MILITARY CHECKPOINTS AND THE RULE OF LAW: AN UNSETTLED PEACE FOR WHOM?

*Lorenzo B. Ziga**

In March 1987, following the removal of the Philippines from the United Nations watchlist of countries notorious for violations of human rights, representatives of the Lawyers' Committee, a New York-based lawyers human rights group, noted a profound improvement in the human rights condition in the country. It observed that where once human rights by the military were the rule, these had become the exception.[1]

Returning to the Philippines, however, in October 1987, two months after the aborted military take-over of the government in August, 1987 the same group noted a dramatic reversal of these gains and the serious problem in human rights resurfaced.[2]

These developments seemed light years away from the hope and the righteousness that infused President Corazon C. Aquino's Proclamation No. 2 which restored the privilege of the writ of *habeas corpus*. The same proclamation noted that the Filipino people "have established a new government bound to the ideals of genuine liberty and freedom for all"[3] and that the repression carried out by the former regime was "not warranted by the requirements of public safety since the existing rebellion could have been contained by government sincerity at reforms, by peaceful negotiations and reconciliation and by *steadfast devotion to the rule of law.* "[4]

The invocation of the rule of law seems ironic since fifteen years earlier, the same need to uphold the rule of law and maintain peace and order provided the basis for Proclamation 1081 which imposed Martial Law throughout the country. For a people with a strong legal tradition, the rule of law seems to have acquired the nature of a talisman which can be invoked to ward off all evils that threaten the nation. In the Philippines, when the government invokes the rule of law it is oftentimes to utilize the liberal shibolleth as a weapon against

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*Vice-Chairman, Philippine Law Journal Editorial Board, Schoolyear 1989-1991.

[1]LAWYERS' COMMITTEE FOR HUMAN RIGHTS, VIGILANTES IN THE PHILIPPINES: A THREAT TO DEMOCRATIC RULE (1988). pp. x-xvii.

[2]*Id.*

[3]PROCLAMATION No. 2, March 2, 1986.

[4]*Id.*, 2nd Whereas clause 2. Emphasis supplied.

political opposition, a maneuver born of an acute awareness that it is also a principle of legitimacy and therefore, a justification of political power and the right to rule.[5]

An unsettled peace

Armed rebellion is a constant in Philippine history. Hundreds of bloody uprisings during the four centuries of Spanish colonization culminated in the 1896 Revolution. Following the American occupation, the elites were co-opted into the new colonial order while in the countryside, a fierce struggle against the new rulers continued. This compelled the American civil administrators to pass laws designed to dampen the nationalist resistance.

In a parallel vein, socialist and marxist groups have had a long history in the country. These groups survived under the American regime despite repression and became fierce anti-Japanese fighters during the war. Even with the establishment of an independent government in 1946, most of these groups refused to surrender their arms and carried on a guerilla warfare against landlords and corrupt local officials in the countryside.

The political developments in the country did not resolve social conflicts. Various administrations did little by way of alleviating poverty or addressing the semi-feudal conditions in the countryside. Thus, agrarian unrest has continuously animated the insurgencies encountered by Philippine government.

With the additional measure of authority initially granted by the Court[6] and, later on, by his own fiat,[7] President Ferdinand Marcos, declared war on Communist insurgents, Muslim separatists, landlords, oligarchs and poverty.[8]

Meanwhile, in 1968, reflecting the rift in international communism between Moscow and Peking, a group of young intellectuals (most of them from the University of the Philippines) broke away from

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[5]G. FERRERO, THE PRINCIPLES OF POWER 20-27 (1942).

[6]Lansang v. Garcia, 42 SCRA 448 (1971). In this case, the court formulated its test on whether or not the President acted arbitrarily in suspending the privilege of the writ. After sifting through the documents presented to its both by the Executive and from the Senate Committee probing into the activities of communist insurgents in Central Luzon, the court upheld the Presidential suspension of the writ. The so-called *Lansang* doctrine would later on be used to validate the imposition of Martial Law on Septemberf 21, 1972. *See* Aquino, Jr. v. Enrile, 59 SCRA 183, (1974).

[7]PROCLAMATION NO. 1081, September 21, 1972.

[8]*See generally*, F. MARCOS, NOTES ON THE NEW SOCIETY (1973).

the Moscow-oriented Partido Komunista ng Pilipinas (PKP) and established the Communist Party of the Philippines (CPP). On March 29, 1969, the CPP organized its own military arm, the New People's Army (NPA).

Beginning with a hundred armed cadres, the CPP-NPA today has grown into a 30,000-man that has been tagged by the Philippine military as the single biggest threat to Philippine democracy. In a report to the U.S. Senate in 1985, it was noted that the CPP-NPA controls or is contesting control of settlements inhabited by at least 10 million people in a country with a population of 53 million.[9]

In 1974, the CPP-NPA defined the nature of its revolution as:

> . . . a national democratic revolution aimed at completing [the] struggle for national independence and giving substance to the democratic aspirations of our people. We have no recourse but to fight for national emancipation and social liberation against US imperialism, feudalism, and bureaucrat capitalism. . . .
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> Between armed struggle and parliamentary struggle, the former is principal and the latter is secondary. Every genuine revolutionary knows that the chief component of the reactionary state is the reactionary army. The Filipino people are helpless without their own army. They cannot take a single step towards smashing the entire military-bureaucratic machine of the enemy without a people's army. [10]

Feeding on long-festering issues such as poverty, corruption and government neglect, the NPA has grown in strength so much so that it now routinely attacks government forces. Many attacks on military outposts are intended to acquire weapons. By the end of 1983, the NPA claimed to have obtained 20,000 weapons including machineguns and grenade launchers.[11]

A few days after assuming office, President Aquino ordered the release of all political prisoners including top Communist leaders. It was later announced that the government would be conducting ceasefire talks with the National Democratic Front (NDF), the underground alliance of which the CPP-NPA is a leading light. Despite opposition from the Philippine military, a 60-day ceasefire agreement was signed between

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[9]COMMITTEE PRINT, THE PHILIPPINES: A SITUATION REPORT (1985), Staff Report to the Senate Select Committee on Intelligence, US Senate Nov. 1, 1985, as cited in THE PHILIPPINES READER. Daniel B. Schirmer and Stephen Shalom, editors, (1987) 315-318.

[10]A. Guerrero, Specific Characteristics of People's War in the Philippines, in Shirmer and Shalom.

[11]The Philippines: A Situation Report, *supra* note 9.

the Aquino government and the rebels. The talks would collapse however, in early 1987, following the death of farmers marching to Malacanang Palace.

