MILITARY CHECKPOINTS AND THE RULE OF LAW

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In January of 1987, pursuant to Armed Forces of the Philippines General Headquarters Letter of Instruction 02/87, the National Capital Region Defense Command (NCRDC) established several checkpoints in various parts of the metropolis.

Unknown to many, however, the military checkpoint is not a new creation of the Aquino Government. During the Marcos years, military checkpoints were used extensively in the provinces, most notably in northern Luzon and in the southern city of Davao, as a measure against the mounting insurgency problems of the country. General Order No. 66,[1] promulgated by then President Marcos in 1980, authorized the establishment of checkpoints as an appropriate measure to preserve peace and security in the nation.[2]

According to the NCRDC Staff Manual,[3] checkpoints are installed: (1) to establish an effective territorial defense; (2) to maintain peace and order; and (3) to provide an atmosphere conducive to the social, economic and political development of the National Capital Region.

The checkpoints installed in Metro Manila are manned by members of the NCRDC, often with the assistance of the local police forces. These are located along main thoroughfares within Metro Manila and its outskirts, and established in such a way that they cover points of entry to and exit from the National Capital region. They are placed on roads approaching important government installations or through which a sizeable flow of vehicular traffic passes. Vehicular traffic coming through these roadblocks normally slows down to a crawl or comes to a stop because of the manner by which the barriers and police

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[1]As amended by General Order No. 67, otherwise known as "The Law Amending and Amplifying Paragraph 7 of General Order No. 66 dated September 13, 1980", 79 O.G. 31, 4226 (1983).

[2]*Id.*, 3rd preambular paragraph.

[3]NATIONAL CAPITAL REGION DEFENSE COMMAND (NCRDC) STAFF MANUAL 1 (1987).

military vehicles are arranged. Primarily, they are designed to give the military men some time to get a look at the vehicle and its occupants.[4]

Not all vehicles, however, are stopped for closer scrutiny. Those that are asked to halt are either chosen at random or usually have all-male occupants. They are instructed to pull over to the side of the road where the occupants are given a closer look and are asked queries regarding their identities and destinations. Occasionally, the occupants are ordered to open the trunk and the glove compartment.[5]

One such military checkpoint was installed in Valenzuela, Metro Manila, where one early morning in July 1988, a Municipal Property Custodian on board his car was gunned down by elements of the NCRDC after ignoring the said checkpoint.[6] The man was allegedly drunk and was unable to stop at the checkpoint. Because of this and other reported incidents of the arbitrary and capricious manner by which checkpoint procedures were implemented, the practice of requiring vehicles to stop at checkpoints have been assailed by various human rights groups as unconstitutional. The focal point of the attack has been its alleged violation of due process and the guarantee against unreasonable searches and seizures.

This paper is an attempt to study (1) the legal basis of military checkpoints in light of the jurisprudential framework established both by the Philippine Supreme Court and the United States Supreme Court and (2) the legal significance and implications of military checkpoints in the Rule of Law.

The Right Against Unreasonable Searches and Seizure

The 1987 Philippine Constitution provides:

> No person shall be deprived of life, liberty or property without due process of law."[7]
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> The right of people to be secure in their persons, houses, papers and effects against unreasonable searches of whatever nature and for any purpose shall be inviolable, and 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

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[4]*See generally* NCRDC MANUAL, *id.*

[5]*Id.*

[6]*See People's Tonight*, July 9, 1988, at 2, col. 1. *See* also the Petition submitted by Ricardo Valmonte in Valmonte v. de Villa, G.R. No. 83988, dated July 13, 1988.

[7]CONST., art. III, sec. 1.

> and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized.[8]

The language of the constitutional prohibition against unreasonable searches and seizures is essentially directed against state intrusions which fail to satisfy the requirement of reasonableness.[9] Its principal function is the promotion of freedom by limiting governmental interference in the affairs of individuals. But unlike other constitutionally protected rights, the standard set by the above quoted provisions is subject to "reasonableness", and considering the thin line that separates the requirements of effective law enforcement and the person's right to privacy, courts have found it very difficult to strike the essential balance which provides sufficient protection to personal security, without unduly hampering national security operations.

It is not difficult to discern that the very language of Article III, section 2, creates an immediate question of construction. How does one properly correlate the two conjunctive clauses of "reasonableness" and "probable cause"? Should "probable cause" modify all searches and seizures, or must those allowed without a warrant only reach a level of "reasonableness"? What constitutes "reasonableness"? And, who is to determine what is reasonable?

Generally, a search is considered reasonable when it is authorized by the court as evidenced by a search warrant issued in compliance with the Constitution. Uncertainty arises, however, in the determination of the reasonableness of the search conducted without a warrant.[10] One school of thought emphasizes the interrelation between the reasonable clause and the warrant clause such that warrantless searches are viewed as being presumptively unreasonable, and therefore illegal, subject only to a few specifically delineated exceptions.[11]

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[8]CONST., art. III, sec. 2.

[9]*See* Payton v. New York, 445 US 573 (1980).

[10]For warrantless searches and seizures established as valid and reasonable, *see* Bautista, *The Philippine Law on Search and Seizure: A Restatement*, 51 PHIL. L. J. 219, 220-225 (1976).

[11]Cox, *An Emerging New Standard for Warrantless Searches and Seizures Based on Terry v. Ohio*, 35 MERCER L. REV. 647. *See* also Salken, *Balancing Exigency and Privacy in Warrantless Searches to Prevent Destruction of Evidence: The need For a Rule*, 39 HAS. L.J. 283 (1988).

Exceptions to the Warrant requirement include: search of moving vehicles, *see* Carrol v. United States, 267 U.S. 132 (1924); evidence in plain view of officer and consent to search without coercion, *see* Coolidge v. New Hampshire, 403 U.S. 443 (1970); search incident to a valid arrest, *see* Chimel v. California, 395 U.S. 752 (1969); search made following hot pursuit of a suspect, *see* Warden v. Hayden 387 U.S. 294 (1966). *See* also Johnson v. 333 U.S. 10 (1947) for a list of several possible "exceptional circumstances".

