EMERGENCY POWERS

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I. CRISIS SITUATIONS AND THE RESULTING PROBLEM

Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence? This is the Lincolnian dilemma. It was framed by President Abraham Lincoln in his attempt to justify the bold and extraordinary actions taken by him during the American Civil War.

It presents a problem which every now and then confronts a democratic government, and challenges the best in the minds and hearts of its leaders. It accompanies almost every crisis in a nation's life. Every emergency which puts to a test a state's capacity for existence, or actuates state authority into subjecting the rights and liberties of its people to a precarious siege, brings the dilemma to the fore. In these times of recurring crises, it is easy to see how the problem has become more perplexing and difficult. The world since Lincoln's time, with the tremendous growth of industry and its many riotous and violent problems; with the increase in world population and its retinue of crisis-stimulating phenomena; and, with the unprecedented progress in science especially in the field of destruction, has certainly become more complex. Now, more than ever before, the threats to every state's existence have become all the more frequent, grave and possessed with surer potentiality to succeed. To cap all these, we still have to adjust ourselves, and carefully, to the tense and explosive atmosphere in a world seething with bitterness. We have before us a world divided into two warring and mutually nagging camps—the democratic and the communist. For the Philippines and the rest of the democracies, communism, in its present form under the leadership of Soviet Russia, is a menace to our independence and internal tranquility. As a potent source of national crisis in a democratic state, communism has been described thus:

> "The only probable future enemy is now supported by fanatical partisans within our midst. In strategic places, in communications, government, labor or industry, they could give valuable aid and comfort to the enemy. Probably much greater than their capacity for actual harm is their capacity to arouse fears and hatreds among us. A secret conspiratorial group, even if not very potent itself, can goad the government into striking blindly and fiercely at all sus-

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> pects in a manner inconsistent with our normal ideas of civil liberties." [1]

Against a backdrop of national emergency, the dilemma of necessity requires prompt and speedy solution, an immediate implementation of remedial action. Usually, split-second decisions have to be made, having as the prime and guiding consideration the preservation of the state. It is no wonder, therefore, that emergency measures are out of the ordinary modes and processes of democratic governmental action. And as Rossiter rightly stated:

> "Wars are not won by debating societies, rebellions are not suppressed by judicial injunctions, the reemployment of 12,000,000 jobless citizens will not be effected through scrupulous regard of the tenets of free enterprise and hardships caused by the eruptions of nature cannot be mitigated by letting nature take its course." [2]

The truth of his statement is now a matter of history in the Philippines. We will see presently how during the last World War, the Philippine National Assembly delegated vast emergency powers to the President and how the latter used and exercised them.

It is here pertinent to note, that in all crisis decisions and measures, controversies in respect to their validity, whether ventilated in press discussions, articles and radio commentaries, or debated in court litigations, usually center around the conflicting claims of state authority and private individual rights. There is involved the problem of harmonizing two fundamental principles lying at the base of every democratic constitutional system: first, in Rosseau's formulation, "the people's first intention is that the State shall not perish"; and second, in the language of our Constitution, "No person shall be deprived of his life, liberty or property without due process of law . . ." [3] And if that democratic ideal of a "government of the people, by the people and for the people," is to be achieved or at least approximated, then, in equating these two conflicting values of state authority and individual rights, due regard must be given in every case to the ". . . civil liberties as guaranteed by the Constitution" which "imply the existence of an organized system maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses . . ." [4]

To be sure, a democratic constitutional government must be strong in normal times and stronger still in abnormal times. It must be equal to any and every type of crisis that may confront it. In peace and in war, in internal tranquility and rebellious uprisings, in business booms and in economic depressions, in Nature's calm and disaster, and generally, in normal and abnormal times, a government must assert its authority

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[1] Jackson, Wartime Security and Liberty Under Law, I BUFFALO L. REV. 103-105.
[2] ROSSITER, C., CONSTITUTIONAL DICTATORSHIP, (1948 ed.).
[3] Art. III, sec. 1, par. (1).
[4] *Cox v. New Hampshire*, 312 U.S. 569 (1940).

and function as a sovereign organ of the state, if the ends and aims of its existence as clearly set forth in the Philippine Constitution—"to conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence,"[5]—are to be realized. The extremist Machiavelli went as far as to say that ". . . republics which in time of danger cannot resort to a dictatorship will generally be ruined when grave occasions occur."[6] In more modern and specific terms, in support of his theory of "constitutional dictatorship," Rossiter, after recounting the political history of the United States, with stress on the administrations of Presidents Lincoln, Wilson and Franklin Roosevelt, pointed out:

> "Perhaps the matter may be most clearly stated in this way; the government of a free state is proceeding on its way and meeting the usual problem of peace and normal times within the limiting framework of its established constitutional order. The functions of government are parceled out among a number of mutually independent offices and institutions. The power to exercise those functions is circumscribed by well-established laws, customs and constitutional prescriptions; and the people for whom this government was instituted are in possession of a lengthy catalogue of economic, political and social rights which their leaders recognized as inherent and inalienable. A severe crisis arises—the country is invaded by a hostile power, or a dissident segment of the citizenry revolts, or the impact of a world-wide depression threatens to bring the nation's economy down in ruins. The government meets the crisis by assuming more powers and respecting fewer rights. The result is a regime which can act arbitrarily and even dictatorially in the swift adoption of measures designed to save the state and its people from the destructive effects of the particular crisis. The narrow duty to be pursued by this strong government, this constitutional dictatorship? Simply this and nothing more: to end the crisis and restore normal times."[7]

But, at the same time, a democratic constitutional government must be responsive and considerate to the needs and necessities of the people's welfare and must recognize and respect human personality and liberty. The clear mandate of the Philippine Constitution on this point is that the government must institute and maintain "a regime of justice, liberty and democracy,"[8] and it must promote "social justice to insure the well-being and economic security of all the people."[9] For after all, it is admitted that men "are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness," and that, governments are instituted to secure and protect these same rights.[10] Nor does the admission end here. It proceeds fur-

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[5] See Preamble, Phil. Const.
[6] ROSSITER, C., *op. cit. supra* note 2, at p. 1.
[7] *Id.*, at p. 7.
[8] See *supra*, note 5.
[9] Art. II, sec. 5.
[10] See American Declaration of Independence.

ther to grant, that "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, . . . as to them shall seem most likely to effect their Safety and Happiness."[11]

Yet, the dilemma and the problem posed by it must be resolved. A middle ground consistent with the sovereignty of the state and the dignity of the human person must be struck somewhere. This is the business of law, policy, judicial decision, and administrative and executive practice.

II. Remedial Doctrines, the Crisis and the Problem

The Philippine Constitution was framed undoubtedly by men who knew and understood in a realistic light, the sublime though delicate office of a democratic constitution. They realized for instance, that, if the "Constitution is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances,"[12] it must contain adequate and elastic provisions, to insure that the government established under it could function as well in war and other national emergency, as it could in peace or normal times. Thus, the framers were careful to include specific provisions in our Constitution, which make it legally possible and easy for the government when faced with a crisis, to effect the necessary changes in its structure and power, thereby insuring a smooth and prompt transition from normal to crisis government—an essential condition for a democratic constitutional government to overcome a crisis and restore conditions to normal. And while the framers firmly believed in the sanctity of the human person and his property,[13] they likewise were firm believers in the principle that the preservation of the state is no less, if not even more sacrosanct; that a doctrinaire and unyielding attachment to the inviolability of human rights and liberties, in the face of a severe national emergency pregnant with perils to the security of the state, would not at all be practical nor realistic, but on the contrary, "would result in converting the constitutional Bill of Rights into a suicide pact."[14]

The following provisions of the Philippine Constitution, which may well be called "crisis provisions," will bear out the foregoing assertions:

1. *Art. II, sec.* 2—The defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service.
2. *Art. VI, sec.* 22 (2)—The Congress may by law authorize the President, subject to such limitations and restrictions as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues.

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[11] *Ibid.*
[12] *Ex parte Milligan*, 4 Wall. 2 (1866).
[13] See Bill of Rights, PHIL. CONST.
[14] *Terminiello v. Chicago*, 337 U.S. 1 (1948) (Jackson J., dissenting).

