THE CONSTITUTION ACCORDING TO THE SUPREME COURT: A REVIEW OF CASES IN 1989 - 1990

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On a number of occasions in the past, the Supreme Court passed upon constitutional questions even in cases that had become moot, in the general interest of "educating the bench and the bar"[1] and "for the guidance of and as a restraint upon the future."[2] The notion that the Court has a symbolic or educational function derives from a long tradition dating back to *Marbury v. Madison*,[3] which declared it to be "emphatically the province and the duty of the judicial department to say what the law is." As Dean Eugene Rostow of Yale Law School put it, "[t]he Supreme Court is, among other things, an educational body, and the Justices are inevitably teachers in a vital national seminar."[4] For his part, Laurence Tribe describes the American tribunal as "the schoolmaster of the Republic."[5]

However that may be -- whether the applicable figure is that of teacher in a national seminar or headmaster in a nursery school -- for the Court's teachings to have effect beyond the immediate parties, the citizens must be given space to interact in an ongoing process of constitutional discussion. The republican ideal in our Constitution can draw life if only the citizens somehow participate not only in the work of the representative branches of the government but also in that of the courts.[6] To recur to the symbolic function of the Court, both teacher and participants in the seminar must engage in an imaginary colloquy about the need for this or that rule so that decisions thereafter rendered will be more firmly grounded. As Professor Cox has written:

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[1]Salonga v. Cruz Paño, 134 SCRA 438 (1985).

[2]Javier v. COMELEC, 144 SCRA 194 (1986); Demetria v. Alba, 148 SCRA 208 (1987).

[3]1 Cranch 137, 2 L. Ed. 60 (1803).

[4]Rostow, *The Democratic Character of Judicial Review*, 66 HARV. L. REV. 193 (1952).

[5]L. TRIBE, GOD SAVE THIS HONORABLE COURT 27 (1985).

[6]*See generally* Mendoza, *The Constitution and the Office of Citizen*, 4 LAW. REV. 41 (1990).

> Constitutional adjudication depends. . . upon a delicate, symbiotic relation. The Court must know us better than we ourselves. Its opinions may . . . sometimes be the voice of the spirit reminding us of our better selves. . . . But while the opinions of the Court can help to shape our national understanding of ourselves, the roots of its decisions must be already in the nation.[7]

This review of constitutional decisions in 1989 and the first half of 1990, like the previous ones made in the last four years, is an effort to promote public interest in the work of the Supreme Court as part of the building of civic spirit, if the Court as teacher is not to talk above the heads of the students.

I. STRUCTURE AND POWERS OF THE GOVERNMENT

A. The Supreme Court and Judicial Review

1. *Judicial Review and the Standing Requirement.* -- In NEPA v. ONGPIN,[8] the Court dismissed a suit for prohibition questioning the validity of the Omnibus Investment Code of 1981,[9] Presidential Decree 1892 which suspended the nationality requirement of the Code with respect to so-called nonpioneer industries, and the Government's Investments Priorities Plan. The dismissal was based on the ground that the petitioners did not have standing to sue.

The National Economic Protectionism Association (NEPA) is an association of citizens, taxpayers and businessmen who are concerned with the enforcement of nationalization laws. It contended that the conditions for the exercise of emergency powers, as provided in Art. VI, Sec. 26 of the 1935 Constitution and Amendment No. 6 of the 1973 Constitution, on the basis of which the President acted in promulgating the decrees, did not exist and that the suspension of the 60% nationality requirement with respect to nonpioneer industries contravened the nationalization provisions (Art. XIV, Secs. 8-9) of the 1973 Constitution. In holding that petitioners did not have standing, the Court, through Justice Paras, said that they had not shown that the increase in foreign equity participation in nonpioneer industries during the period of suspension had resulted in unemployment, unfair foreign competition or exploitation by foreign investors of the country's natural resources. While the petitioners were also suing as taxpayers, the Court noted that

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[7] A. COX, THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT 117 (1976).
[8] 171 SCRA 657 (1989).
[9] Pres. Decree No. 1789 (1981).

unlike in taxpayers' suits,[10] the case at bar did not involve an appropriation law.

Perhaps it should have also been explained why in other cases brought by concerned citizens or groups, the Court was receptive to the claim of standing. For example, in *Igot v. COMELEC*,[11] a voter, although not a candidate, was allowed to question the validity of Batas Pambansa Blg. 52, Sec. 4, which disqualified any candidate in an election if in a preliminary investigation it was shown he was *prima facie* guilty of subversion or rebellion. In CORDILLERA BROAD COALITION v. COA,[12] a public interest group was allowed to sue to question the constitutionality of an Executive Order which created the Cordillera Administrative Region. Maybe what made NEPA v. ONGPIN unsuitable for the adjudication of constitutional questions is the fact that these questions required the presentation of evidence to show the economic injuries pointed out by the Court and none was offered by the petitioners.

2. *Taking Judicial Review Seriously: The Executive Ban on Travel.* -- In MARCOS v. MANGLAPUS,[13] the Supreme Court, by a vote of 8 to 7 of its members, upheld the President's determination barring the return of former President Marcos and his family from their exile in Hawaii on the ground of national security. The majority opinion of Justice Cortes followed a two-step reasoning. First, she argued that under the Constitution the enumeration of specific powers of the President does not exhaust the grant to him of the "executive power" because what is not specifically granted to the Congress and the Judiciary is deemed vested in the President. Then, citing the Constitution's declaration of principles that "the prime duty of the government is to serve and protect the people"[14] and that "the maintenance of peace and order . . . and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy,"[15] she argued that the President possesses "residual powers" to discharge this duty of government. She said that the question whether the petitioners may be allowed to return to the Philippines cannot be considered from the viewpoint of the individual's liberty of abode and the right to travel but in the light of these "residual unstated powers of the President to safeguard and protect the

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[10]*E.g.*, Pascual v. Secretary of Public Works & Communications, 110 Phil. 331 (1960).

[11]95 SCRA 392 (1980).

[12]G.R. Nos. 79956 & 82217, Jan. 29,1990.

[13]117 SCRA 668 (1989).

[14]Art. II, sec 4.

[15]Art. II, sec. 5.

general welfare." Second, the policy determination of the President is subject to judicial review but only for the purpose of finding out whether there has been "grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the President. More specifically, the question was whether there existed "factual bases for the President to conclude that it was in the national interest to bar the return of the Marcoses to the Philippines." On this point, the majority opinion stated:

> We find that from the pleadings filed by the parties, from their oral arguments, and the facts revealed during the briefing in chambers by the Chief of Staff of the Armed Forces of the Philippines and the National Security Adviser, wherein petitioners and respondents were represented, there exist factual bases for the President's decision.
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> The Court cannot close its eyes to present realities and pretend that the country is not besieged from within by a well-organized communist insurgency, a separatist movement in Mindanao, rightist conspiracies to grab power, urban terrorism, the murder with impunity of military men, police officers and civilian officials, to mention only a few. The documented history of the efforts of the Marcoses and their followers to destabilize the country, as earlier narrated in this *ponencia*, bolsters the conclusion that the return of the Marcoses at this time would only exacerbate and intensify the violence directed against the State and instigate more chaos.
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> As divergent and discordant forces, the enemies of the State may be contained. The military establishment has given assurances that it could handle the threats posed by particular groups. But it is the *catalytic effect* of the return of the Marcoses that may prove to be the proverbial final straw that could break the camel's back.

Earlier, the Court cited, as justification for the President's decision, "[1] The failed Manila Hotel Coup in 1986 led by political leaders of Mr. Marcos; [2] the takeover of television station Channel 7 by rebel troops led by Col. Canlas with the support of Marcos Loyalists; [3] the unsuccessful plot of the Marcos spouses to surreptitiously return from Hawaii with mercenaries aboard an aircraft chartered by a Lebanese arms dealer; [4] the August 28, 1987 coup attempt by Col. Gregorio Honasan; [5] the communist insurgency and the secessionist movement in Mindanao which gained ground during President Marcos'[s] rule;" and [6] the "foreign debt and the plunder of the nation attributed to Mr. Marcos and his cronies which left the economy devastated."

After the decision in this case, former President Marcos died on September 18, 1989. But the Court denied the petitioners' motion for reconsideration on the ground that the supervening event had not changed the basis of its decision. "On the contrary," it said, "instead of erasing fears as to the destabilization that will be caused by the return of the Marcoses, Mrs. Marcos reinforced the bases for the decision to bar

their return when she called President Aquino 'illegal,' claiming that it is Mr. Marcos, not Mrs. Aquino, who is the 'legal' President of the Philippines, and declared that the matter 'should be brought to all the courts of the world.'"[16]

Justice Gutierrez, joined by Justice Bidin, disputed the majority's holding that the case involved a political question, because whether the return of a citizen may be barred on the grounds of national security is a question which has not been committed solely to the President. The case, he argued, should be viewed "solely in the light of the constitutional guarantee of liberty of abode and the citizen's right to travel as against the respondents' contention that national security and public safety would be endangered by a grant of the petition." He claimed that the more serious attempts at the overthrow of the government cited by the majority were unrelated to President Marcos and that it was unfair to blame the communist movement and rightist conspiracies on the petitioners.

Justice Cruz disputed the majority's contention that the President has residual powers, otherwise why would the Constitution give him specific powers. He said that the respondents failed to show that the return of the petitioners would prejudice the security of the State.

Justices Paras and Padilla, in separate dissenting opinions, stressed the right of petitioners, as Filipino citizens, to return to the Philippines in the absence of danger to the public safety and national security which they said the Armed Forces failed to prove.

Justice Sarmiento contended that even in national security matters, the President's powers are subject to constitutional limitations and that the President could prevent a return of the petitioners only upon lawful order of the Court or when necessary in the interest of national security, public safety or public health, as provided in Art. III, Sec. 6.

Thus, on the whole, the Court was agreed that on grounds of national security or public safety, the return even of a citizen can be prevented by the State. The Justices differed on the question whether such grounds were present in this case. The majority, employing deferential review, found sufficient and factual basis for the President's decision to bar the petitioners' return. On the other hand, the dissenters, insisting on strict scrutiny, found no "hard evidence" (Justice Padilla's words) supporting the President's determination. Ultimately, the

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[16]178 SCRA 760 (1989).

difference between the majority and the minority of the Justices concerned the appropriate standard of review.

The majority justified its less demanding standard on the basis of the second part, while the dissenters invoked the first part, of the second paragraph of Art. VIII, Sec. 1. This provision reads:

> [1] Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and [2] to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

As the majority noted, the standard of review embodied in the second part was adopted from the ruling in *Lansang v. Garcia*[17] in which it was held that, in reviewing the President's decision to suspend the privilege of the writ of habeas corpus, the function of the Court is

> merely to check -- not to supplant -- the Executive, or to ascertain merely whether he has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act.

The *Lansang* Court, however, was speaking of the President's proclamation suspending the privilege of the writ. It cited various violent incidents to support its finding that in suspending the privilege of the writ the Executive had not acted arbitrarily nor gravely abused his jurisdiction. Its inquiry did not end with that determination. As the Court made plain, "[t]he next question for determination is whether the petitioners herein are covered by said proclamation as amended."[18] With respect to this question, the Court indicated that the level of scrutiny would be more exacting to determine whether the petitioners in that case had participated in the rebellion. If the Court did not undertake such inquiry itself, it was only because there was already a pending investigation before the fiscal's office to which the petitioners were remanded.

What, therefore, the Court in *Lansang* subjected to deferential review was the Executive decision to suspend the privilege of the writ of habeas corpus, and not the application of the decision to the petitioners. Its review of violent events in that case was not for the purpose of determining whether the arrests were justified (in fact the petitioners' participation in those incidents was not alleged) but only to determine the sufficiency of the factual basis of the suspension of the privilege of

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[17] 42 SCRA 448, 480 (1971).

[18] *Id.*

the writ of habeas corpus. The fact is that the Court performed review on two levels in *Lansang v. Garcia*: on the level of policy, using deferential standard, and on the level of actual application, using strict scrutiny.