Another school of thought opines that while the warrant clause serves to establish the standards for a valid warrant, the presence or absence of a warrant is not conclusive as to reasonableness. Under this theory the question of reasonableness is not to be determined by the mechanical test of the existence of a warrant, but by the collective facts and circumstances of each case.[12]

The long history of search and seizure cases promulgated by the United States Supreme Court is a manifestation of the complicated and intricate nature of the Constitutional guarantee against unreasonable searches and seizure. As Justice Frankfurter puts it, "The course of the law pertaining to searches and seizures . . . has not -- to put it mildly -- run smooth."[13]

Initially, the U.S. Supreme Court indicated a strong inclination to uphold the warrant requirement.[14] The inclination construes "unreasonable searches" in relation to the text of the fourth amendment and the historical basis of its enactment. The concern that gave rise to the fourth amendment was the existence of an adequate evidentiary basis for searches and the issuance of a warrant upon probable cause and adequate specificity.[15] It was pointed out that the general understanding of the fourth amendment must refer to the objections raised to general warrants and writs of assistance.[16]

Although subsequent to World War II, the court began to discuss the tension between protecting the individual's right to privacy on the one hand and promoting the general welfare through good law enforcement on the other, probable cause remained the Court's choice in the balance of these competing interests.[17]

In *Chimel v. California*,[18] the court explained:

> The Fourth Amendment was the answer of the colonial Revolutionary statesmen to the evils of searches without warrants and searches with warrants unrestricted in scope. Both were deemed

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[12]*Id. See* also Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 393-394 (1974).

[13]Chapman v. U.S. 365 U.S. 610, 618 (1960) (Frankfurter, J. concurring).

[14]*See* Henry v. United States, 361 U.S. 98 (1959). *See* also United States v. Rabinowitz, 339 U.S. 56 (1949).

[15]*See generally* Amsterdam, *supra* note 12.

[16]T. TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 38 (1969) as cited in G. Dix, *Means of Executing Searches and Seizures as Fourth Amendment Issues*, 67 MINN. L. REV. 89, 141 (1982).

[17]*See* Brinegar v. U.S. 160, 176 (1949).

[18]395 U.S. 752 (1969). *See* also U.S. v. Rabinowitz, 339 U.S. 56 (1949), and Frank v. Maryland, 359 U.S. 360 (1958).

> "unreasonable". Words must be read with the gloss of experience of those who framed them. . . . When the Fourth Amendment outlawed "unreasonable searches" and then went on to define the very restricted authority of a magistrate in issuing a search warrant, the framers said with all the clarity and gloss of history, that a search is "unreasonable" unless a warrant authorizes it, barring only exceptions justified by absolute necessity.

The warrant is deemed as an essential requisite and not a mere formality that may be dispensed with without conclusive showing that the circumstances of a particular case justify its absence. In upholding this theory, the U.S. Supreme Court feared that "an arrest without a warrant bypasses the safeguards provided by an objective predetermination of probable cause," suggesting that "an after-the-event justification . . . [was] too likely to be subtly influenced by the familiar shortcomings of hindsight judgment."[19]

In 1967, however, with the promulgation of the landmark decision in *Camara v. Municipal Court*,[20] the balancing of interests theory began to gain dominance in the analysis of the Fourth Amendment clause. Abandoning the traditional concept that the determination of probable cause required facts sufficient to justify a reasonably cautious person in believing that another had committed or was commiting a crime,[21] the *Camara* majority determined probable cause on the basis of reasonableness, considering both the governmental and individual interests involved,

> . . . [it is] obviously necessary first to focus on the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of private citizens.
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> If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitable restricted search warrant.[22]

The Court further explained,

> In determining whether a particular inspection is reasonable -- and thus determining whether there is probable cause to issue a warrant for that inspection -- the need for the inspection must be weighed in terms of these reasonable goals of code enforcement.[23]

Probable cause was redefined as a flexible concept through which reasonableness, as an independent factor, was employed in fourth

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[19]Beck v. Ohio, 379 U.S. 89, 96 (1964).
[20]387 U.S. 523 (1967).
[21]*See* U.S. v. Adison, 28 Phil 516 (1914).
[22]*Id.*, at 535-36, 539.
[23]*Id.*, at 534-35.

amendment analysis. *Camara* paved the way for the alternative approach where instead of probable cause defining reasonableness, reasonableness became the basis of probable cause determination.

The reversal of the roles of probable cause and reasonableness expanded the range of acceptable governmental regulations beyond intrusions based on individualized suspicion to include activities in which government interest outweighed the individual's privacy interests.[24] Taking a step even further, the U.S. Supreme Court in *Terry v. Ohio*[25] did not rely upon a flexible probable cause concept, but instead held that the warrant clause did not apply to the police conduct of stopping a pedestrian and searching his person. In this case, the Supreme Court was once again faced with the tension between law enforcement techniques and fourth amendment constraints on searches and seizures. An experienced police officer had observed three unknown men conducting themselves in a suspicious manner, suggesting that they were planning an imminent robbery. The officer approached the men and, when they did not respond satisfactorily to his queries, the officer grabbed Terry and patted down his outer clothing. The pat-down allowed the officer to discover a gun in one of Terry's pockets.

Chief Justice Warren, delivering the opinion of the Court held that the very nature of the street encounter did not necessitate the warrant requirement. The court said thus,

> If this case involved police conduct subject to the Warrant Clause of the Fourth Amendment, we would have to ascertain whether "probable cause" existed to justify the search and seizure which took place. However, that is not the case. . . . [W]e deal here with an entire rubric of police conduct -- necessarily, swift action predicated upon the on-the-spot observation of the officer on the beat -- which historically has not been, and as a practical matter could not be, subjected to the warrant procedure.[26]

Pursuant to this decision, reasonable belief of danger, based on "specific and articulable facts," suffices to justify intrusion, even where those facts are considerably less specific than would be required to constitute traditional probable cause. Reasonableness, thus, has been transformed into a factor which should be determined by balancing the government's interests against those of the individual. Some searches and seizures, have thus become allowable on less than probable cause

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[24]Parlade, *Mass Saturation Drives and the Rights Against Unreasonable Searches and Seizures: Constitutional Possibilities*, 62 PHIL. L.J. 181 (1987).

[25]392 U.S. 1 (1967).

[26]*Id*, at 20.

because they are only a limited intrusion and are justified by substantial law enforcement interests.

