due process because when martial law is declared the constitutional guaranties are not in force, and besides, in such a situation the state is simply exercising a right to preserve its own existence.[243]

But granting there is no conflict, how can we tell if those military decrees, affecting the lives, liberties and properties of civilians, are lawful? The courts cannot inquire since they are non-operative. Who is going to judge then whether the action of the army commander was truly based on neces-

[241] Phil. Const. art. VII § 10 (2).
[242] 73 W. Va. 759 (1914).
[243] Rankin, When Civil Law Fails 201-02 (1939).

sity, or was merely an act of lawless violence and one based on whim and caprice? Who is going to set the limits on such seemingly limitless authority?

Must the executive department then rule over the lives and fortunes of millions of souls, uncontrolled by any power on earth? There is an infinite number of American decisions, and a number of Philippine cases, indicating the supremacy of the President in this matter, and the impotence of the courts to as much as question the actions of the executive. But there is another line of decisions holding otherwise. In other words, there are many rulings holding that executive martial proclamations may be subjected to judicial inquiry, that the courts may set allowable limits to military discretion, invalidate the findings of the head of the state as to the necessity of declaring martial rule, and annul the action as destructive of the due process inhibition of the Constitution.

One leading case, *Sterling v. Constantin*,[244] recognized the power of the courts to review the findings of the governor as to the existence of an insurrection, and to stop him by injunction from using military forces to effectuate his proclamation. In another case, *Russell Petroleum Co. v. Walker*,[245] it was ruled that although the state governor is vested with the duty to enforce faithfully the laws which includes the discretion to determine whether or not an exigency has arisen requiring military assistance, the courts may intervene when the actions of the military operate to deprive owners of their property without due process of law.

3. *The Civil War and World War II Martial Actions of the President.* Although the war powers of the Presidents have been time and again judicially questioned, in times of war and peace, from Andrew Jackson to Truman, it was, however, in the Civil War and World War II where certain phases of these powers were subject to greater scrutiny than at any time in American history.

a. Establishment of Military Tribunals: The main question that has plagued the judiciary and the executive is whether the latter can replace the civil courts with military courts in areas where the former are regularly functioning. Can the President do this and base his action on his authority as commander-in-chief of the armed forces? This was the question posed before the Court in *Ex-parte Milligan*,[246] a Civil War case. Milligan, a civilian, was charged with having given aid and comfort to the enemy, and was convicted by a military tribunal established by Lincoln in Indiana, whose judiciary was at that time normally administering justice and on whose soil there was no hostile force.

The Court, speaking through Justice Davis, ruled that in a territory not invaded, where the civil administration is functioning, and courts are "open

[244] 287 U.S. 378 (1932).
[245] 162 Okla. 216 (1933).
[246] 71 U.S. (4 Wall.) 2 (1866).

and in the proper and unobstructed exercise of their judicial functions," military commissions had no jurisdiction to try and convict a civilian. The opinion further declared that neither the President nor Congress had such an awful power. Therefore, said the Court in effect, since Milligan had been denied the procedural guarantees normally granted in criminal cases of treason, he had been deprived of liberty without due process of law.

By this decision the majority opinion asserted the claim that the judiciary shall determine when and where war exists. However, Chief Justice Chase, dissenting vigorously, denied that such power belongs to the courts in times of mortal peril to the nation, even if the courts are open. He said: "Martial law may be called into action by the President in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights." Affirming the impotence of courts during serious crises and their consequent inability to render adequate protection to the safety of the state, he continued: "These courts might be open and undisturbed in the exercise of their functions, and yet wholly incompetent to avert threatened danger, or to punish with adequate promptitude and certainty the guilty conspirators." And he concluded: "We are unwilling to give our assent to expressions of opinion which seem to us calculated, though not intended, to cripple the constitutional powers of the government, and to augment the public dangers in times of invasion and rebellion."

Professor Burgess[247] wholeheartedly agrees with this line of reasoning of the minority opinion and claims it to be not only a sound view but "the only view which can reconcile jurisprudence with political science, law with policy." And supporting his assertion why it is a sound view, he said, "In time of war and public danger the whole power of the state must be vested in the general government, and the constitutional liberty of the individual must be sacrificed so far as the government finds it necessary for the preservation of the life and security of the state. This is the experience of political history and the principle of political science."