On the other hand, what was involved in MARCOS v. MANGLAPUS was not the review of a policy but of executive action against particular individuals. It would seem therefore that the applicable standard of review is that generally employed whenever claims of constitutional violations are raised before the courts, which demands proof of the grounds for denial of those rights. In other words, the review is that which is required in Art. VIII, Sec. 1, second paragraph, to wit:

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable . . .

This provision calls for heightened judicial review even in the face of claims of national security. As the U.S. Supreme Court held in rejecting the government's contention that when internal security matters are involved no judicial warrant was required to conduct a wire tap:

> The danger to political dissenters is acute where the Government attempts to act under so vague a concept as the power to protect the 'domestic security.' . . . Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the executive branch. The Fourth Amendment does not contemplate the executive officers of Government as neutral and disinterested magistrates. . . . The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech. . . . We cannot accept the Government's argument that internal security matters are too subtle for judicial evaluation. Courts regularly deal with the most difficult issues of our society. There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases. . . . If the threat is too subtle or complex for our senior law enforcement officers to convey its significance to a court, one may question whether there is probable cause for surveillance.[19]

3. *Congressional Power to Define the Jurisdiction of Courts: The Validity of Anti-Injunction Laws.* -- Despite the enactment by the legislative branch of statutes banning the issuance of injunctions by the courts in certain cases,[20] doubt persisted as to their validity, perhaps

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[19]United States v. United States District Court, 407 U.S. 297 (1972).

[20]*See e.g.*, TAX CODE, sec. 219 ; LABOR CODE, sec. 254; Rep. Act No. 875, sec. 9 (1953); Pres. Decree No. 385 (1974); Rep. Act. No. 6657, sec. 55 (1988).

because in the only case where the Supreme Court sustained the constitutionality of such a statute, its decision was based on the ground that courts never really had the power to enjoin the collection of taxes. Whether Congress could prohibit the issuance of injunction in other cases without diminishing the judicial power vested in the courts by the Constitution was left unresolved.[21]

In MANTRUSTE SYSTEMS, INC. v. COURT OF APPEALS,[22] the question was squarely raised and decided. Petitioner leased the Bayview Plaza Hotel from the Development Bank of the Philippines. After it was decided to sell the hotel in line with the government's privatization program, petitioner at first demanded that it be considered a "preferred bidder" on the ground that it had a legal lien on the hotel in the amount of P12 million and, after being disqualified, brought suit to compel the DBP and the Assets Privatization Trust to award the hotel to it. The trial court issued an injunction, stopping the DBP and the APT from approving the winning bids and awarding the hotel to the Makati Agro-Trading, Inc. and the La Filipina Uy-Gongco Corp. and from taking possession from petitioner. But the Court of Appeals nullified the injunction on the basis of Proclamation No. 50-A, dated December 15, 1986, of the President of the Philippines, which provides in Sec. 31 that "no court or administrative agency shall issue any restraining order or injunction against the [APT] in connection with the acquisition, sale or disposition of assets transferred to it. . . [or] against any purchaser. . . from taking possession of any assets purchased by him." The proclamation was issued by the President in the exercise of her legislative powers under the Provisional Constitution.

On appeal to the Supreme Court, it was contended that the ban on injunction impinged on the judicial power of the courts as provided in Art. VIII, Sec. 1 and that the law left the petitioner without protection of its right to retain possession of the hotel until it was paid for what it had advanced. The Court, through Justice Griño-Aquino, found this contention untenable. In the first place, petitioner, as lessee, did not have a right to retain possession until it was reimbursed for its advances. In the second place, the anti-injunction statute was an exercise by the President of the legislative power now found in Art. VIII, Sec. 2 to define the jurisdiction of the various courts except the jurisdiction of the Supreme Court as vested in it by the Constitution.

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[21]Churchill v. Rafferty, 32 Phil. 580 (1915). *See also* Sarasola v. Trinidad, 40 Phil. 252 (1919); David v. Ramos, 90 Phil. 351 (1951).

[22]179 SCRA 136 (1989).

In the United States, the validity of the Norris-La Guardia Act ban on injunction[23] was similarly upheld on the ground that "there can be no question of the power of Congress thus to define and limit the jurisdiction of inferior federal courts of the United States."[24] What calls for comment in MANTRUSTE is the additional statement in the opinion of the Court implying that, even without the ban on injunction, courts may not interfere with the business of administrative agencies like the APT. For, as the Court itself said, the function of the writ of preliminary injunction is to preserve the status quo pending determination of the rights of a party. Courts may thus find it necessary to issue such injunction without disrespecting the function of administrative agencies. That is the reason why, for weighty reasons, Congress may find it necessary to limit or curtail the powers of the courts so long as such powers are not granted to them by the Constitution but only by statute.

B. The Executive Branch

1. *Power of Appointment.* -- In *Sarmiento v. Mison*,[25] the Supreme Court, by way of dictum, construed Art. VII, Sec. 16 as requiring confirmation only of the appointments mentioned in the first sentence, namely:

> First, the heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and, second, other officers whose appointments are vested in him in this Constitution:
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> [The "other officers" whose appointments are vested in the President in the 1987 Constitution are:
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> 1. Regular members of the Judicial and Bar Council (Art. VIII, Sec. 8 (2));
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> 2. Chairman and Commissioners of the Civil Service Commission (Art. IX B, Sec. 1(2));
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> 3. Chairman and Commissioners of the Commission on Elections (Art. IX C, Sec. 1(2));

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[23]29 U.S.C. secs. 104, 107-108 (1970).
[24]Lauf v. E.S. Shinner & Co., 303 U.S. 323 (1938).
[25]156 SCRA 549 (1987).

4. Chairman and Commissioners of the Commission on Audit (Art. IX D, Sec. 1 (2)); and

5. Members of the Regional Consultative Commissions (Art. X, Sec. 18).].

On the other hand, appointments mentioned in the second and third sentences, according to the Court, are vested solely in the President, or, in the case of "officers lower in rank," in the President alone, in the courts or the heads of departments, agencies, commissions or boards.

In CONCEPCION BAUTISTA v. SALONGA,[26] it was held that the appointment of the Chairman of the Commission on Human Rights was not subject to confirmation and that it was beyond the power of the executive and legislative branches of the government to agree on the submission of the nomination to the Commission of Appointments. The Chairman and the members of the Commission on Human Rights are among the officers "whom [the President] may be authorized to appoint pursuant to the second sentence," since their positions are not among those offices in the second sentence, appointments to which are provided for by law.[27]

Mary Concepcion Bautista had been appointed Chairman of the CHR and had taken her oath of office. For some reason, however, the Office of the President submitted her appointment to the Commission on Appointments. She refused to submit to the jurisdiction of the appointments body and filed a petition for certiorari with the Supreme Court. When the Commission disapproved her appointment on the ground that she had refused to submit the papers required by it, she asked the court to set aside the Commission's action.

In an opinion by Justice Padilla, the Court, 9 to 4, ruled that Mary Concepcion Bautista's appointment was not subject to confirmation by the Commission and that it had been completed when she took her oath of office. The decision of the President to submit Mary Concepcion Bautista's appointment was beyond the President's power, according to the Court, because neither she nor Congress could "move power boundaries in the Constitution differently from where they are placed by the Constitution."

> . . . Neither the Executive nor the Legislature (Commission on Appointments) can create power where the Constitution confers none.

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[26]172 SCRA 160 (1989).

[27]Exec. Order No. 163, (1987).

> The evident constitutional intent is to strike a careful and delicate balance in the matter of appointments to public office between the President and Congress (the latter acting through the Commission on Appointments). To tilt one side of the scale is to disrupt or alter such balance of power. In other words, to the extent that the Constitution has blocked off certain appointments for the President to make with the participation of the Commission on Appointments, so also has the Constitution mandated that the President can confer no power of participation in the Commission on Appointments over other appointments exclusively reserved for her by the Constitution. The exercise of political options that finds no support in the Constitution cannot be sustained.

The Court also rejected the contention advanced by Hesiquio R. Mallilin, who had been designated Acting Chairman of the CHR, that, at all events, it was within the President's power to remove Bautista. It noted that while originally Executive Order No. 163 gave the Chairman and the members of the CHR a seven-year term, the amendment on June 30, 1987 converted the term into a "tenure. . . at the pleasure of the President." The Court declared the amendment unconstitutional, as being contrary to Art. XIII, Sec. 17 (2), which provides that "the term of office . . . of the Members of the Commission [on Human Rights] shall be provided by law."

Justice Gutierrez, who dissented in *Sarmiento v. Mison*, again dissented. He argued:

> (1) If the officers in the first group are the only appointees who need confirmation, there would be no need for the second and third sentences of Section 16. They become superfluous . . . .
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> . . . .
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> (3) The second sentence of Section 16 starts with, "He shall also appoint. . . ." Whenever we see the word "also" in a sentence, we associate it with preceding sentences, never with the different sentence that follows. On the other hand, the third sentence specifies "other officers lower in rank" who are appointed pursuant to law by the President "alone." This can only mean that the higher ranking officers in the second sentence must also be appointed with the concurrence of the Commission on Appointments . . . . By express constitutional mandate, it is Congress which determines who do not need confirmation. Under the majority ruling of the Court, if Congress creates an important office and requires the consent of the Commission before a presidential appointment to that office is perfected, such a requirement would be unconstitutional . . . .

Apparently answering the majority opinion in *Sarmiento v. Mison* that the Constitutional Commission deliberately curtailed the powers of the Commission on Appointments because experience under the

previous Constitution showed that the Commission had become a "venue of horsetrading and other similar malpractices," Justice Gutierrez said that "the delays and posturings are part of the democratic process" and "they should never be used as arguments to restrict legislative power where the Constitution does not expressly provide for such a limitation."

Justice Cruz reiterated his dissent in the *Mison* case, calling attention to absurd consequences flowing from the majority decision: appointments to important positions in the government, such as those of Commissioners on Human Rights and the Governor of the Central Bank, would not be subject to confirmation, but those of lesser categories, like colonels in the armed forces, are. He pointed out that even the President did not seem to agree with the *Mison* decision as shown by her submission of the appointment in this case to the Commission on Appointments.

On the other hand, Justice Griño-Aquino, joined by Justice Medialdea, thought that the CHR is like the Civil Service Commission, the COMELEC and the COA, whose members are appointed by the President with the consent of the Commission on Appointments. Chief Justice Fernan and Justice Sarmiento took no part.

On June 1, 1989, the Court denied a motion for reconsideration of its decision, reiterating its opinion in *Mison*, in which it invoked textual and historical arguments in support of its interpretation. It called attention to the language of Art. VII, Sec. 16 which states that, with respect to the first group of public officers, the President shall "nominate and, with the consent of the Commission on Appointments, appoint" such officers. In contrast, the second sentence simply states that "He shall also appoint all other officers of the government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint," without mentioning the Commission on Appointments at all.

With respect to the history of Art. VII, Sec. 16, the Record of the Constitutional Commission shows that what was just one sentence requiring nominations of the President to be confirmed was split into two by stopping at the end of the enumeration of officers whose appointments are vested in the President and adding "and other officers whose appointments are vested in him in this Constitution."

Following this interpretation, it was held in QUINTOS-DELES v. COMMISSION ON CONSTITUTIONAL COMMISSIONS AND OFFICERS,[28] that the appointment of sectoral representatives under the

[28]177 SCRA 259 (1989).

party-list system is subject to confirmation by the Commission on Appointments because it is an appointment vested in the President by this Constitution, as distinguished from one vested in him by law. In the latter case, the appointment is not subject to confirmation.

The petitioners, representing women, youth, peasant, and urban poor, were appointed by the President but because of opposition to their oath taking before the Speaker of the House of Representatives, the President subsequently referred their appointments to the CA for confirmation. The petitioners refused to appear before the CA. Instead they brought suit for prohibition contending that Art. XVIII, Sec. 7 does not require confirmation of their appoinments. This provision reads:

> Until a law is passed, the President may fill by appointment from a list of nominees by the respective sectors the seats reserved for sectoral representation in paragraph (2), Section 5 of Article VI of this Constitution.