The American jurisprudential trend of expanding the role of reasonableness, in the determination of the validity of warrantless searches and seizures, is likely to be adopted in the Philippine experience. It cannot be denied that Philippine Jurisprudence is largely influenced by American case law due to the fact that our laws are basically patterned after theirs. Indeed, a comparison of Article III, section 1 of the 1987 Constitution and of the Fourth Amendment of the United States Constitution[27] shows no obstacle for the adoption of the *Camara* and *Terry* doctrines.

It has been contended, however, that the Philippine Law on search and seizure remains largely statutory.[28] To support this, it was noted that the decisions of the Philippine Supreme Court rely merely on a mechanical interpretation of statutory provisions, and that no attempt has ever been made to analyze the clashing interests of law enforcement and individual liberty.[29] A perusal of Supreme Court decisions on the subject gives basis to this contention. The highest court in the land has yet to touch upon the issue of whether or not administrative inspections and stop-and frisk situations are subject to the constitutional proscription against unreasonable searches and seizures. It should be noted that the very nature of said inspections, makes impossible the compliance with the requirement of individualized suspicion, precluding the issuance of a warrant.[30] It was pointed out that

> While accepting reasonableness as the touchstone in the analysis of the legality of a search and seizure makes impossible strict adherence to the traditional warrant probable cause framework, this seems to be an inevitable result of the expansion of the scope of search and seizure provision to include those "of whatever nature and for any purpose"[31] viewed against the weighty governmental interest in investigating or preventing a crime.[32]

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[27]FOURTH AMENDMENT.

[28]Bautista, *supra* note 10, at 236.

[29]*Id.*

[30]*See* Camara v. Municipal Court, *supra* note 20, and Terry v. Ohio, *supra* note 25.

[31]CONST., art. III, sec. 2.

The right of people to be secure in their persons, homes, papers and effects against unreasonable searches *of whatever nature and for any purpose* shall be inviolable. xxx.

[32]Parlade, *supra* note 24, at 181, 194.

The Automobile Exception

"A man's home is his castle." The inviolability of the home is one of the most fundamental of all the individual rights declared and recognized in civilized nations. As has often been quoted: "The privacy of the home -- the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the King, except in rare cases, has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled."[33]

Although automobiles have traditionally been considered as an extension of the home, and hence, is subject to the same constitutional protection as the latter, the U.S. Supreme Court maintains that one's expectation of privacy in an automobile and of freedom in its operation is significantly different from the usual expectation of privacy and freedom in one's residence. This view was explained, first, on the basis of the inherent mobility of automobiles, and the facility by which criminals may escape arrest when riding in one, and second, because a car is used for transportation and not a residence or repository of personal effects.

It was in *Carroll v. United States,*[34] that the U.S. Supreme Court first upheld the warrantless search of an automobile. In this case, two individuals in an automobile were stopped on a highway by federal agents who had probable cause to believe that they were transporting liquor in violation of the law. The agents searched the car and found six cases of whiskey and gin hidden under the seat. In upholding the conviction and by ruling that the evidence was admissible as the result of a reasonable search, the Court recognized that there is a

> necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant may readily be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought.[35]

The court considered the inherent mobility of a vehicle to be a circumstance which would eliminate the need for a warrant before an officer could conduct a reasonable search. Still the Court narrowly construed the exception, for it asserted that in the absence of a probable cause to search, no justification existed for a warrantless search of an

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[33]U.S. v. Arceo, 3 Phil. 381, 384 (1904).
[34]267 U.S. 132 (1924).
[35]*Id.*, at 153.

automobile.[36] It is clear that the automobile exception, when it was first conceived, consisted of two elements: (1) probable cause to search; and,(2) mobility of the object to be searched. The inherent mobility of the automobile gave rise to an "exigency" which made unneccessary the need to procure a warrant.

In *Chambers v. Maroney,*[37] and *Coolidge v. New Hampshire,*[38] the Supreme Court expanded the temporal scope of the *Carroll* exception. In *Chambers,* the Court found probable cause both to arrest the defendants and to search the car at the scene of the arrest. The issue was whether or not the search conducted at the police station, after the initial search during the arrest, could be upheld. In determining that the later search was also valid, the Court compared the potential intrusions on the defendant's fourth amendment interests:

> [T]he circumstances that furnish probable cause to search a particular auto for particular articles are most often unforeseeable; moreover, the opportunity to search is fleeting since a car is readily movable . . . [T]he occupants are alerted, and the contents may never be found again if a warrant must be obtained.[39]

> Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the "lesser" intrusion is permissible until the magistrate authorizes the "greater." But which is the "greater" and which is the "lesser" intrusion is itself a debatable question and the answer may depend on a variety of circumstances. For constitutional purposes, we see no difference between, on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate, and on the other hand carrying out an immediate search without a warrant.[40]

In contrast, *Coolidge,* in determining whether the search conducted some time after probable cause to arrest had arisen, held that the search was not valid under the automobile exception because no exigency had occured to prevent the procurement of a warrant before the seizure.[41] Thus, the court viewed that the requirement of exigency must exist both prior to and after the arrest. The court stated,

> The word "automobile" is not a talisman in whose presence the fourth amendment fades away and disapppears. And surely there is nothing in this case to invoke the meaning and purpose of the rule of *Carroll v. U.S.* -- no alerted criminal bent on flight, no fleeting opportunity on an

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[36]*Id.,* at 154.
[37]399 U.S. 42 (1969).
[38]403 U.S. 443 (1970).
[39]Chambers v. Maroney, *supra* note 38, at 50-51.
[40]*Id.*, at 52.
[41]Coolidge v. New Hampshire *supra* note 39, at 478.

> open highway after a hazardous chase, no contraband or stolen goods or weapons, not even the inconvenience of a special police detail to guard the *immobilized* automobile.[42]

In *U.S. v. Chadwick*,[43] the Court faced the issue of a search of a container found within the automobile. In this case, federal agents arrested the defendants as they were placing a footlocker, identified by a police dog as containing marijuana, into the trunk of a waiting automobile.[44] Hours later at the federal building, the agents searched the footlocker without first obtaining consent or a search warrant. The Court, although it noted that both luggage and automobile have mobility characteristics, maintained that the separate treatment of automobiles depended not only on their mobility but also on their lesser privacy interests. It was held that such lesser privacy interest, did not characterize personal luggage.[45] The Court rejected the contention that the search was a valid search incident to an arrest, because it was too "remote in time and place from the arrest."[46] It has been argued that *Chadwick* is not an automobile exception;[47] it remains important nonetheless in its establishment of the distinction in privacy interests between automobiles and personal luggage contained therein.

