MYTH AND POLICY: A LEGAL CRITIQUE OF VALMONTE, GUANZON AND UMIL

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INTRODUCTION

In three (3) decisions in a span of eleven (11) months, the Supreme Court revolutionarily emasculated the Filipino of his constitutionally guaranteed civil liberties. The justification of the warrantless searches of automobiles[1] and communities,[2] and the warrantless arrest of suspected subversives,[3] all but revealed the propensity of the highest court of the land, to rule against individual liberties at the slightest invocation of exigencies affecting national interest.

While it may be true that the interests of state security normally outweigh the rights of the individual during national emergencies, hindsight tells us that not all threats justify the government's infringement of civil rights.[4] More importantly, we profess to live in a democracy - a democracy wherein sovereignty resides in the people; and a people from whom all government powers reside.[5] The Bill of Rights enshrined in the 1987 Constitution is stronger than ever. It is indeed disturbing that the Supreme Court chose to ignore this revitalized advocacy in three (3) landmark cases, which could have served as perfect opportunities in giving flesh to the Filipino's constitutionally guaranteed liberties.

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[1]Valmonte v. de Villa, G.R. No. 83988, 29 September 1989.

[2]Guanzon v. de Villa, G.R. No. 80508, 30 January 1990.

[3]Umil v. Ramos, G.R. Nos. 81567, 84581-82, 82583-84, 83162, 85727 and 86332, 9 July 1990.

[4]Wolf, National Security v. the Rights of the Accused: The Israeli Experience, 20 CAL. WEST. INTL. L. J. 115, 151 (1990).

See Abinales, Demilitarization: The Military and the Post Marcos Transition, Third World Studies Center (1986) for a discussion on the Philippine experience.

See also Brennan, The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crisis, 18 Is. Y. B. of H.R. 11, 19 (1988) as cited by Wolf, *supra.*

[5]CONST., art. II, sec. 1 (1987).

This article is an attempt to make manifest the blatant discrepancy between actual Philippine reality (as exemplified in the cases of Valmonte, Guanzon and Umil) and the avowed constitutional policy of protecting and promoting the basic civil liberties of Filipinos. The following questions are important to the discussion,

> 1. To what extent has the judiciary deviated from established State policy in its determination of cases (Valmonte, Guanzon and Umil) involving civil liberties?
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> 2. How can the Supreme Court's pronouncements in these cases be justified in light of the staunch protection of civil liberties mandated by the 1987 Constitution?
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> 3. Are the three (3) cases indicative of a trend on the Judiciary's position concerning the proper stature of civil liberties in the Philippine legal system?

CIVIL LIBERTIES

2.1. *Definition*

The protection of fundamental liberties against the State is the essence of Constitutional democracy.[6] The Bill of Rights govern the relationship between the State and the individual while it guarantees the latter's freedom from and protection against state aggression.

Civil liberties, on the other hand, encompass the basic guarantees of freedom from arbitrary confinement, inviolability of the domicile, freedom from unlawful searches and seizures, privacy of correspondence, freedom of movement, and free exercise of religion and parental and marital activities.[7] Together with political freedoms[8] and economic rights,[9] civil liberties comprise the three dimensions of the Bill of Rights.

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[6]Bernas, Sponsorship Remark: Bill of Rights, I Journal of Constitutional Commission 295, Journal No. 32, 17 July 1986.

[7]*See* generally Barker, CIVIL LIBERTIES AND THE CONSTITUTION 1-16 (1982). Note that the last four (4) mentioned freedoms will not be discussed in this article.

[8]This includes the freedom to participate in political processes, assembly and association, the right to vote, the right of equal access to office, the freedom to participate in the formation of public opinion, and the separation of church and state.

In its broadest sense, the terms "civil liberties" or "civil rights" has been held to include those rights which are the outgrowth of civilization, the existence and exercise of which necessarily follow from inherent rights that repose on the subjects of a country exercising self-government.[10] It is posited that these rights are not derived from governmental agencies, nor from the Constitution.

> They exist inherently in every man, by endowment of the Creator, and are merely reaffirmed in the Constitution, restricted only to the extent that they have been voluntarily surrendered by the citizenship to the agencies of the government."[11]

It becomes apparent that even absent an express guaranty in the Constitution, civil liberties of citizens remain to be legally demandable and enforceable.

2.2. *Civil Liberties and Judicial Review*

The Constitution is the highest law in the Philippine legal order. All other sources of law - statutes, jurisprudence, and administrative orders - must be in conformity with the Constitution. This legal maxim mandates the Judiciary to determine whether the acts of the other branches of government are consistent with the Constitution.[12] Indeed, section 1, article VII of the 1987 Constitution explicitly provides that,

> Judicial power includes the duty of the courts of justice to ... determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

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[9]This covers all freedoms which stem from economic self-determination, free pursuit of economic activity in general, free choice of profession, free competition and free disposal of property.

[10]Grooms v. Thomas, 219 P. 700 (1923).

[11]Dallas v. Mitchell, 245 S.W. 944 (1922).

[12]Marbury v. Madison, 3 U.S. (1 Cranch) 137 (1803). *See* generally, Fiss, The Supreme Court, 93 HARVARD L. REV. 1 (1979).

The courts are mandated to uphold the supremacy of the Constitution.[13] It should be noted that such authority is granted by the Constitution to the courts, to the exception of any other institution of government.[14]

Judicial review, as such, gives the judiciary a crucial role in the articulation and development of civil liberties policy. It serves as the arbiter and dispenser of relief and redress in cases of violations of civil rights.[15] The pronouncement of Justice Ozaeta in *Herras Teehankee v. Rovira*[16] comes to mind. He said thus,

> On the threshold of our existence as an independent nation, the Court ought to define its attitude unequivocally and set a definite line of conduct to be followed in deciding questions of vital importance, such as those involving personal liberties. Our decision in this and similar cases will form a weather-vane by which the people can see whether we are travelling on the path of freedom and democracy or are wobbling in the direction of the opposite way of life. If we condone, tolerate, or gloss over unlawful restraints or violation of personal liberties ..., our profession of adherence to freedom and democracy would be taunted as sheer mockery and undiluted hypocrisy.[17]

Indeed, absent an unwavering commitment from the Judiciary to consistently uphold and defend basic individual rights - civil liberties, no matter now staunchly entrenched in the supreme law, will be rendered toothless. In the words of Justice Brennan,

> Abstract principles announcing the applicability of civil liberties ... are ineffectual ... unless the principles are fleshed out by a detailed jurisprudence explaining how these civil liberties will be sustained against particularized national security concerns.[18]

THE 1987 PHILIPPINE CONSTITUTION

3.1. The Rights Against Unreasonable Searches and Seizure

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[13]*See* Angara v. Electoral Commission, 63 Phil. 139 (1936).

[14]CONST, art. VIII, secs. 1, 4 and 5; art. III, secs. 2, 4, 5, 6, 8 and 10 (1987).

[15]Munoz-Palma, Defense of Human Rights - Responsibility of the Bench and the Bar, 4 J. Int. Bar of the Phil. 7, 26 (1988).

[16]75 Phil. 634 (1945).

[17]*Id.* at 634.

[18]Brennan, *supra* note 4 at 19.

Article III, the Bill of Rights, has been referred to as the cornerstone of the 1987 Constitution.[19] It manifests the will and the desire of the Filipino to restore authentic democracy in the Republic. Specifically, section 2 has been singled out as a definitive safeguard of the citizen's liberty and security of his person against the arbitrary use of power by the government in the name of national security.[20] It provides thus,

> 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.
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> No search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized.[21]

The return to the 1935 mandate that only the judge may issue search and arrest warrants[22] is the 1986 Constitutional Commission's response to the national experience under the Marcos regime. The lesson learned is that, the power to issue warrants, when given to non-judicial officers, may be utilized as a tool for oppression and the perpetuation of dictatorial rule.[23]

Such warrant may be issued only after a personal determination by the judge of the existence of probable cause.[24] The prescribed procedure requires the personal examination by the magistrate of the complainant and his witnesses under oath or affirmation. This has been interpreted as requiring a personal, and not merely a delegated examination by the judge himself, and not any other person.[25]

Moreover, the judge's determination of the reasonableness of the judicial warrant must be based on the testimony of one who has personal knowledge of the fact to which he testifies. The basis for the determination

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[19]Munoz-Palma, *supra* note 15 at 18.