The Supreme Court, in an opinion by Justice Bidin, held that sectoral representatives to the House of Representatives are among the "other officers whose appointments are vested in the President in this Constitution" as provided in the first sentence of the Appointments Clause and, therefore, were subject to confirmation by the Commission on Appointments. The Court stressed that petitioners' appointments, according to the notices given to them, were made "pursuant to Article VII, Section 16, paragraph 2 and Article XVIII, section 7 of the Constitution," which means, according to the Court, that the appointments were *ad interim* appointments because the second paragraph of Art. VII, sec. 16 refers to *ad interim* appointments.

I have already commented on the interpretation of *Sarmiento v. Mison* of the Appointments Clause in last year's survey of cases in constitutional law.[29] Only two points need be added by way of comment on QUINTOS-DELES v. COMMISSION ON CONSTITUTIONAL COMMISSIONS AND OFFICERS. The first is that the artificiality of the distinction between the requirements of the first sentence of Art. VII, Sec. 16 and those of its second sentence will be seen if, pursuant to Art. XVIII, Sec. 7, in relation to Art. VI, Sec. 5(1), Congress should pass a law providing for the appointment of sectoral representatives by the President. In such event, the appointment of sectoral representatives would not be subject to confirmation because it would then fall under the second sentence of the Appointments Clause, *i.e.*, "those whom [the President] may be authorized by law to appoint."

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[29]*See* Mendoza, *The Supreme Court on the Supreme Law: An Annual Survey*, 62 PHIL. L. J. 407, 414-420 (1987).

The second observation is that if the appointments of the sectoral representatives were *ad interim* appointments, they should have been allowed to take their seats in Congress, subject to the action of the CA. That they were not allowed to do so and the office of the President only later sent their nominations to the CA for confirmation seem to indicate the understanding of both branches of the government that the appointments extended to the petitioners were regular appointments.

2. *Effects of Pardon.*-- In MONSANTO v. FACTORAN,[30] the Supreme Court ruled that, while pardon remits the consequences of a criminal conviction and restores the convict's eligibility to hold public office, it does not *ipso facto* restore him to the office from which he might have been removed. He may apply for reappointment but his conviction must be taken into account in assessing his fitness.

Petitioner was formerly assistant treasurer of Calbayog City. She was convicted of estafa through falsification of public documents and sentenced accordingly by the Sandiganbayan. She appealed to the Supreme Court and, while her appeal was pending, she was granted absolute pardon and "restored to full civil and political rights by President Marcos." The Ministry of Finance agreed to reinstate her without the need of a new appointment but when the new administration assumed power it refused to reinstate her. She brought an action in the Supreme Court, contending that, as she had been granted pardon while her case was still pending,[31] the accessory penalty of forfeiture of office did not attach.

Through Chief Justice Fernan, the Court affirmed the action of the Executive Branch. It rejected the view that pardon makes the one pardoned a new person, as if he had never committed an offense. "We cannot perceive," the Court said, "how pardon can produce such a 'moral change' as to equate a pardoned convict in character and conduct with one who has constantly maintained the mark of a good, law abiding citizen. . . . And in considering her qualifications and suitability for the public post, the facts constituting her offense must be and should be evaluated and taken into account to determine ultimately whether she can once again be trusted with public funds." The Court also denied her request for exemption from payment of the civil indemnity imposed upon her. It held that this can only be extinguished in accordance with the civil law.

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[30]170 SCRA 190 (1989).

[31]Under art. VII, sec. 11 of the 1973 Constitution, as amended, there was no condition that pardon could only be granted after conviction.

Justices Padilla and Feliciano filed separate concurring opinions applying Art. 36 of the Revised Penal Code that pardon does not work a restoration of the right to hold public office, or the right of suffrage, unless such rights are expressly restored by the terms of the pardon. They disagreed with the majority that the pardon granted the petitioner had removed her disqualification from holding public employment. While the pardon stated that petitioner was being "restored to full civil and political rights," Justice Feliciano did not regard this as sufficient because it did not specify the right to public office, considering that there are other "political rights."

The statement that "in the eyes of the law the offender [who is pardoned] is as innocent as if he had never committed the offense," which the Court in MONSANTO repudiated does not seem to have ever been adopted as a rule in any previous decision. While this statement, which was made in *Ex Parte Garland*,[32] was quoted in *People v. Vera*,[33] it was only by way of dictum. In *Cristobal v. Labrador*[34] and *Pelobello v. Palatino*,[35] what was said about pardon was this, which is consistent with what the Court said in MONSANTO:

> An absolute pardon not only blots out the crime committed, but removes all disabilities resulting from the conviction. In the present case, the disability is the result of conviction without which there would be no basis for disqualification from voting. Imprisonment is not the only punishment which the law imposes upon those who violate its command. There are accessory and resultant disabilities, and the pardoning power likewise extends to such disabilites. When granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction.[36]

Rather, the statement that "the person released from amnesty stands before the law precisely as though he committed no offense," was made in another case,[37] about amnesty, not pardon, and, in that context, it was correct because in amnesty there is no previous conviction that leaves a stigma.

C. Congress

Reorganizing the Commission on Appointments.-- Art. VI, Sec. 18 provides that the Commission on Appointments shall be composed of 12

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[32]71 U.S. (4 Wall.) 333, 18 L. Ed. 366 (1866).
[33]65 Phil. 56, 108 (1937).
[34]71 Phil. 34 (1940).
[35]72 Phil. 441 (1941).
[36]*Supra* note 34, at 38.
[37]Barrioquinto v. Fernandez, 82 Phil. 642, 647 (1949).

senators and 12 members of the House of Representatives to be elected by each House "on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein." The Senate President is Chairman. In *Cunanan v. Tan*,[38] it was held that the Commission cannot be reorganized as a result of the formation of a temporary alliance even though the reorganization would involve only the replacement of the representatives of a political party by other members of the same party and the number of representatives of such party would not be reduced. Only a permanent change of party affiliation could justify a reorganization. Hence, it was held that the replacement of three members of the Nacionalista Party by three other members of the same party, which was made at the instance of the Allied Majority, was illegal.

On the other hand, in DAZA v. SINGSON,[39] what was involved was a reduction in the membership of a political party because of the resignation of some members, resulting in a corresponding increase in the membership of the party to which they transferred. The Supreme Court, in an opinion by Justice Cruz, upheld the reorganization of the Commission. The facts were: On September 16, 1988, when the Laban ng Democratikong Pilipino (LDP) was reorganized, 24 members of the Liberal Party resigned and joined the LDP. As a result, the LP membership in the House of Representatives was reduced to 17, while that of the LDP grew to 157. On December 5, 1988, the House elected a new set of representatives in the Commission. Petitioner Raul A. Daza, representing the LP, was replaced by respondent Luis C. Singson, of the LDP. Daza brought suit, contending that, under the ruling in *Cunanan v. Tan*, he could not be replaced because the LDP had not as yet attained stability as a political party. Rejecting the petitioner's contention, the court stated:

> The LDP has been in existence for more than one year now. It now has 157 members of the LDP in the House of Representatives and 6 members in the Senate. Its titular head is no less than the President of the Philippines and its President is Senator Neptali A. Gonzales, who took over recently from Speaker Ramon V. Mitra. It is true that there have been, and there still are, some internal disagreements among its members, but these are to be expected in any political organization, especially if it is democratic in structure. In fact, even the monolithic Communist Party in a number of socialist states has undergone similar dissension, and even upheavals. But it surely cannot be considered still temporary because of such discord.

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[38] 115 Phil. vii (1962).
[39] 180 SCRA 496 (1989).

> As for the other condition suggested by the petitioner, to wit, that the party must survive in a general congressional election, the LDP has doubtless also passed the test, if only vicariously. It may even be said that it now commands the biggest following in the House of Representatives, the party has not only survived but in fact prevailed. At any rate, that test was never laid down in Cunanan.

What can be said by way of comment on this case is that the staying power of LDP as a political party might be in doubt but that its members were "permanently affiliated" with it was beyond question. Allowing it to have greater representation in the Commission was one way of enabling it to consolidate power and thus attain "political stability." As long as the changing of party affiliation is not prohibited and the representation of political parties and organizations is based on party membership, frequent reorganizations of the Commission can be expected.

II. INDIVIDUAL RIGHTS

A. Loss and Reacquisition of Citizenship

1. *Expatriation by Naturalization in a Foreign State.* -- In FRIVALDO v. COMELEC,[40] the annulment of petitioner's election and the termination of his continuance in office as governor of Sorsogon were sought on the ground that he had divested himself of his Philippine citizenship by being naturalized as an American citizen. The action was brought in the Commission on Elections. Petitioner moved for the dismissal of the suit, alleging that he had simply been forced to apply for American citizenship because of persecution during the Marcos years and that, at any rate, he had reacquired Philippine citizenship by filing his certificate of candidacy in 1988 and by his active participation before that in the 1987 congressional election. As the COMELEC insisted on hearing the case against him, petitioner filed a petition for certiorari and prohibition in the Supreme Court.

Through Justice Cruz, the Court held that by seeking naturalization in the United States, petitioner had renounced Philippine citizenship. It rejected his claim that he had simply been forced to apply for American citizenship. It pointed out that other Filipinos, among them the late Ninoy Aquino, had been exposed to the same risk because of opposition to Marcos' rule, but they had held on to their Philippine citizenship.

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[40]G.R. No. 87193, June 23, 1989.

On petitioner's claim that he had been repatriated because by taking part in the Philippine elections he automatically forfeited his American citizenship, Justice Cruz said that this was a matter between him and the United States. Such forfeiture of American citizenship did not automatically restore his citizenship in the Philippines. Under Sec. 2, Commonwealth Act No. 63, it was pointed out, citizenship in this country can only be reacquired by an act of Congress, by naturalization, or by repatriation, in case of Filipino women who lost their citizenship by marriage to foreigners and those declared deserters from the armed forces. The Court concluded that petitioner's election did not cure his lack of eligibility because his election was based on a mistake. It would be an "anomaly [to have] a person sitting as provincial governor in this country while owing exclusive allegiance to another country."

Justice Gutierrez concurred in a separate opinion, while Justice Cortes limited her concurrence to the result. On the other hand, Justice Sarmiento took no part.

It may be noted, in connection with the claim made in this case that by taking part in Philippine elections petitioner forfeited his American citizenship, that in *Afroyim v. Rusk*,[41] the United States Supreme Court held that the U.S. Congress was without power to strip an American of his citizenship solely on the ground that he had voted in a foreign election.

Similarly, in LABO v. COMELEC,[42] also by Justice Cruz, it was held that petitioner was disqualified to be Mayor of Baguio City, because he was an alien, even as the claim of the candidate who obtained the second highest number of votes for Mayor to be declared entitled to the position was denied. The Court instead ordered the petitioner to relinquish the mayorship to the Vice Mayor.

Petitioner Ramon L. Labo, Jr. married an Australian citizen, because of which he was granted Australian citizenship without having to meet normal requirements. He took an oath of allegiance, renouncing all other allegiances. In addition, in 1986, he took out an Australian passport and later returned to the Philippines as a former Philippine citizen and was granted an immigrant certificate of registration by the Commission on Immigration and Deportation. In a case filed against him, he questioned the jurisdiction of the barangay court on the ground that he was an Australian citizen. He was elected Mayor of Baguio City in the January 18, 1988 election, but his election was contested in a quo warranto suit filed by respondent Luis Lardizabal who got the second

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[41]387 U.S. 253 (1967), *overruling* Perez v. Brownell, 356 U.S. 46 (1958).
[42]G.R. No. 86564, Aug. 1, 1989.

highest number of votes. Petitioner moved to dismiss the suit in the Commission on Elections on the ground that, although the suit was brought within ten days from his proclamation, as required by law,[43] the filing fee was paid only after 21 days. As his motion was denied, he brought the matter to the Supreme Court on a petition for certiorari.