It was in *Arkansas v. Sanders*[48] that the Supreme Court had the first opportunity to discuss the personal-luggage-private-interest distinction, in the context of a valid warrantless automobile search. Contrary to the police action in *Chadwick*, the policemen in *Sanders* waited until the defendant had placed the suitcase in the trunk of a taxi and had driven away before stopping him several blocks from the airport. The police opened and searched a suitcase finding marijuana packed in plastic bags.[49]

In rejecting the validity of the search of the suitcase, the Court stated:

> A closed suitcase in the trunk of an automobile may be as mobile as the vehicle in which it rides. But as we noted in *Chadwick*, the exigency of mobility must be assessed at the point immediately before the search-after the police have seized the object to be searched and have it securely within their control . . . Once the police have seized a suitcase, as they

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[42] *Id.*, at 461-462.
[43] 443 U.S. 1 (1977).
[44] *Id.*, at 4.
[45] *Id.*, at 13.
[46] *Id.*, at 15.
[47] Phillips, *Toward a Functional Fourth Amendment Approach to Automobile Search and Seizure Cases*, 43 OHIO STATE L.J. 861, 872 (1982).
[48] 442 U.S. 753 (1979).
[49] *Id.*, at 755.

> did here, the extent of its mobility is in no way affected by the place from which it was taken. Accordingly, as a general rule there is no greater need for warrantless searches of luggage taken from automobiles than of luggage taken from other places.[50]

It should be noted, however, that the Court did not extend the logic of this statement to all containers. In a footnote, the Court stated that,

> Not all containers and packages found by the police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of package will be open to "plain view," thereby obviating the need for a warrant.[51]

Thus, in *Sanders*, the Court extended the rationale of *Chadwick* to a *Carroll* or *Chambers* situation so that some containers and luggage would not be susceptible to a warrantless search as would the rest of the automobile.

In the later case of *U.S. v. Ros*,[52] however, the Court seemingly lifted the prohibition on searching containers in automobile searches. It was held that if probable cause justifies the search of a vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.[53] The Court explained,

> The scope of a warrantless [automobile] search based on probable cause is no narrower -- and no broader -- than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize. The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather it is defined by the object of the search and the places in which there is a probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase.[54]

Checkpoints

In view of the absence of any case on the matter within our jurisdiction, reference must be made to American Jurisprudence. It need

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[50] *Id.*, at 763-64.
[51] *Id.*, at 764-65.
[52] 456 U.S. 798 (1982).
[53] *Id.*, at 852.
[54] *Id.*, at 823-34.

not be said that our courts have recognized and acknowledged American Jurisprudence as persuasive, especially those that interpret the Fourth Amendment. As previously mentioned, the Fourth amendment served as basis for Article III, section 2 of our Constitution.

The question on the constitutionality of searches incident to operations of military checkpoints have been discussed by the U.S. Supreme Court in several cases concerning the legality of checkpoints established in borders in order to prohibit aliens from illegally immigrating into the United States. Although not strictly in point to the subject of this paper, which concerns checkpoints established in the heart of the metropolis, and allegedly for the protection of the peace and order situation in the Country, the principles laid down in the U.S. cases are relevant, if only tangentially, to the present discussion.

In *U.S. v. Brignoni-Ponce*,[55] the Supreme Court, citing *Almeida-Sanchez v. U.S.*[56] held that the Fourth Amendment forbids stopping a vehicle, even for the limited purpose of questioning its occupants, unless the officers have a "founded suspicion" that occupants are aliens illegally staying in the country.

In this case, two officers were observing northbound traffic from a patrol car parked at the side of a highway. The road was dark, and they were using patrol car's headlights to illuminate passing cars. They pursued respondent's car and stopped it, saying later that their only reason for doing so was that its occupants appeared to be of Mexican descent. The occupants were questioned, and it was learned that they were aliens who had entered the country illegally. In denying the constitutional propriety of the arrest, the court explained:

> We are unwilling to let the Border Patrol dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving-patrol stops. . . . The Fourth Amendment demands something more than the broad and unlimited discretion by the law enforcers.[57]

The Border Patrol's traffic-checking operations are designed to prevent the inland movement of illegal aliens. They succeed in apprehending some illegal entrants and smugglers, and they deter the movement of others by threatening apprehension and increasing the cost of illegal transportation.[58] Against this valid public interest, the Supreme Court weighed the interference with individual liberty that results when an officer stops an automobile and questions its occupants.

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[55]422 U.S. 873 (1975).
[56]413 U.S. 266 (1973).
[57]U.S. v. Brignoni-Ponce, *supra* note 56, at 880, 881, 882.
[58]*Id.*, at 879.

> We are not convinced that the legitimate needs of law enforcement require this degree of interference with lawful traffic. [A] requirement of reasonable suspicion for stops allows the Government adequate means of guarding the public interest and also protects residents of the border areas from indiscriminate official interference. Under the circumstances, and even though the intrusion incident to a stop is modest, we conclude that it is not "reasonable" under the Fourth Amendment to make such stops.[59]

The Supreme Court reiterated the doctrine laid down in *US v. Brignoni-Ponce* in *U.S. v. Ortiz*.[60] In the latter, it was held that in the absence of consent or probable cause, the Fourth Amendment forbids border patrol officers to search private vehicles at traffic checkpoints removed from the border and its functional equivalents, more so when officers advance no special reason for believing that defendant's vehicle contained aliens.[61]

The State tried to maintain that the officers exercised their discretion on which vehicles to stop, with restraint, and searched only those that aroused their suspicion. Viewed realistically, said the Court, this position would authorize the Border Patrol to search vehicles at random, for no officer would have to justify his decision to search a particular car.