On the other hand, the Aquino government had to deal with a restive armed forces. After a decade of Martial Law, the Armed Forces of the Philippines had become a force to reckon with in Philippine society. From the outset, the Aquino government had to deal with two factions in the military: one led by Chief of Staff General Fidel V. Ramos; the other composed of former Defense Minister Juan Ponce Enrile and his followers in the military (many from the Reform the Armed Forces Movement) together with forces loyal to the former President which favored a more overt role for the military in running the affairs of the government.[12]

These contending forces within the military resulted in repeated *coup* attempts against the Aquino government. Thus, compounding the problems confronted by the newly- restored democracy.[13]

The first casualty of armed conflict is human rights. As the Marcos government carried out an all-out war against the Communist rebels, reports of human rights violation mounted. In 1985, Sister Mariani C. Dimaranan, a well-known human rights advocate decried the violations that were being committed by the military.

> A survey of the human rights situation in the Philippines in the last two-and-a-half years defines these new trends: 1) There has been an alarming increase in cases of political arrest and detention, torture, extra-judicial killings, and kidnappings and disappearances; 2) there has been a growing tendency to victimize not only peasants, workers, urban poor residents, youth and students, but also a growing number of journalists, clergymen, intellectuals, professionals, and businessmen; and, 3) there has been a marked increase in human rights violations related to the counter-insurgency program of the Marcos government directed against New People's Army guerillas, their sympathizers, particularly in the countryside.[14]

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[12]*See generally* Chapter 12 (*Aquino's Thousand Days*), THE PHILIPPINE READER, *supra* note 9.

[13]The first coup attempt was by civilian supporters of the former President on July 23, 1986 followed closely by the aborted coup on November, 1986. A military group loyal to the former President attempted another coup on January 26, 1987 followed by the so-called Black Saturday coup in March of the same year. Another attempt at Villamor Air Base was followed by the August 27, 1987 coup led by renegade Colonel Gregorio Honasan.

[14]*See generally* M. DIMARANAN, THE HUMAN RIGHTS SITUATION AND SOCIAL CONSEQUENCES OF THE CRISIS IN THE PHILIPPINES (1985). Mimeo. Dimaranan would be

Her observations only reiterated the findings earlier made by the Amnesty International (AI) mission to the Philippines in 1981 when they found "that the security forces of the Philippines have systematically engaged in practices which violate fundamental human rights, including the right to life, the right to security of person and the right against arbitrary arrest and detention."[15]

These pressures took their toll on the so-called democratic space that followed the fall of the Marcos government, such that as President Aquino announced that her government would be discussing a ceasefire with the Communist rebels, it was made clear that should the talks fail the Armed Forces would resume all-out offensive against rebel positions and strongholds. The signal from the President came on March, 1987 when she directed the new graduates from the Philippine Military Academy to bring the government "a string of honorable victories".[16] This may well have ended all lingering hopes for peace as President Aquino concluded that "the answer to the terrorism of the left and right is not social and economic reform but police and military action."[17]

The Road to Oplan Mamamayan

Insurgency and the measures to contain it have become a central focus of Philippine governments in recent times, defining not only the natioal security compass but the entire tenor of foreign and domestic affairs as well. In the process, these measures have presented grave constitutional considerations.

In early 1983, the Marcos counter-insurgency program, *Oplan Katatagan* was launched. The objectives of *Oplan Katatagan* were "winning the hearts and minds of the people through military operations and civilian operations" and "neutralizing the insurgent leadership and political infrastructure, while denying them access to manpower and material resources."[18]

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appointed as a member of the Aquino government's Presidential Commission on Human Rights which would later on be a constitutional body.

[15]Amnesty International Mission to the Republic of the Philippines, 11-28 November 1981, London: Amnesty International Publications, 1982, 10-14.

[16]President Corazon C. Aquino, Speech at the Philippine Military Academy, March, 1987.

[17]*Id.*

[18]R. Simbulan, *Philippine Counter-Guerilla Programs in the 80's*, in LOW INTENSITY CONFLICT: THEORY AND PRACTICE IN CENTRAL AMERICA AND SOUTHEAST ASIA (1988).

The first phase involved military operations to clear an area of the rebels' politico-military apparatus which included the insurgents' propaganda and armed machinery, and progressive and militant people's organizations (labor, farmers, urban poor, students, human rights groups). The second phase was to hold and defend the areas that have been cleared by establishing checkpoints, detachments and patrols. A third phase consisted in stimulating economic and livelihood activities. In the last phase, control over the community was further consolidated when the Civilian Home Defense Force (CHDF) was formed.[19]

The roots of this strategy may well be traced to the defeat suffered by the United States in Vietnam which generated a backlash of American public opinion against the intervention and involvement of American combat troops in overseas conflicts. The primary strategy is the creation and support of local forces with military and economic aid provided not only by the U.S. government but also by non-government agencies.

The Low Intensity Conflict (LIC) derives its name from the type of weaponry used which is at the the level of small scale conflict outside of conventional war. Ultimately, the LIC is a multidimensional strategy embracing political, economic, and psychological elements with the military component only a distant dimension. For the United States, it is a low-cost, protracted strategy which avoids direct US involvement.[20]

Nowhere is this strategy more apparent than in the latest counter-insurgency plan drafted by the Aquino government, *Oplan Balikwas*. It is in essence "winning the war against the insurgency by a war of quick decisions or a war of rapid conclusion."[21] Crucial to the success of the plan is the organization of "civilian volunteers organizations" and the Civilian Armed Forces Geographical Units (CAFGU) at the barangay or grassroots level which would function alongside "aggressive military operations". This is in line with the vision of Defense Secretary Fidel V. Ramos who said that "what we need is decisive success, as quickly as say, two to three years. A protracted war would drain us, blight the hopes of at least our generation and render our final victory a pyrrhic one."[22]

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[19] *Id.*

[20] Malloy, *A Legacy of the Reagan Doctrine: Low Intensity Conflict*, in LOW INTENSITY CONFLICT, *supra* note 18.

[21] Simbulan, LOW INTENSITY CONFLICT, *supra* note 18.