3. *Art. VI, sec.* 25—The Congress shall, with the concurrence of two-thirds of all the Members of each House, have the sole power to declare war.
4. *Art. VI, sec.* 26—In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy.
5. *Art. VII, sec.* 1—The Executive power shall be vested in a President of the Philippines.
6. *Art. VII, sec.* 10 (1)—The President shall . . . take care that the laws be faithfully executed.
7. *Art. VII, sec.* 10 (2)—The President shall be 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, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.
8. *Art. VII, sec.* 10 (5)—The President shall from time to time give to the Congress information of the state of the Nation, and recommend to its consideration such measures as he shall judge necessary and expedient.
9. *Art. XIII, sec.* 6—The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.
10. *Art. XIV, sec.* 9—The Government shall organize and maintain a national police force to preserve public order and enforce the law.

III. Crisis Government in the Philippines

A. *The Structural Organization*

It is easy to conclude from the foregoing constitutional provisions that the framers intended all emergency powers for the President and Congress. While Congress has the sole power to declare war, and may by law require all citizens "to render personal military or civil service," we find the active and actual prosecution of war lodged in the hands of the President, in his capacity as "commander-in-chief of all armed forces of the Philippines," with the specific though limiting authorization to "call out such armed forces to prevent or suppress lawless violence, invasion, insurrection or rebellion," in his power to suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law, and as enforcer of the "laws". In times of "war or other national emergency," the Constitution provides for a joint congressional-presidential action,—the Congress granting emergency powers and the President exercising the same. The President also, after congressional authorization, may fix tariff rates, import or export quotas, and tonnage and wharfage dues. Then, "in the interest of national welfare and defense," Congress may "establish and operate industries by means

of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government." Beyond doubt, "in times of war or other national emergency," Congress may, under its authority to grant emergency powers, delegate to the President the above power. Finally, it is for Congress to organize and maintain a "national police force," which under present laws[15] is the Philippine Constabulary; but again, by virtue of the commander-in-chief clause and the faithfully-executed clause, further implemented by specific statutory provision,[16] the President is head of such "national police force".

The above discussed organization and correlation of governmental powers under the Constitution in times of emergency, is a clear indication that the framers intended that the President and Congress should work as a team in times of peril. This is significant. It reduces to a minimum the possibility of abuse by either crisis agency, and at the same time, enables the government to deal effectively with a crisis and with reasonable promptness.

It is to be observed though, that, although the totality of emergency powers is lodged in the President and Congress, these two crisis agencies, even at the peak of a crisis, do not become absolute masters, with unlimited and uncontrollable powers. It is true that in such times they have extraordinary powers, for emergencies call for such powers. But, it is nonetheless true that "under our concept of constitutional government, in times of extreme perils more than in normal circumstances 'the various branches, executive, legislative and judicial,' *given the ability to act*, are called upon to perform the duties and discharge the responsibilities committed to them respectively."[17] There is still the need therefore, to make legislative and executive emergency actions conform with constitutional proscriptions of power, or the courts will be free to declare their actions void in appropriate proceedings. "It is precisely in time of emergency," observes a promising writer of Philippine constitutional law, "that the role of the Supreme Court as guardian of constitutional rights becomes more pressing and inescapable, if the faith and confidence of the people in democracy in action are to be preserved unimpaired."[18]

(1) *The President and the Crisis*

While the framers intended that the President and Congress work as a team in time of crisis, they also implicitly recognized the former clause, the clause on the President's power to suspend the privilege of the writ of habeas corpus and place the Philippines under martial law,

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[15] See Com. Act No. 1 and the Rev. Adm. Code of the Philippines, secs. 824-906.

[16] Sec. 826, Rev. Adm. Code, ". . . the Philippine Constabulary shall be subject to the command and general supervision of the President . . ."

[17] *Araneta v. Dinglasan* 45 O.G. 10, 4412 (194).

[18] See 27 Phil. L. J. 1, 17 (1951).

to be the captain of the team. The provisions of our fundamental law on the presidency amplified by the debates and proceedings during the constitutional convention, are evidence of the resolute will of the framers to establish and assure presidential leadership in time of emergency. The executive power clause expresses the clear purpose to assign the Executive Department to a single, not plural, Executive. This gives the President the advantage of unity as against the other two departments of the government, the legislative and the judiciary, both of which are assigned to a body of men. Implied in this advantage is the Executive's superior fast action, so essential in a crisis. By virtue of the commander-in-chief clause and also of his headship of the civil administration,[19] the President commands both the military and civil intelligence agencies of the government,—the Military Intelligence Service of the Armed Forces of the Philippines and the National Bureau of Investigation, to mention the principal ones. The President is thus assured a position to have easier and better access to superior information than the other branches of our government, which, combined with his advantage of unity, enables him to act swiftly and intelligently to bring a crisis to a fast and desirable end. Added to these advantages, the faithfully-executed clause, the clause on the President's power to suspend the privilege of the writ of habeas corpus and place the Philippines under martial law, and the emergency powers clause make him the repository of tremendous powers, and further enhance his leadership in perilious times. Naturally, with all these powers, we see in the President a rich and tempting patronage, one hard to deny, if not irresistible. By a wise and effective use of this patronage, the President could surround himself with powerful, competent and loyal servants, all established and strong in the confidence of the other departments of the government and the masses of the people, who could give him invaluable aid in obtaining desired legislation and implementing his policies.

On the historical side of the question of leadership in time of emergency, Delegate Aruego gives these personal observations:

> "During the Convention days, some delegates raised a voice of protest against the provisions in the first draft of the Constitution, setting up a rather extraordinarily strong Executive who, they feared, might easily develop into a dictator. But, the Convention, intent on creating a strong Executive, voted down all propositions tending to weaken the Executive." [20]

As far as statute law is concerned, the constitutional intent to establish a strong President is faithfully adhered to and implemented. There is discernible from the statutes, congressional condescension to presiden-

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[19] Phil. Const., Art. VII, sec. 10 (1), "The President shall have control of all executive departments, bureaus, or offices, exercise general supervision over all local governments, . . . and take care that the laws be faithfully executed."

[20] I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 395 (1946 ed.).

tial leadership in time of crisis. The Emergency Powers Acts, which will presently be discussed, are legislative admissions and acceptance of such leadership. The National Defense Act declares that, "civil authority shall always be supreme" with the President as commander-in-chief of the Armed Forces of the Philippines.[21] Under the laws, he is authorized to convene general courts-martial, or delegate such authority to certain officers;[22] to designate by proclamation places and constructions as "prohibited places" and hence closed to photographers and snoopers;[23] to grant emergency powers to the Director of Health to issue emergency health regulations in time of epidemic;[24] to remove any person from any position of trust or authority in the government for disloyalty;[25] to order the investigation of any government officer and designate the person to conduct such investigation;[26] to order the deportation of any resident alien when his continued stay is a menace to the peace and security of the country;[27] to authorize the governor with the approval of the Congress to evacuate the inhabitants of outlying barrios to places near the *poblacion* if necessary to protect them from *ladrones* or outlaws;[28] to place any body of local police under the control of the Provincial Inspector of the Philippine Constabulary when required by public interest;[29] to order the Provincial Inspector of the Philippine Constabulary to disarm any body of local police within his jurisdiction;[30] and the President is also invested with extensive powers relating to the possession, sale, transfer and manufacture of firearms and ammunitions.[31]

The foregoing discussion of the general powers of the Philippine president, is ample support, at least in the Philippines, of Rossiter's statement that, "crisis government is primarily and often exclusively the business of the president . . ."[32]

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[21] Com. Act No. 1, art. 1, sec. w (d).
[22] Com. Act No. 408, art. 8.
[23] Com. Act No. 616 secs. 7, 8, 9, 10
[24] Rev. Adm. Code, sec. 947.
[25] *Id.*, sec. 64 (a).
[26] *Id.*, sec. 69.
[27] *Id.*, sec. 64 (c).
[28] *Id.*, sec. 73.
[29] *Id.*, sec. 836.
[30] *Id.*, sec. 839.
[31] *Id.*, secs. 880-906.
[32] ROSSITER, C., *op. cit. supra* note 2, at p. 12, "In the last resort it is always the executive branch in the government which possesses and wields the extraordinary powers of self-preservation of any democratic constitutional state. Whether the crisis demands the initiation of the martial rule or enabling act or a full blown war regime, it will be the executive branch that the extraordinary authority and responsibility for prosecuting the purposes of the constitutional dictatorship will be consigned. Crisis government is primarily and often exclusively the business of the president and prime ministers. Where the powers of constitutional dictatorship have been worked out and given a legal or constitutional basis—as in the state of seige, the enabling act . . . it is always the executive organ which is selected by the legislators to be the spearhead of crisis section. When the forms have not been worked out, it is still the executive, this time selected by nature and expediency, which must shoulder the burdens and deal with the exigency under the law of necessity."