It was not until about three quarters of a century later that the Court had decided again to curb seriously the power of the President to institute martial law. The cases that arose concerning the exercise of this power were unfolded in Hawaii during World War II. Although there were a number of such cases in this possession, the most outstanding and the ones which caused the greatest attention were *Duncan v. Kahanamoku* and *White v. Steer*.[248]

Immediately after the outbreak of the war with Japan, martial rule in its entirety was declared in Hawaii, a rule authorized not only by the President but by the Organic Act of Hawaii as well. White, a civilian, was

[247] 1 BURGESS, POLITICAL SCIENCE AND CONSTITUTIONAL LAW 251-52 (1902).
[248] 327 U.S. 304 (1946).

convicted by a military tribunal for embezzlement, and Duncan, another civilian, was convicted for assault. Under a plea of habeas corpus the Court declared the actions of the military tribunals unconstitutional and construed the Organic Act as not justifying conviction of civilians by a military court in a region not invaded and where the courts were in a position to administer justice. This ruling was laid down along substantially the same lines as the reasoning in *Ex parte Milligan*.

In the Philippines, an important case of the same nature arose after the termination of hostilities with Japan. In *Yamashita v. Styer*,[249] affirmed on appeal to the United States Supreme Court,[250] both supreme courts held that the army commander can validly set up military commissions to try persons charged for offenses against the law of war, and their proceedings, no matter how manifestly irregular, are not reviewable by the courts. Both courts ruled that under the laws of war a military commander, as authorized by the Executive, has the power to appoint and convene a military commission to try civilians because such act is an aspect of waging war.

But it is in the two dissenting opinions of Justices Ruthledge and Murphy where we find the argument that the military commission had violated the accepted standards of procedural due process in criminal cases, particularly in accepting *ex parte* depositions and hearsay evidence, and denying an opportunity for the defendant to prepare his defense. These two violations disregarded the right of the accused to confront and cross-examine the witnesses. But the Court, brushing these objections aside, resolved that the procedure and rules of evidence of a military commission whose jurisdiction has been legally established can only be reviewed by higher military authorities.

b. Suspension of the Writ of Habeas Corpus: Another troublesome phase of the war powers of the President is the power to suspend the writ of habeas corpus. Up to the present it is not very clear who has this power, *viz.*, whether Congress alone, or the President, or both. Constitutional theory has never answered this satisfactorily and historical fact shows that it has been assumed by the President on many occasions.

In *Ex parte Merryman*,[251] another Civil War case, Chief Justice Taney denied to the President the power to suspend the writ even in an area of military operations. Merryman, a civilian, was charged with disloyalty to the United States Government due to his acts of inciting the people of Maryland to secede from the Union. He was arrested by army authorities and incarcerated in a military prison. The attachment order of Taney for the release of Merryman under a writ of habeas corpus proved of no avail since it was resolutely resisted by the army commander. Undeterred by

[249] 75 Phil. 563 (1945).
[250] *In re* Yamashita, 327 U.S. 1 (1946).
[251] 17 Fed. Cas. 144 (1861).

this decision, Lincoln continued exercising the power of suspension. Taney pointed out clearly, however, that the Fifth Amendment had been abridged since the process meant therein was judicial, and by no means military, which was the proceeding here.

In a Philippine case, *Raquiza v. Bradford*,[252] the Court upheld the action of the army commander. The issue here was substantially identical with that of Merryman, for it concerned the authority of the armed forces to arrest, detain and deny civilians the privilege of the writ. Raquiza was imprisoned indefinitely without trial by the United States Army in the Philippines, in a place of war operations, allegedly on the ground of having voluntarily given aid and comfort to the enemy. At the time of her apprehension the war was at the height of its fury, the courts were not functioning and the civil administration was still overthrown. But at the time of her petition for release from detention under a plea of habeas corpus, the courts were already in the normal discharge of their duties and civil rule had been restored.

The dissenting opinion briskly attacked the majority opinion, and strongly contended that the army procedure was a gross violation of the due process clause. It is not due process, the dissenting justice proclaimed, because, "it is a rule as old as the law that no one shall be personally bound until he had had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard."

Perhaps recalling the words of Justice Davis in the case of Milligan, where the judge said that the Constitution of the United States is a law in war and in peace, and that "no doctrine involving more pernicious consequences than that any of its provisions can be suspended during any of the great exigencies of government," Justice Ozaeta of the minority view said:

> But we understand that military necessity was not intended to override law and justice as regards the lives and liberties of citizens. With or without war the petitioners are entitled to due process of law.