The Court sustained the respondent's contention that the late payment of the filing fee was justified by the fact that in the beginning the COMELEC treated the case as a pre-proclamation controversy and only considered it as a quo warranto suit on February 8,1988 and, since the fee was paid on February 10, payment was made within two days. The Court, however, did not limit its ruling to this question. It decided instead the very question pending before the COMELEC and held that petitioner had lost his Philippine citizenship by naturalization in a foreign country,[44] express renunciation of Philippine citizenship,[45] and swearing allegiance to a foreign country.[46] That his new citizenship, according to the Australian Consul in the Philippines, could be revoked because his marriage to an Australian citizen was bigamous was considered immaterial. Nor was his contention that his taking of an oath and obtaining an Australian passport were mistakes on his part considered satisfactory.

But the Court rejected the respondent's contention that he should be declared Mayor. The Court reversed its ruling in *Santos v. COMELEC*,[47] and reinstated its former ruling in *Geronimo v. Ramos*[48] that, in the absence of any law, votes cast for a candidate who is disqualified cannot be considered void so as to entitle the candidate who obtained the second place to take the post.

Justice Gutierrez filed a brief concurring opinion, reiterating his position in FRIVALDO that, although the Court should not consider an issue not squarely raised in a case before it, the case of a foreigner sitting as mayor could not be countenanced. Subsequently, however, he dissented on the ground that, after going over petitioner's motion for reconsideration, he became convinced that petitioner should not be declared to have lost his Philippine citizenship through the application of the doctrine of *res ipsa loquitur* in a petition for

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[43]OMNIBUS ELECTION CODE, sec. 253.
[44]Commonwealth Act. No. 63(1936), sec. 1(1).
[45]*Id.* at sec. 1(2).
[46]*Id.* at sec. 1(1).
[47]137 SCRA 740 (1985).
[48]136 SCRA 435 (1985).

certiorari. The majority, however, stood pat on its decision and denied petitioner's plea for reconsideration.[49]

2. *Renunciation or Denaturalization? The Case of Willie Yu.* -- Willie Yu was naturalized as a Philippine citizen in 1978. In 1980, he signed commercial documents in Hongkong in which he declared that his nationality was Portuguese. In 1981 he secured a renewal of his Portuguese passport from the Portuguese embassy in Tokyo. The passport had been originally issued to him in 1971. He brought an action for certiorari in the Supreme Court to stop the Commission on Immigration and Deportation from deporting him.

In YU v. DEFENSOR-SANTIAGO,[50] the Court, through Justice Padilla, held that the petitioner's acts constituted express renunciation of Philippine citizenship, under Commonwealth Act No. 63, Sec. 1(2). Accordingly, it dismissed the petition.

Justice Gutierrez, joined by Chief Justice Fernan, dissented. He argued that a citizen may get a foreign passport simply for convenience or to avoid discriminatory visa requirements and not necessarily because he really wants to give up his Philippine citizenship. He said that whatever might be the reason must be determined in a trial and not in an administrative proceeding, such as that undertaken by the Commission on Immigration and Deportation. Justice Cruz also dissented in a separate opinion.

Both the majority and dissenting Justices assumed that renunciation could be inferred from certain acts. They only differed on whether this could be determined in a collateral proceeding, such as a petition for habeas corpus, or whether this should be decided in a regular court proceeding. I think the real question in this case was whether the acts attributed to the petitioner (*i.e.*, obtaining a foreign passport and declaring in commercial documents his former nationality) constituted express renunciation of Philippine citizenship. While the acts might imply renunciation, they did not constitute express renunciation as required by Sec. 1(2) of Commonwealth Act No. 63. They could have been done for some other purpose than a desire to divest one's self of one's citizenship.[51] Express renunciation must be shown by a distinct or unequivocal declaration that leaves no doubt as to a person's intention. It cannot be inferred from conduct, unless the conduct itself is a ground provided by law for loss of citizenship. To paraphrase the American Supreme Court, the Constitution can most reasonably be read

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[49]Res., Sept. 28, 1989.

[50]169 SCRA 164 (1989).

[51]*See, e.g.*, Palanca v. Republic, 80 Phil. 578 (1948).

as defining citizenship which a citizen keeps unless he voluntarily relinquishes it.[52]

Nonetheless, I think the acts of the petitioner constituted proof of falsely swearing allegiance to the Philippines.[53] Thus in *Knauer v. United States*,[54] it was held that an individual who falsely swears allegiance to the German Reich and was a "thoroughgoing Nazi and faithful follower of Adolf Hitler" may be stripped of his citizenship through the cancellation of his certificate of naturalization. If the decision in YU v. DEFENSOR-SANTIAGO had been made to rest on this ground, *i.e.*, fraudulently obtaining naturalization rather than express renunciation, there need be no fear that even natural born citizens could lose their citizenship on such slender grounds as those found by the majority in this case, as Justice Gutierrez feared.

On the other hand, in AZNAR v. COMELEC,[55] it was held that if a person is a citizen both of the Philippines and of the United States, the fact that he secures a certificate of alien registration from the Commission on Immigration and Deportation and states in his application for a reentry permit that he is a "U.S. national" is not sufficient to consider him to have renounced Philippine citizenship. The Court thus upheld a resolution of the COMELEC, dismissing a petition for disqualification filed against the respondent Emilio Mario Renner Osmeña, who had been elected Provincial Governor of Cebu in the 1988 elections. Osmeña is the son of a Filipino, the latter being the son of the late President Sergio Osmeña, Sr. Through Justice Paras, the Court ruled:

> Considering the fact that admittedly Osmeña was both a Filipino and an American, the mere fact that he has a certificate stating he is an American does not mean that he is not *still* a Filipino. Thus, by way of analogy, if a person who has two brothers named Jose and Mario states or certifies that he has a brother named Jose, this does not mean that he does not have a brother named Mario; or if a person is enrolled as a student simultaneously in two universities, namely University X and University Y, presents a certification that he is a student of University X, this does not necessarily mean that he is not still a student of University Y. In the case of Osmeña, the certification that he is an American does not mean that he is not still a Filipino, possessed as he is, of both nationalities and citizenships. Indeed there is no express renunciation here of Philippine citizenship; truth to tell, there is even

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[52]Afroyim v. Rusk, 387 U.S. 253 (1967).

[53]Under Commonwealth Act No. 473, sec. 18(1), in relation to Commonwealth Act No. 63, sec. 1(5), a certificate of naturalization may be cancelled if it was fraudulently obtained.

[54]328 U.S. 654 (1946).

[55]G.R. No. 83820, May 25, 1990.

> no implied renunciation of said citizenship. When we consider that the renunciation needed to lose citizenship must be "express", it stands to reason that there can be no such loss of Philippine citizenship *when there is no renunciation, either "express" or "implied".*

Six Justices concurred in the majority opinion of Justice Paras. They were Justices Narvasa, Bidin, Cortes (in the result), Aquino, Medialdea, and Regalado. Chief Justice Fernan and Justice Gutierrez took no part, the first having been counsel of the Osmeña estate.

Justice Sarmiento, joined by Justice Feliciano, concurred on the ground that there was no proof how, in addition to being a Philippine citizen, Osmeña became an American citizen because, he argued , if it was by operation of the doctrine of jus soli, Osmeña would not lose his Philippine citizenship. As to the fact that Osmeña registered himself in the Commission on Immigration and Deportation as an alien, he contended that this did not amount to an "express renunciation" as required by law.

Justices Melencio-Herrera, Cruz, and Padilla dissented. Justice Herrera wrote that while at the beginning Osmeña had a dual citizenship, he later made a choice of American citizenship when he obtained a certificate of alien registration in the Philippines twice, once upon reaching the age of 24 in 1958, and again, in 1979 when he was 45 years old. This was also the point which Justices Cruz and Padilla made in their separate dissenting opinions.

B. Searches and Seizures

1. *Requirements for Issuance of Search Warrants.*-- Art. III, Sec. 2 imposes two requirements with regard to search warrants, namely, first, that "no search warrant . . . shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce," and, second, that the warrant must "particularly [describe] the place to be searched and the persons or things to be seized."

With respect to the first requirement, Rule 126, Sec. 4 of the 1985 Rules on Criminal Procedure provided that the judge must personally examine the applicant and his witnesses by means of "searching questions and answers" as to facts within their personal knowledge.[56] In PRUDENTE v. DAYRIT,[57] the Supreme Court reiterated this principle

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[56]Burgos v. Chief of Staff, AFP, 133 SCRA 800 (1984); Corro v. Lising, 137 SCRA 341 (1985); Rodriguez v. Villamiel, 65 Phil. 230 (1937); Alvarez v. Court of First Instance, 64 Phil. 33(1937).

[57]180 SCRA 69 (1989).

even as it held that a judge should not accept at face value the representation of an applicant and his witnesses that, based on information which they verified to be true, they have good reason to believe that a person has in his possession or control firearms, explosives and ammunition. The judge must find out, by means of searching questions, how and when applicant verified the information. He must see to it that the depositions or affidavits submitted to him have been drawn in such a manner that perjury can be charged or that the affiant can be held liable for damages.

On this ground the Court, through Justice Padilla, set aside a search warrant issued by the respondent judge on the basis merely of information, which the police claimed it had verified and found to be true, that petitioner Nemesio Prudente, president of the Polytechnic University of the Philippines, had in his possession at his office (i) M16 Armalite with ammunition; (ii) .38 and .45 caliber handguns; (iii) explosives and handgrenades and (iv) assorted weapons with ammunition. Actually, the search yielded only three fragmentation grenades, which the Court ordered to be delivered to the Philippine Constabulary.

But the Court found the warrant sufficient as to its description of the place to be searched and the offense for which it was issued. The Court held that specification of the offices of the Department of Military Science and Tactics on the ground floor and that of the PUP president on the second floor of the same building was sufficient. It was in fact enough to specify simply the premises of the PUP on Anonas St., Sta. Mesa, Sampaloc, Manila. Moreover, it was not necessary that separate warrants be issued for firearms, ammunition and explosives. The offenses are related ones, although separately penalized by P.D. No. 1866, and it was enough that the warrant indicated it was for "Illegal Possession of Firearms, etc."

2. *Checkpoints and "Areal Target Zonings" and the Appropriateness of Prohibition as a Remedy.*-- In VALMONTE v. DE VILLA,[58] the Supreme Court was asked by residents of Valenzuela, Metro Manila to declare checkpoints in that town to be illegal and to order their removal. They complained that their cars and vehicles were being subjected "to regular searches and check-up . . . without the benefit of a search warrant and/or court order."

The Court, through Justice Padilla, dismissed the petition on the ground that "a general allegation . . . that [the petitioner] had been

[58]G.R. No. 83988, Sept. 29, 1989.

stopped and searched without a search warrant without stating the details of the incidents which amount to a violation of his right against unlawful search and seizure is not sufficient [because] not all searches and seizures are prohibited." The Court held that the establishment of checkpoints was justified in view of attempts of rightist elements to destabilize the government and the shift of insurgent attacks to urban centers. The Court said, "Between the inherent right of the state to protect its existence and promote public welfare and an individual's right against a warrantless search which is however reasonably conducted, the former should prevail."

Justices Cruz and Sarmiento dissented in separate opinions. Justice Cruz wrote: "What is worse is that the searches and seizures are peremptorily pronounced to be reasonable even without proof of probable cause and much less the required warrant." In the same vein, Justice Sarmiento argued that "the absence alone of a search warrant . . . makes the checkpoint searches unreasonable" and that "the burden is the State's to demonstrate the reasonableness of the search."

There have been criticisms-- some of them vitriolic and intemperate-- against the decision in this case.[59] Given the "abnormal times" in which we live, checkpoints, as the majority held, may really be the "price we must pay for an orderly society and a peaceful community." However, one may take issue with the holding that the allegation "that [petitioner] had been stopped and searched without a search warrant . . . without stating the details of the incidents which amount to violation of his right against unlawful search and seizure, is not sufficient." A search without a warrant is unlawful and an allegation to this effect is sufficient. Certainly, Justice Sarmiento is right in his dissent that "the petitioners did not have to give details of the incident, because the burden was on the government to demonstrate the validity of the search.

