including losses in the process of liquidation, were ₱60,000. These were apportioned as stipulated, shown on line (e).

The remaining assests are to be distributed as shown on line (f). A is entitled to recover ₱35,000 from the partnership. This is a part of his original investment.

B receives nothing, despite the fact that he gave a loan to the partnership. If the loan were to be paid first, he would owe the partnership an equal amount, which he must pay in order to properly bear his share of the losses. The loan is compensated against his share of the losses.

C receives nothing because his share in the losses is greater than his total claim against the partnership. Instead, it is he who owes the partnership ₱5,000, which he must pay in order to properly bear his share of the losses as stipulated.

D's claim is for profits only. As he does not share losses, he is entitled to his claim in full.

C must pay ₱5,000 to the partnership funds of ₱35,000, in order to make a grand total of ₱40,000. Of this amount, A is entitled to ₱35,000, while D gets ₱5,000.

If C is insolvent, the ₱5,000 he fails to pay will be a loss to the remaining partners, who must divide it equally in accordance with the stipulated profit and loss sharing ratio. Since D is exempt, A and B will have to pay ₱2,500 each to D. ("...if it results that there is not enough property in the partnership to pay him, then the capitalist partners must pay him." Cia Maritima vs. Muñoz, 9 Phil. 326, 334)

B's claim for his loan is supposed to rank first in the order of payment. Nevertheless he gets nothing, while A's claim for capital and D's claim for profits are entitled to payment.

We submit that this is the correct way to distribute the partnership assests, at the same time giving full effect to the stipulated profit and loss sharing ratio. To follow literally the order given in Art. 1839 (2, b,c,d) C.C.Phil. would violate the profit and loss sharing ratio, delay liquidation, cause multiplicity of claims, and work injustice on some of the partners.

*(Speech delivered by Justice Cesar Bengzon * of the Supreme Court on November 8, 1952 at the Manila Hotel in the occasion of the Seventh-Anniversary Celebration of the Bulacan Bar Association)*

"Whether constitutional dictatorship is feasible in this jurisdiction..." "President Osmeña, President Roxas and even President Quirino ruled the Philippines by executive order. What of the future? May we again be subjected to Executive legislation or Presidential law-making?

ON this, the seventh anniversary of the Bulacan Bar Association it is my pleasant privilege to greet its members and wish them well in their endeavors to improve their record of public and private service. To a lawyer's mind Bulacan province recalls the Malolos Republic and the Malolos Constitution, the saving courage and the native wisdom of our fathers whose examples remain a source of inspiration from which Filipinos should drink deep and long. To me Bulacan is all that, plus Marcelo del Pilar, Gregorio del Pilar, Balagtas and others of national fame, to whom I desire to pay at this moment modest and respectful tribute.

When the Committee of this Association visited me to extend its invitation, they were accompanied by their adviser the honorable Judge Bonifacio Ysip, my friend Pacio. Meeting my esteemed contemporary brought to my

* A.B., Ateneo de Manila, '15.

recollection, vivid memories of our college days—our classes and our classics; poems we learned by heart; masterpieces we analysed; orations we memorized. Foremost among these, for beauty of style and novelty of thought, was the address of Juan Denoso Cortes, Spanish orator and man of letters. Curiously enough, he merely spoke about one book. Naturally, that book was the Bible.

Today I propose to speak of several books, concerning the departments of Government. Ancient topic, I admit. But as the saying goes, we may pour old wine into new bottles or new wine into old bottles. I know this is not Constitution Day. Yet it is part of prudence occasionally to examine the basic structure of the Government we must love in order to live. The ship of state we must survey in order to survive. Even non-expert looks might uncover unsuspected stresses spelling the difference between national salvation and national disaster.

Well-known is the division of Government powers into three separate, independent and co-equal departments. Not so well-known is the fact that in the exercise of its powers the judiciary labors under one principal handicap: the two-thirds rule to nullify legislation. Time was when authors wrote of Judicial Supremacy. Those books are now outmoded, in the Philippines at least. Our Constitution prepared in the hey-days of Franklin Delano Roosevelt, whose approval was of the essence, could not and did not endorse an idea which he thoroughly abhorred. Remember his fights with the U.S. Supreme Court to carry out his New Deal program. Obviously the tussel of the political departments with the courts in the United States reverberated on our shores, and, as a consequence, the latter's power to declare laws unconstitutional was curbed. Only by the consent of two-thirds of its membership may the Supreme Court invalidate a statue. Therefore on basic issues, the Constitution in effect has placed the opinion of the political departments over and above that of a majority of the Supreme Court.