That due process of law has been disregarded here, the dissenting opinion cites Rule 102 of the Rules of Court of the Philippines. Section 1 provides that "the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty." Section 2 reads, "the said writ may be granted by the Supreme Court on any day and at any time in the instances authorized by law."

According to the dissenting opinion, Section 4 of Rule 102 expressly provides for the exceptions under which no writ of habeas corpus may be granted. These are the following:

1. If the person alleged to be restrained of his liberty is in the custody

[252] 75 Phil. 50 (1945).

of an officer under process issued by a court or judge, or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render or make the order;

2. The case of a person charged with or convicted of an offense in the Philippines or in any part of the United States, and who ought to be delivered up to the executive power of the United States, or of any State or territory thereof;

3. The case of a person suffering imprisonment under lawful judgment.

The present case does not fall under any of these exceptions; therefore, the dissenting justice claims, there was a clear failure of the indispensable requisites of due process of law.

c. Establishment of Military Areas: This power was principally directed towards the evacuation of the Japanese-Americans from the West Coast of the United States. In early 1942 the President, under the plan of "military necessity," issued an executive order delegating to the army authorities the power of establishing military areas as a security measure. This power was based on his position as commander-in-chief alone, though Congress a month later gave it its sanction by passing a law punishing violations of the President's orders.

The first of the leading cases arising from this forced evacuation to come to judicial notice is *Hirabayashi v. United States*.[253] Hirabayashi, an American citizen of Japanese ancestry, was convicted in the district court for violation of the curfew order under the program of exclusion. He claimed that the curfew order was unconstitutional since it discriminates against citizens of Japanese ancestry, in violation of the Fifth Amendment. It was held, however, that the Fifth Amendment contains no equal protection clause and it restrains only such discriminatory legislation by Congress as amounts to a denial of due process. It further held that Congress and the Executive are justified in placing citizens of one ancestry in a different catcgory by reason of the perils of war and in order to protect the nation against sabotage and espionage. The order, therefore, was upheld as a reasonable exercise of the war power of the President.

But in the case of *Ex parte Endo*,[254] the Supreme Court ordered Endo, an American citizen of Japanese ancestry and of demonstrated loyalty, to be released from detention in a "relocation center" under a plea of habeas corpus, not on the ground that she was being deprived unlawfully of her liberty without due process, but because her detention had no relation to the "power to protect the war effort against espionage and sabotage."

The last of the important evacuation cases to come before judicial review

[253] 320 U.S. 81 (1943).
[254] 323 U.S. 283 (1944).

was *Korematsu v. United States*,[255] where the court denied the plea of violation of the procedural rights under the Fourth, Sixth, Seventh and Eight Amendments. Korematsu was convicted in a district court for failure to observe the exclusion order because he remained in his home when asked to leave. The Court approved the army's judgment in carrying out the President's program of exclusion, and impliedly held that under such circumstances judicial inquiry is deemed precluded.

In all these cases, however, it should be observed that the Court has never attempted to define the limits or scope of the war powers. And if it has decided against the exercise it has granted belated relief to the defendants. This was the case with respect to Milligan, Endo, Duncan and White, all of whom had to languish in some camp or military prison for a considerable period of time before their liberty was restored to them. This fact only proves quite clearly that due process as a substantive and procedural restraint has not always been effectual. However, these decisions have served to remind the commander-in-chief that his power to declare martial rule is not unlimited and that the Court, the guardian of the Constitution, has the power to subject his actions to judicial restraint whenever it decides that he has overstepped his grounds. Be this as it may, many nevertheless simply regard this power as limited, not by any court, but by the conscience of the President and his responsibility to the memory of history. Justice Jackson affirmed this opinion when he proclaimed in *Korematsu v. United States*,[256] that:

> The chief restraint upon those who command the physical forces of the country, in the future as in the past, must be their responsibility to the political judgment of their contemporaries and to the moral judgment of history.

VIII. Conclusion

In the United States, as in the Philippines, a close scrutiny of the Supreme Court decisions will reveal the glaring fact that the law on due process is still in a state of development. In fact, it is in a condition of flux where many principles applicable to the cases before the Court are still unsettled and uncertain. But this is more clearly obvious in a young country where the concept of due process has just comparatively recently found expression in its system of law and government. Several factors could be attributed for this stunted growth.

