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The Constitutional Question on the Writ of Habeas Corpus by Jose L. Llanes

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BOOK REVIEWS

THE CONSTITUTIONAL QUESTION ON THE WRIT OF HABEAS CORPUS. By Jose L. Llanes. Archipelago Publishing House, Manila. 1952. Pp. xix-200.

In a conflict with the State, the individual is indeed a puny adversary. Lest he be simply overwhelmed and crushed by the weight of the forces of the state, the constitution has thrown about him various procedural safeguards to ensure that neither his life nor property, nor his liberty nor dignity, be taken away from him, except after fair hearing and by judgment of competent and impartial authorities. In exceptional circumstances, when the higher interests of organized society demand it, principally when the existence of the state itself is threatened, these safeguards are allowed to be thrust aside, just as sometimes and for like reason, the substantive rights of individuals are made to give way to the paramount demands of the general welfare.

The problem is as old as government—how to reconcile the individual's interests with the State's.

One situation that involves this problem occurs when the state, in the course of repelling an invasion, or putting down an insurrection or rebellion, may find it expedient to arrest persons on mere suspicion or detain them beyond the legal period. Our constitution resolves the dilemma in favor of the state and against the liberty of the individual by authorizing the president, upon the occurrence of the exigencies mentioned, to proclaim martial law or suspend the privilege of the writ of habeas corpus, should the public safety require it. This constitutional provision, seemingly simple, raises difficult and delicate questions of interpretation. Who is to decide, with finality, that invasion, insurrection or rebellion exists or that public safety requires the suspension of the privileges of the writ of habeas corpus—the president or the

courts? In case of a suspension of the writ, is an innocent person who has been detained by the authorities deprived of every legal remedy to obtain his liberty? May the privilege of the writ be effectively suspended by the president when the civil courts are still functioning in the areas covered by the presidential proclamation?

To the solution of these and other equally vexing questions, Jose L. Llanes, in a 200-page work, addresses himself. The task is not an easy one. Except for the decision of the Supreme Court rendered 50 years ago in the case of *Barcelon v. Baker*, 5 Phil. 87, there is no local precedent, and no direct one in the United States, not even those cited in the *Barcelon* case as the author shows, except possibly an Idaho case, *In re Boyle*, 45 L. R. A. 832. Nevertheless, patiently and with a fine passion for the liberty and dignity of the individual, the author examines the nature and traces the history of the writ of habeas corpus, and after a brief speculation on the reason for the grant of power to the president to suspend the privileges of the writ, considers the implications of such suspension.

The conclusions reached by Mr. Llanes are invariably in favor of the liberty of the individual and against the pretensions of the state, as represented by the executive department of the government. He holds, for example, that even when the writ is suspended, an innocent person who has been arrested, or a person who, whether innocent or not, is being detained beyond the 6-hour period allowed by the Revised Penal Code, is entitled to his freedom, as long as the courts are still functioning or may function, without danger to the state during the existence of an invasion, insurrection or rebellion. At all events, the author submits, the other rights enumerated in the bill of rights are not suspended along with the privilege of the writ; they, and the ordinary remedies provided by law, continue to subsist and be enforceable. Thus, according to Mr. Llanes, the detained prisoner may compel by mandamus that criminal charges be filed against him and that he be tried thereon, publicly and speedily, with right to bail, and in every respect according to the constitution and the laws. Less debatable are the author's propositions, which are indeed supported by the great weight of authority, that during the suspension of the writ, the criminal and civil laws remain in force, but that, however, the actual redress of wrongs committed by the authorities will have to abide the restoration of the writ.

The author shows a decided inclination to put all his faith in the courts and none in the executive, and would therefore subject to judicial scrutiny and review all the acts of the latter,

to the extent that he cites favorably Justice Feria's bold assertion (in *Avelino v. Cuenco*, G. R. No. L-2821) of judicial supremacy "not only on justiciable questions but political questions as well." Hence, Mr. Llanes vigorously challenges the ruling in the *Barcelon* case that the conclusions of the chief executive made in the exercise of his power to suspend the writ, as to the existence of invasion, insurrection, rebellion or imminent danger thereof, and as to the necessity of suspending the writ, are final and conclusive on everyone, including the courts. It is to be regretted that Mr. Llanes has peremptorily brushed aside the reasons given by the Supreme Court, namely, the impracticability of pulling out of the firing line, maybe from distant parts of the country, the officers and soldiers who may be the only ones capable of giving legally admissible evidence of the existence of the emergency, and the danger that may arise from prematurely exposing the proofs in the possession of the government. This is a point susceptible of practical, common-sense discussion not requiring legal precedents. It is of course true that great inconvenience or difficulty in procuring proof is not reason enough for the courts to refuse to assume jurisdiction; on the other hand, in the interpretation of a constitutional provision, it is a wise rule to consider the mischief or danger that would result from a given interpretation (See *Krivenko v. Register of Deeds*, 44 O.G. 471). Moreover, in accordance with an elementary canon of constitutional construction, which Mr. Llanes does not consider worthy of a passing reference, even if the *Barcelon* ruling were intrinsically feeble, yet having stood without question for over 30 years at the time of the promulgation of our constitution, it may be regarded as having been impliedly incorporated in the constitutional provision granting to the president the power to suspend the privilege of the writ, for this provision is but a reproduction of the provision of the Philippine Bill interpreted by the Supreme Court in the *Barcelon* case.