(2) *Specific Crisis Powers of the President*

Under the system of government established by our Constitution, the emergency powers of the President may be classed into *emergency powers by direct constitutional grant*, and *emergency powers by constitutional statutory grant*. The first kind of emergency powers is specifically and directly granted by the Constitution, without the need of any statute to make the grant effective. The emergency powers of the second type are merely executory grants by the Constitution, and their efficacy as grants of power is dependent upon a congressional enabling act.

(a) *Emergency Powers by Direct Constitutional Grant*

Article VII of the Philippine Constitution, reproducing the first sentence of Article II, section 1 of the United States Federal Constitution,[33] opens with the provision, "The Executive power shall be vested in a President of the Philippines." This is the famous executive power clause in American constitutional history. This is one of the constitutional clauses availed of by President Abraham Lincoln to support the many emergency measures and actions, like suspending the privilege of the writ of habeas corpus, taken by him during the Civil War. To him, this clause is a source of vast and undefined presidential powers, in the nature of a standing grant of residuary executive powers. The United States Supreme Court confirmed this view, stating that the specific enumeration of powers found in the constitution of the United States, was simply to lend "emphasis where emphasis is appropriate." In actual practice, this clause has been availed of by American Presidents as authority in "employing armed forces abroad, of enforcing international obligations owed to the United States, and of protecting extraterritorial property and interests of American citizens." The fact of identity between the Philippine and the Federal Constitution on this point, makes American jurisprudence and practice highly persuasive. The approach of Justice Laurel in the case of *Planas v. Gil*,[34] reiterated in the subsequent case of *Villena v. Secretary of Interior*,[35] when he stated that by virtue of the executive power clause "all executive authority is thus vested in him," approximates that of the United States Supreme Court in the above mentioned case. Of late, however, doubt has been entertained as to the current validity of this view on the executive power clause.[36] In view of

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[33] U.S. CONST., Art. II, sec. 1: "The executive Power shall be vested in a President of the United States of America. . . ."

[34] 67 Phil. 62 (1939).

[35] 67 Phil. 451 (1939).

[36] *Youngstown Sheet and Tube Co. v. Sawyer*, 342 U.S. 597 (1952). Justice Douglas said in part, "Article II which vests 'executive power' in the President defines that power with particularity."

Justice Jackson in the same tenor said, "If that be true (that the executive power clause is a grant of residuary powers) it is difficult to see why the forefathers bothered to add several specific items, including some trifling ones."

the change in American judicial attitude, it is necessary to reexamine Justice Laurel's statement in the *Planas v. Gil* case. Apparently, the cases of *Lacson v. Roque*[37] and *Jover v. Borra*,[38] both dealing with the power of the President—in the first case, to suspend an elective city mayor and, in the second case, to remove an appointive city mayor wherein our Supreme Court took a less sympathetic response to the claims of authority by the President, seem to indicate a repudiation of the *Planas v. Gil* doctrine and a drift towards the view recently adopted by the United States Supreme Court.[39] However, we believe that this drift is more apparent than real. It is plausible and even cogent to maintain that the apparent tendency of our Supreme Court in the above cited recent cases, could be well explained by the fact that in these cases, there is involved a more specific constitutional provision—"The President shall exercise *general supervision over all local governments as may be provided by law*"[40]—as well as specific provisions of law in pursuance of the former, such that, the Supreme Court is left no choice but to disregard the executive power clause in deference to these specific constitutional and statutory proscriptions of authority of the President.[41]

Justices Black and Frankfurther, though in less explicit terms, had the same view. See also II TAÑADA AND FERNANDO, CONSTITUTION OF THE PHILIPPINES 956-7 (1954 ed.), on the effect of the *Steel Seizure Case* on Philippine constitutional law. See also 28 PHIL. L. J. 401-2 (1953).

[37] G. R. No. L-6225, Jan. 10, 1953.

[38] G. R. No. L-6782, July 25, 1953.

[39] See *supra* note 36.

[40] The phrase "general supervision" cannot be construed reasonably to include the power to remove or suspend local officials, like elective or appointive city mayors, as this would amount to granting him the power of "control" over them. This construction finds support in that, whereas this constitutional provision provides for presidential "control" of all executive departments, bureaus or offices, it only provides for "general supervision" when it comes to local governments. This shows that the Constitution distinguishes between "control" and "supervision". As maintained by Professors Tañada and Fernando, II CONSTITUTION OF THE PHILIPPINES 994,"once the distinction between *supervision* and *control* is accepted, there is strong support for the view that *removal* could only be implied from *control* but not from *supervision*. For if under the power of control one may appoint, suspend or remove, and under the power of general supervision one may appoint suspend or remove, the distinction becomes meaningless." See also note 41, *infra*.

[41] In the case of *Lacson v. Roque* (see note 37), the law involved was sec. 9 of the Revised Charter of the City of Manila (R.A. No. 409) which provides that, "the Mayor shall hold office for four years unless sooner removed." Thus the court said—"the Charter does not contain any provision for this officer's removal or suspension. This silence is in striking contrast to the explicitness with which Republic Act No. 409 stipulates for the removal and suspension of board members and other city officials . . .

"There is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials. By article VII, sec. 10 (1) of the Constitution, the President "shall exercise general supervision over all local governments, but supervision does not contemplate control. Far from implying control or power to remove, the President's supervisory authority over municipal affairs is qualified by the proviso 'as may be provided by law' a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation."

In the other case of *Jover v. Borra* (se note 38), the law involved provided that the mayor of Iloilo "shall hold office for six years unless removed . . ." (C.A.

Another source of enormous presidential powers is the constitutional provision which enjoins the President to take care that the laws be faithfully executed.[42] Included in the term laws are the Constitution, statutes, judicial decisions,[43] treaties, generally accepted principles of international law,[44] executive orders, acts and regulations, and administrative regulations. Under the accepted view that the constitution nullifies a statute repugnant to it, one may safely say that under the President's duty to take care that the laws be faithfully executed, he could refuse to enforce a statute which he deems violative of the Constitution, if only to keep faith with this duty.[45] However, once the courts have ruled on its constitutionality, the President is bound by such adjudication and must enforce that law, regardless of his personal view as to its constitutionality. Likewise, under the faithfully-executed clause, support may be had for President Quirino's act in sending Filipino troops to fight in Korea. As a signatory to the United Nations Charter, the Philippines undertook to "give the United Nations every assistance in any action it takes,"[46] "to accept and carry out the decisions of the Security Council,"[47] and "make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities" as far as may be "necessary for the purpose of maintaining international peace and security."[48] All these provisions of

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No. 158, sec 8). Again the court said: The legislative intent to provide for a fixed period of office tenure for the Mayor of the City of Iloilo and not to make him removable at the pleasure of the appointing authority may be inferred from the fact that whereas the appointment of the Vice-Mayor of the same city, as provided for in an amendatory act, and those of the Mayors and Vice-Mayors of other cities are at pleasure, that of the Mayor of the City of Iloilo is for a fixed period of time."

Then referring to article VII, sec. 10 (1) of the Constitution, the court said that the President "cannot derive from this provision the authority to relieve or remove the petitioner from office, because his power is merely one of general supervision over all local governments and such supervision is to be exercised as may be provided by law."

[42] Art. VII, sec. 10 (1).

[43] Art. 8, Civil Code of the Phil. provides that "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

[44] Art. II, sec. 3, "The Philippines adopts the generally accepted principles of international law as part of the law of the Nation."

[45] GARCIA, PHILIPPINE POLITICAL LAW 405-406, Questions Nos. 621 and 623, "The courts have no jurisdiction to interfere with the President of the Philippines in the performance of his official duties, and will not attempt to control such official acts either by mandamus or injunction; first, because of the separation of powers; second, because the due performance of his political duties is entrusted to his official honesty, judgment and discretion, and the courts possess no power to supervise or control him in the manner or mode of this discharge or exercise; and third, because the judiciary is without machinery and the power to enforce its process against the head of the executive department" (*Severino v. Gov. General*, 16 Phil. 534; *Abueva v. Wood*, 45 Phil. 612; *Tisco v. Forbes*, 16 Phil. 534). And on the specific question of whether the President may refuse to enforce a law which he deems unconstitutional, Prof. Garcia says that it is within his constitutional power to do so, but then he runs the risk of being impeached, and cites Cooley in support of this view.

[46] United Nations Charter, Chap. I, art. 2, sec. 5.