[22] Simbulan, *id.*

A Dangerous Enterprise

It is within this context that the Lawyers Committee returned to the Philippines, and observed that an irrevocable transformation had taken place. It noted not only the alarming increase in human rights violations but also that "the military's most dangerous enterprise has been its role in recruiting and arming citizens' groups that participate in counterinsurgency operations."[23]

Although the Marcos regime had implicitly sanctioned the operation of paramilitary groups, the incidents more or less fell into the greater pattern of deceit, cruelty and repression that characterized a regime that flaunted the rule of law. By late 1987, however, the new government installed in its place, functioning under a new constitution with more sophisticated guarantees for individual freedoms and liberties, allowed the organizational existence of over 200 vigilante groups in the country.[24]

Curiously, enough these groups came about in the process of searching for peace, law, and order. In the countrysides, following the breakdown of peace negotiations between the National Democratic Front (NDF) and the government, para-military groups mushroomed and presented a grave problem with their reported abuses. In line with the counterinsurgency thrust of the Aquino government, the initial success of the so-called vigilantes in Davao City's Agdao district led President Aquino to hail the experience and to call for the formation of other similar groups in the country. On hindsight, the move would seem precipitate and hasty. Later on, as the Senate Committee on Justice and Human Rights noted, police and military personnel used vigilante groups and their members "to perform police and military activities such as armed patrols, manning of checkpoints, and in search and seizure operations."[25]

In a move that may be perceived to spring from the same vein, the country's commercial and government center, Metro Manila, became the object of similar counter-insurgency measures. Pursuant to Letter of Instruction 02787 of the AFP General Headquarters, on January 20, 1987, the National Capital Region District Command (NCRDC) was activated to conduct security operations within its area of responsibility and peripheral areas, to establish an effective territorial defense, maintain peace and order and provide an atmosphere conducive

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[23] LAWYERS' COMMITTEE FOR HUMAN RIGHTS, *supra* note 1, x-xvii.

[24] *Id.*

[25] Congress of the Philippines, Senate, *Report of the Senate Committee on Justice and Human Rights on Vigilante Groups* (1988).

to the social, economic, and political development of the National Capital Region.

This move was directly seen as a revival of the military checkpoints and roadblocks of the Marcos regime.

Public reaction to the return of checkpoints ranged from outright indifference to genuine concern. In August 1987, Sen. Juan Ponce Enrile delivered a privilege speech denouncing the checkpoints and the roadblocks. Whatever salutory effects of this caveat was blunted by later events. While this caused the reduction of roadblocks and checkpoints, it also decreased the peripheral security of the Metro Manila area such that the forces of renegade Colonel Gringo Honasan, riding public utility buses, were able to enter Metro Manila without great difficulty shortly afterwards.

Valmonte v. de Villa

Along with these developments came the Supreme Court's decision in *Valmonte v. de Villa*.[26] Ricardo C. Valmonte, a member of the Integrated Bar of the Philippines (IBP) and a resident of Valenzuela, Metro Manila, in his capacity as a taxpayer, sought a preliminary injunction and/or temporary restraining order seeking the declaration of checkpoints in Valenzuela, Metro Manila and elsewhere as unconstitutional. He further sought the dismantling and banning of the same.

> On January 20, 1987, the Armed Forces of the Philippines activated the National Capital Region District Command (NCRDC) through Letter of Instruction 02787 charging it with securing the Matro Manila area. The military established checkpoints in Valenzuela as well as in other parts of Metro Manila to carry out its mission. Petitioners averred that Valenzuela residents were worried of being harrassed and of their safety being compromised because of the "arbitrary, capricious, and whimsical" disposition of the military manning the checkpoints. Their apprehensions increased when, on July 9, 1988, Benjamin Parpon, a supply officer of the municipality of Valenzuela was shot by soldiers manning one such checkpoint along MacArthur Highway at Malinta, Valenzuela after he ignored or refused to submit himself to the checkpoint. There were other instances where those stopped by the checkpoints while not killed were harrassed. Valmonte himself claims to have been searched on several occassions. He assailed the blanket authority given to the military to conduct searches and/or seizures without warrants and/or court orders in violation of the constitution.

[26]Valmonte v. De Villa, 178 SCRA 211 (1989).

The court began correctly enough by reiterating that what constitutes a reasonable or unreasonable search and seizure *in any particular case* is a question the judge must be determined from evaluating the circumstances involved. The constitutional right against unreasonable searches and seizures is a personal right which may be invoked only by a party whose rights have been violated. Justice Teodoro Padilla, the *ponente,* noted that *Valmonte* failed to state details of the incidents that would amount to a violation of his rights. What *Valmonte* presented was, in the court's language "general allegation" which prevented the court from determining whether there indeed was a violation of Valmonte's rights. The court also noted that the petitioners' concern for their safety and apprehension of being harrassed by the military were not sufficient grounds to declare the checkpoints illegal *per. se.*[27]

As if it was not enough that Valmonte lost his case because of generality and vagueness, the decision awkwardly proceeded to throw a similar general and blanket approval over all such acts of the military. "True," the court said, "the manning of checkpoints by the military is susceptible to abuse by the men in uniform, in the same manner that all governmental power is susceptible to abuse. But at the cost of occassional inconvenience, discomfort, and even irritation to the citizen, the checkpoints during these abnormal times, when conducted with reasonable limits are part of the price we have to pay for an orderly society and a peaceful community."[28]

Justice Isagani Cruz and Justice Abraham Sarmiento both filed strong dissents. Justice Cruz felt that a broad assertion of national security must not be at the cost of individual rights. "The sweeping statements in the majority opinion are as dangerous as the checkpoints it would sustain and fraught with serious threats to individual liberty. The bland declaration that individual rights must yield to the demands of national security ignores the fact that the Bill of Rights was intended precisely to limit the authority of the State even if asserted on the ground of national security."[29]

On the other hand, Justice Sarmiento pointed out that the burden of proving the reasonableness of the search lay on the State and that the petitioners need not therefore have illustrated the "details of the incident" in all their "gore and gruesomeness."[30]

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[27] *Id.*
[28] *Id.*
[29] *Id.*, Dissenting opinion, Justice Cruz, 217.
[30] *Id.*, Dissenting opinion, Justice Sarmiento, 219.

Curiously, in proceeding to vest approval on the acts of the military, the court announced that it was taking judicial notice of the shift of the NPA to the urban centers, the proliferation of unlicensed firearms, and the deteriorating economic conditions which have brought about the "alarming rise in lawlessness and violence."[31]

Primarily, the dismissal was premised on Valmonte's failure to show concrete details that would enable the court to decide whether the searches were unreasonable or not. While the ban on such searches are determined by the details that obtain in each case, the court -- after presenting Valmonte with his failure -- was inspired to enumerate its own list of police-citizen encounters which fall under the category of reasonable searches. From its own list -- a reality constructed and derived from U.S. casebooks -- the court then validated the checkpoints as necessary evils to Philippine civilization.

An occassional inconvenience?

What to the court was an "occassional inconvenience" the Senate Committee on Justice and Human Rights found cause for alarm.[32] Following persistent reports on the proliferation of vigilante groups in parts of the country and their activities which took on some of the law

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[31]*Id.*, 216-217.

