REFERENCE DIGEST

CONSTITUTIONAL LAW: THE JUDICIAL POWER — AN ANALYSIS.—Neither more nor less than "judicial power" is vested by the Constitution in our courts. This power has been defined as the power that adjudicates upon and protects the rights and interests of persons or property, and to that end declares, construes, and applies the law. Otherwise stated, judicial power is the power to judge. And the question asked is: the power to judge what? The answer may be given: to judge what may, properly speaking, be judged, namely a case or controversy. A justiciable case should be distinguished from a dispute of a hypothetical character or from one that is academic or moot. It must be definite and concrete, touching the legal relations of parties having adverse legal interests. Even in declaratory judgments, there must be a case or controversy, one ripe for judicial determination, before declaratory relief may be invoked.

Given a case or controversy, the court has all the powers necessary to decide it. It has the power to hear it or receive evidence to know the facts, to determine what is the law applicable, to apply that law to the case and render judgment accordingly. This is why courts have the power to determine the constitutionality or validity of any law. For in deciding a case, the Court, being bound to uphold the Constitution as the paramount law, must regard any legislative or executive act as not having the force of law if repugnant to the Constitution and therefore refuse to apply it. This is the root of the well-known principle of judicial review.

Hence, the power of judicial review is not a distinct power but is merely a necessary incident of the judicial power. When a court declares a law unconstitutional, the court does not control the legislature, but simply interprets the law. All that it does is to declare that a conflict exists between two laws of different degrees of authority. It is in this light that the so-called principle of judicial supremacy should be understood.

The author points out that there may be instances of violation of the Constitution which cannot be brought within the jurisdiction of the courts. For the judicial power to apply, the violation must involve "a case in law or equity" in which a right under such law is asserted in a court of justice. Also, the rule is well-settled that courts have no power to decide political questions.

It is however within the competency of Courts to decide conflicting claims of authority between departments, agencies, or officials of the government. And this power does not upset the principle of separation of powers inasmuch as this principle operates to protect each department from encroachment by another only in so far as it keeps within the boundaries of its lawful powers. (Cecilio Pe, The Judicial Power—An Analysis, XI U.S.T. Law Review No. 1, at 15-23 (1960) ₱2.00 at the University of Sto. Tomas, Manila).

CRIMINAL LAW; OBSERVATIONS ON THE PROPOSED CODE OF CRIMES.—As stated by the Code Commission, the proposed Code of Crimes establishes a new orientation in criminal law. It is an amalgam of the positivist and the classical sys-

tems, with a strong tendency toward the former, which considers the man rather than the act itself. It has abandoned the classical concept of retribution.

The author submits that the present Revised Penal Code, although enacted thirty years ago, is still good for our time. In this article, he presents strong arguments against the adoption of the proposed Code of Crimes.

If crime, according to positivist theory, is a social phenomenon, then before taking measures against acts and omissions which are to be regarded as crimes, we should first study the factors which produce crime in a given society. The fundamental shortcoming of the proposed code is that it is not based on any relevant and concrete data regarding crimes in this country, as duly established by fact-finding surveys. Consequently, it may be good only on paper but may not work out well in practice.

The proposed code unduly restricts individual liberty. It has substantially increased the list of punishable offenses and concerns itself with trifles. It is too moralistic, and unwittingly seeks to create a police state.

The system of individualization of punishment and rehabilitation of criminals may be theoretically sound. But the author asks: Does the government have the necessary resources, funds, facilities, and personnel to implement it? Moreover, one objectives of individualization and reformation in the proposed code may be attained even under the present system by a more faithful application of the principles of the Indeterminate Sentence Law and the provisions of the Prison Law.

Criminal law is only one factor in repressing crime. The other aspect is effective enforcement of the law. If the present code has been ineffective, it may be due mainly to the lack of effective enforcement. The same may well become the fate of the proposed code with its catalogue of new offenses.

The present code has one singular merit which makes it superior to the proposed code: with its 367 articles, it is certain and well known. The proposed code has more than a thousand articles which it would take time to master. It may become an instrument of persecution in the hands of unscrupulous peace officers.

Finally, the punitive or retributive propose of criminal law should not be eliminated. Threat of punishment is the best deterrent against crime. Even the theology of universal religion is based on retribution.

By way of suggestions, the author comments that the proposed radical changes may be first tested with respect to crimes against property. He concludes with the suggestion that a Survey and Reform Commission be formed to study criminality in the Philippines and gather data as a basis for appropriate legislation. (Ramon C. Aquino, *Observations on the Proposed Code of Crimes*, XXXV PHIL. L. J. No. 3 at 1015-1030 (1960). ₱3.00 at the University of the Philippines, Diliman, Q.C. This issue also contains: Perfecto Fernandez, *Relief from Municipal Taxation in the Philippines*; Luis Gonzaga, *Statutory Construction*—19g9.)

LABOR LAW: THE PROCESS OF DECISION BY THE INTERNATIONAL LABOR ORGANIZATION.—In the light of the present struggle for power among nations, past events reveal that all is not well with this world. While no one reason may be advanced for this, nevertheless it will not perhaps be inaccurate to state that the uneven distribution of the economic goods necessary for existence and continued life has contributed towards the present uneasy situation.