> This degree of discretion is not consistent with the Fourth Amendment. A search, even of an automobile, is a substantial privacy intrusion. To protect that privacy from official arbitrariness, the Court always has regarded probable cause as the minimum requirement for a lawful search.[62]

Abandoning the doctrine laid down in *U.S. v. Brignoni-Ponce* and *U.S. v. Ortiz*, the Supreme Court in *U.S. v. Martinez-Fuerte*[63] held that vehicle stops at a fixed checkpoint for brief questioning of its occupants, even though there is no reason to believe that the particular vehicle contains illegal aliens, are consistent with the Fourth Amendment, and that the operation of a fixed checkpoint need not be authorized in advance by a judicial warrant. In referring to its prior decision in *US v. Ortiz*, the Court said that, "[We] hold *today* that such stops are consistent with the Fourth Amendment."[64]

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[59] *Id.*, at 883.

[60] 422 U.S. 891 (1975). Note that *Brignoni-Ponce* and *U.S. v. Ortiz*, were decided on the same day, June 30, 1975.

[61] *Id.*

[62] *Id.*, at 896.

[63] 428 U.S. 543 (1976).

[64] *Id.*, at 545.

Martinez-Fuerte involved criminal prosecutions for offenses relating to the transportation of illegal Mexican aliens. Each defendant was arrested at a permanent checkpoint operated by the Border Patrol away from the international border with Mexico, and each sought the exclusion of certain evidence on the ground that the operation of the checkpoint was incompatible with the Fourth Amendment.[65] In each instance, the inquiry as to the possible violation of the Fourth Amendment turned primarily on whether a vehicle may be stopped at a fixed checkpoint for brief questioning of its occupants even though there was no reason to believe that the particular vehicle contained illegal aliens.

It is well settled that checkpoint stops are "seizures" within the meaning of the Fourth Amendment.[66] Invoking *Brignoni-Ponce*, the defendants maintained that routine stopping of vehicles at a checkpoint is invalid in the absence of reasonable suspicion. In upholding, however, that a reasonble suspicion is not a prerequisite to a valid stop, the Court explained that:

> A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens. In particular, such a requirement would largely eliminate any deterrent to the conduct of well-disguised smuggling operations, even though smugglers are known to use these highways regularly."[67]

The reasonableness of the procedure followed in making these checkpoint stops makes the resulting intrusion on the interest of motorists minimal. Moreover, the purpose of the checkpoints was held to be legitimate and pursuant to public interest.

In an attempt to be consistent with the decisions in *Ortiz* and *Brignoni-Ponce*, the Court said that routine checkpoints do not intrude on the motoring public as much as roving patrols do.[68]

> First, the potential interference with legitimate traffic is minimal. Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second, checkpoint operations both appear

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[65]*Id.*

[66]Delaware v. Prouse, 440 U.S. 648 (1979); U.S. v. Cortez, 449 U.S. 411 (1981); U.S. v. Kerr, 817 F. 2d 1384 (9th Cir, 1987).

[67]U.S. v. Brignoni-Ponce, *supra* note 56, at 557.

[68]Note that roving patrols and not routine checkpoints were involved in *Ortiz* and *Brignoni-Ponce*.

> to and actually involve less discretionary enforcement activity. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve public interest.[69]

In the 1979 case of *Delaware v. Prouse*,[70] however, the Supreme Court may be said to have retracted its pronouncement in *Martinez-Fuerte* and reaffirmed its judgment in *Ortiz* and *Brignoni-Ponce* when it held that, except in those situations in which there is at least *articulable and reasonable suspicion*[71] that a motorist is unlicenced or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment. The Court explained thus,

> To insist neither upon an appropriate factual basis for suspicion directed at a particular automobile nor upon some other substantial and objective standard or rule to govern the exercise of discretion would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.[72]

It should be noted however that the issue of the legal validity of systematic road-block type stops (checkpoints) was not the focal issue in *Delaware*. Herein, the court ruled on random stops of motorists, and not in connection with systematic checkpoints, in the absence of specific articulable facts which justify the stop.

US v. Cortez[73] is more in point. In this case, the Supreme Court upheld the constitutional validity of the act of the Border Patrol in stopping a pick-up truck believed and observed to be involved in the illegal traffic of aliens. Invoking its prior pronouncement in *Brignoni-Ponce*,[74] the Court held that the stop was legal based upon the whole picture, from which the Border Patrol could have surmised that the particular vehicle they stopped was engaged in criminal activity.[75] In discussing the requisite basis for a legal stop, the Court said that:

> Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like

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[69]*Id.*, at 559. *But see* the dissenting opinion of Justices Brennan and Marshall at 567-578.

[70]440 U.S. 648 (1979).

[71]*See* U.S. v. Brignoni-Ponce, *supra* note 56, at 881; and U.S. v. Ortiz, *supra* note 61, at 894.

[72]*Id.*, at 661.

[73]449 U.S. 411 (1981).

[74]Note that the Court did not invoke *Martinez-Fuerte*.

[75]*Id.*, at 421.

> "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances -- the whole picture -- must be taken into account. Based upon that whole picture the detaining officers must have a *particularized and objective basis* for supporting the particular person stopped of criminal activity.[76]

Clearly, far from affirming *Martinez-Fuerte*, the Court went even further than *Brignoni-Ponce* and *Ortiz* when it laid down the requisite "particularized and objective basis" for a valid and constitutional stop. Such particularized suspicion contains two elements:

> First, the assessment must be based upon all the circumstances. The analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of law breakers. From these data, a trained officer draws inferences and makes deductions.
>
> Second, the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing.[77]

The Valmonte Decision

The growing and developing tendency of the Court in legitimizing searches and seizures of automobiles, in general, and those incidental to checkpoint operations, in particular, indicate a clear departure from a warrant-preference approach. The Court's choice in pursuing an analysis of the competing interests present in automobile searches appears to have been compelled by societal and individual interests: the governmental interest of efficient law enforcement and the individual's interest in his privacy. It was pursuant to this analytical framework that the controversial case of *Valmonte v. De Villa*[78] was promulgated by the Philippine Supreme Court.