[47] *Ibid.*, Chap. V, art. 25.

[48] *Ibid.*, Chap. VII, art. 43, sec. 1.

the Charter form part of the "laws" of the Philippines, which is the President's duty to "faithfully execute." These commitments became an actual duty when the Security Council adopted the resolution of June 27, 1950 calling upon the members of the United Nations to give armed aid to South Koreans to repel the unprovoked attack by the communist North Koreans. When in answer to this resolution, President Quirino sent Filipino troops to fight in Korea, he was only acting in pursuance of his duty to "take care that the laws be faithfully executed." At any rate, to make the armed aid more effective, Congress enacted Republic Act No. 573—"An act providing for the organization, equipping and maintenance of a Philippine Expeditionary Force for service in the enforcement of United Nations sanctions and policies . . ." On this same clause, the President may base his act of using the armed forces to prevent or suppress riots, mass violence or other widespread disturbances of the public peace, when the regular law enforcement agencies of the government, local or national, are unable to cope with the same.

The President is likewise empowered by the Constitution to be the Commander-in-Chief of the Armed Forces of the Philippines, and "may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion."[49] This is a broad, vital, responsible and delicate grant of power; nevertheless, the framers unhesitatingly made this grant.[50] This grant of power implies the recognition of that fundamental principle in a democracy, that, the civil authority must always be supreme. Hand in hand with his power to appoint ranking army officials,[51] the commander-in-chief clause gives the President ultimate control and direction of the military organization, personnel and program of the country. The immediate responsibility of direction, however, is vested in the Secretary of National Defense who is charged with the duty of "supervising the National Defense program of the country," and the "executive supervision over the armed forces of the Philippines with its Ground Force, Air Force and Naval Patrol."[52] More specifically, as commander-in-chief, the President controls the "disposition of troops, the direction of vessels of war, and the planning and execution of campaigns."[53] It must be noted that the commander-in-chief clause is not intended solely for war purposes. It is an all time grant of power. Our Constitution is explicit in saying that the President "may call out the armed forces to prevent or suppress lawless violence," short of rebellion or insurrection. Under this specific authorization to call out the armed forces, the President is made the supreme preserver of the peace

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[49] Art. VII, sec. 10 (2).

[50] ARUEGO, *op. cit. supra*, note 20, at 430; "There was a unanimous support in the Convention in favor of making the President the commander-in-chief . . ."

[51] Art. VII sec. 10 (3).

[52] GARCIA, *op. cit. supra* note 49, at 606.

[53] II TAÑADA AND FERNANDO, *op. cit. supra* note 36, at 1007.

and order of the country. It must also be observed, that when the Constitution designated the President as the commander-in-chief, and then proceeded to enumerate the specific instances wherein he may call out and employ the armed forces of the Philippines, the intent is manifest to prevent the use by the President of the commander-in-chief clause as a source of power to employ the armed forces for any other purpose. This is a praiseworthy limitation. It establishes a potent check to the institution of a police state or military oligarchy by an evil-minded President.

President Quirino's act of sending Filipino troops to Korea, as previously referred to, may likewise be justified under the commander-in-chief clause, and by his more specific power to call out the armed forces to "prevent or suppress invasion." In our times, a disorder in one country occasioned by a rebellion or war with another nation, especially if precipitated by ideological differences, is a direct threat to the peace and safety to the entire family of nations. Considering the ideological color of the Korean conflict, the geographical position of the Philippines in relation to Korea, and giving due regard to the present communist-inspired Huk rebellion in the Philippines, the threat to our security and the danger of a communist invasion, as a result of a commuist victory in Korea, became more menacingly real. So, not constitutionality alone, but necessity just as well, justified Mr. Quirino's move.

In the case of *Ruffy v. Chief of Staff*,[54] our Supreme Court held that the power to set up courts martial is implied from the constitutional power of the President as commander-in-chief, independently of any statutory grant. This was a case of certiorari against the judgment of the General Court Martial convened by the Chief of Staff, which found the petitioners guilty of having murdered a fellow guerrilla. One of the bases of the petition was the alleged unconstitutionality of the Ninety-third Article of War, which provides that any person subject to military law who commits murder in time of war shall suffer death or life imprisonment as a court martial may direct. They argued that, since this Article provided no appeal from the decision of the court martial to the Supreme Court, the constitutional provision that the Supreme Court can not be deprived of its jurisdiction to review "final judgments of inferior courts" in all "criminal cases in which the penalty imposed is death or life imprisonment,"[55] is thus violated. Returning this contention and sustaining the validity of the law, the Supreme Court among other things said:

> "Courts martial are agencies of executive character and one of the authorities 'for ordering of courts martial has been held to be attached to the constitutional function of the President as Commander-in-Chief, independently of legislation.' (Winthrope Military Law and

[54] 75 Phil. 875 (1946).
[55] Art. VII, sec. 2.

> Precedents, 2nd ed. p. 49). Unlike courts of law, they are not a portion of the judiciary. . . .
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> "Not belonging to the judicial branch of the government, it follows that courts martial must pertain to the executive department; and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief, to aid him properly in commanding the army and navy and enforcing discipline therein." [56]

Just after the war President Roxas issued Executive Order No. 68, establishing the National War Crimes Office and prescribing rules and regulations governing the trial of accused war criminals. The constitutionality of this order was contested in the case of *Kuroda v. Jalandoni*.[57] In spite of the fact that Congress was then functioning normally and could have provided for the matter, the validity of the order was upheld, again upon the theory that it was simply an exercise by the President of his power as commander-in-chief. Citing the case of *Yamashita v. Styer*,[58] the Supreme Court declared:

> "War is not ended simply because hostilities have ceased. After cessation of armed hostilities, incidents of war may remain pending which should be disposed of as in time of war. 'An important incident to a conduct of war is the adoption of measures by the military command not only to repel and defeat the enemies but to seize and subject to disciplinary measures those enemies who in their attempt to thwart or impede our military effort have violated the law of war'. (Ex parte Quirin 317 U.S. 1). Indeed, the power to create a military commission for the trial and punishment of war criminals is an aspect of waging war. [59]

May a Filipino commit war crimes against the Philippines? If he may, can he be tried by a military commission, although the civil courts are already open and functioning? These questions were answered affirmatively by our Supreme Court in the case of *Cantos v. Styer*.[60] The court here said that when a Filipino commits "atrocities against unarmed and noncombatant Filipino civilians," and loots Filipino property in time of war, all in furtherance of the war effort of the enemy, he becomes a "war criminal subject to the jurisdiction of the military commission," regardless of whether the civil courts are open and functioning, or not.

The Constitution, as we have seen, invests the Congress with the "sole power to declare war." At the same time, it provides that the President may call out the armed forces to "prevent or suppress invasion." This question may therefore be asked: May the President employ the army to prevent or repel a foreign invasion without an ante-

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[56] 75 Phil. 875, 885 (1946).
[57] 46 O.G. 4283 (1949).
[58] 42 O.G. 664 (1945).
[59] 46 O.G. 4283, 4287 (1949).
[60] 44 O.G. 453 (1946).

cedent declaration of war by Congress? It is clear that if the President employs the army to repel or prevent a foreign invasion, he in effect is declaring war on the enemy, and, any congressional declaration of war following, will only be a mere formality—something which Congress would be compelled to do. But even so, we believe that the President has this power under the Constitution. The framers for obvious reasons did not see fit to impose as a condition precedent to the President's use of the army in case of invasion, an antecedent declaration of war by Congress; otherwise, they could have easily provided—The President may may call out the armed forces to prevent or suppress invasion, after Congress has declared war. It would be the height of imprudence to require that the President wait until Congress has declared war, before ordering the army to resist the invasion. It takes time before an assembly like Congress, composed of twenty four Senators and one hundred and two Representatives, would be able to marshal two thirds of its constituents to declare war, not to mention the additional delay in case the Congress is not in session and a special session is still to be called. In the meanwhile that Congress is not able to act and hence the President is impotent, the invaders would be very free to overrun the country or at least deal the fatal blow. Our framers did not and could not have intended such an absurd and suicidal situation to happen to our country. A Constitution, expressly embodying such extremely nationalistic tenets as, "The defense of the State is a prime duty of government," could not at the same time be held to contain provisions from which implications destructive of such nationalistic tenets could be drawn. As previously stated, the Constitution not only intended the President and Congress to work as a team in time of emergency, but also intended the former to lead the team. They are partners in the delicate and difficult task of defending the state, with the President as the "managing partner." Consistently with this, the President cannot therefore be denied the power to act immediately, and with all the forces at his command, to strike back against the invaders. As a matter of fact, practice bears out our conclusion. Filipino troops were sent to fight in Korea, when there was not even an actual invasion of the Philippines, without the benefit of a declaration of war by Congress. It would seem therefore, that when the Constitution invested Congress with the "sole power to declare war," it was with the qualification that in case of a foreign invasion, the President may use the armed forces without waiting for a declaration of war to be made by Congress.