[20]*Id.* at 19.

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

[22]Note that the phrase "and other responsible officer as may be authorized by law" in the 1973 Constitution is not retained in the 1987 Constitution.

[23]Bernas, *supra* note 6 at 295. *See* also BERNAS, THE 1987 CONSTITUTION: A REVIEWER-PRIMER 48 (1987).

[24]Stonehill v. Diokno, 20 SCRA 383 (1967); Pasion vda. de Garcia v. Locsin 65 Phil. 289 (1938).

[25]Alvarez v. Court of Appeals, 64 Phil. 33 (1922); Bache and Co. v. Ruiz, 37 SCRA 823 (1971).

of probable cause should not be grounded on mere belief, nor reliance on a third person's account. Thus, in *Burgos v. Chief of Staff*,[26] the Supreme Court held that testimony based on a military report that the newspaper WE Forum was used for subversive purposes, did not constitute the constitutional requirement of personal knowledge on the part of the affiant. Likewise, in *Corro v. Lising*,[27] the testimony based on investigative reports that certain items in the Philippine Times Daily were subversive, was held defective for failure to approximate personal knowledge. In both cases, the search warrants issued were rendered unconstitutional, and the evidence obtained from the searches, inadmissible.

It should likewise be noted that article III, section 2 of the Constitution guarantees the inviolability of the right of the people to be secure against unreasonable searches and seizures of whatever nature and for any purpose. The phrase "of whatever nature of for any purpose," was first introduced in the 1973 Constitution and was subsequently adopted in the 1987 Constitution. Records of the Constitutional Commission provide no explanation for the new language, but it has been opined that the clause effectively extends the search and seizure guarantee to (1) administrative searches and seizures and (2) stop and frisk situations.[28] This phrase is not found in the Forth Amendment,[29] from which article III, section 2 was lifted. In this light, there appears to be legal basis for the observation that our Bill of Rights is superiorily vigilant in the protection of individual liberties.[30]

3.2. *Individual Liberties v. State Interests*

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.[31] Its principal function is

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[26]133 SCRA 800 (1984).

[27]137 SCRA 541 (1985).

[28]Parlade, Mass Saturation Drives and the Rights Against Unreasonable Searches and Seizure: Constitutional Possibilities, 62 Phil. L. J. 181, 193 (1987) *citing* BERNAS, THE CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 100 (1987).

[29]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 upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

[30]Transcripted notes of the speech delivered by Dean Pacifico A. Agabin on the FLAG sponsored Symposium on Umil v. Ramos, 14 August 1990 at Malcolm Hall, UP College of Law.

[31]*See* Payton v. New York, 445 U.S. 573 (1980).

the promotion of freedom by limiting governmental interference in the affairs of individuals. But unlike other constitutionally protected rights, the standard set by article III, section 2 is subject to "reasonableness." And considering the thin line that separates the stringent requirements of effective law enforcement and the protection of individual civil rights, courts have found it difficult to strike an essential balance which provides sufficient protection to personal liberties without unduly hampering national security activities.

It is well settled that the balancing of interests theory rests on the reality that Constitutionally guaranteed private liberties are not absolute, and that they may be abridged to some extent to serve appropriate and important national interests.[32] It devolves upon the Courts, therefore, to decide on the propriety of alleged national security concerns as a justifiable infringement of civil rights. This is no reason, however, for us to credit national security as a "catch all phrase to justify every governmental intrusion visited upon the individual."[33] National security can not be invoked to justify violations, curtailment and loss of basic civil liberties guaranteed by the Constitution.[34] Our Martial Law experience remains fresh in our memory.

It is herein submitted that, without having to undermine national survival, the Court should as far as practicable, choose to rule (to err if it has too) in favor of individual liberties. For indeed,

> [N]ational security is a compelling reason for a democracy to be even more zealous in the protection of its Bill of Rights. In times of emergency, the basic freedoms are, if anything, even more essential than usual to the welfare of the community. For the Bill of Rights is meant to endure in all situations and under any exigency.[35]

In her dissenting opinion in *Aquino v. Military Commission*,[36] Justice Munoz-Palma expressed the same sentiment when she said that,

> The Bill of Rights must remain firm, indestructible, and unyielding to all forms of pressure, for like Mt. Sinai of Moses, it can be the only

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[32]Gonzales v. Comelec, 27 SCRA 835, 839 (1969).

[33]Lopez, The Saturation Drives: A Mass Arrest of Constitutional Protection, 62 PHIL. L. J. 167, 181 (1987).

[34]Munoz-Palma, Defense of Human Rights: Responsibility of the Bench and the Bar, 16 J. INT. BAR OF THE PHIL. 7, 26 (1988).

[35]*Id.*

[36]63 SCRA 546 (1975).

> refuge of a people in any crucible they may suffer in the course of their destiny.[37]

The judiciary, cognizant of its sacred mission, must favor personal liberty.

When President Aquino assumed office in 1986, the Filipino people had the highest expectations that the Supreme Court will be the "vigilant guardian of the Constitution, protector of the People's rights and freedoms, and repository of the nation's guarantees against tyranny, despotism and dictatorship."[38] No less than Chief Justice Claudio Teehankee maintained that, "it is time that the Martial Law regime's legacy of the law of force be discarded and that there be a return to the force and rule of law."[39] This was followed by a strong advocacy on the part of Justice Isagani Cruz that efforts must be exerted in order to make our country truly democratic, such that every individual is "entitled to the full protection of the Constitution, and the Bill of Rights stand as a solid sentinel for all."[40]

In light of these pronouncements, the cases of Valmonte, Guanzon, and Umil appear to be nothing more than vestiges of the past regime. They have no place in a legal system which has chosen to uphold the 1987 Charter.

THE CASES

4.1. Valmonte v. De Villa

The growing and developing tendency of the U.S. Supreme Court in legitimizing searches and seizures of automobiles, in general, and those incidental to border checkpoint operations, in particular, indicate a clear departure from a warrant-preference approach.[41] The United States Supreme 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 constitutional right to be secure against

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[37]Munoz-Palma, dissent, *Id.* at 655.

[38]Munoz-Palma, *supra* at 34.

[39]Lacanilao v. de Leon, 147 SCRA 286 (1989).

[40]Alih v. Castro, 151 SCRA 279 (1990).

[41]*See* generally Palazo, Military Checkpoints and the Rule of Law, 65 PHIL. L. J. 211 (1989).

unreasonable searches.[42] It was pursuant to this analytical framework that the controversial case of *Valmonte v. De Villa*[43] was promulgated by the Philippine high 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 checkpoints (a) give respondents authority to make searches and seizures without search warrants as guaranteed by article III, section 2 of the Constitution; (b) provide respondents with blanket authority as well as license to kill or maim people; (c) provide a fertile ground for respondents to violate and disregard the due process clause of the Constitution; (d) limit people's movement and mobility; and (e) constitute a blatant disregard of the mandate of the Constitution against the supremacy of the military over civilian authority.[44]

The petitioners contend that because of said checkpoints, the residents of Valenzuela are worried about their safety. It would appear that even without search warrants, their cars and vehicles are subjected to regular searches and check-ups especially at night or at dawn.[45] They cite specifically the case of Valenzuela resident Benjamin Parpan who was gunned down in cold blood by the members of the NCRDC manning the checkpoint along MacArthur Highway at Malinta, Valenzuela. Parpan allegedly ignored and refused to submit himself to be searched at the checkpoint.[46]

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

> 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

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[42]U.S. v. Brignoni Ponce, 422 U.S. 876 (1975); Almeida-Sanchez v. U.S., 413 U.S. 266 (1974); U.S. v. Ortiz, 422 U.S. 891 (1975); U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976); Delaware v. Prouse 440 U.S. 648 (1979).