[32]The following are those who attended and/or testified at the Committee hearings:

November 3, 1987: Bishop Antonio Tobias of Pagadian, Zamboanga del Sur; Rev. Francisco Ugsad of the Alliance of Concerned Visayans in Metro Manila; Dr. Maria Serena Diokno of the National Movement to Disband Vigilantes; Mr. Arnel de Guzman of the Philippine Alliance of Human Rights Advocates; Atty. Arnedo Valera of the Structural Alternative to Legal Assistance for the Grassroots; Lolita Dellosa, Miling Manresa, Ramon Mamolo, and Alejo Cabanero, all refugees from Leyte.

November 5, 1987: Defense Secrtary Rafael Ileto; Chairman Mary Concepcion Bautista and Commissioners Samuel Soriano and Hesequio Malillin of the Commission on Human Rights; Director Lorney K. Dilag of the Department of Local Governments (DLG).

November 11, 1987: Mr. Rufino Juico, Mrs. Betty Profeta, Ms. Milagros Perez of the Polytechnic University of the Philippines; Mr. Maximo Villarente of the Manila Public Schools Teachers Association.

November 18, 1987: Lt. Gen. Renato de Villa, Deputy AFP Chief of Staff; Brig. Gen Alfredo Lim and Col. Edgar Dula Torres of the Western Police District (WPD); Atty. Arno Sanidad of the Free Legal Assistance Group (FLAG); and, Dr. Maria Serena Diokno.

December 2, 1987:Fr. Jack Walsh,; Fr. Sean Mcdonagh, Fr. Charles Meagher; Fr. Thomas Matti; Mayor Butch Veloso, Tacloban City.

January 13, 1988: Lt. Col. Franco Calida, Davao City Metrodiscom chief; Lt. Col. Romeo Maganto, WPD Tondo Station Commander; Director Marceliano Cosio and Assistant Secretary Chuch Leung of the Department of Local Governments; Eddie Guanzon, Elsie Estares, and Romeo Refuerzo of the Kongreso ng Pagkakaisa ng maralita ng Lungsod.

enforcement and anti-insurgency functions of both the Armed Forces and the police, the Committee conducted a series of public hearings from November 3, 1987 to January 13, 1988.[33]

While the Committee was primarily interested in the activities of the said para-military groups, also known as Civilian Volunteer Self Defense Organizations (CVSDOs), Senator Wigberto Tanada, Committee chairman, noted that there was a need to get "a full (and) comprehensive picture of the issues raised by the problem."[34]

The Committee observed that there was no statutory or legal basis for the guidelines on the CVSDOs issued earlier by a Cabinet sub-committee composed of the Department of NationalDefense (DND), Department of Local Government (DLG), and the Commission of Human Rights (CHR). In this regard, the then Defense Secretary Rafael Ileto admitted that there is no specific law that would authorize them to issue the guidelines but they thought "the functions fall directly under them."[35] Secretary Ileto also confirmed that "there was no legal basis for the organization of the vigilante groups, and that the inter-agency committee was not created by an executive order and that the sub-committee recommendations do not have the force of law."[36]

The Senate Committee unearthed more dangerous enterprises carried out by the para-military groups most crucial of which was the second of its findings that certain police and military personnel use vigilante groups and their members to "perform police and military activities such as armed patrols, *manning of checkpoints* (emphasis supplied), and in search and seizure operations."[37]

In its main report, the Committee cited the food blockades as among the more notorious and flagrant abuses committed by these groups manning the checkpoints:

> 1) . . . in La Paz, Leyte, as recounted by Rev. Ugsad, [the residents] were made to go through checkpoints whenever people from the barangays go to the poblacion to buy goods and provisions. The people are asked by vigilante group members to pay three pesos (₱ 3.00) at every checkpoint. In the case of rice, if a cavan is bought, only one or two gantas are allowed and the rest of the rice is left at the checkpoint. The people were unable to bring and sell their copra at the poblacion; neither could they buy goods from the

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[33]COMMITTEE PRINT, *supra* note 9, at 1.
[34]*Id.*, at 2.
[35]*Id.*., at 13.
[36]*Id.*
[37]*Id.*, at 10.

> poblacion to sell in their barangays. When allowed, purchases were limited . . .[38]

In the report submitted by the Commission of Human Rights to the Committee, the same food blockade cases were reported to have occured in Panay, Iloilo, Negros, Mindanao, and Kalinga-Apayao.[39]

The Task Force Detainees Philippines (TFDP) reported that from January to August, 1987, there were four such food blockade incidents in Luzon affecting 17 barangays; one in Visayas affecting one municipality. The same report also listed an economic blockade in a *sitio* and *barangay* in the Visayas.[40]

In Davao del Sur, the TFDP reported that the para-military group NAKASAKA (Nagkahiusang Katawhan alang sa Kalinaw or United People for Peace) organized by Governor Douglas Cagas, has become "a quasi-police group that is authorized to make citizens' arrest and has set up checkpoints along the roads."[41] Lt. Col. Sumaoy, an aide of Col. Jesus Magno, the regional military commander, was reported to have said that "people could be stopped at the checkpoints" if they were carrying "Marxist materials" although Gov. Cagas would later hedge saying "they could not be arrested for that, but only for actually being a Marxist."[42]

In Davao City's Agdao District, home of the *Alsa Masa* (People Rising), the first of such para-military groups, residents were required to join the *Alsa Masa* patrols and help man the *Alsa Masa* checkpoints around the city. The coercion is somehow softened by the token P 20 allowance given to those pressed into service.[43]

A Tyranny of Fear

That the incidents involving checkpoints are merely a small fraction of the ordeal undergone by Filipinos in the countrysides was sensed by then Chief Justice Claudio Teehankee when he said that if the vigilante phenomenon and their activities got out of hand, it could even be worse than the dreaded secret marshalls of the Marcos regime

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[38] *Id.*
[39] *Id.*, Annex L-1, at 4.
[40] *Id.*, Annex L-2.
[41] *Id.*, Annex L-3, at 18.
[42] *Id.*
[43] *Id.*, Annex M-8.

that ran up a record body count of 160 alleged holdup men in less than two years.[44]

What the Supreme Court was presented with in the Valmonte case was merely a small fraction of a more complex and tangled issue which involves most of the initiatives taken by the government for its anti-insurgency campaign. Given the presence of the free press and other watchdog groups in Metro Manila, the justices were confronted with a still sanitized version of checkpoints which outside of Metro Manila left communities ravaged and countless victims in its wake. For while the city is confronted with some problems of law enforcement, the conditions that obtain in the city certainly do not compare with the conditions prevailing in the countryside where the government competes with the insurgents for the hearts and minds of the people.