Perhaps in the realm of political science the judicature may not claim a higher position than third place after the two elective departments. Yet judging by some proposed amendments to the Constitution it is planned to make it a poor third. And ironically enough it is expected to stand firm and unmovable as "the last bulwark of freedom and democracy".

Perhaps many of you have read two volumes on the judiciary, I mean the U.S. Supreme Court: Nine Old Men by Pearson and Allen and Nine Young Men by Wesley McCune. Witty and anecdotic, at times iconoclastic, these books however interesting would not do for today's discussion. For one thing, our Supreme Court is composed neither by eleven old men nor by eleven young men.

A fourth book on the U.S. Supreme Court is entitled "The Roosevelt Court". Written by Professor Pritchett of the University of Chicago, it is a study of judicial behavior since 1937, the attitudes and beliefs in that Federal Court, as reconstituted and redirected by Roosevelt appointees. The Philippine version would be, The Quirino Court. But is there such a court? In the sense intended by Professor Pritchett, there is here no Quirino Court. But there is a majority of Quirino appointees in the present Supreme Court. And if any one should hesitate to tag Chief Justice Paras as a Quirino appointee, because he was originally elevated to the Supreme Court by another President, then I affirm there will be a Quirino majority in a few months, when one of us retires by reason of age. Now, mark well, I do not imply a Tribunal influenced or dominated by President Quirino. I merely say, there is or will be, a majority of Quirino appointees.

The recent impasse between the Congressional Committees and Malacañan Palace growing out of the struggle for political domination, has laid open an area of unsettled constitutional precedents. A treatise on Congressional Investigations would undoubtedly prove informative. However I dare not pursue the matter further for fear to stumble on Parliamentary grounds, which I have had little opportunity to explore.

On the other hand, having worked in the Executive Department for more than 15 years before joining the judiciary, I feel that the territory of administrative action is not entirely unfamiliar.

I have recently perused two books—one by Professor Corwin of Princeton University on the President, Office and Powers, and another by Dr. Clinton L. Rossiter, fa-

culty member of Cornell University. The latter, entitled Constitutional Dictatorship, I consider to be thought-provoking, and worthy of notice.

It demonstrates by chronological and analytical methods how the practices of dictatorship have been employed in modern democracies during stated periods and how two apparently conflicting philosophies could work together to accomplish the country's deliverance from unforeseen contingencies. After reviewing with historical erudition the crisis governments of the French Republic and Great Britain in their war and post-war years, the book describes in greater detail the emergency procedures which America adopted in parallel situations. Naturally the central point of such abnormal exercise of governmental powers was the chief executive as the principal instrument of strong extra-constitutional authority. Dr. Rossiter scrutinized some legally debatable Presidential acts, and directives especially during the terms of Lincoln, Wilson and Franklin D. Roosevelt. He reached however the conclusion that although the Constitution has at times been violated in U.S. during Constitution has at times been violated in the United States during periods of critical need, yet that same constitution and the American people will check every attempt at constitutional dictatorship in their country.

Finding that war, rebellion and economic crisis are usually the principal emergencies calling for display of extraordinary government actuation, Dr. Rossiter emphasizes what Chief Justice Hughes and the Supreme Court said, that emergency does not create nor increase official powers.

The book relates that at the time of the secession Lincoln was confronted with the argument that the Constitution gave the President no right to force a state to continue in the Union. Nevertheless Lincoln employed military force to prevent the separation, reasoning that if the Union could not be saved constitutionally, it must be saved unconstitutionally. Some of his proclamations and other measures by-passed the Constitution; but regarding them as unavoidable, he invoked the "war powers of the Government".

Wilson was described by war publicists and politicians as a dictator. Indeed, Dr. Rossiter says, he had more

power than had theretofore been given to an American President. Unlike Lincoln he did not spell his powers from doubtful deductions, but thru delegation to him by Statutes of Congress, in spite of the fundamental rule against delegation of legislative powers. For it is said, Wilson mastered the technique of legislative leadership, bridging the gap between the White House and the Capitol.

Franklin D. Roosevelt, profiting from the experience of both Lincoln and Wilson, wielded tremendous powers acquired thru his own initiative and unprecedented grants of legislative and administrative authority from Congress. His bank holiday and gold embargo proclamations represent his bolder moves. The subsequent enactments transfering to him wholesale legislative authority stemmed not only from unparalleled congressional confidence in his stewardship, but also from the support of public opinion in a thoroughly scared country demanding the temporary obliteration, for the sake of efficiency, of the normal separation of powers.