In the first place, the courts of the Philippines have chosen to leave the meaning of the clause in the abstract, without in any instance defining with any degree of exactness or definiteness the terms embraced. The intention seems plainly evident. Since the clause lends itself to generality and broadness, the Court, following the example of the United States Supreme

[255] 323 U.S. 214 (1944).
[256] *Ibid.*

Court, has always seen fit to define the clause only to suit the particular circumstances of the case before it. It is only then that the particular principles are brought out to conform to the circumstances of the case. Another set of principles would be applied in another case. In fine, the Philippine Supreme Court has adopted the well-known rule, in the application and construction of the guaranty, of "inclusion and exclusion."

But this method of application has only led to much confusion and misconception of the true scope and worth of the clause in the protection of individual rights. By such method the Court has failed to develop new and revolutionary doctrines of the phrase in order to suit better the temper and mores of the times. The tribunal, has, therefore, become a sort of conservative body where modern concepts of law are at best unwelcome to enter. This is not conducive to progress and to the expansion of the vast undeveloped field of due process, both as a limiting factor and as a source of protection of rights against the attacks of government and private individuals.

Because of such an attitude of the courts there has been an imperceptible but systematic easing out of individual liberties, particularly in the fields of taxation, eminent domain and police power. Due to the rapid expansion of these powers as a result of the efforts of the government to improve labor, economic and social conditions, coupled with the readiness of both executive and legislative departments to make extensive use of them in order to strengthen their positions, there has been lately a narrowing down of the extent of the clause as a protecting shield against attacks on constitutional liberties. And the courts have construed that exercise in such a manner as to go along with the principle that individual good must always yield to the collective interests of the state.

Contemporary legal history has shown that both departments have not been reluctant to employ these great powers as a pretext to take away these liberties. In the guise of taxation, for instance, in order to raise the needed revenue and at the same time regulate the use of property, private property has sometimes been so heavily levied upon that its owner has been reduced to a state of penury. Under the pretense of eminent domain, private property has been taken away completely in order to make way for vast government projects and land irrigation programs even if such expropriations were not really for the general welfare. In the guise of promoting common interest and public good, the government by using the seemingly unlimited and omnipotent police power has so regulated life, liberty and property that in many cases the regulation has amounted to confiscation, deprivation and irreparable damage.

In criminal cases the traditional safeguards for the accused have always been observed by the courts. In this quarter there has been no fear of unjust deprivation since the rights of the defendant have always been zealously guarded and secured against assault. This must be so since procedural rights have been fixed and their application in individual cases rigidly followed in accordance with the specific provisions of the Constitution and the Rules of Court. Here, therefore, the courts have encountered no difficulty. But it is in civil and administrative proceedings where the generality and uncertainty of the clause have been so marked.

In administrative cases we have seen how liberty and property have been sacrificed for the sake of expediency and dispatch. In this field there has been little growth of the concept as a protecting arm of rights to take place not however in the use of the traditional safeguards such as notice, hearing and the procedural rights in criminal cases, but in the sense that these constitutional guaranties could not be claimed as a matter of right. They have only been granted in these cases solely at the will and good conscience of the governing officials. That these rights have been withdrawn and denied in many instances to justify administrative efficiency is beyond dispute. This trend has been reflected in immigration and deportation proceedings, in labor arbitration controversies and in public utility cases.

In other administrative bodies where they do not exercise the dual role of judicial and legislative functions, the substantive as well as the procedural rights of due process are totally non-existent. In fact this is the general rule and the agencies with the dual role are the exceptions simply because to the latter are delegated, either by authority of the Constitution or by the Statutes, the powers of policy-making and rule-interpreting, where we have seen the phases of due process. Whether this delegation, however, is proper and constitutional is not a matter for us to touch upon, much less decide on its propriety. Suffice it to say that in the exercise of administrative duties the constitutional guaranties have not been given the proper expression as fountains for the protection of rights.

Aside from its recent origin, another factor may be stated to show why due process in the Philippines has been slow in its growth. Owing to the fact that the clause may be better availed of in great moments of stress — in conflicts of forces of society — where individual rights are pitted against the arbitrary actions of the State or groups of persons, in a country where these are relatively absent there must be less opportunity for its courts to apply its principles. The pages of United States constitutional history are full of accounts of great labor, social and economic movements and conflicts such as the steel strikes and the automobile workers' and coal miners' clashes with capital. In these struggles the interpretation of the constitutional provision could be brought out to full play on a number of issues principally involving the lives, liberties, and properties of individuals and corporations.