The President may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law, in case of invasion, insurrection, or rebellion, or imminent danger thereof, whenever the public safety requires it.[61] The President's power to sus-

[61] Art. VII, sec. 10 (2).

pend the privilege of the writ of habeas corpus, is limited as to the place and time thus: "wherever during such period the necessity for such suspension shall exist."[62] In the case of *Villaviciencio v. Lukban*,[63] the Supreme Court, discoursing on the purpose of the writ of habeas corpus, stated:

> "The essential purpose and object of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient."[64]

The above-cited constitutional provisions in other words, authorize the President to suspend the privilege of the writ of habeas corpus or place the Philippines under martial law, in times of perils to the existence of the government. We see in these provisions, the triumph, constitutionally sanctioned, of state security over an individual's right to liberty. Under the situations contemplated by the Constitution, invasion, insurrection, rebellion or imminent danger thereof, there should be no question as to the necessity and desirability of the existence of the power to suspend the privilege of the writ of habeas corpus. National security is a value equalled by none in the catalogue of values of any state. The laws and institutions of a state, the welfare of its people and the rights and liberties of its citizens, all without exception, find indispensable anchorage in national security.

In the political history of the Philippines, the privilege of the writ of habeas corpus has been suspended twice. The first suspension occurred before the effectivity of the Constitution, and the second suspension, after the latter's effectivity and some four years after the inauguration of the Philippine Republic. On January 31, 1905, Governor-General Luke E. Wright issued Executive Order No. 6, suspending the privilege of the writ of habeas corpus in the provinces of Cavite and Batangas. The suspension of the privilege was made under the authority of the Philippine Bill of 1902.[65] The occasion for the suspension was the existence of organized groups of "ladrones" who were in open "insurrection" against the then government of the Philippines.

The first suspension of the privilege of the writ of habeas corpus gave rise to the famous and leading case of *Barcelon v. Baker*.[66] For

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[62] Art. III, sec. 1 (14).
[63] 39 Phil. 778 (1919).
[64] *Id.*, at 790.
[65] Sec. 5, Phil. Bill of 1902—"That the privilege of the writ of habeas corpus shall not be suspended unless when in cases of invasion, insurrection, or rebellion the public safety may require it, in either of which events the same may be suspended by the President or by the Governor-General with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist."
[66] 5 Phil. 87 (1905).

the first time in Philippine jurisprudence, the question was raised as to whether the findings of fact upon which the Governor-General based his order suspending the privilege of the writ of habeas corpus could be inquired into by the courts. Upon the theory that the courts could reverse the findings of fact of the Philippine Commission, the petitioner sought his release through the writ of habeas corpus, affirming that factually there was no basis for the order of suspension. Rejecting the petitioner's contention, the Supreme Court reasoned, that a judicial inquiry, as a condition for the courts to obey an order suspending the privilege of the writ of habeas corpus, would bring about a condition whereby "the hands of the Governor-General may be tied until the very object of the rebels or insurrectos has been accomplished."[67]

This was the state of Philippine law and jurisprudence when the Constitutional Convention met on July 20, 1934. The framers continued the power to suspend the privilege of the writ of habeas corpus in the executive, this time the President of the Philippines; and the fact that in so doing, the provision of the then existing organic law,[68] already interpreted in the aforecited case of *Barcelon v. Baker*,[69] is practically reproduced, is very instructive and significant. There was however strong and well-reasoned opposition from among the delegates to continuing the power with the President.[70] This opposition served a good purpose. It brought into the open and underscored the deter-

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[67] *Id.*, at 94.

[68] Jones Law of 1916, which reproduced, deleting the requirement of consent by the Philippine Commission to the order of suspension by the Gov.-Gen., the habeas corpus provision of the Philippine Bill of 1902 (see *supra* note 65).

[69] *Supra note* 66.

[70] ARUEGO, *op. cit. supra* note 20, at 430-432. "With respect to the authority of the President to suspend the writ of habeas corpus, there were two camps of thought in the Convention. One was in favor of the provision of the first draft giving the authority to the President; the other, in favor of giving the authority to the National Assembly when it was in session, otherwise to the President with the consent of the majority of the Supreme Court. An amendment reading thus, was introduced by Delegate Araneta:

"In case of invasion, insurrection or rebellion, when the public safety requires, the National Assembly may suspend the privileges of the writ of habeas corpus. In case the National Assembly is not in session, the President may suspend the privileges of the writ of habeas corpus with the consent of the majority of the members of the Supreme Court, but this suspension of the privileges of the writ of habeas corpus will be considered revoked if the President does not call a special session of the National Assembly within 15 days from the degree suspending the writ of habeas corpus or if the National Assembly fails to confirm the action of the President within 30 days.

"Defending his amendment, which was considered by the contention on Dec. 17, 1934, Delegate Araneta pointed out that its object was to protect the life and liberty of the people. Under the provision of the draft, he said, the Chief Executive would be the only authority to determine the existence of the reasons for the suspension of the writ of habeas corpus; and according to Philippine jurisprudence, the Supreme Court would refuse to review the findings of the Executive on the matter. . . . To give the power to suspend to the National Assembly or even to the President provided that it be with the consent of the majority of the Supreme Court would be, according to the Manila delegate, to reduce if not remove the possibility of abuse . . ."

mined intent of the framers to vest the exclusive power to suspend the privilege of the writ of habeas corpus, and the conclusive power to determine the factual basis of the suspension, in the President. We will see presently the ease with which our Supreme Court disposed of the question of conclusiveness of presidential determination of facts, in connection with the second suspension of the privilege of the writ of habeas corpus.

The second instance when the privilege of the writ of habeas corpus was suspended was on October 22, 1950. It was the immediate offshoot of the mass arrest of communist suspects on October 17, 1950, which included some nine ranking members of the National Secretariat of the Communist Party of the Philippines. To the surprise of all, men prominent in governmental and social circles, like Attorney Jesus Lava, Angel Baking of the Department of Foreign Affairs and Councilor Amado Hernandez of Manila, were among those arrested. To make the situation more alarming, papers and documents containing strong and convincing evidence linking those arrested with the Hukbalahap uprising, were seized during the raid. At once, the gravity of the communist menace in the country was fully realized. President Quirino acted quickly and firmly. Barely five days after the incident, he issued a proclamation suspending the privilege of the writ of habeas corpus. The suspension was national in scope and covered all "persons (then) presently detained, as well as others who may be thereafter similarly detained for the crimes of sedition, insurrection or rebellion, and all other crimes and offenses committed by them in furtherance or on the occasion thereof, or incident thereto, or in connection therewith."[71] With a view to complying with constitutional requirements, the suspension was based on the existence of "actual danger of rebellion which may extend throughout the country." It must be noted that the Constitution does not require the existence of "actual danger of rebellion" in order to justify a suspension of the privilege of the writ of habeas corpus. An "imminent danger of rebellion" is all that is required. Thus, our Supreme Court in one of the cases arising from the suspension, had occasion to say that "actual danger of rebellion" clearly meets the constitutional requirement as it implies "much more than imminent danger thereof."[72]

In the cases that arose out of the second suspension of the privilege of the writ of habeas corpus, the following questions were raised:

1. Is the factual basis of the presidential proclamation suspending the privilege of the writ of habeas corpus subject to judicial review and inquiry?
2. Could such proclamation be made to cover both persons arrested and

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[71] Proclamation No. 210, 46 O.G. No. 10, 4682.
[72] *Montenegro v. Castañeda*, G.R. No. L-4221, Aug. 30, 1952.

detained before and after the effectivity of the proclamation?
3. Is sedition a constitutional ground for suspension?
4. Does the suspension of the privilege of the writ carry with it the suspension of the right to bail?