The difficulty in VALMONTE v. DE VILLA, however, lay in the fact that there was no evidence nor even allegation of just exactly what was being done at the checkpoints. Both the majority and the minority Justices simply assumed that what were being done were searches within the meaning of the Constitution. But merely stopping vehicles and detecting by means of one's natural senses what is inside a vehicle is not searching, for the same reason that there is no search where one simply overhears conversations in an adjoining motel rooms, if

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[59]*See, e.g.*, *In Re* Ramon Tulfo, AM No. 90-4-1545-0, April 17, 1990, finding a columnist guilty of contempt of the Supreme Court for calling the ruling in *Valmonte v. De Villa* "an idiotic decision."

they are audible by the naked ear.[60] Nor is there a search when common means of enhancing the senses, such as flashlights[61] or binoculars,[62] are used. There was in fact agreement on the Court in *Valmonte* that merely using a flashlight to see what is inside a vehicle was not an unreasonable search. As the Court subsequently explained in denying reconsideration of its decision, "For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable searches."[63]

It is this lack of specification as to what exactly was being done at the checkpoints, aside from looking inside, which really made the case hardly the appropriate vehicle for litigating an important constitutional issue. After all, to say that there is a search made so as to impose the requirement for a valid search is to state a conclusion and not a fact.

On the other hand, in GUANZON v. DE VILLA,[64] in an opinion written by Justice Gutierrez, the Court stopped short of dismissing the petition for prohibition to prevent the military from conducting so-called "areal target zonings" in Metro Manila and instead remanded the case to the Regional Trial Court to determine allegations of human rights violations committed in the course of zonings. The petitioners were residents of Metro Manila. They complained that on various dates mentioned in their petition, the military launched "saturation drives" by cordoning off large areas and rudely rousing the residents from their sleep in the dead of the night or in the early hours of the morning, requiring males to strip down to the waist to check them for tattoo marks, ransacking houses, even destroying parts thereof like the ceilings, resulting in some case in the loss of money and other valuables, and arresting those pointed to by hooded informers. These allegations were denied by the respondents who claimed that the "areal target zonings" were conducted in coordination with barangay officials who in turn enlisted the support of the residents to flush out lawless elements who had killed even policemen and government soldiers. The charges of excesses were denied.

Justices Cruz and Sarmiento again dissented in separate opinions. Justice Cruz argued that "even without proof of the hooded figures and

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[60]United States v. Fisch, 474 F.2d 1071 (9th Cir. 1973).
[61]Marshall v. United States, 422 F.2d 185 (5th Cir. 1970).
[62]People v. Ciocon, 23 Ill. App.3d 363, 319 N.E.2d 332 (1974).
[63]Res., May 24, 1990.
[64]G.R. No. 80508, Jan.30, 1990.

the personal indignities and the loss and destruction of properties and the other excesses allegedly committed, the mere waging of saturation drives is enough" to warrant a finding of unconstitutional search. As in the checkpoint case, VALMONTE v. DE VILLA, Justice Sarmiento found that there had been arrests and searches made and, since they were made without court orders, they violated Art. III, Sec. 2. To him, although the "zonings" might have been made "with due courtesy and politeness," they were nevertheless invalid because of lack of warrants from the courts.

Apart from the fact that the suit was not brought by those who might have been actually injured, but by concerned citizens, this and the checkpoint case raise questions as to the appropriateness of prohibition as a remedy against checkpoints and "target zonings." Suppose, on remand, the trial court found the alleged abuses by the military to be true, would that be a basis for enjoining the military from committing similar abuses in the future? For unless shown that the alleged atrocities were committed in furtherance of government policy, the writ of prohibition cannot be issued without unwarrantedly assuming that the military would engage in similar conduct in the future. It would be as if the government were enjoined to sin no more simply because in the past its agents had been found guilty of human rights violations. Surely, military abuses should not be tolerated. But the remedy in such case would be the prosecution of erring military personnel or the exclusion of any evidence they may have obtained in the course of the "areal target zonings."

3. *Warrantless Searches and Seizures.* -- In PEOPLE v. ASIO,[65] the accused was arrested after he was found in possession of two bags of marijuana. A member of the Baguio City police, posing as a buyer, and an informant, approached him at the Wright Park in Baguio City. After a while he was seen leaving by two policemen who stayed at a distance. An hour later he came back with two bags. The two policemen then rushed to him and, after identifying themselves, seized the bags which were found to contain marijuana. He was found guilty of selling prohibited drugs under Republic Act No. 6425, Sec. 4, and sentenced to *reclusion perpetua* and fined P20,000.00 On appeal, he questioned the legality of his arrest and the seizure of the two bags without warrant. Through Justice Gutierrez, it was held that "a search and seizure is allowed in buy-bust operations [considering that] the accused . . . was caught red-handed while pushing marijuana . . . ." The Court noted three instances when search without warrant may be conducted: (i) when it is incidental to an arrest; (ii) when it is the search of a moving

[65]177 SCRA 250 (1989).

vehicle; and (iii) when the article seized is within the plain view of the searching party.

On the other hand, in PITA v. COURT OF APPEALS,[66] it was held that without an order from a court finding materials to be pornographic and authorizing their seizure, the confiscation of magazines sold on the sidewalks is unconstitutional. In that case, members of the Western Police District waged an anti-smut campaign in Manila, resulting in the seizure, among other things, of issues of the "Pinoy Playboy" magazine. Petitioner, the publisher of the magazine, brought an injunctive suit against the mayor and the police superintendent but the suit was dismissed. The Court of Appeals affirmed the dismissal. On appeal, the Supreme Court reversed. The Court, through Justice Sarmiento, after struggling with various definitions of what constitutes obscenity and expressing doubt whether an "acceptable" definition was at all possible, settled for the "less heroic" task of "evolving standards for proper police conduct" by requiring police authorities to secure search warrants from the courts before they could seize magazines for sale on the streets.

The Court was rightly concerned, lest policemen confiscate even materials that are not obscene. The confiscation could constitute prior restraint on the freedom of publishers to distribute. But what about the societal interest in morality? Pornographic materials are usually sold on the sidewalks by ambulant peddlers, sometimes in the vicinity of downtown schools. To require the police to apply for a search warrant before they can seize such materials would be to severely handicap them. In the Philippines we have not gone so far as to outlaw film censorship as unconstitutional prior restraint on freedom of expression.[67] Maybe what the Court should have devised is a procedure which would allow the police to seize what it believes to be obscene literature and then bring court proceedings against the publisher on an expedited basis similar to the procedure for denying permits for street rallies and other public assemblies under Batas Pambansa Blg. 880. The issue in PITA v. COURT OF APPEALS was not only the right of the publisher to freedom of expression and from unreasonable searches and seizures. Indeed, there was no issue of unreasonable search since the magazines were sold openly in public. There was equally the right of local authorities to safeguard public morals.

4. *Arrests and Searches by Orders of Non-judicial Officals.*-- In two cases, one decided in 1989 and the other in 1990, the Supreme Court

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[66]G.R. No. 80806, Oct. 5, 1989.

[67]*See* Gonzales v. Kalaw-Katigbak, 137 SCRA 717 (1985); People v. City Court, 154 SCRA 175 (1987) (dissenting opinions of Gutierrez and Cruz, *JJ.*)

held that laws authorizing non-judicial officers to order arrests or searches to enforce laws administered by them lapsed upon the coming into force of the present Constitution on February 2, 1987. These laws were passed pursuant to the previous Constitution which allowed "such other responsible officer as may be authorized by law" to issue search warrants or warrants of arrest.[68] In PRESIDENTIAL ANTI-DOLLAR SALTING TASK FORCE v. COURT OF APPEALS,[69] a member of the Anti-Dollar Salting Task Force issued on March 12, 1985 six search warrants against several companies, pursuant to Presidential Decree No. 1936, as amended by Presidential Decree No. 2002, for violation of laws and regulations relating to foreign exchange. The companies brought an injunctive suit in the Regional Trial Court, which declared the search warrants void. On appeal, the Court of Appeals at first reversed the trial court and upheld the power of the Task Force, but later reconsidered and affirmed the trial court's decision. On appeal, the Supreme Court, through Justice Sarmiento, affirmed. First, it was held that under the present Constitution, the power to order arrest and search is "exclusive upon judges" and, therefore, the warrants could no longer be enforced. Second, it was held that even under the 1973 Constitution, the Task Force could not be granted the power to issue search warrants and warrants of arrest because its function was to prosecute violators of laws relating to foreign exchange and as such it could not be expected to be a neutral and detached judge in determining the existence of probable cause.

On the other hand, in SALAZAR v. ACHACOSO,[70] the Court, also through Justice Sarmiento, declared Sec. 38(c) of the Labor Code, which authorized the Secretary of Labor and Employment to order arrests and searches in cases involving violations of the Code's provisions on illegal recruitment for overseas employment, unconstitutional and of no effect on the ground that under the present Constitution only a judge can issue search warrants and warrants of arrest. On this ground, the Court set aside an order for the search of petitioner's premises as ordered by the Philippine Overseas Employment Administration. The Court distinguished administrative arrests in immigration and deportation cases, which it said are valid, because of the inherent power of the State to exclude and deport undesirable aliens.[71]

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[68]1973 CONST. art. IV, sec. 3.

[69]171 SCRA 348 (1989).

[70]G.R. No. 81510, March 14, 1990.

[71]Immigration Act of 1940, Sec. 37 (a); People v. Chan Fook, 42 Phil. 230 (1921); Harvey v. Defensor-Santiago, 162 SCRA 840 (1988). *See* Mendoza, *The Supreme Court on the Supreme Law: An Annual Survey*, 62 PHIL. L. J. 407, 435-437

On the other hand, in CHIA v. ACTING COLLECTOR OF CUSTOMS[72] the Court, through Justice Griño-Aquino, upheld the seizure of untaxed electronic equipment from petitioner's stores, on the strength of warrants issued by the Collector of Customs. The Court based its decision on Sec. 2209 of the Tariff and Customs Code. This section, however, by providing for the issuance of warrants by a "judge of the Court or such other responsible officer as may be authorized by law," begs the question whether the Collector of Customs is such "responsible officer authorized by law," as provided in Art. IV, Sec. 3 of the previous Constitution. Anyway, the Court's main ground for sustaining the seizure of the goods was that under Sec. 2536 of the Code, the Collector of Customs has the power to demand proof of the payment of duties and taxes on foreign articles which are openly offered for sale or kept in storage and if none is produced to seize such goods even without a warrant.

5. *Administrative Searches and Seizures.* -- Different from warrants of arrest and search warrants issued by a "responsible officer authorized by law," which were allowed under the previous Constitution, are those issued by administrative agencies to enforce laws under their charge. While the decisions of the Supreme Court on the validity of such administrative warrants before 1988 were somewhat conflicting,[73] the ruling that year in *Harvey v. Defensor-Santiago*[74] settled the question in favor of the power of the Commissioner of Immigration and Deportation who under Sec. 37(a) of the Immigration Act of 1940 is authorized to order the arrest of aliens whose stay in the Philippines is violative of any limitations or conditions under which they were admitted. In TRAN VAN NGHIA v. LIWAG,[75] the Court reiterated its ruling in *Harvey* and sustained the authority of the Immigration Commissioner to issue a warrant of arrest. Petitioner, a French national, was arrested by virtue of a mission order issued by the Commissioner of Immigration, on the sworn complaint of his landlord that petitioner had committed "acts inimical to public safety and progress." He filed a petition for habeas corpus assailing the legality of his arrest. Quoting from *Harvey*, the Court, in an opinion by Chief Justice Fernan, held:

(1987) for the view that the requirement that probable cause must be determined by a judge applies only to criminal prosecutions and not to deportation proceedings.

[72]G.R. No. L-43810, Sept. 26, 1989.

[73]*Compare* Qua Chee Gan v. Deportation Board, 9 SCRA 27 (1963); Ng Hua To v. Galang, 10 SCRA 411 (1964); Vivo v. Montesa, 24 SCRA 155 (1968) *with* Tiu Chun Hai v. Commissioner of Immigration, 104 Phil. 949 (1958); Morano v. Vivo, 20 SCRA 562 (1967).

[74]162 SCRA 840 (1988).

[75]175 SCRA 318 (1989).