Also, great human conflicts such as those that have characterized the political and historical life of the United States like the American Revolu-

tion of 1776, the War of 1812, and the Civil War, have not marred the life of the young republic. Of course, it too, has had its baptism of fire its human conflicts and struggles between opposing economic and social forces, but they were not such as to warrant the development of the concept of due process to a very great extent. A good example of this lack of opportunity is in the field of martial rule and national emergencies where there is a great scarcity of materials. There were so few Philippine cases wherein the Court could apply the concept of due process to resolve the questions before it that there was a necessity of falling back mainly on American cases in order to do justice to those great principles underlying the application of the clause to such abnormal times.

Still another factor could be cited. There has been great reluctance on the part of Philippine courts to apply the guaranty to cases where there has been no precedent established. As it is well-known to law practitioners and political scientists, courts generally are not anxious to tread on unexplored and virgin territory. It has long been regarded as a matter of good jurisprudence that in cases coming before them, they should recall certain principles of law applied and interpreted in past decisions and apply them where substantially similar facts and circumstances obtain. That this is true generally with regards to the principles involved in due process, one simply has to pore over the numerous decisions penned by the Supreme Court of the Philippines. In most cases decided by this body it has been content to hold that there is no application of due process to executive and legislative actions. Or, in order to evade the responsibility of facing squarely a new development of the clause, it has side-tracked the issues presented by due process. Or else it has ruled simply that the statute or act complained of was in conformity with the clause without further discussion, for it wanted to avoid complications which the employment in full of the clause would occasion.

In view of the fluid state in which the law on due process is found at present, largely due to the negative attitude of the courts to inject new and untried principles, and their refusal to go out of their way to break precedents, and because of the inability of the legislative and executive branches to restrict their powers which have continued to expand at the expense of constitutional rights, it is difficult to predict the future status of the law as a source of protection.

However all these may be, there is hope in the future that due process will be, as it ought to be, the bulwark of individual liberty and the citadel of human rights to which every person, natural or artificial, may seek and find full protection. There are various reasons that can be assigned to justify this expectation. There are now cases betraying the awareness of the courts of the vast potentialities of the guaranty as a means of protecting the rights and properties of the people. As a result of this realization there is now,

as there never was before, greater willingness to exploit whatever "hidden" principles there may be in the bosoms of the clause in order to check the great expansion of the powers of legislative and executive bodies done ostensibly in the name of public necessity and public welfare.

This desire has manifested itself in several ways. There has been a more frequent use of the injunction and certiorari as effective weapons of restraint. Limits have been set to certain phases of the police power; general welfare has been given a clearer definition; public safety and public health likewise have been clearly defined. The concept of public use has been given a reasonably restrictive sphere of action within which to operate. The objects of taxation have been legally fixed and the scope of taxes as regulatory measures has been circumscribed. In short, the courts now are desirous of putting a stop to the stream of unchecked governmental powers by inquiring more into the actions of these departments through various interpretations of the clause in order to insure civil rights against destruction.

As a consequence of this recent vigor, many doubtful questions concerning the guaranty have been resolved. But whether the courts will continue to have a progressive view is a matter that only the future can answer, although the sign-posts on the road point clearly toward further strengthening of the guaranties against curtailment.

Despite the political separation of the Islands from the United States, the influence of the political and legal institutions of the United States will continue to be felt. The bonds that have been established for over half a century will be, it is predicted, even stronger and closer. Particularly will this be true with regard to the due process clause since, as earlier stated, the principles and legal basis have already been firmly incorporated into the Philippine structure. Thus it can be expected that the axioms and concepts of this Anglo-Saxon provision will continue to breathe life and form into many a court decision to come.

And when great occasions for its use occur as they have occurred in the United States, it is to be hoped that the Philippine courts will not hesitate to utilize the principles of due process, not only for the individual, but also for the common good.

It is well to conclude, therefore, that the paramount mission of due process, is not to promote individual welfare alone, but to strike a happy balance between the enjoyment of individual liberty and the insurance of public interest, *viz.*, a point should be reached where one right could exist and still be consistent with the other.