The checkpoints in the*Valmonte* case at least are manned by elements of the NCRDC who may be presumed to have trained and possess a high level of discipline, and an awareness of individual rights and liberties guaranteed by the Constitution. Outside of Metro Manila, *per* the findings of the Senate Committee on Justice and Human Rights these checkpoints may either be of the military, the paramilitary groups, or manned jointly by the military and the paramilitary groups.

Certainly the constitutional prohibition against unreasonable searches and seizures may not be used to discourage citizens from actively helping law enforcers apprehend criminals.[45] Since the constitutional provision was historically meant as a restraint on the activities of the State,[46] the protection against unreasonable searches and seizures do not extend to searches and seizures undertaken by a private individual when such is accomplished without police participation.[47] When the civilians carry out such activities under the supervision, request, suggestion or order of police or military authorities, then such civilians are deemed to have shed their private capacities and the constitutional provision applies to them as well.[48]

This situation obtains in the present case when the CVSDOs, absorbing all paramilitary groups, were placed under the leadership of the AFP and the Integrated National Police (INP) by virtue of the

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[44]Manila Journal, April 16, 1987. *See also* Hildawa v. Ponce Enrile, 138 SCRA 146 (1985).

[45]Coolidge v. New Hampshire, 403 U.S. 443 (1971).

[46]Burdeau v. Mcdowell, 256 U.S. 465 (1920).

[47]U.S. v. Winbush 428 F 2d 357 (1970); U.S. v. Goldberg, 330 F.2d 30 (1964); Burdeau v. Macdowell, *id.*.

[48]Corngold v. U.S., 367 F. 2d 1 (1966).

guidelines issued by the sub-cabinet committee on October 30, 1987.[49] Under the said guidelines, the AFP and the INP would "lead the citizenry in their effort to maintain peace and order in their respective communities."[50] The guidelines, furthermore, spell out the terms by which such groups are in effect transformed into agents of the Armed Forces and the police.[51]

As may be seen thus far, the checkpoints that obtain in the country operate not so much as measures to enforce laws concerning persons, property, or contraband goods but actually form part of the intricate strategy against the communist insurgency and other forces that may threaten national security. They are used either to actively pursue or flush out insurgents or consolidate the control of government forces over areas formerly held by the insurgents by minimizing contact between the rebels and the population who may be predisposed to offer them moral and material support.

Thus, checkpoints in the country are like phantoms that persist with time and like chameleons, blend with the necessity or convenience that decreed their existence. In this light, how the military describes them differs greatly from the perception of those who have had the misfortune of being at the wrong end of the gun of those who man them.

By mid-1989, the new Secretary of Defense, Fidel V. Ramos would reiterate DND policy on checkpoints:[52]

> 1. Military checkpoints must be temporary and mobile.
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> 2. They must be led by an officer or at least a non-commissioned officer.
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> 3. All military personnel assigned in the checkpoints must be in uniform.
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> 4. Only the PC provincial commander or the Army battalion commander or higher authorities are allowed to establish checkpoints.
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> 5. Hastily established checkpoints must be coordinated with local authorities, and if a military operation has something to do with

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[49]INTER-AGENCY SUB-COMMITTEE, GUIDELINES ON CIVILIAN VOLUNTEERS SELF DEFENSE ORGANIZATION. Document from the Department of National Defense, Republic of the Philippines.

[50]*Id.*, *supra* note 49.

[51]*Id.*

[52]The Philippine Star, September 4, 1989.

> their installation, the local official must be informed as soon as possible.
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> 6. Military and other personnel assigned in the checkpoint shall be rotated.
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> 7. Checkpoints established by government agencies other than the military such as the DENR, the EIIB, or the LTC must be coordinated with local officials and made clear that they are in support of local or civilian law enforcement work.

These guidelines would offer scant consolation to a country that still has to complete its emergence from an authoritarian past where the military played an inordinate predominance over the national consciousness a community faced with the reality that the military still needs to completely shed both its trappings of power and heightened sense of its force.

In inspite of whatever effects these guidelines may have, a number of conditions alter the tenor of the encounters between the nation's law enforcers and the community. In this regard, with the checkpoints coming at the heels of, if not actually intimately related to paramilitary groups in the rural areas, the checkpoints and the characters so involved in them, function as a reminder that both the people's freedoms and their democracy remain as delicate as dew.

The Senate Committee report notes: "The existence and operations of many vigilante groups subject the local population to a grip of paralyzing, debilitating fear that greatly hampers their ability to work for their livelihood and the welfare of their families and communities. Such fear also prevents them from exercising their constitutional right to organize and collectively solve their community problems."[53]

Searches and Seizures

In the light of the pronouncements of the Court in *Valmonte* particularly with the danger that zealous government functionaries may seize the *obiter* statements as license for further actions along this line, it is well to remember one constitutional feature that has been constantly reiterated in the various revisions of the Philippine constitution has been the protection against unreasonable searches and seizures.

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[53]COMMITTEE PRINT, *supra* note 9, at 17.

In the 1935 Constitution, the fourth amendment[54] of the Constitution of the United States was reproduced almost *in toto* as Paragraph 3 of the Section 1 of the Bill of Rights.[55]

Thirty-eight years later, in the light of the landmark case of *Stonehill v. Diokno*[56] and despite an expanded provision of the commander-in-chief powers, the 1973 Constitution restated a similar although diluted constitutional guarantee foreshadowing the Martial Law phenomena of Arrest, Search, and Seizure Orders (ASSOs), Presidential Commitment Orders (PCO), and Preventive Detention Action (PDA) which were warrants issued by the President.[57]

Article 3, Section 2 of the 1987 Constitution restated this provision as follows:

> 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 no search warrant or warrant of arrest shall issue except upon probable cause to be determined *personally by the judge* after examination under oath of affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (emphasis supplied)

The evolution of the provision reflects the prevailing political temperaments of their times proving that since the law articulates State power, its complexion assumes the features of the political system that it serves. This is best shown when the Supreme Court, in the companion cases of *Garcia-Padilla v. Ponce Enrile* and in *Morales v. Ponce Enrile* used the constitutional guarantee itself to validate the

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[54]The Fourth Amendment of the U.S. Constitution reads: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but on probabale cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

[55]CONST. (1935), art. III, sec. 1 (3): The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, to be determined by the judge after examination under oath of affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[56]20 SCRA 383 (1967).