The first three questions were resolved in the case of *Montenegro v. Castañeda.*[73] On October 18, 1950, Montenegro and others were arrested at the Samanillo Building, in downtown Manila by agents of the Military Intelligence Service of the Armed Forces of the Philippines, for complicity with the communist Hukbalahap organization in the commission of acts of rebellion, insurrection and sedition. A petition for the writ of habeas corpus was filed by the father of Montenegro, on the latter's behalf, on October 21, 1950. The following day, October 22, 1950, the privilege of the writ of habeas corpus was suspended. From the decision of the trial court denying the petition, the petitioner appealed to the Supreme Court raising the following issues: (1) the proclamation is unconstitutional because it partakes of the nature of a bill of attainder or an ex post facto law; (2) that it is unconstitutional because it unlawfully includes sedition as one of the grounds of the suspension; (3) that it is unconstitutional because there is no state of invasion, insurrection or rebellion or imminent danger thereof. The Supreme Court denied the petition, affirming the decision of the trial court. On the first issue, the Supreme Court said that the prohibition against bills of attainder and ex post facto law applies only to "statutes," and at any rate, inasmuch as the President is authorized by the Constitution to issue the order of suspension, "such order must be deemed an exception to the general prohibition against ex post facto laws and bills of attainder —supposing there is a conflict between the prohibition and the suspension." On the second issue, the court stated that "the inclusion of sedition does not invalidate the entire proclamation," as such could be treated as a "mistake or surplusage" inasmuch as the other grounds of the suspension are constitutionally sufficient to support the suspension. The court answered the third issue by reiterating the doctrine in the case of *Barcelon v. Baker,*[74] that, "the authority to decide whether the exigency has arisen requiring suspension belongs to the President and his decision is final and conclusive upon the courts and upon all other persons."

Notice must be taken of the fact, that in the above case of *Montenegro v. Castañeda,* what the court refrained from reviewing was the factual determination of the President as to the existence of "actual danger of rebellion." But the Supreme Court did review, as it is in duty bound so to do as supreme guardian of the Constitution, the constitutionality of the order of suspension from the viewpoint of whether it was based on grounds specified by the Constitution, and whether it offends against

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[73] *Ibid.*
[74] See *supra* note 66.

the inhibition on ex post facto law and bill of attainder in the Bill of Rights.

The stand taken by our Supreme Court in these two cases of *Barcelon v. Baker* and *Montenegro v. Castañeda*, is a practical and realistic appraisal of the factual situation co-existing with the suspension of the privilege of the writ of habeas corpus. Certainly, in the interest of national security, it is best that the Executive be left alone to determine the sufficiency of the facts upon which to premise his action. Emergency situations are never the proper business of courts, for so long as the emergency lasts. Slow judicial process, in the face of crisis situations threatening the life of the nation itself, must give way to fast executive action—the paramount need of the moment. And when the intervention of the courts is sought, judges should be slow and cautious to interfere with and disturb crisis decisions and actions, not only of the President but also of the Congress. For as admitted by our Supreme Court, "whereas the Executive Branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery can not be in a better position to ascertain or evaluate the conditions prevailing in the archipelago." [76]

On the question of whether the suspension of the privilege of the writ of habeas corpus likewise suspends the right to bail, there is as yet no authoritative decision. This question was squarely presented before the Supreme Court in the cases of *Nava v. Gatmaitan*[77] and *Hernandez v. Montesa*.[78] It however failed to render a decision on the question due to the lack of the required six votes.[79] Of the nine justices who took part in the consideration of the case, five sustained the negative of the issue, while the other four justices supported the affirmative. Thus, the decisions of Judge Gatmaitan and Judge Montesa of the Court of First Instance of Manila, that the suspension of the privilege of the privilege of the writ of habeas corpus likewise suspended the right to bail, stood undisturbed.

Chief Justice Paras, who voted with the five justices, explained his view thus:

> "If the intention of the framers of the Constitution was that the suspension of the privilege of the writ of habeas corpus carries or implies the suspension of the right to bail, they would have very easily provided that all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when the evidence of guilt is strong and except when the privilege of the writ

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[76] *Montenegro v. Castañeda*, see *supra* note 72.
[77] G.R. L-4964, prom. Oct., 11, 1951.
[78] *Ibid.*
[79] Sec. 9, Judiciary Act of 1948 (R.A. No. 296).

> of habeas corpus is suspended. As stated in the case of Ex parte Milligan, the Constitution limited the suspension to only one great right, leaving the rest to remain forever inviolable"

To the argument that the security of the State requires that the suspension of the privilege of the writ of habeas corpus be considered as another exception to the right to bail, the Chief Justice countered:

> "And it should be borne in mind that if worse comes to worst—to the extent that the security of the State is in fact imperiled and the regular constitutional processes can no longer be observed with general safety to the people—the President is authorized by the Constitution (Article VII, sec. 10, par. 2) to "place the Philippines or any part thereof under martial law.' x x x The stubborn fact, however, is that the mere suspension of the privilege of the writ of habeas corpus is an admission that the courts can function and are functioning normally; otherwise, there is no need for the suspension as there will be no court to grant the writ."

Justice Bengzon would have the controversy resolved this way: "Bail before the information is filed has been suspended; after the information is filed, the right to bail emerges in full force and effect." He maintains that once information is filed, the Executive loses jurisdiction over the prisoner in favor of the Judiciary and as such the "ordinary principles regulating criminal procedure, e.g., proceedings to obtain bail or to enforce other rights of the prisoner," must be followed. Dealing with the security of the state, which was the main point of the respondents, Justice Bengzon, emphatically declared:

> "And in my opinion, one of the surest means to ease the uprising is a sincere demonstration of this government's adherence to the principles of the Constitution together with an impartial application thereof to all citizens, whether dissidents or not. x x x Give them the assurance that the judiciary, ever mindful of its sacred mission will not, thru faulty cogitation or misplaced devotion, uphold any doubtful claims of governmental power in diminution of individual rights, but will always cling to the principles uttered long ago by Chief Justice Marshall that when in doubt as to the construction of the Constitution, 'the courts will favor personal liberty.'"

Adhering to the conclusion of the above named justices, Justice Tuason came out with his stern and affirmative reminder:

> "To the plea that the security of the State would be jeopardized by the release of the defendants on bail, the answer is that the existence of danger is never a justification for the courts to tamper with the fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency, or so called 'judicial statesmanship."

On the other hand, Justice Bautista Angelo would rather see the Republic safe and secure first before an individual's right to bail should be respected. He said:

> "When the right of the individual conflicts with the security of the State, the latter should be held paramount. This is a self-evident political shibboleth. The State is a political body that stands for society and for the people to secure which individual rights must give way and yield. For as Justice Holmes well said, 'when it comes to a decision by the head of the State upon a matter involving its life, the ordinary rights of individuals must yield to what he deems the necessities of the moment.'" [80]

Sharing the same view held by Justice Angelo Bautista, Justice Padilla pointed out that the right to bail and the exception to such right as provided by Article III, sec. 1 (16) contemplates periods of normalcy in the life of the nation; and, in abnormal times, when the privilege of the writ of habeas corpus is suspended, another exception to the right to bail comes in—persons coming within the terms of the order of suspension cannot claim the right to bail.

What line of thought Philippine jurisprudence will finally adopt is not definitely knowable. If we are to premise our prediction on the approach of our Supreme Court on presidential power, as evinced in the two Emergency Powers cases,[81] those of *Lacson v. Roque*[82] and *Jover v. Borra*,[83] and the voting itself of the Supreme Court in the cases of *Nava v. Gatmaitan*[84] and *Angeles v. Montesa*,[85] the tendency of the Supreme Court is to trim presidential powers in deference to private individual rights. Yet, under the facts and surrounding circumstances in the cases of *Nava v. Gatmaitan* and *Hernandez v. Montesa*, we believe that the opinions of Justices Bautista Angelo and Padilla are the more realistic and beneficial view. Considering the present world-wide communist menace, which is actually actively present in our own country; the fact that the petitioners in these cases were finally convicted by our courts of the crime imputed against them, together with

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[80] In answer to Justice Bengzon's view, Justice Bautista said: "If there is justification for their confinement while they are under investigation for the purpose of determining their participation or complicity in the acts for which they are held under suspicion, there is indeed more cogent and plausible reason, if not more, to keep them behind bars after they are indicted. . . ."

To Chief Justice Paras's view, Justice Bautista replied: "In the light of the precepts of our Constitution, the issuance of the Proclamation has no other legal consequence than the limitation of the right of the individual to his liberty. No other right or privilege vouchsafed to him by the Constitution has thereby been affected or impaired which he is free to invoke in line with the processes prescribed by our statutes. x x x We concede that the detainee, once indicted, can invoke in his favor all the rights guaranteed to him by law and the Constitution if he deems it necessary to protect his interest. And in this sense, he can invoke his right to a speedy trial, to be defended by counsel, to be confronted by and cross-examine witnesses, to have compulsory process to secure the attendance of witnesses in his behalf, etc. In other words, he is not denied due process of law simply because of his confinement. The only limitation on his rights refers to his freedom which, as already stated, has been withheld from him by the Proclamation."