> The requirement of probable cause, to be determined by a Judge [ ] does not extend to deportation proceedings.' (*Morano vs. Vivo, supra*, citing *Tiu Chun Hai vs. Commissioner, infra*). There need be no 'truncated' recourse to both judicial and administrative warrants in a single deportation proceeding.
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> The foregoing does not deviate from the ruling in *Qua Chee Gan vs. Deportation Board* (G.R. No. 10280, September 30, 1963, 9 SCRA 27 [1963] reiterated in *Vivo vs. Montesa, supra*, that 'under the express terms of our Constitution (the 1935 Constitution), it is therefore even doubtful whether the arrest of an individual may be ordered by an authority other than a judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation.'
>
> What is essential is that there should be a specific charge against the alien intended to be arrested and deported, that a fair hearing be conducted (Section 37[c]) with the assistance of counsel, if desired and that the charge be substantiated by competent evidence . . . .

The Court noted that unlike the petitioners in *Harvey*, who had been arrested only after it was found there was probable cause, petitioner was arrested solely on the complaint of a single individual. Nonetheless, the petition in this case was dismissed on the ground of mootness, it appearing that petitioner had been released on bail.

The reference to *Tiu Chun Hai* and *Qua Chee Gan* is confusing because these cases precisely announce conflicting rulings. The question is not whether a warrant may issue prior to the determination of the existence of probable cause. The question is whether under the Constitution only a judge can determine the existence of probable cause. Nevertheless, I believe that in both cases the Court reached the right result that the determination of probable cause for the issuance of a warrant of arrest in deportation proceedings is not governed by the *second part* of Art. III, Sec. 2. Said section reads in full:

> [1] The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and [2] no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The *first part* applies to all types of warrants -- whether arrest or search, whether issued by a judge or by an administrative officer like the Commissioner of Immigration and Deportation -- by guaranteeing to every individual the inviolability of his person, papers and effects against unreasonable searches and seizures "of whatever nature and for

any purpose." But the *second part*, which prescribes the procedure for determining probable cause and specifies that the determination should be done by a judge, applies only to the issuance of search warrants and warrants of arrest in criminal cases. This part of Art. III, Sec. 2 was derived from Secs. 97 - 99 (search warrants) and Sec. 13 (warrants of arrest) of General Order No. 58 of the Military Governor in the early period of American rule in the Philippines and was later embodied in the early Organic Acts (Philippine Bill of 1902, Sec. 5 and Jones Law of 1916, Sec. 3) and became the basis of Art. III, Sec. 1(3) of the 1935 Constitution and Art. IV, Sec. 3 of the 1973 document.

As previously noted, in SALAZAR v. ACHACOSO,[76] the Court distinguished administrative warrants in immigration and deportation cases from those formerly authorized to be issued under the 1973 Constitution by "a responsible officer authorized by law." The former were justified by the inherent power of the State to exclude and deport undesirable aliens. On the other hand, the latter ceased to be valid upon the effectivity of the present Constitution which confines the power to issue warrants in criminal cases to judges.

6. *Does the Miranda Rule Apply to Administrative Investigations?* -- In PEOPLE v. AYSON,[77] the prosecution contested the trial judge's ruling excluding from evidence the confession given by the accused during an investigation by his office on the ground that he had not been given the Miranda warnings required in Art. IV, Sec. 20 of the 1973 Constitution, and that, in waiving his rights, he had not been assisted by counsel.

The accused was a ticket freight clerk of the Philippine Airlines in Baguio City. He was investigated concerning irregularities in the sales of plane tickets. The day before the hearing, he sent his superiors a handwritten note offering to "settle" for P76,000.00 and, at the investigation, he admitted he had misused the proceeds from the sales of tickets. He was charged with estafa. The prosecution offered in evidence his confession but the trial court ordered it excluded.

The Supreme Court set aside the trial judge's ruling. Through Justice Narvasa, it held that the Miranda rule, as then embodied in Art. IV, Sec. 20 of the 1973 Constitution, applied only to custodial interrogations, *i.e.*, questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.[78] The Court recalled that the

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[76]*Supra* note 70.

[77]175 SCRA 216 (1989).

[78]Miranda v. Arizona, 384 U.S. 436 (1966).

purpose of the rule was to prohibit "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights."[79] The Court held that the general Self-Incrimination Clause was different from the Miranda rule and observed that while the two were found in Art. IV, Sec. 20 of the 1973 Charter, they are now found in two separate provisions[80] which indicates much more clearly "the individuality and disparateness of these rights." The Court pointed out that the rule is that the privilege against self-incrimination must be invoked by the individual otherwise the privilege is waived, because the investigator has no "affirmative obligation to advice the witness of his right against self-incrimination." Since the accused did not claim the privilege during the administrative investigation it was held that he thereby waived the privilege and his confession should be admitted. The Court stated:

> It should by now be abundantly apparent that respondent Judge has misapprehended the nature and import of the disparate rights set forth in Section 20, Article IV of the 1973 Constitution. He has taken them as applying to the same juridical situation, equating one with the other. In so doing, he has grossly erred. To be sure, His Honor sought to substantiate his thesis by arguments he took to be cogent and logical. The thesis was however so far divorced from the actual and correct state of the constitutional and legal principles involved as to make application of said thesis to the case before him tantamount to totally unfounded, whimsical or capricious exercise of power. His Orders were thus rendered with grave abuse of discretion. They should be, as they are hereby, annulled and set aside.

It is indeed true that the Miranda rule applies only to custodial interrogations and cannot possibly apply to administrative disciplinary hearings. But from this it does not follow that any statement made in the course of that investigation without the safeguards prescribed by the Miranda rule is admissible in a criminal trial, otherwise the objective of the rule -- to protect the suspect's right against self-incrimination not necessarily in a police-dominated investigation -- would be defeated. The threat of dismissal for refusal to testify in an administrative investigation can overbear his will just as effectively as the psychological coercion inherent in police custodial interrogation. In *Garrity v. New Jersey*,[81] it was held that admissions made by police officers in an administrative investigation regarding fixing of traffic violations cases, if made under pain of dismissal if they refused to testify, were psychologically coerced and therefore inadmissible in a criminal prosecution against them. Coercion can be mental as well as

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[79]People v. Duero, 104 SCRA 379, 388 (1981).

[80]CONST. art. III, sec. 12(1) and sec. 17.

[81]385 U.S. 493 (1967).

physical, and the blood of the accused is not the only hallmark of unconstitutional inquisition, it was said.

Indeed, employers have the right to question employees concerning irregularities in their work on pain of removal if they refused to testify. But the testimony cannot be used to convict the employees, nor may they be required to surrender their immunity.[82] Perhaps, if the AYSON case was viewed from this perspective, the question whether he had waived the privilege against self-incrimination by his failure to claim it at the administrative investigation would have been seen in a different light.

C. The Death Penalty and Other Cruel or Unusual Punishments

1. *Effect of the Abolition of the Death Penalty on the Provisions of the Penal Code.* -- In PEOPLE v. MUÑOZ,[83] the accused, who were bodyguards of a mayor, killed three persons whom they suspected of being cattle rustlers. The killing took place in San Carlos City, Pangasinan, on June 30, 1972. After trial, the accused were found guilty of murder. Three appealed to the Supreme Court, which affirmed the trial court's findings. The penalty for murder under Art. 248 of the Revised Penal Code is *reclusion temporal* maximum to death. The question was the appropriate penalty to be imposed on the accused in view of Art. III, Sec. 19(1) of the Constitution which prohibits the death penalty from being imposed "unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it" and provides that "any death penalty already imposed shall be reduced to *reclusion perpetua.*"

In four cases[84] previously decided by it, the Supreme Court had held that in view of the abolition of the death penalty the remaining penalty must be divided into three new periods, namely, the lower half of *reclusion temporal maximum* as the minimum, the upper half of the same penalty as the medium, and *reclusion perpetua* as the maximum. The Court reconsidered this earlier ruling in MUÑOZ. Through Justice Cruz, it held that Art. III, Sec. 19(1) does not change the periods of the penalty prescribed by Art. 248 of the Revised Penal Code but only prohibits the imposition of the death penalty and reduces it to *reclusion perpetua.* Otherwise the range of the medium and minimum penalties remain unchanged.

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[82]Lefkowitz v. Cunningham, 431 U.S. 801 (1977); Gardner v. Broderick, 392 U.S. 273 (1968); Sanitation Men v. Sanitation Comm'r, 392 U.S. 280 (1968).

[83]170 SCRA 107 (1989).

[84]People v. Gavarra, 155 SCRA 327 (1987); People v. Masangkay, 155 SCRA 113 (1987); People v. Atencio, 156 SCRA 242 (1987); People v. Intino, 165 SCRA 635 (1988).

This interpretation could lead to inequities in some cases. For example, a person originally subject to the death penalty and another one who commits murder without the attendance of any modifying circumstances would both be punishable with the same medium period of the penalty although the former is concededly more guilty than the latter. But, the Court said, the problem was for the Congress to solve. It was pointed out that penalties are prescribed by statutes and are essentially and exclusively a matter of legislative determination. Judges can only apply them. They have no authority to modify penalties or revise their range as determined exclusively by the legislature. In this case it was held that, as there was no generic aggravating or mitigating circumstances attending the commission of the offenses, the applicable sentence was the medium period of the penalty prescribed by Art. 248 of the Revised Penal Code which, conformably to the new doctrine, was *reclusion perpetua.*

Justice Melencio-Herrera filed a concurring and dissenting opinion. She concurred insofar as the conviction of the appellants was concerned, but dissented as to the penalty imposed. She said that the question was whether or not the 1987 Constitution had abolished the death penalty. She said the records of the Constitutional Commission (CONCOM) indicate clearly the intention of that body to abolish the death penalty. She argued that if *reclusion perpetua* is retained as the penalty for murder even in the absence of modifying circumstances, while it is also imposed as the new maximum penalty for the crime, the presence or absence of modifying circumstances would no longer have any effect when the penalty to be imposed must precisely be fixed according to the attending circumstances. "Certainly," she wrote, "the CONCOM, in banning the imposition of capital punishment, could not have also intended to discard the underlying reason of the Penal Code in imposing three periods for the penalty for murder, *i.e.*, to punish the offense in different degrees of severity depending on the offender's employment of aggravating or mitigating circumstances or the lack thereof. To say that this is 'the will of the Constitution' is inaccurate for the matter was clearly left to the Courts which were expected to be 'equal to the task.'"

2. *Indefinite Imprisonment.* -- In PEOPLE v. DACUYCUY,[85] the Supreme Court invalidated a penalty for being indefinite, apparently the result of oversight by Congress to fix the term, and declared that courts cannot supply legislative omissions. The private respondents were charged in the municipal court of Hindang, Leyte with violation of the Magna Carta for Public School Teachers, for which the penalty provided in Sec. 32 of the law was a "fine of not less than one hundred

[85]173 SCRA 90 (1989).

pesos but not more than one thousand pesos, or by imprisonment, in the discretion of the court." The private respondents moved to dismiss the case on the ground that because of the indefinite term of imprisonment, the jurisdiction of the municipal court could not be determined. But their motion was denied. They filed a petition for certiorari in the Court of First Instance, contending that Sec. 32 gave the courts unlimited discretion to fix the term of the sentence. However, they again lost. The case then went to the Supreme Court on petition of both the prosecution and the defense.

Through Justice Regalado, the Court rejected the defense's claim that because under the law the courts could exercise wide discretion to fix the term of imprisonment the resulting penalty would be cruel and unusual. It reiterated the ruling in *People v. De la Cruz*[86] that the constitutional prohibition is aimed at the form or character of the punishment rather than its severity in respect of duration or amount. That the penalty that might be fixed is grossly disproportionate to the crime is an insufficient basis to declare it unconstitutional. It will only authorize courts to recommend to the Executive Branch the reduction of the penalty, the Court said.