[57]CONST. (1973), art. IV, sec. 3: 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 not be violated, and no search warrant shall issue except upon probable cause to be determined by the judge or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons of things to be seized.

continued detention of prisoners arrested by virtue of the dreaded Presidential Commitment Order (PCO).[58] Nevertheless, the guarantee against illegal searches and seizures is a fundamental hallmark of constitutional regimes and of democracies. As a primary component of the Bill of Rights which by nature defines the boundaries of governmental power over its citizens, the guarantee crystallizes the notion of individual liberty as opposed to tyranny and authoritarianism.

Each case involving unauthorized searches and seizures would pose a judicial question considering the circumstances, purpose, probable cause, manner, the place searched or thing seized, the character of articles procured, and the nature and importance of the crime suspected. In this regard, the fundamental principle, however, is that while the grant of rights is not in all cases absolute, statutes derogating constitutionally protected rights must be construed strictly against the State and the person invoking them since the proceedings of search and seizure are summary and drastic.[59]

In this juridiction however, government has, by tradition, always been uncomfortable with this constitutional provision and various devices have been enacted to expand government action with regard to the individual's right of privacy. More recently, the Marcos government, when it experienced the initial stages of what would later become a full blown economic debacle after seven years of the economy's dependence on agricultural exports and massive foreign loans. President Marcos issued General Order . No. 66 on September 13, 1980, authorizing the Chief of the Philippine Constabulary to establish checkpoints, update the list of wanted persons and conduct dragnet operations. This would be amended by Gen. Order No. 67 dated October 8, 1980.

The issuance also ordered the PC chief to establish checkpoints in all big establishments, amusement centers and public and private buildings to inspect the bags and luggages. Any person found carrying firearms, explosives or incendiary and other material used in the manufacture of firearms and explosives would be arrested and detained and charged accordingly.[60] Furthermore, all passengers and cargo whether coming in by land, sea, or air transport including mail were to be subjected to the same inspection.[61] Those who were detained in accordance with the order as well as those who refused to be inspected

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[58]Garcia-Padilla v. Ponce Enrile, 121 SCRA 472 (1983); Morales v. Ponce Enrile, 121 SCRA 538 (1983).

[59]Alvarez v. Anti-Usury Board, 64 Phil. 33 (1937).

[60]Gen. Order No. 66, OG 4224-4226 (1980).

[61]*Id.*, par. 2.

would be detained until ordered released by the President.[62] General Order No. 67 would limit this detention to 72 hours from the time of arrest while ordering the arrest and detention of any person found with the said materials as well as carrying firearms without permit outside their residences.

The constitution's emphatic prohibition against unreasonable searches and seizures is amplified by the later requirements that the warrants issued must be based on probable cause that shall personally be determined by a judge. A search warrant, moreover, must be in connection with one specific offense the judge should determine.[63] The property to be seized must be related to a specific offense as well. In this instance, probable cause has been defined by the Court as such reasons supported by facts and circumstances, as will warrant a cautious man in the belief that his action and the means taken in prosecuting it are just.[64]

The traditional exeptions to the requirement of a validly issued search warrants prior to the actual search are search and seizure by customs authorities[65] and regulatory searches conducted by administrative and executive officials in exercise of their regulatory or licensing powers.[66]

While it may be argued that such right may be waived when a person voluntarily submits himself to a search, by the very nature of the circumstances obtaining in our roadblocks and checkpoints, a refusal to submit to such searches may have dire consequences. For example in the Valmonte case, the proximate cause of the filing of the case was the shooting of a municipal supply officer by soldiers manning a checkpoint in Valenzuela. The consent to a search and seizure must be given knowingly and intelligently.

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[62]*Id.*, par. 7.

[63]REV. RULES ON CRIMINAL PROCEDURE., Rule 126, Sec. 3. For a judicial definition of probable cause *see* Uy Keytin v. Villareal, 42 Phil. 886 (1921); People v. Rubio, 57 Phil. 384 (1932).

[64]U.S. v. Addison, 28 Phil. 566, 570 (1914).

[65]TARIFF AND CUSTOMS CODE, Sec. 2211. Right to Search Vehicles, Beasts, and Persons - It shall also be lawful for a person exercising authority as aforesaid to open and examine any box, trunk, envelope, or other container, wherever found, when he has reasonable cause to suspect the presence therein of dutiable or prohibited article or articles introduced into the Philippines contrary to law, and likewise, to stop, search, and examine any vehicle, beast or person reasonably suspected of holding or conveying such article as aforesaid.

[66]Bautista, *The Philippine Law on Search and Seizures: A Restatement*, 51 PHIL. L. J. 219, 225 (1976).

Conflict and Human Rights

The checkpoints and roadblocks that are presently set up in the country may be viewed more critically in the following framework: if it is established that government agents have engaged in a search or seizure that affected the party's undefeased ligitimate expectations of privacy in his person, house, papers, or effects and whether such intrusions were reasonable.[67]

Recent trends require a more rigorous predicate than probable cause and a warrant for surgical search. Under this rule, governmental conduct violates the prohibition against unreasonable searches and seizures if the government does not possess the predicate required for the kind of activity undertaken including probable cause to search or "to associate seized material with criminal activity, reasonable suspicion to detain persons or things, a judical warrant or exigent circumstances, administrative or statutory authorization of inspections and every other pre-intrusion requisite to the legality of the conduct."[68]

Apart from the constitutional prohibition on unreasonable searches and seizures, checkpoints may infringe as well on the people's right to travel.[69]

Even as the right to travel is not absolute, it has been held that "those lawfully within the country, are entitled to use the public highways, have a right to free passage without interruption or search unless there is known to be a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."[70]

The rights of pedestrians and vehicles to use highways are "mutual, reciprocal, and equal."[71] Neither vehicle nor pedestrians may use the public way disregarding the other's right to use it and mutual accomodations must be made, anticipating each other's movements as well as recognizing the dangers that accompany the manner of the highway's use by the other.[72]

In the exercise of its police power however, the state may limit, control, and regulate the use of public highways by vehicular or

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[67]Junker, *The Structure of the Fourth Amendment: The Scope of the Protection*, 79 J. OF CRIM. LAW AND PSYCH. 1105, 1108 (1989).

[68]*Id.*, citing Ker v. California, 374 U.S. 23 (1963).

[69]CONST. (1987), art. III, Sec. 6.

[70]Carroll v. U. S., 267 U.S. 132 (1924).

[71]Williamson v. Garrigus, 228 Ark. 705 (1958).