[81] See *infra* note 104.

[82] See *supra* note 37.

[83] See *supra* note 38.

[84] See *supra* note 77.

[85] See *supra* note 78.

those arrested under similar charges in the mass raid of October 17, 1950;[86] the thousand and one atrocities and brutalities committed by the petitioners' comrades, the Huks, and to which by conspiracy they are accountable; and the further fact that the petitioners and their comrades are bent on overthrowing by force of arms, the present government, and institute in its place a communist "machinery"; we believe that for our own good and safety,—our way of life, our Constitution, laws and institutions—that once the privilege of the writ of habeas corpus is validly suspended, all reasonable doubts should be resolved in favor of giving full force and efficacy to the suspension and the purpose thereof. A simple case will serve to illustrate our point. A, B, C, and D are top ranking members of a revolutionary movement. "A" is the commanding general of the revolutionary forces about ready to start hostilities. "B" and "C" are the financiers of the uprising, without whose aid and backing, it cannot even exist, much less succeed. "D" is an intelligence man, doing efficient and effective espionage work within the government the rebels seek to overthrow. Because of the uprising, the privilege of the writ of habeas corpus was suspended. "A", "B", "C" and "D" were nabbed in a fast government raid. They petitioned for habeas corpus due to prolonged detention without being indicted in court. Their petition was naturally denied outright. Subsequently, they were charged with rebellion. They applied for bail saying that they are entitled to bail as a matter of right for they are not charged with a capital offense. Question—Should they be admitted to bail and granted their freedom? We believe they should not. We believe that the suspension of the privilege of the writ of habeas corpus had the effect, as to them, of impliedly suspending the right to bail. Is not the function of the suspension precisely to legalize their detention and keep them in confinement until acquitted or released in the ordinary course of law—by judicial or executive decision? Is not their freedom being denied them for the purpose of preventing them from joining their fellow rebels and hence frustrate their design to overthrow the government? Certainly, the government cannot indulge in theoretical appraisal of values, nor engage in abstract rationalizations, and neither can it be expected to accord an idealistic regard to the pretensions of liberty of the very same individuals seeking its destruction, under situations where its own existence is perilously at stake. If individuals are granted the legal right of self-defense; certainly, the state with more compelling reasons cannot be denied the same. And for sure, the mood and manner of defense which the State may employ, is left to the sovereign discretion of the appropriate sovereign organ of the State, which in the Philippines is personified by the President, uncontrolled by and not subject to the de-

[86] As previously stated, included among those arrested on this day were nine ranking members of the National Secretariat of the Communist Party. See Manila Times, October 18, 1950.

sires of the enemy, the aggressors, who have no more right to dictate the State's means of defense, as the State has right to dictate to them their means of aggression. Beyond doubt, individual liberty is not more precious than the continued existence of the constitutional order. It is absurd to think that our framers ever intended at all to make the Bill of Rights as a possible weapon which could be turned against, and end the life of, the entity itself, which is the source and protector of those same rights. Again it must be recalled that enshrined in the Constitution itself is the principle that, "The defense of the State is a prime duty of government."[87] And President Lincoln's words, still burning in deathless realism, comes to our mind: "Often a limb must be amputated to save a life, but a life is never wisely given to save a limb."[88]

(b) *Emergency Powers by Constitutional-Statutory Grant*

One of the settled principles of Philippine constitutional law is the principle of separation of powers. Under our Constitution the principle finds recognition "not through express provision but by actual division."[89] Broadly stated, the principle means—

> "The legislative department is assigned the power to make laws. The Executive Department is charged with the execution or carrying out of the provisions of said laws. But the interpretation and application of said laws belong exclusively to the Judicial Department."[90]

But as pointed out by Justice Tuason, adopting Holmes, separation of powers in reality:

> "x x x is not rigid and absolute but abstract and general intended for practical purposes and adopted to commonsense. There is no such thing as complete and definite designation by the Constitution of all the particular powers that appertain to each of the several departments. The constitutional structure is a complicated system, and overlappings of governmental functions are recognized, unavoidable, and inherent necessities of governmental coordination."[91]

An accepted corollary to the principle of separation of powers is the principle of non-delegation of legislative powers, otherwise known as the Lockian maxim. In the words of Locke, "The legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have."[92] The rationale behind the Lockian maxim is "that such a delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another."[93]

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[87] PHIL. CONST. Art. II, Sec. 2.
[88] ROSSITER, C., *op. cit. supra* note 2, at p. 11.
[89] *Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936).
[90] *Endencia v. David*, G.R. No. L-6305, prom. Aug. 31, 1953.
[91] *Arnault v. Pecson*, 48 O.G. 533, 538 (1950).
[92] See *infra* note 112.
[93] *U.S. v. Barrias*, 11 Phil. 327, 330 (1908).

Our Constitution though, recognizes certain exceptions to the Lockian maxim. In at least two specific provisions of the Constitution, we find specific authorization to the delegation of legislative power by Congress. One such provision is section 22 (2) of Article VI, under which Congress "may by law authorize the President, subject to such limitations and restriction as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues." The other is section 26 of the same article, where power is given to Congress "in times of war or other national emergency" to invest the President "by law" "for a limited period and subject to such restrictions as it may prescribe" with authority "to promulgate rules and regulations to carry out a declared national policy." The latter provision may be referred to as the "emergency powers clause." It is easy to see that the underlying reason for these exceptions is necessity. It is to be observed further, that these exceptions are not self-executing. They do not constitute automatic conferments of emergency powers on the President. There must first be an enabling statute before the President can act under either of them.

It is section 26 of Article VI though, which presents a striking and interesting feature in our constitutional system. It has no counterpart in the Federal Constitution of the United States, although the Philippine Constitution is admittedly an imitation of the former. In fact, this particular section has been described as "an improvement over the American Constitution."[94] To the extent, however, that a permanent delegation of emergency powers cannot be made under our Constitution, when in the United States it is constitutionally possible to enact the same,[95] it cannot be said that this provision of our Constitution is an improvement on the American Charter.

Why this provision was inserted in our Constitution is explained by Delegate Aruego thus:

> "x x x to make possible in the Philippines a delegation of legislative power in times of emergency, similar to what was being done in the United States under the administration of President Franklin D. Roosevelt. At the time, there were some doubts entertained in the United States regarding the constitutionality of some of the "New Deal" measures. In order that the constitutionality of similar measures in case they would be necessary in the Philippines someday would be sure, the committee on legislative power included in its report a recommendation permitting in effect a delegation of legislative power to the President. x x x"[96]

The inclusion of this provision was met with a vigorous and determined opposition from one of the prominent delegates to the constitutional convention, who warned the convention that its inclusion would permit

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[94] II TAÑADA AND FERNANDO, *op. cit. supra* note 36, 929.
[95] See *Hart, The Ordinance Making Power of the President of the United States*
[96] I ARUEGO, *op. cit. supra* note 20, at 388-389.

a "vast control of government by a single, strong man and the establishment of a virtual dictatorship."[97] This opposition notwithstanding, the inclusion of section 26, Article VI was approved "overwhelmingly."

A reading of section 26, Article VI reveals that for a valid delegation of emergency powers, there must be: first a "war or other national emergency"; second, a "law" to effect the delegation; third, the delegation must be for a "limited period and subject to such restrictions" as Congress may prescribe; and lastly, a "national policy" which must be declared in the enabling act, and which is to be carried out by the President through the exercise of the powers granted by the act.