The petitioners in this case were Ricardo Valmonte, a lawyer by profession and a resident of Valenzuela, Metro Manila and the Union of Lawyers and Advocates for People's Rights (ULAP). They assailed the constitutionality of the military checkpoints installed by respondents in Valenzuela and other parts of the metropolis on the ground that: (a) checkpoints give respondents authority to make searches and seizures without search warrants in violation of Article III, section 2 of the 1987 Constitution; (b) checkpoints provide respondents with blanket authority as well as license to kill or maim people; (c) checkpoints

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[76]*Id.* at 417-418.
[77]*Id.*
[78]G.R. No. L-83988, September 29, 1989.

provide a fertile ground for respondents to violate and disregard the due process clause of the Constitution; (d) checkpoints limit people's movement and mobility; and (e) checkpoints constitute a blatant disregard of the Constitutional mandate of the civilian supremacy over the military.[79]

The petitioners contended that because of said checkpoints, the residents of Valenzuela were worried about their safety because even without search warrants, their cars and vehicles were subjected to regular searches and check-ups especially at night or at dawn.[80] They cite specifically the case of Valenzuela resident Benjamin Parpan who was gunned down in cold blood by members of the NCRDC manning the checkpoint along McArthur Highway at Malinta, Valenzuela. Parpan allegedly ignored and refused to submit himself to a search at the checkpoint.[81]

The following are the details of the incident, as reported by the NCRDC officers:

> Benjamin Parpan, 48, Supply Officer of the Municipality of Valenzuela died on the spot in the front seat of his bullet-peppered green Ford Cortina with license plate NDK 656. The car was a total wreck with all the window panes shattered by bullets from armalite rifles. Upon reaching Malinta along the stretch of McArthur highway, he reportedly ignored a checkpoint manned by officers of the NCRDC, and instead sideswiped an officer who was flagging him down.
>
> Police said the car did not stop and continued to speed off inspite of warning shots fired in the air. A group of soldiers ahead, suspecting the car's driver to be an enemy, fired at the speeding car that eventually smashed into a cemented (sic) wall of a hardware establishment some hundred meters away from the checkpoint.
>
> When the soldiers approached the car, Parpan was seen slumped on the steering wheel with his head almost unrecognizable and his entire body peppered with bullet wounds.[82]

Petitioners prayed for the issuance of a restraining order enjoining respondents from installing or putting up checkpoints in any or all parts of Valenzuela or elsewhere. The petitioners also asked for rules and guidelines for the NCRDC officers manning the checkpoints so as to safeguard the people's Constitutional right to due process.[83]

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[79]Petition, *supra* note 6, at 4-6.
[80]*Id.*, at 2.
[81]*Id.*
[82]*Id.*, at 3.
[83]*Id.*, at 7.

In its Comment, the Solicitor General dismissed the allegations of Valmonte, stating categorically that: (a) checkpoints are lawfully put up under the administration of the NCRDC; (b) recent events justify and lay stress on the importance of setting up checkpoints as security measures; (c) national and public interests require that the Government take steps to foil or forestall these threats; (d) the inspections conducted at these checkpoints are lawful and reasonable; and, (e) the checkpoints and the personnel manning them operate within the limits set by law and the Constitution.[84]

The State, likewise, took note of the "radical and extremist forces from the entire range of the political spectrum" who have continuously attempted to destablize the Government with the ultimate objective of "seizing the reins of national rule and imposing upon the inhabitants of this nation a form of government which a vast majority will not support."[85]

The military checkpoints, it was contended, were designed precisely to thwart these plots:

> [The] Government has merely responded by invoking its police power to prevent further loss of life and destruction of property, as well as to create an atmosphere necessary to economic development. The State also has the inherent right to protect itself.[86]

In defending the constitutionality of the warrantless searches and seizures conducted in military checkpoints, the State maintained that if warrantless searches and seizures are not deemed unconstitutional in certain instances[87] then it is imperceptible that the

> [g]overnment can not take the necessary steps to protect itself against forces that seek to tear the Republic assunder. After all, the State's need for revenue, or for the promotion of local industries, or the advancement

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[84]Comment submitted to the Supreme Court on 28 October 1988 by the Office of the Solicitor General, 10-25.

[85]*Id.* The State referred to the (1) New People's Army (NPA), which threatens the stability of our Republic not only in the areas outside of the National Capital Region, but also within the very heart of the metropolis; the (2) "fanatic insurgents of the extreme right" who staged bloody *coup de etats* with the hope of transferring the national power to their sector; and (3) the other seccessionist movements and criminal elements which add to the problem of maintaining peace and order in the country.

[86]*Id.*, at 14.

[87]As incident to a lawful arrest, *see* Alvero v. Dizon, 76 Phil. 637 (1946); for customs enforcement purposes, *see* Pacis v. Pamaran, 56 SCRA 16 (1974); upon a waiver of that right by the person affected, *see* People v. Malasuqui, 63 Phil 22 (1936); for health and sanitation, *see* U.S. v. Arceo, 3 Phil. 381 (1904); etc.

> of economic progress . . . become moot when the State itself has become extinct.
>
> The right of the sovereign to set up the checkpoints in question and to conduct inspections even without a warrant supercedes, in this instance, the individual's right to privacy. These warrantless checkpoint searches, conducted pursuant to the Republic's firmly established right to defend itself, are not subject to the Constitution's warrant provisions.[88]

Invoking *U.S. v. Martinez-Fuerte,* the State maintained that the Valenzuela checkpoints are consistent with the rationale considered in the determination of the border checkpoints as valid, pursuant to the Constitutional mandate. It explained,

> That there are a number of factual differences in the two cases [*U.S. v. Martinez-Fuerte* and the case on hand] does not reduce the applicability of those principles because, in all such situations, the scope of a warrantless search and seizure must be commensurate with the rationale that excepts the search from the warrant requirement.
>
> The checkpoints have an important role in preserving our democratic society. That they are not dominant features of a militarized state is clear from the fact that checkpoints are utilized in such bulwarks of democracy as the United States of America. Neither do they disregard civilian supremacy over the military as they were established precisely under our civilian Government's guidance and to preserve the Government's civilian structure. [89]

On 29 September 1989, 14 months after the petition was submitted, the highest court in the land, dismissed the petition and upheld the constitutionality of military checkpoints in the country. The Court explained:

> The setting up of the questioned checkpoints may be considered as a security measure to enable the NCRDC to pursue its mission of establishing effective territorial defense and maintaining peace and order for the benefit of the public. They may also be regarded as measures to thwart plots to destabilize the government, in the interest of public security.[90]

The court took judicial notice of the shift to urban centers and their suburbs of the insurgency movement, so clearly reflected in the increased killings in cities of police and military men by NPA "sparrow units" not to mention the abundance of unlicensed firearms and the alarming rise in

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[88]Comment, *supra* note 84, at 16, Citing U.S. v. Soto-Soto, 598 F. 2d 545, 548 (1979) and U.S. v. Ramsey, 52 L. Ed. 2d 617 (1977).