But the Court sustained the defense contention that courts are without power to fix the term of imprisonment because this is a legislative function and, obviously in this case, Congress overlooked to fix the term. "It is not for the courts to fix the term of imprisonment where no points of reference have been provided by the legislature," Justice Regalado wrote. "[W]hat valid delegation presupposes and sanctions is an exercise of discretion to fix the length of service of a term of imprisonment which must be encompassed within specific and/or designated limits provided by law, the absence of which will constitute such exercise as an undue delegation, if not an outright intrusion into or assumption of, legislative power." As the only remaining penalty was the fine, the court upheld the municipal court's jurisdiction on the basis of such penalty.

The *dictum* in *People v. De la Cruz*,[87] which the Court quoted with approval in DACUYCUY, to the effect that "cruel or unusual punishments" refer to "punishments which never existed in America or which public sentiment had regarded as cruel, such as those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling and the like," should not be understood in a narrow sense that only the ancient barbaric practices are contemplated in the Constitution. In Chief Justice Marshall's phrase, it should never

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[86]92 Phil. 906 (1953).

[87]*Id.* at 908.

be forgotten that the Constitution is "intended for ages to endure,"[88] so that what is cruel or unusual punishment is not limited to those which the founders dealt with at the time of creation. The phrase "cruel or unusual," now changed to "cruel, degrading or inhuman,"[89] is a standard, not a rule, and necessarily must change with advancing standards of civilization and morality. Consequently, punishments, which before were not thought to be cruel, degrading or inhuman, may be so regarded by succeeding generations.

Nor are disproportionate penalties only subject to reduction. They may be so grossly disproportionate as to require their invalidation.

D. Freedom of Expression

1. *Prior Restraints* -- In SANIDAD v. COMELEC,[90] the Supreme Court struck down a COMELEC rule prohibiting columnists, commentators and announcers from campaigning through the mass media for or against the Organic Act for the Cordillera Autonomous Region[91] in connection with the plebiscite set on January 30, 1990. The COMELEC cited Art. IX C, Sec. 4 as authority for its rule. As Justice Medialdea pointed out, however, the power granted to the COMELEC to supervise and regulate, among others, media of communication or information during election period is intended to ensure "equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates," and thus prevent any candidate from having undue advantage over others. It does not apply to media people themselves. In fact, in the plebiscite on the Organic Act, there were no candidates who could gain undue advantage by media exposure.

2. *Freedom of Expression and Defamation*. -- In MANUEL v. CRUZ PAÑO,[92] petitioner, a practising attorney, and his clients were prosecuted for libel on the basis of a letter which the lawyer had written to the Chairman of the Anti-Smuggling Action Center, in which he denounced certain agents of the ASAC for allegedly subjecting his client to indignities and taking her necklace and bracelet and her son's wristwatch, plus HK$70. After investigation, his complaint was dismissed and the ASAC agents were exonerated. Petitioner then filed robbery charges against the agents. However, he found the prosecutors

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[88]McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579 (1918).
[89]CONST. art. III, sec. 19(1).
[90]G.R. No. 90878, Jan. 29, 1990.
[91]Rep. Act No. 6766 (1989).
[92]172 SCRA 225 (1989).

unsympathetic. He, therefore, filed a civil action for damages against the agents.

On June 10, 1976, the *Bulletin Today* published a news item based on petitioner's letter to the ASAC. The publication of the letter formed the basis of the action for libel against petitioner and his clients. Petitioner moved to quash the case, but his motion was denied. He filed a petition for certiorari in the Supreme Court.

The Court ruled that the letter was privileged. Through Justice Cruz, it held that both as lawyer and as a private citizen, petitioner had a right to complain against official abuses and it was for the prosecution to prove that petitioner was motivated by actual malice.

With respect to the contention that the case should not be dismissed outright to give the prosecution a chance to prove malice, the Court said that, from the allegations in the information itself, it was evident that the accused had acted in good faith and for justifiable ends in making the allegedly libelous imputations. There was no need to prolong the proceedings so as not to dampen the civic spirit. The Court said:

> The vitality of republicanism derives from an alert citizenry. . . .
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> . . . Whenever the citizen discovers official anomaly, it is his duty to expose and denounce it . . . . The sins of the public service are imputable not only to those who actually commit them but also to those who by their silence or inaction permit and encourage their commission.

The case of MANUEL involved criticism of official conduct. In such a case the doctrine of privilege throws a mantle of protection on expression and shifts the burden of proving the malice to the prosecution. No such privilege attaches to criticism of private conduct. In other words, in the usual case, malice is presumed from defamatory words, but the doctrine of privilege destroys the presumption.[93] It is the privileged character of the communication on which the Court based its ruling in MANUEL v. CRUZ PAÑO.

In the landmark case of *New York Times Co. v. Sullivan*,[94] the U.S. Supreme Court, through Justice Brennan, held that "erroneous statement is inevitable in free debate and [must] be protected if the freedoms of expression are to have the 'breathing space' that they need [to] survive;" that "neither factual error nor defamatory content [nor

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[93]*See* United States v. Bustos, 37 Phil. 731, 743 (1918).

[94]376 U.S. 254 (1964).

their combination] suffices to remove the constitutional shield from criticism of official conduct;" and that the "constitutional guarantees require a federal rule that prohibits a public official from recovering damages for defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." The *New York Times* test of "actual malice" appears to have been adopted by the Philippine Supreme Court.[95]

In SOLIVEN v. MAKASIAR and BELTRAN v. MAKASIAR,[96] one of the petitioners (Luis Beltran) asked the Court to invalidate the libel law[97] on the ground that it was "violative of the constitutional guarantee of the freedom of the press and of the right of the people to information on matters of public interest." However, the Court, obviously misapprehending the import of his argument, dismissed his petition. It thus missed the opportunity to clarify the constitutional question in the light of the ruling in *New York Times v. Sullivan.*

Petitioners Maximo Soliven and Luis Beltran were publisher and columnist, respectively, of the *Philippine Star.* In the October 12, 1987 issue of the paper, Beltran wrote in his column entitled "The Nervous Officials of the Aquino Administration:" "If you recall during the August 29 coup attempt, the President hid under her bed, while the fighting was going on -- the first Commander-in-Chief of the Armed Forces to do so." The petitioners were accused of libel upon complaint of the President of the Philippines. They moved to quash the information on the ground that it did not allege actual malice as an essential element. In addition, Beltran argued that the libel law was unconstitutional, apparently invoking the doctrine of *New York Times.* The trial court denied the petitioners' motions. It held that the libel law does not punish false statements without regard to the existence of actual malice and, since the information against the petitioners averred the elements of libel as defined in the law, the information was sufficient.

Petitioners filed petitions for certiorari in the Supreme Court. Misapprehending petitioners' contention as a general advocacy that all libel laws are unconstitutional because of the guarantee of freedom of expression, the Court dismissed the petitions on the ground that "even preferred rights . . . such as the rights asserted by petitioner Beltran are

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[95]*See* Mercado v. Court of First Instance, 116 SCRA 93 (1982); Babst v. NIB, 132 SCRA 316 (1984) (Teehankee, *J.*, dissenting); Lopez v. Court of Appeals, 34 SCRA 116, 129 (1970) (Fernando and Dizon, *JJ.*, dissenting).

[96]G.R. Nos. 87099 and 87204, Sept. 28, 1989.

[97]REV. PEN. CODE, arts. 353-355.

not absolute and may be restricted in recognition of greater societal values or the rights of other individuals," and that if the petitioners thought they were unduly hampered in the performance of their duties as journalists, "their recourse is not to this Court to challenge the wisdom of said laws but in the halls of Congress for the enactment of remedial legislation."

Justice Gutierrez dissented. He pointed out that the petitioners' position was not that all libel laws are violative of freedom of speech but only that the petitioners' rights would be infringed upon if they were prosecuted because of its "chilling effect" on press freedom. He also argued that Soliven, as publisher, and the other accused had no control over the contents of columns and therefore the case against them should be dismissed, while the case against Beltran should be "weighed against [the] interest in a courageous and unfettered press."

The Court could simply have held that, by ruling that the libel law does not punish every false statement unless made with actual malice, the trial court gave a construction which is consistent with the doctrine of *New York Times*. The trial court's action accords with the adjudicatory principle that "when the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, [the court must] first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."[98] Even an overbroad statute can be saved by a limiting construction, provided the construction is a relatively simple and natural one.

3. *Freedom of Expression and Contempt.* -- In *In Re Ramon Tulfo*,[99] a columnist of the *Philippine Daily Inquirer* called the decision in the checkpoint case[100] "idiotic" and the members of the Supreme Court which rendered it *"sangkatutak na bobo"* (or a "bunch of nincompoops"). When asked to show cause why he should not be punished for contempt, he said he was reacting emotionally because he had been harassed and oppressed at checkpoints and that his reference to "stupid Justices" or *"sangkatutak na bobo"* was not his own but the

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[98]Ashwander v. TVA, 297 U.S. 288, 346 (1936) (Brandeis, *J.*, concurring).

On this ground the Court, through Justice Feliciano, held that sec. 13 of Executive Order No. 18, abolishing the Philippine Sugar Commission and transferring its assets to the Sugar Regulatory Administration, "is not to be interpreted as authorizing the SRA to disable the Philsucom from paying Philsucom's demandable obligations by simply taking over Philsucom's assets and immunizing them from legitimate claims against Philsucom." A contrary interpretation would make sec. 13 an unconstitutional impairment of the obligation of contracts and a violation of the due process clause. Gonzales v. Sugar Regulatory Administration, 174 SCRA 377 (1989).

[99]*Supra* note 59.

[100]Valmonte v. De Villa, G.R. No. 83988, Sept.29, 1989.

reaction of some lawyers to the decision in the Checkpoint case and that, at all events, what he had written did not pose a clear and present danger to the administration of justice.

The Court was not satisfied. It held that its decisions are open to criticisms for as long as they are couched in respectful language and, above all, directed at the merits of the case. Where, however, comment in the guise of a critique is intended to degrade and ridicule the Court, as well as to insult its members, thereby causing or conditioning the public to lose its respect for the Court and its members, the comment becomes clearly an obstruction or affront to the administration of justice.

The columnist was found guilty of contempt, although he was merely warned that a repetition of the conduct would be dealt with more severely.

The statement in this case, like other defamatory imputations or "fighting words," belongs to a category of speech whose very utterance inflicts instantaneous injury and has only slight social value as a step to truth. Accordingly, its punishment hardly raises any serious constitutional problem.[101] The assumption underlying the clear and present danger test is that "[i]f there be time to expose through discussion the falsehood and fallacies . . . the remedy to be applied is more speech, not enforced silence."[102] For this reason, the test does not seem to be appropriate in cases of defamation or contempt of court because the injury or harm is immediate and no time is left for counter speech.

In *In re Sotto*,[103] a senator, who said that by its decision in a case[104] the Supreme Court "once more [put] in evidence the incompetency and narrow mindedness of the majority of its members [and that] in the wake of so many blunders and injustices deliberately committed during these last years . . . the only remedy . . . [was] to change the members of the Supreme Court" by reorganizing it, was held guilty of contempt and fined P1,000.00. The Court rejected the claim that he was simply exercising his freedom of expression.

On the other hand, what was involved in ZALDIVAR v. SANDIGANBAYAN[105] was not epithet or a libelous statement. With respect to criticisms of this type, courts in the United States generally

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[101]Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

[102]Whitney v. California, 274 U.S. 357 (1927) (Brandeis, *J.*, concurring).

[103]82 Phil. 595 (1949).

[104]*In re* Parazo, 82 Phil. 230 (1948).

[105]170 SCRA 1 (1989).

apply the clear and present danger test[106] but in the Philippines the Supreme Court has yet to rule on the applicable test. What it has done instead is to apply alternatively the clear-and-present-danger test, the balancing-of-interest test, and the dangerous tendency test.[107] The Court in ZALDIVAR v. SANDIGANBAYAN again failed to indicate what specific test applies. It simply said that whether it was the clear-and-present danger test or the balancing-of-interest test, the respondents' statement that "while rich and influential persons get favorable actions from the Supreme Court, it is difficult for an ordinary litigant to get his petition to be given due course"[108] transcended the limits of free speech. While the Court has undoubted power to punish conduct likely to result in the "degradation of the judicial system of the country and the destruction of standards of professional conduct required from members of the bar and officers of the courts," the need for a demonstration of the existence of a clear and present danger of such substantive evil or how the balance was struck in favor of the power of contempt is indicated.