The obsession for the creation of an international association dealing with the problems of labor has long haunted the minds of economists and statesmen. The impact of the industrial revolution has resulted in competition among nations for the accumulation of the materials necessary for the basic needs of men. Some nations have been more successful than others in building up reserves of economic strength. The disparity in the knowledge and application of technology are partly responsible for this. Another important factor is the unequal treatment afforded to the workers in different countries. To compete in the world market, some nations have tolerated the maintenance of low standards of living for workers resulting in the neglect of their well-being. To a certain extent, this factor was a contributing influence in the establishment of the Industrial Labor Organizations at the time of the Peace Conference following the First World War.

The goals of the ILO, as set out by the author in this article, are:

1. The establishment of a system within the internal arena of each member state whereby the competence to make decisions over labor questions shall be shared by labor and employer groups;

To provide employment to workers in the occupation where they can have the satisfaction of giving the fullest measure of their skill and of making their greatest contribution to the common well-being;

3. The pursuit of a greater sharing of material well-being and spiritual development by all human beings;

4. Shared respect.

For purposes of explanation, the author divides the International Labor Organization's arenas of interaction into two, namely: the Internal Arena and the External Arena. Under the former, the internal machinery is laid out and discussed comprehensively. The compositions, officers, methods of voting of the different bodies composing the internal machinery of the ILO are expounded upon, thereby leaving in the reader's mind a clear picture of the organization. The modes of admission into and withdrawal from the organization are enumerated and explained

The relations of the body with other nation states, the United Nation and other international organizations and with the International Court of Justice are also treated by the author.

In the broad scheme of labor legislation, two measures play a very prominent role: the conventions and the recommendations. The importance of these measures are stressed by the author.

Practice, the specific technique by which the participants make and apply authoritative community in the world power process, is efficiently elucidated upon through the use of a detailed outline of its different functions. These functions, as set forth in the outline, are the following:

A. Intelligence function or the practices by which the decision-makers keep themselves informed, and by which they conceive, clarify and project future plans of action;

B. Recommending and Prescribing functions;

C. Invoking functions or those which deal with the practices by which the community machinery is set in motion;

D. Applying function which includes the practices by which authoritatively prescribed community policy is administered in concrete instances;

E. Appraising function which examines the consequences of efficiency, consistency and integrity with which the organization operates, and the impact of its works;

F. Terminating function or the practice by which obsolete prescriptions are put to an end. (Gonzalo T. Santos Jr., *The Process of Decision by the International Labor Organization*, VIII M.L.Q. Law Quarterly Nos. 2 & 3 at 129-148 & 282-305 (1958). ₱———, at the M.L.Q. University, Manila. This issues also contain: Nolledo, *Lobbying in the Congress of the Philippines*; Justice Concepcion, *The Constitution of the Philippines and the Proposed Amendments Thereto.*)

REMEDIAL LAW: RELIEF FROM MUNICIPAL TAXATION IN THE PHILIPPINES.—The right of the citizen to be relieved of wrongful municipal taxation rests on the principle that no person shall be deprived of property without due process of law. Our towns and cities have but limited power to tax. Beyond the authority conferred by statute and exercised through a valid ordinance, the taking of property through municipal taxation is unlawful and is not pursuant to due process. Accordingly, no one questions that our courts, in the exercise of judicial power, can grant relief to the aggrieved taxpayer.

The relief available to the taxpayer in the cities are chiefly regulated by their charters while those in municipalities and municipal districts are governed largely by more general laws, such as the Revised Administrative Code, although there is no difference as to the specific actions

Judicial relief generally takes two forms, namely: (1) absolution of the complaining taxpayer from the payment of the tax in question, and (2) the return of the amounts paid by the taxpayer.

The author examines at some length the following specific remedies available to the taxpayer, depending upon his objeect: (1) action for declaratory relief; (2) action for the annulment of the taxing ordinance in question; (3) action for refund, as well as the ancillary remedy of (4) injunction and the extraordinary legal remedy of (5) mandamus. These remedies may be predicated on a claim that the ordinance in question is unconstitutional, or illegal, or unenforceable, or merely inapplicable to the complaining taxpayer.

For each of these remedies, the author points out the requisites that have been laid down in pertinent statutes and decisions. The taxpayer must be careful to comply with these requirements in order that the action may prosper. This is particularly true when refund is sought, where our courts require that the suit be brought before the lapse of the appropriate reglementary period and that the wrongful payment must have been made under protest when prescribed by statute, or at least under some form of duress.

The article also contains discussions of the proper forum for the action, pleading and procedure, the proper parties, and extent of relief.

The entire article is richly indexed with Supreme Court decisions on the subjects treated. Perfecto V. Fernandez, *Relief from Municipal Taxation in the Philippines*, XXXV PHIL. L. J. No. 3 at 1058-1080 (1960). ₱3.00 at the University of the Philippines, Diliman, Q.C. This issue also contains: Ramon C. Aquino, *Observations on the Proposed Code of Crimes*, Luis Gonzaga, *Statutory Construction*—1959.)