[89]*Id.* at 23.

[90]*Id.* at 5.

lawlessness and violence in such urban centers. Between the inherent right of the State to protect its existence and promote public welfare, and an individual's right against a warantless search, the former, it was held, should prevail.[91]

> [It is] true [that] the manning of chekpoints by the military is susceptible of abuse by the men in uniform, in the same manner that all governmental power is susceptible of abuse. But at the cost of occasional inconvenience, discomfort and even irritation to the citizen, the checkpoints *during these abnormal times*, when conducted within reasonable limits, are part of the price we pay for an orderly society and a peaceful community. [92]

Without applying or even invoking the jurisprudential framework established by the United States Supreme Court in *Camara, Martinez-Fuerte* and subsequent cases, it is clear that in *Valmonte,* the Philippine Supreme Court utilized the balancing theory in arriving at the validity of the questioned military checkpoints.

This case is reminiscent of the 1972 Supreme Court decision in *People v. Ferrer*[93] which held that ordinary police procedures, coupled with a strict warrant requirement, are relatively cumbersome and ineffective in capturing insurgents and that the State possesses the inalienable right of protection and self-preservation from the acts of lawless, disorderly persons who may have banded together for the purpose of opposing its civil or political authority. As the Supreme Court explained:

> That the government has a right to protect itself against subversion is a proposition too plain to require elaboration. Self preservation is the "ultimate value" of society. It surpasses and transcends every other value. If a society cannot protect its very structure from armed internal attack . . . no subordinate value can be protected. [94]

The implication is that, considering the substantial public interest to be protected, the standards governing the determination of the validity of police action must be qualitatively different from those in relation to searches and seizures for other offenses. It should be less rigorous, allowing greater flexibility in the exercise of governmental powers.

A perusal of the cases discussed thus far, seem to provide a legal basis for the validity and constitutionality of military checkpoints. As was mentioned, the American cases are tangentially relevant here

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[91] *Id.*
[92] *Id.*, at 5-6. Underscoring supplied.
[93] 48 SCRA 382 (1972).
[94] *Id.*

because they lay down, at least by analogy, the principle that the routinary stopping of vehicles at fixed checkpoints does not violate the constitutional prohibition against unreasonable searches and seizures when established for the furtherance of "national security", even though there is no reason to believe that a particular vehicle contains insurgents or loose firearms. And in *Valmonte,* the Supreme Court, sitting *en banc,* may be said to have spoken with finality in upholding the constitutionality of military checkpoints during these "abnormal times."[95]

It may be well to note at this point that various human rights groups in the country have raised their opposition to the doctrine laid down in *Valmonte.* The Filipino Lawyers Assistance Group (FLAG) maintains that military checkpoints violate more than they protect the civil liberties of our citizens. This is due to the absence of respectable disposition and the lack of intelligent discretion consistently displayed by members of the military conducting such checkpoints, and the fact that checkpoints *per se* are reminiscent of the oppressive rule imposed by then President Marcos under Martial Law.[96]

Moreover, it is well to maintain the different context within which the American cases have been decided. *Almeida-Sanchez, Martinez-Fuertez* and *US v. Cortez* contemplate checkpoints made at borders or constructive borders such as checkpoints near the boundary lines of the State, but not those within the interior of the territory and in the absence of probable cause. Analysis of the cases reveal that within the interior of the territory warrantless searches and seizures are constitutionally allowable only in isolated, occasional, incidental, temporary and limited application. The checkpoints in question in *Valmonte,* concern those established right in the heart of the metropolis.

Rule of Law

The concept of Rule of Law has been understood in several ways and in different contexts. Traditionally, it has been considered to mean that,

> no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise

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[95]*Cf.* Mendoza, *The Bill of Rights of the Accused,* 63 PHIL. L. J. 62-63 (1988).

[96]An interview with Atty. Mario Victor F. Leonen, member of the Filipino Lawyers Assistance Group (FLAG) at his office in PSSC, Diliman, Quezon City on November 16, 1989.

> by persons in authority of wide, arbitrary or discretionary powers of constraint.[97]

The socio-cultural development of man, however, has led to the evolution of a redefined concept of the Rule of Law. Today, the concept of Rule of Law advances the principle that governments have the duty to protect and promote the international movement on human rights.[98] This means that:

> [T]he promotion of human rights becomes the end by which a modern government is presumably constituted. . . . It somehow became imperative as a historical development that human rights were a logical outgrowth of the tradition and practice of constitutionalism.
>
> If the realization of Human Rights is the ultimate aim of modern contemporary governments, as this is currently believed to be so, and government has a defined active role in their advancement, then the constitutionalist mode of government must be the means, or the theoretical and practical technique, to attain this end. [99]

The Rule of Law is closely related to liberty.[100] If the legal system is to be considered as a coercive order of public rules addressed to rational persons for the purpose of regulating their conduct and providing the framework for social cooperation, then, when these rules are just, they establish a basis for legitimate expectations. Consequently, when the bases of these claims are unsure, so are the boundaries of men's liberties.[101]

Constitutionalism has been equated to the rule of law.[102] And where there exists a Constitution, the rule of law is deemed manifest.[103] The ultimate concern, therefore, is whether or not the judiciary, in the performance of its powers and functions pursuant to the duly promulgated Constitution, is operating under the Rule of Law; that is, whether or not the promotion and advocacy of human rights is upheld as a primary consideration in our jurisprudence. It is in this context that the *Valmonte* ruling should be analysed.

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[97]CHAMBLISS AND SEIDMAAN, LAW, ORDER, AND POWER 77 (1971).