[72]Mahan v. State, 172 Md. 373, (1937).

pedestrian traffic.[73] After all, the right to operate an automobile on state highways is not a guaranteed right but is a privilege bestowed by the State upon those of its citizens who have qualified.[74] The regulation however, must be both reasonable and impartial. Moreover, the power to regulate vehicles and their use of the public highways may not be used indirectly to control and regulate the business of the user.[75]

Vehicles have been considered to come under the scope of the constitutional protection against unreasonable searches and seizures as "effects."[76] Elsewhere, courts have upheld the validity of roadblocks by police to stop automobiles passing a certain point in order to check for driver's licenses and vehicle registration certificates.[77]

The court noted in the Valmonte case, similar cases of inspections where the police officer draws aside a curtain of the vehicle which parked on public grounds, or simply looks into a vehicle or flashes a light through the vehicle's window.[78]

In the cases of searches on vehicles the exception to the warrant requirement takes place: a) as an incident to a lawful arrest where a search of the premises where the arrest was made is in order to find and seize things connected with the crime as in *Chimel v. California*;[79] b) as evidence in plain view;[80] c) seizure of contraband or of goods for which duties have not been paid; and, d) searches and seizures conducted pursuant to a waiver of that right by the accused.

It may be noted that search of premises incident to a lawful arrest and the plainview doctrine in the Philippines have evolved into rules of procedure; intelligent and knowing waiver is allowed by the Constitution, while in the seizure of goods and contraband the law enforcement officers carry out such searches in proximate relation if not expressly authorized by the Tariff and Customs Code and in the *Carrol* case, by the Prohibition Act.

In our case, it may be difficult to find such statutory reference for the checkpoints and the conduct of the military men and their agents

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[73]Clark v. Poor, 274 U.S. 554 (1926); Frost v. Railroad Commission, 271 U.S. 583 (1925).
[74]State v. Kabayama, 226 A. 2d. 760, 763 (1967).
[75]Hertz v. Siggins 359 Pa. 251 (1948).
[76]State v. de Ford, 250 Pacific 220 (1926).
[77]State v. Kabayama, *supra* note 74.
[78]Valmonte v. De Villa, *supra* note 26.
[79]395 U.S. 752 (1969).
[80]Coolidge v. New Hampshire, *supra* note 45.

who man such checkpoints. Of further concern is that the *Valmonte* case tackled a novel issue but failed to offer help to either the pedestrians or the vehicles that have encountered such checkpoints. It may be noted that courts have admitted the impracticality in certain cases of obtaining warrants to search vehicles but have consistently stressed the importance of probable cause in the same instances.

In *Chambers v. Maroney*,[81] the U.S. Supreme Court said:

> We have made a somewhat extended reference to these statutes to show that the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically from the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile, for contraband goods, where it is practicable to secure a warrant because the vehicle can be quickly moved out of the locality or juridiction in which the warrant must be sought.
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> The measure of legality of such seizure is therefore, that the seizing officer shall have reasonable or probable cause for believing that the automobile which he stops and seizes has contraband liquor therein which is being illegally transported.

In *Almeida v. Sanchez*[82] however, the court clarified that exigent circumstances[83] notwithstanding, there is still a need for probable cause before an automobile may be stopped and searched in the highway. In this instance, probable cause was a minimum requirement for a reasonable search permitted by the constitution. Rulings of the Philippine Supreme Court[84] in this context have cited *Carrol v. U.S.* in sustaining the validity of the seizure of undervalued and misdeclared goods after the trucks containing them were stopped and searched. In *People v. CFI of Rizal*,[85] the court however held that probable cause must exist. It must be pointed out that Carrol did not do away with the probable cause requirement but merely relaxed the need for a warrant on the grounds of practicality.

The frisking of civilians in checkpoints, provides occassion where the constitutional protection against unreasonable searches and seizures come to play as in *Terry V. Ohio*,[86] the U.S. Supreme Court said that "the Fourth Amendment right against unreasonable searches and

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[81] 399 U.S. 42 (1970).
[82] 413 U.S. 266 (1973).
[83] Coolidge v. New Hampshire, *supra* note 45.
[84] Papa v. Mago, 22 SCRA 857 (1968).
[85] 101 SCRA 86 (1983).
[86] 392 U.S. 1 (1968).

seizures belongs as much to the citizens in the streets as to the homeowner closetted in his study to dispose of his secret affairs."[87] Holding that the Fourth Amendment protects people not places, the court held that police "stop and frisk procedures" are not outside the purview of the fourth Amendment which governs 'seizures' of the person not eventuating in 'arrests' in the traditional terminology; whenever a police accosts an individual and restrains his freedom to walk away, he has 'seized' that person and a careful exploration of the outer surfaces of a person's clothing all over his body in an attempt to find weapons is a 'search', a serious intrusion upon the sanctity of the person which is not to be taken lightly."[88]

In the course, however, of defining this new level of police conduct, the court observed that, since not all personal intercourse between police and citizens involve seizures of person, it is only when the officer by means of physical force or show of authority has restrained the citizen's liberty that a seizure has occured.[89] From *Terry* would evolve a framework where police encounters with citizens are placed into one of these categories: a) communication between police and citizens involving no coercion or detention and therefore outside of the 4th Amendment; b) brief seizures that must be supported by reasonable suspicion; and c) full-scale arrests that must be supported by probable cause.[90]

Since *Terry* did not define precisely when a seizure has occured, attempts were made in the next two decades to develop such a precise formulation. In *U.S. v. Mendenhall*,[91] in a plurality decision penned by Justice Stewart and joined only by the then Justice but later on Chief Justice Rehnquist, the court explained that an encounter is a brief seizure and not merely a communication involving no coercion or detention if a reasonable person would feel free to end the encounter and walk away from the police officer. If so no seizure had taken place and the 4th Amendment does not apply. If not, the citizen has been seized and police conduct must be tested by the reasonableness required by the amendment.[92]

The Mendenhall test would later be adopted by the majority in *Florida v. Royer*,[93] and has since then been widely accepted by state

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[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] U.S. v. Berry, 670 F. 2d. 583, 591 (1982).
[91] 446 U.S. 544, (1980).
[92] *Id.*
[93] 440 U.S. 491, (1983).

courts.[94] This test however has become a favorite straw man since citizens almost always do not feel free to walk away from policemen and the police also find it difficult to apply the standards in the field. It has been suggested that instead of this intricate and unworkable approach the test should instead be a rule based on the purpose for which the police initiates the encounter with the citizen.[95] This test however may prove even more difficult in our setting where the masses in the countrysides would almost always feel overwhelmed by military power and where checkpoints are manned by soldiers and CVSDOs bristling with arms. The Philippine military is not known for its sense of humor and equanimity. Furthermore, the Senate Committee found out that some CVSDOs are themselves notorious police characters.[96]

The Rule of Law

While reality breathes life into the law, the constant dilemma of constitutionalism in the Philippines has not been the absence of a robust constitutional tradition but the difficulty our courts have had in accomodating the political realities of the moment without sacrificing the spirit of the Constitution.