[43]*Supra* note 1.

[44]Petition, Valmonte v. De Villa, submitted to the Supreme Court on 13 July 1988 by Ricardo Valmonte and the Union of Lawyers and Advocates for People's Rights, pp. 4-6.

[45]*Id.*, at 2.

[46]*Id.*

> reaching Malinta along the stretch of MacArthur highway, he reportedly ignored a checkpoint manned by officers of the NCRDC, and instead sideswiped an officer who was flagging him down.
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> Police said the car did not stop and continued to speed off in spite 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 wall of a hardware establishment some hundred meters away from the checkpoint.
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> 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.[47]

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.[48]

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 that (e) the checkpoints and the personnel manning them operate within the limits set by law and the Constitution.[49]

The State took note of the "radical and extremist forces from the entire range of the political spectrum" who have continuously attempted to destabilize 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."[50]

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[47]Id at 2-3.

[48]*Id.* at 7.

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

[50]Id. The State referred to (1) the New People's Army, 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; (2) the "fanatic insurgents of the extreme right" who staged bloody coup de etats with the hope of transferring national power to their sector; and (3) the other seccesionist movements and criminal elements which add to the problem of maintaining peace and order in the country.

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

> [T]he 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.[51]

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[52] then it is imperceptible that the

> Government can not take the necessary steps to protect itself against forces that seek to tear the Republic asunder. After all, the State's need for revenue, or for the promotion of local industries, or the advancement of economic progress ... become moot when the State itself has become extinct.
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> The right of the sovereign to set up the checkpoints in question and to conduct inspections even without a warrant supersedes, 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.[53]

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 [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.

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[51]*Id.* at 14.

[52]As incident to a lawful arrest, Alvero v. Dizon, 76 Phil. 637 (1946); for customs enforcement purposes, Pacis v. Pamaran, 56 SCRA 16 (1974); upon a waiver of that right by the person affected, People v. Malasiqui, 63 Phil. 221 (1936); for health and sanitation, U.S. v. Arceo, 3 Phil. 381 (1904); *etc.*

[53]Comment, *supra* note 49 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).

The checkpoints [in Valenzuela] 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 bulwark 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."[54]

On 29 September 1989, 14 months after the petition was submitted, the high court 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.[55]

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 of police and military men by the NPA "sparrow units" not to mention the abundance of unlicensed firearms and the alarming rise in 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 warrantless search, the former, it was held, should prevail.[56]

> [It is] true [that] the manning of checkpoints 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.[57]

Without invoking the jurisprudential framework established by the United States Supreme Court in related cases, it is clear that in Valmonte, the Supreme Court utilized the balancing theory in justifying the validity of the questioned military checkpoints.

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[54]*Id.* at 23.
[55]Valmonte v. De Villa, *supra* note 1 at 5.
[56]*Id.*
[57]*Id.* at 5-6, underscoring supplied.

This case is reminiscent of the 1972 Supreme Court decision in *People v. Ferrer*,[58] 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 can not protect its very structure from armed internal attack ... no subordinate value can be protected.[59]

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.

Such a position compels us to recall the Military Rule imposed by then President Marcos. In the words of former Chief Justice Claudio 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.[60]

The military virtually had unlimited powers to search, arrest and detain the people.[61] The people on the other hand, had no legal or political defense. These conditions paved the way for injustice. Indeed the degree of military control over civilian life and behavior was unprecedented in Philippine history.[62]

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[58]48 SCRA 382 (1972).

[59]*Id.*

[60]*See* Lopez, *supra* note 33 at 167, *citing* the address by Chief Justice Teehankee at the Symposium on the Rule and Spirit of Law of the Association of Law Journal Editors of the Philippines on 22 November 1986 at the MLQU Auditorium.

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

[62]*Id.*

Our Martial Law experience tells us that the legitimacy of military checkpoints provide 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 death was a blatant disregard of the Constitutional mandate that no person shall be deprived of life without due process of law.[63]

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 dignity. Checkpoints put to question the capacity and willingness of the State to remain true to its mandate to value the dignity of every human person and guarantee the full respect of human rights.[64] Firing at a car which refused to honor a checkpoint goes beyond the rudiments of logic and commonsense, more so when the occupant did not show any sign of firing back.

In his dissent, Justice Isagani Cruz assailed the sweeping statements of the majority as "dangerous like the checkpoints it would sustain and fraught with serious threats to individual liberty."[65] The dictum 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.[66]

Justice Cruz likewise condemned the peremptory pronouncement of the reasonableness of the search even without proof of probable cause as evidenced by the required warrant.

> For this purpose, every individual may be stopped and searched at random and at any time simply because he excites the suspicion, caprice, hostility or malice of the officers manning the checkpoints, on pain of arrest or worse, even being shot to death, if he resists.[67]

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[63]CONST., art. III, sec. 1.
[64]CONST., art. II., sec. 11.
[65]Cruz, dissent, Valmonte v. De Villa, *supra* note 1.
[66]*Id.*
[67]*Id.*

Apparently, the Aquino Government is in a unique dilemma. It was catapulted to power through its advocacy of non-violence; but in power, it has 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 accommodate their interests in her government."[68]

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."[69] 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.[70] In estimating security threat, the military would rather err on the side of overstating the threat and oftentimes see threat where none exists.[71] This contention is manifested by the appalling history of the military's deep involvement in human rights violations.[72]

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 Constitutional requirement of reasonableness becomes meaningful only,

> when it is assured that at some point, the conduct of those charged with enforcing the laws can be subjected to the more detached and neutral scrutiny of a judge who must evaluate the reasonableness of a particular search in light of the particular circumstances. xxx Anything less would invite an intrusion upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches.[73]

The fatal "inarticulate hunch" of the police officers that Parpan was a rebel fugitive violates the intrinsic worth and dignity of human life. Unless

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

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

[70]Hernandez, The Military Mind, its Implications for Civil Military Relations in the Philippines (1986).

[71]*Id.*

[72]*See* generally, ZWICK, *supra* note 61.

[73]Terry v. Ohio, 392 U.S. 1, 21-22 (1968).

our law enforcers show any indication of their commitment to respect and uphold these basic rights, the governmental interests 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 liberties of Filipinos.

4.2. Guanzon v. De Villa

"Saturation drive" or "areal-target zoning" has been defined as the anti-insurgency military operation conducted when "the military, having no specific target house in mind, cordons-off an area of more than one residence and sets out on a fishing expedition for suspects within."[74] The steps of the operation are usually as follows:

> 1. The authorities cordon off an area (usually urban poor) and enter it at dark. The occupants of houses within the area are ordered to come out into the street. The houses are searched.
>
> 2. Residents are lined up and questioned as to their identity and/or any particular crime that may have been committed in the vicinity shortly before.
>
> 3. Men are made to remove their clothing so that the police may look for tattoos or marks of gang affiliations.
>
> 4. A hooded informer points to alleged NPA guerrillas.
>
> 5. Suspects are brought to the police station for interrogation.[75]

Forty-one (41) residents in various parts of the Metropolis filed a petition for prohibition with preliminary injunction to enjoin military and police officers from conducting saturation drives. It was their prayer that these saturation drives be declared unconstitutional because they shamelessly disregard fundamental civil liberties. Specifically, it was alleged that saturation drives are conducted without the requisite search and arrest warrants; and because torture, theft and brutality have become integral parts of the operations.[76]

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[74]ALEXANDER, PRIMER ON ZONING OPERATIONS (1987).
[75]Lopez, *supra* note 33 at 169.
[76]Guanzon v. De Villa, *supra* note 2 at 629-630.