The members of the constitutional convention were fully awake to the inevitable sacrifice of individual liberty in case of a suspension of the writ but they deliberately risked it in the interest of the public safety. Very few or none, however, had realized until the last presidential elections that in entrusting to the president the exclusive discretion to suspend the writ, the founding fathers had put it within the power of an unscrupulous executive to destroy his political enemies and to perpetuate himself in power. In the heated 1951 political campaign, speculations were rife that the writ would be suspended in appropriate areas and important Nacionalista Party leaders flung into jail. It must have been in this

charged atmosphere that Mr. Llanes prepared and published his treatise, for it is heavy with suspicion and distrust of the presidential powers. The political situation then existing was probably responsible, in part at least, for his over-insistence on judicial supremacy. It certainly appears to have distorted his view and caused him to make the completely unrealistic observation—

. . . that people do not rebel for the sake of rebellion, nor resort to arms merely for the sake of committing depredations, but that they do not feel that certain ends they deem fundamental such as a more abundant life, can be attained within the established political environment, and that they do not rebel because of an anarchistic hatred for government as such, or the government as that constitutionally constituted "aggregate of institutions", its form and substance, and its fundamental laws, but rather against that government which, as understood in political practice, is the "group of high executive officers who direct the larger public policies of the state", and who at times make use of government not in the interest of the welfare of the people.

Have the communists abandoned the field?

Which brings this reviewer back to his statement about how puny the individual is beside the state. With the weapons of today it is theoretically inconceivable for governments to succumb to an uprising, even a very popular uprising, and therefore one may innocently wonder why public safety may require this suspension of the writ. The communists and their methods furnish the answer. Well do the communists know that an open revolt has only an infinitesimal chance of succeeding, and therefore they do not resort to it unless they are flushed out of cover. But a small, disciplined and secret minority may be able to seize the nerve centers of administration and control it, and the next thing we know, it is the legitimate government in revolt, as witness Guatemala.

However much we may disagree with some of Mr. Llanes' conclusions, we must gratefully acknowledge that his modest work has brought to the fore the need for re-examining the constitutional provision granting to the president the power to suspend the privileges of the writ of habeas corpus and to proclaim martial law. Perhaps this power may be more safely lodged in the legislature. Perhaps we may be able to reconcile the imperious demands of public safety with our passion for court-administered justice by some kind of a special proceeding to determine provisionally whether there is justifiable cause to detain a person arrested in areas where the writ is suspended. But whatever it is we may decide for the greater protection of the individual, let not our attention be distracted

from the real and present danger by abstract speculations, legal theorizings, and exaggerated fears of executive dominance. Let us, this time, keep one wary eye on the red herring.

FRANCISCO CARREON

ECONOMIC RE-EXAMINATION OF THE PHILIPPINES. By Salvador Araneta. Araneta Institute of Agriculture, Malabon, Rizal, Philippines. 1953. Pp. ii-369.

This book is a collection of speeches and studies on the subject of economic re-examination given by Mr. Araneta between the years 1947 and 1953. The author's present position of Secretary of Agriculture and the prominence which he has long had in Philippine business ensures an interested and respectful audience for his ideas on the present economy of the country.

Though the graduation addresses and other occasional speeches and printed articles of which the book is composed deal with a great variety of economic aspects, there are a few themes which predominate throughout Mr. Araneta's public utterances over the six-year period. Chief among these is his insistence on the need for a revision of the Bell Trade Agreement of 1946. Another is his criticism of the laws, and the implementation of the laws, concerning import control. He insists, also, on the great need for production, both intensive and extensive. And, in a more general way, there is the reiterated exhortation to great sacrifices and "bold measures" towards the economic stabilization of the Philippines.

A "re-examination" naturally contains much adverse criticism of the situation which is being re-examined. The Bell Trade Agreement bears the brunt of Mr. Araneta's attacks. He says that the economic problems in the Philippines since liberation "may be attributed not to an incompetent government, not to deficit financing, but to the Bell Trade Agreement of 1946." The Bell Trade Act, he said in 1947, is "fundamentally defective, beyond repair." The economic ties under this Act are "the main cause of all our social unrest."

On the other hand, in a number of places in this volume are statements charging incompetence to the government, particularly in the matter of import control. He complains that: "It took us more than one year to enact an import control law. Our first attempt to control our imports in 1949 was half-hearted and ineffective." In his foreword he charges that