[98]Payoyo, *The Rule of Law and the Decree-Making Power of the President: Some Reflections on the Crisis of Constitutional Authoritarianism in the Philippines*, 59 PHIL. L. J. 152, 163 (1984).

[99]*Id.*, at 163, 164.

[100]J. Rawls, A THEORY OF JUSTICE 235 (1971).

[101]*Id.*

[102]*See* Burrus, *The Theory of the Rule of Law and the Structure of the Constitutional State*, 16 AM. U. L. REV. 199 (1966); and Cortes, *Constitutionalism in the Philippines: A View from Academia*, 59 PHIL. L. J. 338 (1984).

[103]*See* Muyot, *Amendment No. 6 and the Rule of Law*, 59 PHIL. L. J. 139, 141 (1984).

The permissibility of the military checkpoints was judged by balancing its intrusion on the individual's right against the promotion of "national security."[104] Such a position compels us to recall the Military Rule imposed by then President Marcos, when "national security" was used as a catch-all phrase to justify every government intrusion visited upon the individual. In the words of former Chief Justice Teehankee:

> No individual right, freedom or liberty [during Martial Law] was large enough or precious enough not to be cast into the sacrificial flames of the most capricious of all authoritarian gods -- that of national security. Every excess and abuse of power -- every corruption of public office -- every suppression of free expression -- was premised on national security.[105]

The military virtually had unlimited powers to search, arrest and detain the people.[106] The people on the other hand, had no legal or political defense. These conditions paved the way to injustice. Clearly, the degree of military control over civilian life and behaviour was unprecedented in Philippine history.[107]

Indeed, the Martial Law experience taught us that the legitimacy of military checkpoints provides the inspecting officers with blanket authority as well as license to kill or maim people. Assuming to be true that Benjamin Parpan was killed because he ignored the checkpoint, his killing was a blatant disregard of the Constitutional mandate that:

> No person shall be deprived of life, liberty, or property without due process of law.[108]

Checkpoints, manned by irresponsible officers, provide fertile ground for the violation and disregard of the due process clause. The Law is irreversibly entrusted to the military officer upon whose discretion lies whether or not a particular citizen has violated the law, and almost immediately, whether or not such citizen should live or die. It may be truthfully said that the capricious and whimsical disposition of military men makes a mockery of the Filipino's inherent right to human

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[104]Valmonte v. de Villa, *supra* note 80.

[105]*See* Lopez, *The Saturation Drive: A Mass Arrest of Constitution al Protection*, 62 PHIL. L. J. 167 (1987), citing the address by Chief Justice Claudio Teehankee at the Symposium on the Rule and Spirit of Law of Association of Law Journal Editors of the Philippines (ALJEP) on November 22, 1986 at the MLQU Auditorium.

[106]J. ZWICK, MILITARISM AND REPRESSION IN THE PHILIPPINES 24 (1982).

[107]*Id.*

[108]CONST., art. III, sec. 1.

dignity. Checkpoints put to question the capacity and willingness of the State to remain true to the principle that:

> The State values the dignity of every human person and guarantees full respect for human rights. [109]

Apparently, the Aquino Government is in a unique dilemna. It was catapulted to power through its advocacy of non-violence; but in power, it had to establish a working relationship with Marcos' main instrument of violence. In the words of Professor David, "because of the significant role played by the military in the February revolution, [Aquino] has, somehow, to accomodate their interests in her government."[110]

The military overthrow of the Marcos regime found the new leadership "incorporating the most powerful vestige of the overthrown regime as part of its administrative apparatus."[111] But in so doing, the government is treading on very dangerous grounds. This is because the military has a mind-set diametrically inconsistent with that of a man sincerely advocating non-violence and respect for human life. The "military mind" emphasizes the magnitude and immediacy of security threat. In estimating security threat, the military would rather err on the side of overstating the threat and oftentimes see threat where none exists.[112] This contention is easily shown by the appalling history of the miltary's deep involvement in human rights violations.[113]

In a democracy such as ours, peace and order should not be achieved at the expense of the people's primary and basic constitutional rights. The Bill of Rights is meant to be sustained in all situations and under any exigency. In *Valmonte*, the Supreme Court virtually emptied Article III section 2 of its reasonable requirement. Applying the *Terry* doctrine, by way of analogy, said constitutional requirement becomes meaningful only

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[109]CONST., art. II, sec. 11.

[110]David, *Revolution without Tears: Notes on People Power and the February 1986 Uprising in the Philippines*, 1 KASARINLAN: 4 JOURNAL OF THE THIRD WORLD STUDIES 2, 27 (1986).

[111]Abinales, *Demilitarization, The Military and the Post Marcos Transition*, a paper prepared for the 4th Meeting of the UN University Southeast Asian Perspectives Project, Thailand, 10-15 October 1986.

[112]*See* Hernandez, *The Military Mind, Its Implications for Civil Military Relations in the Philippines*, a paper presented in the Annual Convention of Psychologists in the Philippines: The Philippine Scenario After the February Revolution, Philam Life Auditorium, 5-7 August 1986.

[113]*See* generally J. ZWICK, *supra* note 108.

> when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. . . . Anything less would invite an intrusion upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.[114]

The fatal "inarticulate hunch" of the police officers that Parpan was a rebel fugitive goes against any and all basic consideration for the worth and dignity of human life, and unless our law enforcement officers show any indication of their commitment to respect and uphold these basic rights, the governmental interest of "protecting the peace and security" of the nation can not be justifiably placed over and above the individual's protection against unwarranted official intrusions.

The inevitable conclusion is that the legality of military checkpoints in our country is not in keeping with the mandate of the Rule of Law to protect and promote the civil and political liberties of individuals. In the words of Justice Isagani Cruz, commenting on the decision recognizing the legitimacy of military checkpoints,

> It is incredible that we can sustain such a measure. And we are not even under Martial Law.
>
> Unless we are vigilant of our rights, we may find ourselves back to the dark era of the truncheon and the barbed wire, with the Court itself, a captive of its own complaisance and sitting at the deathbed of liberty.[115]

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[114]Terry v. Ohio, *supra* note 25, at 21-22.

[115]Valmonte v. de Villa, *supra* note 80 (Cruz, J., dissenting).