E. Freedom of Information

In VALMONTE v. BELMONTE,[109] petitioners, who were media practitioners, requested information from respondent General Manager of the Government Service Insurance System on alleged "clean loans" granted by the GSIS to certain members of the defunct Batasang Pambansa on the guaranty of Mrs. Imelda Marcos shortly before the February 7, 1986 election. Their request was refused on the ground of confidentiality of the records. They, therefore, brought a suit for mandamus, which the Supreme Court granted. Speaking for the Court, Justice Cortes wrote:

> The postulate of public office as a public trust, institutionalized in the Constitution (in Article XI, Sec.1) to protect the people from abuse of governmental power, would certainly be mere empty words if access to such information of public concern is denied, except under limitations prescribed by implementing legislation adopted pursuant to the Constitution. The right to information is not merely an adjunct of and, therefore, restricted in application by the exercise of the freedoms of speech and of the press. [It] goes hand-in-hand with the constitutional policies of full public disclosure and honesty in public service. It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.

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[106]*See* Bridges v. California, 314 U.S. 252 (1941); Pennekamp v. Florida, 328 U.S. 331 (1946); Craig v. Harney, 331 U.S. 367 (1947); Wood v. Georgia, 370 U.S. 375 (1962).

[107]*See* Cabansag v. Fernandez, 102 Phil. 152 (1957).

[108]Zaldivar v. Sandiganbayan, 166 SCRA 316 (1988).

[109]170 SCRA 256 (1989).

The Court rejected the contention that funds of the GSIS were not public. It held that the GSIS is a trustee of contributions from the government and its employees and the administrator of various insurance programs for the benefit of the latter. Undeniably, its funds assume a public character. According to the Court, the public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers made the information sought clearly a matter of public interest and concern.

On respondent's claim that in view of the right of privacy which is equally protected by the Constitution and by existing laws the documents evidencing loan transactions of the GSIS must be deemed outside the ambit of the right to information, the Court ruled that the right cannot be invoked by juridical entities, since the basis of the right of privacy is an injury to the feelings and sensibilities. Neither can the GSIS invoke the right of privacy of its borrowers. The right is purely personal in nature. The borrowers themselves in this case, it was pointed out, may not invoke the right of privacy considering the public offices they were holding at the time the loans were alleged to have been granted. "It cannot be denied that because of the interest they generate and their news-worthiness, public figures, most especially those holding responsible positions in government, enjoy a more limited right to privacy as compared to ordinary individuals, their actions being subject to closer public scrutiny," the Court said, citing its decision in *Ayer Productions Pty, Ltd. v. Capulong*.[110]

Finally, it was argued that the records of the GSIS were outside the coverage of the people's right of access to official records because the GSIS, in granting loans, was exercising a proprietary function. This contention was dismissed, the Court citing the intent of the members of the Constitutional Commission of 1986 to include government-owned or controlled corporations and transactions entered into by them in the coverage of the State policy of full public disclosure.

In GARCIA v. BOARD OF INVESTMENTS,[111] the Supreme Court, through Justice Griño-Aquino, granted a petition for certiorari and prohibition and ordered the BOI to publish the amended application for registration of a corporation seeking status as a pioneer industry, to allow petitioner access to BOI's records except to those containing trade secrets and business and financial information, and to set the application for hearing. The Bataan Petro Chemical Corporation applied to the BOI for permission to transfer the site of its petrochemical plant from Limay, Bataan as originally approved to

[110]160 SCRA 861 (1988).
[111]177 SCRA 374 (1989).

Batangas and, to increase its investments from US $220 million to US $320 million, to increase its production capacity and to change its feedstock from naptha to "naptha and/or liquefied gas." Petitioner, congressman from the second district of Bataan, requested from the BOI a copy of the application but his request was denied on the ground that the Taiwanese investors refused to give their consent to the release of the documents requested. Petitioner, therefore, petitioned the Court. The Court held that BOI's failure to publish the application deprived oppositors like the petitioner of due process. As Congressman of the province originally chosen as site of the plant, he represented the people of the affected community who had an actual, real and vital interest in a matter affecting their economic life, "even the air they will breathe." The Court reiterated its ruling in *Tañada v. Tuvera* [112] that every citizen has standing to procure the enforcement of a public duty and to bring an action to compel the performance of that duty. It was pointed out that under Art. III, Sec. 7 every citizen has the right to have access to information on matters of public concern. "The trade secrets and confidential, commercial and financial information of the applicant BPC, and matters affecting national security are excluded from the privilege," according to the Court.

Chief Justice Fernan and Justices Paras and Feliciano took no part. On the other hand, Justice Melencio-Herrera dissented mainly on the basis of the provision of the Omnibus Investments Code declaring applications for registration and their supporting documents to be confidential unless otherwise ordered by a court of competent jurisdiction and contended that to require the BOI to hear petitioner on his opposition to the application would contravene the Code's provision on confidentiality.

F. Right to Education

The right to receive free education in public elementary and secondary schools[113] cannot be asserted against the University of the Philippines because, although it is a state university, it was established mainly to provide advanced tertiary education. This was the ruling in UNIVERSITY OF THE PHILIPPINES v. AYSON[114] in which the Court sustained the right of the UP to discontinue its secondary education program in Baguio City for financial reasons and because of its failure to open its teacher-training program for which the high school was intended as a laboratory. The background of this case is as follows.

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[112] 136 SCRA 27 (1986).

[113] CONST. art. XIV, sec. 2(2).

[114] 176 SCRA 114 (1989).

The UP College Baguio High School was established in 1972 as part of the graduate program in education. However, the graduate program in education was never opened. On January 30, 1989, the UP Board of Regents, acting on the recommendation of a review committee, decided to phase out the high school, citing the insignificant number of its graduates who qualified for admission to the UP College Baguio and the fact that it was not serving the purpose for which it was established. Parents of high school students brought suit in the trial court, which enjoined the UP from closing its high school. The UP in turn filed a petition for certiorari in the Supreme Court.

Through Justice Bidin, the Court held that the right to free public secondary education as guaranteed in the Constitution and implemented by the Free Public Secondary Education Act of 1988[115] is demandable from the State, through the Department of Education, Culture and Sports. The UP's only obligation, it was pointed out, is to provide free secondary education where, in exercise of its academic freedom, it decides to operate high schools.

Chief Justice Fernan did not take part, having gone on leave. Justices Sarmiento and Cortes also took no part, having acted in the case as member of the Board of Regents and member of the review committee which recommended the closure of the high school, respectively.

G. Public Employees' Right to Strike

In SOCIAL SECURITY SYSTEM EMPLOYEES ASSOCIATION v. COURT OF APPEALS,[116] the Court, in an opinion by Justice Cortes, held that in the absence of legislation allowing strikes in the public sector, employees of the Social Security System cannot strike for economic benefits. On this ground, the Court affirmed the Court of Appeals' decision sustaining an injunction issued by the trial court against petitioner union and the denial by the trial court of a motion to dismiss an injunctive suit filed by the SSS. The Supreme Court held that the right of self organization, granted to employees of the public sector by the 1987 Constitution,[117] does not include the right to strike. While the right of workers in general to engage in strike is recognized in Art. XIII, Sec. 3, the right "must be in accordance with law." The Court gave weight to administrative interpretations, making this right depend on legislative implementation.

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[115]Rep. Act No. 6665 (1988).

[116]175 SCRA 686 (1989).

[117]Art. III, sec. 8; art. IX B, sec. 2(5).

H. Right to Property

1. *Taking of Property Under Eminent Domain.* -- After the Supreme Court had held in 1980 that the choice of Fernando Rein and Del Pan Streets in Pasay City as route of the proposed extension of EDSA was arbitrary and, therefore, the expropriation of Cristina de Knecht's land was illegal,[118] the Batasang Pambansa enacted a law[119] providing for the expropriation of the same properties. For this reason, the trial court, instead of dismissing the complaint for expropriation filed by the government pursuant to the 1980 decision of the Supreme Court, decided to proceed with the case on the basis of the new law. On appeal, however, the Court of Appeals ruled that the 1980 decision of the Supreme Court had become the law of the case and that the right of De Knecht could no longer be disturbed. The government appealed. In REPUBLIC v. DE KNECHT,[120] the Supreme Court reversed the decision of the Court of Appeals. Through Justice Gancayco, it held that the circumstances had changed so that, while in its 1980 decision the Court had found the choice of Fernando Rein and Del Pan Streets to be arbitrary, the expropriation of properties along those two streets could now proceed. The Court said:

> The social impact factor which persuaded the Court to consider this extension to be arbitrary had disappeared. All residents in the area have been relocated and duly compensated. Eighty percent of the EDSA outfall and 30% of the EDSA extension had been completed. Only private respondent remains as the solitary obstacle to this project that will solve not only the drainage and flood control problem but also minimize the traffic bottleneck in the area.

Even in 1980, however, the Court already found that the social impact of building the extension along Fernando Rein and Del Pan Streets was less (as these streets were less populous) than it would be on the residents of Cuneta Avenue. But despite this finding, the Court in 1980 thought that in the long run the proposed extension would benefit more the people. The decision in the second case failed to take into account this aspect of the first decision.

As for the fact that the government had subsequently completed nearly 30 percent of the proposed extension, it is noteworthy that even in 1980, when the first decision was handed down, this construction of the proposed extension had already begun. But De Knecht and a few other families refused to sell their lands and move out of Fernando Rein and Del Pan Streets. This made it necessary for the government to bring

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[118]De Knecht v. Bautista, 110 SCRA 660 (1980).

[119]Batas Pambansa Blg. 340 (1983).

[120]G.R. No. 87335, Feb. 12, 1990.

expropriation proceedings against them and the Court, in its first decision, sustained their position that the government's choice of properties to be expropriated was arbitrary and a denial of due process.

2. *Security of Tenure of Civil Service Employees.* --While a public office is a public trust, there is a sense in which it may be regarded as property of which the office holder cannot be deprived and that is under the due process clause and the constitutional guarantee of security of tenure. In TRISTE v. MACARAIG,[121] it was held that a civil service employee, who tendered his resignation as required by the President following the EDSA revolution, cannot later question the acceptance of his resignation if, within one year from February 25, 1986, his successor was designated and later appointed. The Court, in an opinion by Justice Griño-Aquino, cited the Provisional or Freedom Constitution, Art. III, Sec. 2 of which provided that incumbent officials and employees of the government were to continue in office "until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986." The petitioner, who was Acting Assistant Secretary for Comptrollership of the then Ministry of Public Works and Highways, tendered his resignation on February 26, 1986. His successor was designated on May 22, 1986 and on July 23, 1986 was appointed. The petitioner was paid retirement benefits. It was held that his resignation had been validly accepted and, although at the time of his resignation he was discharging the functions of Assistant Secretary for Comptrollership, his receipt of retirement benefits barred him from later claiming that he had a right to his former position as Assistant Regional Director of the Commission on Audit assigned to the Ministry of Public Works and Highways before his designation.

I have said at the beginning that the republican vision of our Constitution -- the ideal of a government of, for, and by the people -- requires that the citizens and their institutions -- including the courts -- engage in a continuing dialogue. Judicial decisions, particularly those of the Supreme Court, on major constitutional issues, can have a life of their own beyond the cases in which they are made if only they are attended to. In Paul A. Freund's phrase, when courts expose the factors that trouble the judgment and strive for as particularistic a decision as they can make and give a reasoned elaboration, they exemplify for us the rational solution of conflicts and provide us with lessons that are too

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[121] 175 SCRA 284 (1989).

precious to be lost through disrespect, neglect, or ignorance.[122] But, as he noted, the practice of stating the grounds of a decision "presupposes a mature people who in the end will judge their judges rationally. Unless this maturity exists the system is in danger of breaking down."[123] Through constant participation in constitutional discourse this maturity may yet be achieved.

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[122]P. FREUND, THE SUPREME COURT OF THE UNITED STATES 190 (1961).
[123]P. FREUND, ON LAW AND JUSTICE 59 (1968).