Respondents, on the other hand, invoked article VII of the Constitution. Said provision states that,

> The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.
>
> The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.[77]

It was their position that the Constitution grants the Government the power to seek and cripple subversive movements which attempt to bring down duly constituted authority.[78]

In January of 1990, twenty-six (26) months after the filing of the petition, the Supreme Court dismissed the petition and remanded the case to the lower court. The high court ruled that the petitioners had no standing to sue and that prohibition is not the proper remedy. It held thus,

> The remedy is not an original action for prohibition brought through a tax payer's suit. Where not one victim complains and not one violator is properly charged, the problem is not initially for the Supreme Court. It is basically one for the Executive and for the trial courts.[79]

The court bewailed the attitude of "well meaning citizens with only second hand knowledge of events" of elevating their problems with the executive to the Supreme Court, as if the latter was the "repository of all remedies for all evils."[80]

The Supreme court conceded that it is "highly probable" that some violations have indeed been violated. But it ruled just the same that, "the remedy is not to stop all police actions, including the essential and legitimate ones."[81] The implication is that saturated drives are considered "essential and legitimate." In fact, the Supreme Court justified the operation as a necessary means of weeding out criminals.

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[77]CONST., art. VII, secs. 17-18.
[78]Guanzon v. De Villa, *supra* note 2 at 631.
[79]*Id.* at 638.
[80]*Id.*
[81]*Id.*

At a time when the courts should have found renewed vigor and fortitude in protecting and promoting the rights of our people, it is disheartening that the high court would lay before us *Guanzon v. De Villa.* Not only did it fail to comply with its constitutionally mandated responsibility of upholding basic civil liberties, it did so by invoking the lame excuse of procedural infirmity.

In a strongly worded dissent, Justice Isagani Cruz castigated the majority for "blinking away" on mere technicalities the valid issue raised. He penned, "the brutal fact is staring us at the face, but we look the other way in search of excuses."[82] He posited that the petitioners had the requisite legal standing to bring the case before the court, because it is well established that technical objections may be brushed aside where the issue involved raises a constitutional question.

An even more basic consideration is the fact that the search, seizure and arrest which occur during saturation drives are not supported by a warrant, issued after the determination by a neutral magistrate of the existence of probable cause. Saturation drives are not among the accepted instances when a search or an arrest may be made without the requisite warrant. And neither did the Supreme Court attempt to justify why it should be considered as an exception. This is clearly not a "consent" search and seizure.[83] It is highly improbable that an impoverished Filipino roused from sleep at the dead of night and at the point of a gun will contest the authority of military officers to search their homes and persons.

Nowhere is the often quoted maxim, " a man's home is his castle," more applicable than in this case. The law creates a legal presumption that warrantless searches are unreasonable,[84] more so when conducted at home.[85] In *Payton v. New York,* the U.S. Supreme Court held that the Fourth amendment prohibits police officers, in the absence of exigent circumstances from making a warrantless and non-consensual entry and search into a suspect's home to effect an arrest.

In legitimizing the police action of conducting saturation drives, it was incumbent upon the high court to cite an exigency of the most urgent

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[82]Cruz, dissent, Guanzon v. De Villa, *id.* at 640.

[83]*See* generally Pasion v. Locsin, 65 Phil. 689 (1938).

[84]*See* generally Mincey v. Arizona, 437 U.S. 385 (1978).

[85]*See* generally Harbaugh, "Knock on Any Door" - Home Arrests After Payton and Steagald, 86 DICK L. REV. 191 (1982).

nature to justify the warrantless intrusion into the homes of the urban poor. It failed to do so. In fact, it albeitly conceded that,

> [There] appears to have been no impediment to securing search warrants or warrants of arrest before any houses were searched or individuals roused from sleep were arrested. There is no strong showing that the objectives sought to be attained by the "aerial zoning" could not be achieved even as rights of squatter and low income families are fully protected.[86]

With this observation alone, the Supreme Court should have ipso facto declared the illegality of saturation drives.

The nighttime entry introduces an additional problem area. Searches pursuant to a validly issued warrant are mandated to be served during daytime.[87] It may be effected at night only if the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at night.[88] In the case at bar, not only was there no cause shown why the searches should be conducted at night, no warrant was ever issued.

Moreover, the constitutional validity of the questioning conducted as incident to the operation should be raised. Whether such questioning constitutes an arrest, or a minor inconvenience visited upon the residents is of no moment. It remains that the requirement of reasonableness must be satisfied. Applying *Terry v. Ohio,* the police and military officers must be able too point to "specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant the intrusion."[89] Otherwise, such questioning on the streets is unconstitutional.

The officer's invitation to some residents to proceed with them to the headquarters is likewise questionable. Such practice has been observed by Justice Gutierrez as a "convenient way of fishing for evidence and avoiding the delay and difficulties attendant to securing a warrant of arrest."[90] He explained that,

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[86]Guanzon v. De Villa, *supra* note 2 at 637.

[87]REVISED RULES ON CRIMINAL PROCEDURE, Rule 126, sec. 8 (1985).

[88]*Id.*

[89]Terry v. Ohio, *supra* note 73 at 21.

[90]Gutierrez, The Unsatisfactory Status of Law on Arrest and Detention, 46 PHIL. L. J. 669, 673 (1971).

> When a person accepts an invitation, he waives the protection which the law on warrants of arrest provides. There is no violation of a constitutional right when the "invited" person voluntarily consents to give a statement at the police station. No responsible police officer can, however, assert that acceptance of invitations is indeed voluntary.[91]

It is submitted that the coercive "invitation" extended by military and police officers to the residents during saturation drives amount to an arrest.[92] And unless such arrest falls within the exceptions provided by law, a warrant of arrest issued on the basis of an impartial determination of improbable cause is a condition precedent. The fact the residents are not reminded of their constitutional rights at any point of the operation aggravates the situation.

That the Supreme Court should definitively and unequivocally rule on the validity of saturation drives is imperative. It is such a waste that Guanzon was decided the way it was. This case is only the second one filed on the validity of saturation drives. The first one was summarily dismissed by the Supreme Court for lack of merit and for failure to state a cause of action.[93] It was held that the petitioner, a non-government organization advocating the cause of human rights, was not a real party in interest.

It is alarming that in two consecutive instances, the Supreme Court refused to rule on the illegality of saturation drives. Such refusal, according to Justice Sarmiento, amounts to "an abdication of judicial duty."[94] The Supreme Court waived its power of judicial review. To pass on the responsibility of adjudicating the matter to the Executive is to make a mockery of the law. This amounts to appointing the Executive as "judge and jury of its own acts."[95]

4.3. *Umil v. Ramos*

In this case the Supreme Court resolved six (6) different petitions for habeas corpus involving ten (10) different persons who were arrested without warrants. Criminal complaints were filed against them several

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[91]*Id.*

[92]As to what constitutes arrest, see generally Wilgus, Arrest Without a Warrant, 22 MICH. L. REV. 541, 543 (1924).

[93]Union Lawyers and Advocates for People's Rights (ULAP), *et al.* v. Integrated National Police, G.R. 80432 (1988).

[94]Sarmiento, dissent, Guanzon v. De Villa, *supra* note 2 at 647.

[95]*Id.*

days, and in some instances, weeks after their arrest. Some were charged with common crimes, some with political offenses, and a few with both common crimes and political offenses. The petitioners sought a pronouncement that their arrests were illegal, in order to render invalid the criminal informations filed against them. This contention is premised on section 7 of the Rules of Court which provides that a lawful warrantless-arrest is a condition precedent for the validity of the complaint or information filed as an incident of such arrest.