Now, against the background of the American Presidency it may be pertinent to inquire, imitating Dr. Rossiter, whether constitutional dictatorship is feasible in this jurisdiction.

We had it undoubtedly during the years following liberation. President Osmeña, President Roxas and even President Quirino ruled the Philippines by executive order. What of the future? May we again be sujected to Executive legislation or Presidential law-making? Having in view the broad powers of the President, I apprehend the possibility of the establishment of Constitutional dictatorship even discounting the occurence of actual or imminent warfare. Not that I like it, not that I endorse it. But from careful study I deduce that an ambitious and resourceful Executive supported by his majority party in Congress may establish virtual constitutional dictatorship.

I start with the premise that our Magna Charta brought forth a very strong chief executive. It is amazing to realize that within Philippine territory the authority of our President is greater than that of the President of the United States in America. In addition to the circumstance that unlike the Philippine Government, the

Federal Government is merely of enumerated powers, our Presidents possess privileges not conferred on the American Chief Executive. For instance the authority to suspend the writ of habeas corpus is not granted to the American President by the Federal Constitution. To mention others, the powers of the Philippine president concerning appropriation laws and his influence on legislative programs by virtue of his privilege to certify urgent bills for consideration, have no counterpart in the Federal scheme. And then our constitution unlike the American, expressly permits delegation of legislative powers to our President. This is the seed, that, fertilized with other presidential prerogatives, will develop into the tree of Presidential Supremacy, which if so designed by emphasis or arrangement, may further expand into a forest of constitutional dictatorship. I tell you gentlemen in all sincerity, if I were to prepare a thesis for a doctorate degree, I would select this topic for a more elaborate discussion of its theoritical and practical aspects.

Let me relate a hitherto unpublished incident.

Way back in 1936, immediately after the first ten members of the newly organized Court of Appeals had been announced, President Quezon gave them a state dinner in Malacañan. Among these ten, Chief Justice Paras, Senator Delgado and myself were there. The banquet over, President Quezon delivered a lecture on the Presidential powers under the Philippine Constitution. Sum and substance of it was the preponderance of the Executive Power in the constitutional set-up. He cited several new constitutional provisions which in his opinion bolstered the Presidential prerogatives. Besides the matters already mentioned, I remember he pointed to his oath of office that required him "to do justice to every man". Reflecting then that I had been nominated to the Court of Appeals, and not to the Supreme Court where Constitutional issues are solved, I did not give a second thought to our leader's explanations.

But now, mulling over the event in retrospect I surmise that foreseeing the probability of those appelate judges being promoted to the Supreme Court, Quezon attempted early to inculcate in their consciousness his notions about presidential supremacy. Did he contemplate a constitutional dictatorship? Was he building fences in that direction?

It is interesting to note that Quezon supported the Constitutional amendments permitting his reelection and establishing a Senate, whose members being elected at large necessarily had to get the indorsement of the President and therefore were beholden to him. Those amendments admittitedly reinforced the already tremendous influence of the President in the political stage.

Consider for the moment a possibility, remote and unlikely, I trust, but a possibility nevertheless. (By the way, this is a mere hypothesis, any resemblance to actual conditions being purely coincidental). As the leader of his party, the President could wangle from a partisan Congress an omnibus delegation of legislative powers—emergency or no emergency. That would be dictatorship in action. Even a defeat at the polls might not strip him of delegated powers, because by vetoing any attempt to withdraw them, he may insist on 2/3 vote to cancel his delegated authority (notwithstanding contrary opinions). But you would say, there is the Supreme Court. True, but such President could so maneuver as to hinder a declaration of invalidity of his acts by procuring the oppointment thereto of jurists of his own school of thought. Even with only one partisan therein (God forbid) he could forestall the clipping of his powers by keeping the membership of the Supreme Court at eight only. Then with one dissenting vote, (as you know) the eight votes to invalidate a law, would not be available.

Nowadays with the opposition in control of the Senate this possibility of constitutional dictatorship is averted. But coming elections might return a solid majority in both houses of Congress for the victorious president. The possibility may thus reapper.

It is therefore important to meditate upon the consequences of our selection for the exalted position of President which as stated, might become a Constitutional dictator. It is even more important that, after the election, the public should be aroused to the convenience of practicing ceaseless vigilance so that his vast powers shall ever be wielded in their behalf along the channels of democratic tradition.

It is always timely to repeat that the people will have the kind of government they choose, the type of leader they demand and in the process of selection, I am convinced lawyers and bar associations may exert persuasive influence. Hence it is their duty to advise and to lead. That duty they must never forget.

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