If parallels be observed, recent pronouncements of the Court – unerringly supportive of challenged actions of the Aquino government – bring to mind a similar chain of decisions that favored and ultimately legitimized the extended one-man rule of the former President. Since the individual incidents that gave rise to these cases had profound implications on the fate and stability of the Aquino government, the role of the Court at this particular juncture may well be a case of *deja vu*. In many instances during the early years of martial law, the Court was moved to invoke the uniqueness of the circumstances as it proceeded to uphold the validity of official actions being challenged as its decisions unfailingly cited the perils faced by the New Society.

It must be borne in mind that while the court in rendering Its judgment functions as a legitimizing authority, the lessons all too painfully learned from what Justice Abad Santos called the "slavish tone" in one Martial Law case,[97] judicial prudence may be equally the rule in cases where the court's imprimatur is required. After all, the court's approval not only dissolves the legal obstacles in the way of the

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[94]Butterfoss, *Bright Line Seizures: The Need for Clarity in Determining when Fourth Amendment Activity Begins*, THE J. OF CRIM. L. AND CRIMLOGY (1988).

[95]*Id.* at 471.

[96]COMMITTEE PRINT, *supra* note 9, at 19.

[97]J. Abad Santos, *concurring*, Garcia-Padilla v. Ponce Enrile, 137 SCRA 647 (1985) at 656.

challenged governmental action but becomes a measure as well of the government's credibility and a crucial factor in facilitating public acceptance of what would otherwise be controversial issues.

Where the military checkpoints, apart from the regular military duties, are given the mandate to "provid(e) an atmosphere conducive to the social, economic and political development of the National Capital Region"[98] must have placed the Court on guard. This caused Justice Isagani Cruz to observe in his dissenting opinion that "It is incredible that we can sustain such a view." While each case of intrusion into the rights to privacy must be determined on the circumstances that obtain considering the severity of the intrusion and the relative strength of the opposing law enforcement and privacy interests, it is difficult to conceive of soldiers as the ultimate arbiter of the economic progress and development of Metro Manila.

It is a curious twist of the Valmonte case that while it took judicial note of the economic hardships that cause lawlessness it would fail to take judicial notice of the more important findings of the Senate Committee on Justice. It would not have been the first time that the court would take judicial notice of the activities of a co-equal branch since congressional findings were utilized by the court to arrive in its decision in *Lansang v. Garcia*.[99] It bears reflection what dire consequences the Court could have avoided had there been more prudence and less general statements when it dismissed the case anyway.

The modern concept of the rule of law is founded on three essential concepts:

> 1) That no man is punishable or can lawfully be made to suffer in body and goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land;.
>
> 2) That not only is no man [is] above the law but that . . . every man whatever his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals; and,
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> 3) That with the law of the constitution, the law of a constitutional code are not the sources but the consequences of the rights of the individuals as defined and enforced by the courts.[100]

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[98]LOI No. 627, (January 20, 1987).

[99]Lansang v. Garcia, *supra* note 6, at 477.

[100]Payoyo, *Reflections on the Rule of Law*, 59 PHIL. L. J., 162, 163 (1984).

Today's concept of the rule of law is anchored on the recognition and enhancement by governments of the rights enjoyed by its citizens. This has further evolved into the view that since the rights of men are guaranteed by the constitution then the rule of law is synonymous to Constitutionalism.[101]

It is therefore distressing to note that the Supreme Court has made a blanket approval of the manner and operation of these checkpoints. It has allowed the executive to blunder about where it could have distinguished and defined the areas where the operation of these checkpoints may be constitutionally defensible. It could have outlined the guidelines that would allow these checkpoints to exist and continue with their law enforcement functions.

In a society undergoing profound social conflicts and transition, the court is required to be sensitive to these dimensions before it errs on the side of expansive reasoning and unpredicated statements. Indeed, the court's first duty short of making each case a "difficult case" is that it may well survey the landscape if the molehills in the pleadings conceal a tragedy for the community at large.

In assessing the constitutional infirmities of the continued existence of military checkpoints and roadblocks, the reasons that may be found to justify their existence fall short of the requirements of the constitution. The circumstances that are given for their necessity are at best a blur. While checkpoints may be established in the war zones to protect civilians as well, their existence in urban areas where presumably there is a greater concentration of police and military personnel are not satisfactorily explained. The government has not provided enough guidelines that would specify with a certain measure of particularity the crimes checkpoints must guard against as well as the things that they have to watch out for. Of grave concern is how the court in approving of the checkpoints may have in effect extended its blessings to the collaboration between para-military groups and the military in these checkpoints.

Previous courts have ben cautious in dealing with similar measures undertaken by the government, thus the Fernando court reprimanded the Marcos government when it decided to field police marshalls.[102] In *Aberca v. Ver*,[103] the same Court that promulgated the *de Villa* decision observed:

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[101]*Id.*

[102]Hildawa v. Ponce Enrile, *supra* note 44.

[103]L-69886, 160 SCRA 590 (1988).

> This is not to say that military authorities are restrained from pursuing their assigned task or carrying out their mission with vigor . . . . What we are merely trying to say is that in carrying out this task and mission, constitutional and legal safeguards must be observed, otherwise the very fabric of our faith will start to unravel. In the battle for competing ideologies, the struggle for the mind is just as vital as the struggle of arms. The linchpin in that psychological struggle is faith in the rule of law. Once that faith is lost or compromised, the struggle may well be abandoned.[104]

The duty of the Court in this regard was defined a generation ago by Claro M. Recto when he said, "[t]he obligation to uphold and defend the Constitution is, I should repeat, even more pressing on those who enjoy the powers and privileges it has provided. They are the creatures of the Constitution. They are sworn to protect, obey and defend it. And, by the very nature of their office, by the authority which invests their pronouncements and their actions, they are the better placed to shape the mind of the people and influence their will and course of conduct."[105]

What the Supreme Court has done may not be vastly different from that of a negligent guardian who has placed a loaded gun in the hands of a child. Comes the deep of the night and both the guardian and the community shall know of no sleep and now await the terrible consequences when the playful child decides to press the trigger.

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[104]*Id.*, at 603.

[105]Claro M. Recto, Some Thoughts on the Constitution in The Development of the Philippine Constitution, National Media Production Center. (1974).