The petitions were consolidated by virtue of the alleged "similarity of issues raised." The wisdom of this consolidation has been questioned on account of the divergent nature of the facts of each case. It is of no moment that the cases raise the singular issue of the validity of warrantless arrests. Professor Tadiar opines that,

> [T]he greater interest of justice would have been much better served by a fully elaborated decision for each disparate situation. This conclusion becomes more persuasive when considered with the maxim that law arises from facts.[96]

A brief account of the facts surrounding each case bears out this opinion.

I. G.R. 81567

The first petition was filed on behalf of Rolando Dural, Roberto Umil and Renato Villanueva on 6 February 1988. Reports indicated that on 31 January 1988, two (2) CAPCOM soldiers were shot dead in Bagong Barrio, Caloocan City, allegedly by NPA sparrows. The following day, the Regional Intelligence Operations Unit of the Capital Command received confidential information that one of the gun-men was confined at the St. Agnes Hospital in Roosevelt, Quezon City. Without securing a warrant, the officers immediately proceeded to the hospital and arrested Dural, and his two companions, Umil and Villanueva. They were brought to CAPCOM headquarters, where three (3) days later, Dural was positively identified by eyewitnesses as the gunman who fired at the two CAPCOM soldiers.

As a consequence of the positive identification, Dural was immediately charged in the Regional Trial Court of Caloocan for the crime of double murder with assault upon agents of persons in authority. Umil and

[96]Tadiar, Critical Analysis of Umil v. Ramos, First Roundtable Discussion on Supreme Court Decisions, UP Law Center, 7 August 1990.

Villanueva, on the other hand, were charged for violation of the Anti-Subversion Act in the Regional Trial Court of Pasay City.

The petition for habeas corpus was dismissed, in the case of Umil and Villanueva, on the ground that the same became moot and academic when they applied for and were subsequently released on bail.[97] The court relied on *Zacharias v. Cruz*[98] which held that the writ of habeas corpus does not lie in favor of an accused who has been released on bail.

On the other hand, the Supreme Court justified the denial of Dural's petition on the ground that he was arrested while committing the continuing offense of subversion. Invoking *Garcia-Padilla v. Enrile*,[99] the Supreme Court held that membership in the New People's Army (NPA) is a continuing offense, and thus,

> [T]he arrest of Rolando Dural without a warrant is justified as it can be said that he was committing an offense when arrested. The crimes rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of continuing crimes.[100]

It is interesting to note that Dural was charged for double murder and not subversion. He was not charged for the latter.

II. G.R. No. 83162

Three months after Dural's arrest. a certain Vicky Ocaya was likewise arrested and detained by military officers. On 12 May 1988, agents of the Philippine Constabulary, armed with a search warrant, conducted a search of a house in Marikina believed to be occupied by a certain Benito Tiamson, head of the CPP-NPA. In the course of the search, Vicky Ocaya arrived. The agents conducted a search on her car where subversive documents and several rounds of ammunition were allegedly found. Thereafter, she was taken to the PC headquarters for investigation. Upon her failure to produce a permit to possess ammunition, she was detained.

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[97]Umil v. Ramos, *supra* note 1 at 7.
[98]30 SCRA 728 (1969).
[99]121 SCRA 472, 488-489 (1983).
[100]Umil v. Ramos, *supra* note 3 at 7.

Upon examination of the return of the writ filed by the Solicitor General and the attached documentation supporting the return, however, it is evident that the ammunition and alleged subversive documents were found not in Ocaya's car but inside the house which was being searched.[101]

The petition for habeas corpus filed for Ocaya on 17 May 1988 alleged illegal arrest and detention, and the denial of the petitioner's right to a preliminary investigation. A day later, Ocaya was charged for the violation of Presidential Decree 1866 for possession of unlicensed firearm in furtherance of subversive activities.

It took the Supreme Court two-and-a-half (2 1/2) years to resolve the petition,[102] and in dismissing the same held that Ocaya was arrested in flagrante delicto, such that her arrest was lawful even if the same was incident to a search in the absence of a warrant.

III. G.R. Nos. 84581-82 & G.R. Nos. 84583-84

The circumstances surrounding the arrest of Amelia Roque, Wilfredo Buenaobra, Domingo Anonuevo and Ramon Casiple were reminiscent of Ocaya's arrest. Buenaobra, Anonuevo and Casiple were accosted while they were about to enter the house of Renato Constantino, which was put under military surveillance. Roque, on the other hand, was arrested when her house was raided pursuant to the contents of a piece of paper containing her telephone number which was found by the officers in Buenaobra's possession. The military believed that they were all members of the CPP-NPA.

Buenaobra was supposed to have readily admitted that he is a regular member of the CPP-NPA, and hence an information for violation of the Anti-Subversion Act was filed against him before the Metropolitan Trial Court of Marikina. His petition for habeas corpus was summarily dismissed.

On 13 August 1990, a day following Buenaobra's arrest, the military proceeded to Roque's residence without securing either a search warrant or

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[101] Diokno, Opening Remarks [Transcripted Notes], Symposium on Umil v. Ramos, UP College of Law, 14 August 1990.

[102] In the meantime, Ocaya was acquitted in the Regional Trial Court for illegal possession of unlicensed ammunition. The prosecution failed to prove her guilt beyond reasonable doubt.

warrant of arrest. One of the occupants of the house was alleged to have given the officers consent to conduct the search. During the search, the officers found and confiscated subversive documents as well as live ammunition. Thereupon, Roque was arrested without a warrant. Two informations were filed against her the next day. One for violation of P.D. 1866, and the other for violation of the Anti-Subversion Act. Again, no preliminary investigation was conducted.

The Supreme Court dismissed her petition for habeas corpus on two grounds. First, like Ocaya, she was in possession of ammunition without license. And second, like Dural, she was committing the continuing offense of subversion at the time of arrest.

In the evening of Roque's arrest, Anonuevo and Casiple were likewise apprehended for illegal possession of firearms. Their petitions for habeas corpus were dismissed for reasons similar to that of Roque: possession of unlicensed firearms at the time of arrest, and the continuing nature of the crime of subversion.

IV. G.R. No. 85727

Three months thereafter, Deogracias Espiritu, the Secretary General of the Pinagkaisahang Samahan ng Tsuper at Operators Nationwide (PISTON) was subjected to a warrantless arrest by elements of the Western Police District.

At 5:00 in the afternoon of 22 November 1988, Espiritu, during a gathering of drivers and symphatizers at the corner of Magsaysay Boulevard and Valencia Street in Sta. Mesa, was supposed to have said,

> Bukas tuloy ang welga natin, sumagot na ang Cebu at Bicol na kasali sila, at hindi tayo titigil hanggang hindi binibigay ng gobyerno ni Cory and gusto nating pagbaba ng halaga ng spare parts, bilihin at pagpapalaya sa ating pinuno na si Ka Roda hanggang sa magkagulo na.

In the early morning of 23 November 1988 at his residence in Sta. Mesa, Espiritu was roused from slumber and arrested without a warrant. An information for inciting to sedition was thereafter filed.

In dismissing the petition for habeas corpus filed on Espiritu's behalf, the Supreme Court justified the warrantless arrest pursuant to section 5(b) of Rule 113 of the Rules of Court which provides,

> A peace officer or a private person may, without a warrant, arrest a person, xxx
>
> (b) when an offense has in fact been committed, and he has personal knowledge of the facts indicating that the person to be arrested has committed it; xxx

The court did not elaborate what offense Espiritu was supposed to have just committed at the time of arrest, or if such offense was a continuing crime.

V. G.R. No. 86332

On 28 December 1988, Narciso Nazareno was arrested for the alleged murder of one Romulo Bunye which occurred fourteen (14) days earlier, on 14 December 1988. He was implicated by a suspect. Like the rest, Nazareno's arrest was done without a warrant. Reports indicate that like Espiritu, Nazareno was arrested while sleeping at a friend's house.[103]

The high court dismissed Nazareno's petition for habeas corpus after ruling that the warrantless arrest was lawful, pursuant to section 5(b) of Rule 113 of the Rules of Court. Similar to Espiritu's case, the court did not elaborate as to what offense Nazareno was supposed to have just committed at the time of the arrest, and whether murder was a continuing crime.

It is submitted that *Umil v. Ramos* significantly deviated from established doctrine, law and state policy in the protection of individual civil liberties enshrined in Article III of the 1987 Constitution. As Justice Abraham Sarmiento stated in his dissent,

> [W]ith this Court's ruling, we have frittered away, by a stroke of a pen, what we had so painstakingly built in four years of democracy, and almost twenty years of struggle against tyranny.[104]

First, Umil violated the staunch mandate of the Constitution that no person shall be arrested unless there is probable cause to believe that he

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[103]Diokno, *supra* note 101.

[104]Sarmiento, dissent, Umil v. Ramos, *supra* note 3.

has committed a crime as evidenced by a lawfully acquired warrant of arrest. And though it is not contested that certain exigencies validly allow exceptions from this doctrine, such exceptions must be strictly construed.[105] The language of article III, section 2 of the Constitution mandates that warrantless arrests, if necessary to be conducted, should be resorted to only in most urgent circumstances.

The Supreme Court said that Dural was lawfully arrested pursuant to section 5, Rule 113 of the Rules of Court which reads,

> Arrest without warrant, when lawful. A peace officer or a private person, may, without a warrant, arrest a person:
>
> (a) When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
> xxx

The court would have us believe that, "subversion being a continuing offense, the arrest of Dural without a warrant is justified as it can be said that he was committing an offense when arrested."[106]

We beg to disagree. The in flagrante delicto exception under paragraph (a) of section 5 above quoted, requires that the arresting officer was able to perceive, with the use of his five senses, that the person to be arrested has committed, is committing or is attempting to commit a crime.[107]

Rolando Dural, when arrested was lying on a hospital bed. He could not have been lawfully arrested for the murder of the CAPCOM officers. The Supreme Court itself does not deny that he "was not arrested while in the act of shooting xxx nor just after the commission of said offense, for his arrest came a day after the shooting incident."[108]

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[105]People v. Burgos, 144 SCRA 2 (1985).
[106]Umil v. Ramos, *supra* note 3 at 7.
[107]Tadiar, *supra* note 96, at 9.
[108]Umil v. Ramos, *supra* note 3 at 6.

Neither could he have been lawfully arrested for the commission of the continuing crime of subversion. It has been well opined that a warrantless arrest for the crime of subversion is impossible in the absence of any overt act that would justify the authorities' determination of guilt.[109]

Section 3 of Executive Order No. 276[110] defined subversion as the act of "knowingly, wilfully and by overt acts affiliating oneself with becoming, or remaining a member of the Communist Party of the Philippines and/or its successor or of any subversive association xxx."

The element of wilfulness is a state of mind of the accused that by its very nature can not be immediately perceived by another person.[111] Moreover, there was no mention that Dural, at the time of arrest, was committing any overt act as to give the officer sufficient justification for the apprehension. "Overt act" refers to the act, movement, deed or word of the accused indicating intent to accomplish a crime.[112] As indicated, Dural was being treated for wounds at the time of arrest.

Justice Sarmiento expressed his fear that the Dural doctrine has "set a dangerous precedent." It has "accorded the military with a blanket authority to pick up any Juan, Pedro, and Maria without a warrant for the simple reason that subversion is supposed to be a continuing offense."[113] The practical implication seems to be that anyone may be picked up at any time and at any place for the simple reason that he is a suspected subversive.

Second, the Supreme Court over-extended the definition of continuing offenses when it applied it to crimes of subversion and inciting to sedition.

A continuing offense has been defined as a "single crime consisting of a series of acts, arising from one criminal resolution."[114] It is a continuous, unlawful act or series of acts set foot by a single impulse and operated by an intermittent force, however long a time it may occupy."[115] Basic knowledge of Criminal Law indicates that the concept of continuing offenses is meant

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[109]Sarmiento, *supra* note 104 at 3. *See* also Tadiar, *supra* note 96 at 9.

[110]Amending Republic Act No. 1700, otherwise known as the Anti-Subversion Act (1987).

[111]Tadiar, *supra* note 96 at 9.

[112]Cramer v. U.S., 325 U.S. 1, 34 (1944).

[113]Sarmiento, *supra* note 104 at 5.

[114]People v. Ensilla.

[115]BOUVIER'S LAW DICTIONARY.

for the benefit of the accused. Under this concept, an accused is charged only for one offense although there exists a plurality of acts performed separately during a period of time.[116]

The Supreme Court's pronouncement that subversion and even inciting to sedition are continuing offenses is highly questionable as it failed to lay down the basis, scope and meaning of such a sweeping statement. It blindly adheres to *Garcia-Padilla v. Enrile* which likewise failed to logically and comprehensively discuss the legal basis for its pronouncement that rebellion is a continuing offense.

The concept of continuing crimes can not apply to the facts of the case. The doctrine requires a plurality of acts performed separately. In this case, Dural, at the time of apprehension, was not performing any overt act which could possibly be correlated to his membership in the NPA. And even if he were delivering propaganda materials, making financial contributions, and other acts mentioned in the Subversion Law,

> "it is doubtful whether the commission of those acts would be sufficient to make a valid warrantless arrest. The fact of the matter is that said acts by themselves are equivocal by nature, equally susceptible of both innocent and guilty construction. Taken together with other evidence, however, they may establish probable cause sufficient for the issuance of a warrant of arrest."[117]

In this case, not only was there no evidence available to establish probable cause at the time of arrest, no warrant of arrest was ever issued.

Third, the Supreme Court erroneously held that the petition for habeas corpus is moot and academic because Dural has already been convicted and is serving sentence.

> Rolando Dural is now serving the sentence imposed upon him by the trial court. Thus the writ of habeas corpus is no longer available to him.[118]

To support this, the Supreme Court invokes the 1905 case of *U.S. v. Wilson*.[119] It may be well to remind the Court that in *Chavez v. Court of*

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[116]People v. Zapata, G.R. No. 3047 (1951).
[117]Tadiar, *supra* note 96 at 12.
[118]Umil v. Ramos, *supra* note 3 at 9.
[119]4 Phil. 317, 325 (1905).

Appeals,[120] it was held that "the writ of habeas corpus may be granted upon a judgment already final." The writ, according to the court, is a "high prerogative writ" whose sole purpose and objective is the "vindication of due process."[121]

Moreover, the judicial doctrine that one is not permitted to take advantage of his wrong doing is applicable to this instance. It is not Dural's fault that it took the Supreme Court two-and-a-half (2 1/2) years to adjudicate this habeas corpus petition, such that in the meantime the trial court has had sufficient opportunity to decide the murder case. It has been observed that this is reminiscent of the Martial Rule practice of conditionally releasing a prisoner and praying that the habeas corpus petition filed in his behalf be dismissed summarily for being moot and academic; such that the accused may immediately be rearrested.[122] The sad thing is that we seem to have turned for the worse. As Professor Tadiar observes, during the Marcos regime, the accused had the consolation of enjoying temporary liberty. The Umil doctrine denies him even this.

Fourth, the Supreme Court justified Dural's arrest on the basis of the continuing nature of a crime for which he was not charged. Dural was charged for the crime of "Double Murder with Assault Upon Agents of Authority." And yet in stamping the arrest with validity, the Court said that,

> Dural was arrested for being a member of the NPA, and that subversion being a continuing offense, the arrest is justified as it can be said that he was committing an offense when arrested.[123]

The filing of the criminal information for Double Murder constituted an effective estoppel on the part of the Supreme Court to claim that he was arrested for subversion.[124]

It is alarming that the highest court of the land would resort to such inconsistency if only to justify the legality of what is otherwise an obviously illegal arrest.

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[120]24 SCRA 663, 684 (1968).
[121]*Id.*
[122]Tadiar, *supra* note 96 at 7.
[123]Umil v. Ramos, *supra* note 3 at 7.
[124]Tadiar, *supra* note 96 at 8.

Fifth, the Supreme Court denied Dural substantive and procedural due process when it failed to assail the legality of the post-arrest singular identification of Dural.[125]

Dural, while confined at the St. Agnes Hospital, was positively identified by eyewitnesses as the gunman who went on top of the hood of the CAPCOM mobile patrol car, and fired at the two (2) soldiers inside the car.[126] This procedure is fatally defective pursuant to the pronouncement of the Supreme Court in *People v. Hassan*.[127] In this case, it was held that "singular identification is pointedly suggestive" and thereby subvert the reliability of the eye witness' identification of Dural as the gunman. The logic here is that if the accused is singularly presented before the eyewitnesses, there being no other suspects brought in with the accused from which the witnesses may choose from, there is a heightened suggestibility that it was indeed the accused who they saw at the scene of the crime.

The Court went on to say that the right to counsel is intended for "all stages of the crime, especially at its most crucial stage, the identification of the accused. [And] ... for the infringement of this right alone, the accused should be acquitted."[128] Absent clear proof that Dural was afforded the right to counsel at the time of identification, such can not be a valid basis for the information charged against him.

Sixth, the reliance of the Supreme Court on the Garcia-Padilla doctrine goes against the very essence of Constitutional democracy.

Justice Sarmiento criticizes the Supreme Court's reliance on *Garcia-Padilla v. Enrile* on two grounds. He maintains that it is "repugnant to due process" and that it "leaves the liberty of citizens to the whim of one man."[129]

Dean Agabin likewise maintains that the reliance of the Court on Garcia-Padilla ruling is misplaced, insofar as the facts in Dural are not in all fours with those of Garcia-Padilla.[130] In the latter, the accused, who were members of the NPA, were arrested as they were conferring about activities in furtherance of subversion, hence there was legal basis for the

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[125]*Id.* at 10.
[126]Umil v. Ramos, *supra* note 3 at 6.
[127]157 SCRA 261 (1988).
[128]*Id.*
[129]Sarmiento, *supra* note 104 at 10.
[130]Agabin, *supra* note 30.

arrest on the basis of the overt acts of the continuing crime of rebellion. In Dural, there were no such overt acts. Dural was then lying on a hospital bed.

Moreover, Attorney Alexander Padilla, counsel for the petitioners in Garcia-Padilla observes that the said decision did not rule on the validity of the arrest, but rather on the validity of the detention.[131] And the detention therein, was by virtue of a Presidential Commitment Order. It follows that Umil had no basis in relying on Garcia-Padilla to justify the warrantless arrest of Dural and company.

Padilla likewise observes that the Garcia-Padilla decision dealt only with political crimes, particularly, rebellion and subversion. Umil on the other hand covered both political and common crimes. It overstepped Garcia-Padilla when it included the offense of inciting to sedition and murder - common crimes - in its enumeration of continuing crimes.[132]

It is likewise submitted that reliance on Garcia-Padilla is inherently defective in light of section 18(4), article VII of the 1987 Constitution which provides that,

> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the writ of habeas corpus.

It is the clear mandate of the Constitution that it should remain operative even during times of national emergency. This effectively abandons the Garcia-Padilla ruling that allows for a different procedure on arrest in times of armed conflict.[133] Professor Tadiar observes that the invocation of Garcia-Padilla by the Supreme Court is reflective of the high court's willingness to "junk the rules on criminal procedure and the constitutional rights of the accused, in cases involving the communist insurrection.[134] As the United States Supreme Court once had the opportunity to say, the Constitution is meant to be a law for rulers and people in war and in peace,

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[131]Padilla, Reaction [Transcripted Notes], Symposium on Umil v. Ramos, UP College of Law, 14 August 1990.

[132]*Id.*

[133]Garcia-Padilla, *supra* note 99 at 488.

[134]Tadiar, *supra* note 96 at 10.

and to cover with the mantle of its protection all classes of men at all times and under all circumstances.[135]

It is well to note that six (6) days after Garcia-Padilla was decided, the Supreme Court promulgated *Morales v. Enrile.*[136] The latter significantly abandoned the former, when it held that

> After a person is arrested ... without a warrant ... the proper complaint or information against him must be filed with the courts of justice within the time prescribed by law...
>
> Failure of the public officer to do so without any valid reason would constitute a violation of article 125 of the Revised Penal Code. And the person detained would be entitled to be released on a writ of habeas corpus, unless he is detained under subsisting process issued by a competent court.[137]

Seventh,77 Phil. 933 (1947). the pronouncement that the filing of bail moots a habeas corpus petition is not substantiated by law.

The 1987 Constitution provides that, "the right to bail shall not be impaired even when the privilege of writ of habeas corpus is suspended."[138] It is submitted that the converse of this provision is likewise demandable as a matter of right, and that is "posting of bail should not affect the habeas corpus petition."[139] This is supported by the Nava v. Gatmaitan[140] ruling that the court, in granting bail, does not pass upon the legality of the questioned arrest and detention.

Moreover, to rule otherwise is to require the accused to stay in jail so that the petition that he raised regarding the illegality of his arrest may be given due course. This would be gravely detrimental to the exercise of the accused of his constitutional right to bail and to petition for habeas corpus.

Eight, the pronouncement that the filing of the criminal information disallows the writ ignores established jurisprudence. The filing of a criminal information is the exclusive act of the Executive Branch of

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[135]Ex Parte Milligan, 18 L. Ed 281 (1866).
[136]121 SCRA 538 (1983).
[137]*Id.* at 560.
[138]CONST., art. III, sec. 13.
[139]Tadiar, *supra* note 96 at 3.
[140]77 Phil. 933 (1947).

government, and is not a "process issued by the court." It follows that section 4 of Rule 102 of the Rules of Court which provides that,

> If it appears that the person alleged to be restrained of his liberty is in the custody of an officer *under process issued by a court* ... the writ shall not be allowed. [emphasis supplied]

is not applicable.

Lino v. Fugoso[141] is in point. In this case the Supreme Court held that the detention of a person arrested without a warrant becomes illegal upon the expiration of the periods delimited by article 125 of the Revised Penal Code. The State Prosecutor has no authority to validate such illegal detention by the simple expedience of filing an information.[142] To rule otherwise, is to allow the fiscal "to render futile the writ of habeas corpus by merely filing a criminal information, no matter how defective."[143]

Ninth, the Supreme Court failed to assail the legality of the search conducted on the car of Vicky Ocaya, where the unlicensed ammunition were allegedly located.

It should be noted that what was covered by the search warrant issued was the house of Benito Tiamson.[144] No search warrant was ever issued on the person nor on the car of Ocaya. The military officers went beyond their statutory authority when they searched the car of Ocaya. Section 3, of Rule 126 of the Rules of Court require the "particular description" of the thing to be searched in order to prevent the search of objects and places not specifically mentioned in the warrant. The warrant issued in this case referred to the house of Benito Tiamson, and to no other. The search conducted in Ocaya's car is clearly illegal. It can not be justified under the "plain view"[145] doctrine. The contents of the car were not in plain view of the officers, much less were they immediately indicative of the incrimination of the accused.[146]

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[141]77 Phil. 933 (1947).
[142]*Id.*
[143]Tadiar, *supra* note 96 at 5.
[144]Umil v. Ramos, *supra* note 3 at 18.
[145]U.S. v. Gray, 565 F. 2d 881.
[146]Applying U.S. v. Gray, *id.*

Tenth, the Supreme Court did not uphold the finding of facts of the lower court which acquitted Ocaya of the crime of possession of unlicensed firearms.

Well settled is the rule that the Supreme Court is bound by the findings of the trial court. In this case, although the petition for habeas corpus is separate and distinct from the criminal case in the Regional Trial Court, the Supreme Court was bound by the latter's findings especially since the petition arose out of the illegal arrest which was made the basis for the filing of the criminal case.

It is hard to comprehend why a person already acquitted of a crime is not granted her petition for habeas corpus, when the latter was filed only to question the legality of the filing of the former.

Eleventh, the Supreme Court's act of dismissing the petition of Buenaobra on the ground that the latter voluntarily offered to stay in the Philippine Constabulary stockade is questionable.

This betrays the willingness of the Court to accept as fact the allegations of the military. No determination seems to have been made by the Court that Buenaobra made his choice freely and voluntarily. That someone would ask to remain in jail, goes against ordinary logic. It becomes all the more imperative that there be an impartial determination of the matter.

Twelfth, the Supreme Court violated the rights of the accused when it readily accepted the extra-judicial confessions of Roque, Dural and Buenaobra.

The 1987 Constitution explicitly provides that,

> Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. xxx The rights can not be waived except in writing and in the presence of counsel.[147]

There is no clear showing that the admissions made by Roque, that she owned the subversive materials, and by Dural and Buenaobra that they are members of the NPA, were made in the presence of counsel. Neither was

[147]CONST., art. III, sec. 12.

there clear evidence to establish that all the accused were warned of their rights prior to their apprehension.[148]

Admissions obtained in violation of the Miranda rights are inadmissible in evidence.[149] It was therefore essential on the part of the Supreme Court to first ascertain whether this procedural requirements were validly complied with, before giving evidentiary weight to the confessions thus obtained. Moreover, violations of the Constitution has been held to be sufficient to divest the Court of jurisdiction over the case, and entitled the accused to the writ of habeas corpus.[150]

Finally, Espiritu's arrest is a clear violation of his Constitutional right to be secure in his own home against unreasonable governmental intrusion.[151] As we had occasion to discuss earlier, a man's home is his castle. Deogracias Espiritu was fast asleep in his home when he was accosted and placed in the custody of the military. It is difficult to comprehend how the high court could have upheld the validity of this warrantless arrest. The Supreme Court gives us the lame excuse that this arrest is covered by the statutory exemption provided by section 5(b) of Rule 113 of the Rules of Court. The offense alleged to "have in fact just been committed" refers to the speech delivered by Espiritu in a press conference on 22 November 1988. He was, however, arrested on 23 November 1988. We were not aware that the phrase "just been committed," is now susceptible of a construction which allows for an appreciable period of time. The situation of Nazareno is no different. He was arrested for an offense which he was supposed to have "just committed" fourteen (14) days earlier.

What makes matters worse is that the Supreme Court contradicted itself. In the case of Dural, the Court held that his arrest a day after the alleged shooting of the CAPCOM soldiers was not justified under section 5(b) of Rule 113.[152] And yet in Espiritu's case, the arrest effected a day after the alleged crime of inciting to sedition was upheld. Worse in Nazareno's case, the arrest conducted fourteen (14) days after the alleged commission of the offense was, likewise, declared lawful.[153]

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[148]Applying Miranda v. Arizona, 384 U.S. 436 (1966).
[149]CONST., art. III, sec. 3.
[150]Abriol v. Homeres, 84 Phil. 525 (1949).
[151]CONST., art. III., sec. 2.
[152]Umil v. ramos, *supra* note 3 at 7.
[153]*Id.* at 24.

Warrantless arrests are justifiable by virtue of the exigencies of a situation that requires swift action so as to abate the escape of the criminal and/or to prohibit him from inflicting more harm. No such exigency existed in these cases. The military officers had sufficient time to present their evidence before an impartial magistrate, who could have reasonably determined the existence of probable cause, and thereby subsequently issue the requisite arrest and search warrants. Umil is dangerous because it legalized warrantless arrests, searches and seizures which have previously been rendered illegal for failing to fall within carefully set exceptions.

The practical effect is to allow the indiscriminate arrest of simply anyone. The officer may claim later on that the accused is a suspected subversive, or that he was arrested for a crime committed sometime ago. As Dean Agabin puts it, Umil "blazes a new trail in the jurisprudence of search and seizure in the country."[154] While the 1987 Constitutional Commission provided more stringent measures for the protection of civil liberties, the Supreme Court moves in the opposite direction and expands the exceptions to the warrant requirement.[155]

Umil brings to us an oppressive era unprecedented in Philippine case law history. Not even in the worst periods of the Marcos regime was the requisite existence of probable cause so indiscriminately dispensed with.[156] Clearly, Umil negates the very rationale for the searches and seizure provision of the Constitution.[157] As the U.S. Supreme Court explained in *MacDonald v. United States,*

> [T]his is [required] not to shield criminals, nor to make the home a safe haven for illegal activities. It is [required] so that an objective mind may weigh the need to invade the privacy in order to enforce the law.

The right to privacy is too precious to be entrusted to the discretion of those whose job is the detection of crimes and the arrest of criminals. Power is a heady thing, and history shows that the police acting on their own can not be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of home. We can not be true to that Constitutional requirement and excuse the absence of a search

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[154]Agabin, *supra* note 30.

[155]*Id.*

[156]The procedure then was for a military commander to apply for a Presidential Detention Authority (PDA) with the Secretary of National Defense, who makes a finding on the existence of probable cause.

[157]Agabin, *supra* note 30.

warrant, without a showing by those who seek exception from the Constitutional mandate that the exigencies of the situation made that course imperative."[158]

We are left with the inevitable conclusion that Umil undermines the very foundation of the Constitutional prohibition against warrantless arrests and unreasonable searches and seizures. It substitutes the neutral determination of a judge with that of the very entity against which individual liberty is sought to be maintained.

MYTH AND POLICY

The 1987 Constitution is clear. The people have spoken. The desire to reverse the suicidal trend towards authoritarianism under the former regime is unmistakable. Lessons have been learned. The invocation of "national security" has been exposed as an empty justification for the rampant violation of individual civil liberties. The necessity of taking away the authority to determine probable cause from non-judicial officers is institutionalized no less than in the Charter of the Republic. The Constitutional guarantee against unreasonable searches and seizures has been made to apply "to all circumstances and for whatever purpose."

The Constitution, regarded as law, is an "embodiment of public morality,"[159] and its adjudicators "decide as moral agents."[160] As such, the Courts have no choice but to observe and respect the policy manifest in its provision; *i.e.* the "authoritative expression of public values and ideals."[161] The policy on the guarantee of the protection and promotion of individual civil liberties is clear and unwavering. It begs for faithful fruition into reality.

Reality, however, is Valmonte, Guanzon and Umil. In Valmonte, the Court said that the occasional warrantless intrusions on the privacy of vehicles is justifiable on account of the mounting rebel insurgency. In Guanzon, the Court provided for the justifiable warrantless intrusions in homes even at the dead of night. In Umil, the Court takes a step further,

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[158]98 L. Ed 153 (1948).

[159]Michelman, Bringing the Law to Life: A Plea for Disenchantment, 74 COR. L. REV. 256, 258-259 (1989).

[160]Hutchinson, Law, Politics and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought, 36 STANFORD L. REV. 199, 205 (1984).

[161]*Id.*

and allows for warrantless arrests anywhere and at anytime, for the simple reason that one is a suspected criminal. The progression of the desecration of civil liberties is manifest.

The policy remains a myth.