War may either be a public war, an armed contest between two or more nations,[98] or a civil war, where the authority of the constitutional government is resisted by a segment of the population "by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said government or its laws, the territory of the Philippines or any part thereof . . ."[99] The context of the constitutional provision and the common sense of the situation would not seem to require, that for Congress to grant emergency powers in time of public war, a declared war is necessary. The Philippines may or may not be involved in a war as a belligerent, yet, there is no denying the probability that, although the Philippines is not a belligerent in a certain war, it may be so situated that the latter so adversely affects it as to create a national emergency. Thus, although the Philippines was not legally a belligerent during the World War II as it did not declare, could not have declared, war against the Axis Powers, still it was engulfed by a national emergency. As we have seen, and will discuss later on, Emergency Powers Acts granting emergency powers to the President were enacted during the World War II. All of these acts were impliedly considered as constitutional by our Supreme Court in the Emergency Powers cases, although they were enacted only pursuant to the "factual war then raging." According to Justice Feria, the phrase "other national emergency" includes "flood, earthquake, pestilence, economic depression, famine, and any other disaster causing a national emergency."[100]

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[97] *Id.*, at 390-391: "Delegate Vinzons presented an amendment for its suppression, which amendment was considered by the Convention on Dec. 12, 1934. Delegate Vinzons summarized his arguments for suppression thus:

"'I would want to say, that our reasons for the elimination of this provision may be considered briefly as follows:

"'First, that this provision of the constitution violates the doctrine of the separation of powers. Second, that under it the Assembly and the President has been given vast and tremendous powers, almost dictatorial in nature. Third, that an analysis of the ordinance-making power does not warrant the grant of such an extensive power to the President of the Philippines.'"

[98] 44 WORDS AND PHRASES, 624.

[99] Art. 134, Rev. Penal Code of the Phil.

[100] Feria, concurring in *Araneta v. Dinglasan*, see note 101.

The requirement that the delegation of emergency powers be by "law" is to insure the indispensable concurrence of will between the principal, Congress, and the agent or delegate, the President. A grant of emergency powers to an unwilling or reluctant President would not be of much use. And although both are agreed as to the necessity of the grant, still there is the further need of agreement on the scope of the grant, so as to achieve the maximum efficiency and benefits therefrom. Thus, the Constitutional Convention revised the original draft of section 26, Article VI which then ran—"In times of war or other national emergency the National Assembly may authorize the President etc.,"—so as to read as now found in our Constitution requiring the grant of emergency powers to be by "law."

Interpreting the constitutional requirement that an emergency powers act be only "for a limited period," Chief Justice Paras speaking for a unanimous Court, adopted Justice Tuason's view in the First Emergency Powers Case,[101] saying: "The words 'limited period' as used in the Constitution are beyond question intended to mean 'restrictive in duration.' Emergency in order to justify the delegation of emergency powers, 'must be temporary or it can not be said to be an emergency.'" As further explained by Justice Padilla, in his concurring opinion,[102]—"The reason why the Constitution is silent on or does not provide for the manner the delegation of legislative powers may be withdrawn, revoked or ended, is because if the war or other national emergency ceases the delegation ipso facto also ceases." And where the emergency powers act does not in terms fix the duration of the grant of powers, our Supreme Court in the aforementioned *Emergency Powers Cases*, acting under the principle that a law is presumed to be constitutional, considered the constitutional requirement of "limited period" as if actually stated in the law and forming part thereof. It is to be recalled, that the grant of emergency powers is subject "to such restrictions as Congress may prescribe." In line with this power, the National Assembly, in the various Emergency Powers Acts enacted by it during the Second World War, used various techniques to control or at least regulate the President's exercise of emergency powers. For instance, the National Assembly required the President to report all acts and measures taken by him under the Emergency Powers Acts.[103] There is also the technique of reserving the power to alter or repeal the rules and regulations issued by the President under his emergency powers.[104] Then there was the technique of limiting the time during which emergency rules

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[101] First Emergency Powers Cases: *Araneta v. Dinglasan; Araneta v. Angeles; Rodrigues v. Treasurer; Guerero v. Commissioner, Barredo v. Commission.* 45 O.G. No. 10, 4412.

[102] *Rodrigues and Tañada v. Gella*, G.R. No. L-6266, Feb. 2, 1953.

[103] See sec. 5, Com. Act No. 496; sec. 5, Com. Act No. 498; sec. 3, Com. Act No. 500; sec. 4, Com. Act No. 600; and sec. 3, Com. Act. No. 671.

[104] See sec. 2, Com. Act No. 498; and sec. 1, C.A. No. 600.

and regulations issued by the President is to remain in force and effect.[105] Another safeguard is limiting the duration of the emergency powers act itself.[106] And still another safeguard is the requirement that the President can only exercise his emergency powers while the Congress is not in session.[107]

The fourth requisite for the constitutionality of a law granting emergency powers is that it must declare a "national policy" in accordance with which the President will be guided in his actions under the grant. It is to be observed that the Constitution expressly requires that the authority of the President under a grant of emergency powers is simply to "promulgate rules and regulations to carry out a declared national policy." The importance of this requisite cannot be over emphasized. The emergency calling for a grant of emergency powers may require a very broad grant as to amount to an abdication of legislative powers. In such a case, the need for a definition of policy for the exclusive attainment of which, the President is to direct the exercise of his emergency rule-making power, becomes imperative. Democracy is never safe under the rule of undefined discretion and power, particularly when such is lodged in a single individual like the President of the Philippines, who even normally under the Constitution, is already a very strong executive. So even when the National Assembly was faced with the certainty that the entire Philippine territory would later on be overrun by the Japanese invaders, necessitating the transfer of the seat of the National Government to some foreign land, it still was careful to declare and define the national policy in all the emergency powers acts enacted by it during the dark days of World War II.

Does section 26, Article VI of the Constitution authorize Congress to delegate legislative powers to the President? We believe it does. As has been discussed a few pages back,[108] it was precisely to erase constitutional objection on the ground of undue delegation of legislative powers, that this provision was included in our Constitution. The debates during the consideration of this provision also reveal the intention of the framers to sanction a delegation of legislative powers under the conditions specified therein.[109] No less than a very prominent and influential delegate to the Constitutional Convention, Jose P. Laurel, then a Supreme Court Justice, has admitted while speaking for the Supreme Court in the case of *People v. Vera*,[110] that section 26, Article VI, of our Constitution authorizes a delegation of legislative powers. In the *Second Emergency Powers Case*,[111] Chief Justice Paras, speaking for a unanimous court, adopted

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[105] See sec. 2, C.A. 498; sec. 1, C.A. 600; sec. 1, Com. Act. No. 620.
[106] See Com. Act No. 496, sec. 2.
[107] See Commonwealth Act No. 600, sec. 2.
[108] See *supra* note 96.
[109] See *supra* note 97.
[110] 65 Phil. 56, 114.
[111] See *supra* note 102.

Justice Laurel's statement in the *Vera* case: "The framers of the Constitution, had the vision of and were careful in allowing delegation of legislative powers to the President for a limited period 'in times of war or other national emergency.'" It might also be stated in corroboration, that in actual practice Congress has been delegating legislative powers to the President under the authority of section 26, Article VI. One need only go over the last three Emergency Powers Acts enacted by the National Assembly during the last World War, to verify the truth of this practice.[112]

The wisdom and utility of section 26, Article VI was actually demonstrated during the last World War, during which Congress had occasion to act under it for no less than seven times. In all these cases though, the occasion for the grant of emergency powers was war emergency created by the World War.

On the 30th day of September 1939, Congress, on account of the existence of a "state of war among the nations of the world," enacted five Emergency Powers Acts. The first[113] authorized the President to suspend, wholly or partially, the operation of the Eight-Hour Labor Law whenever necessary to avoid unnecessary injury to labor and industry by an inflexible application of said law. The second[114] empowered him to take over for the use or operation by the government any public service or enterprise and prescribe penalties for interfering with the exercise by the government of this authority, and further authorizing him to appropriate the necessary funds therefor. The third of them[116] authorized him to promulgate rules and regulations to prevent locally or generally, scarcity, monopolization, and profiteering. The fourth authorized him to approve or disapprove transfers of vessels and shipping facilities under Philippine Registry to foreign registry or flag, so as to insure enforcement of strictest neutrality and to meet shortage of bottoms.[117] The last of them, Commonwealth Act No. 500, granted him authority to decrease expenditures of the executive department through the suspension or abandonment of services or activities of no immediate necessity.

Then on August 19, 1940, with the world situation rapidly worsening, the National Assembly enacted the first emergency powers act containing an omnibus grant of emergency powers.[118] This act was in effect a compilation of the previous Emergency Powers Acts of September 30, 1939, and therefore, impliedly superseded the latter. Besides, to make the Act abreast with the existing perils, additional emergency powers were provided for. The national policy declared in the

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[112] See Com. Acts Nos. 600, 620 and 671.
[113] Com. Act No. 494.
[114] Com. Act No. 496.
[116] Com. Act No. 498.
[117] Com. Act No. 499.
[118] Com. Act No. 600.

Act was "to safeguard the integrity of the Philippines and to insure the tranquility of its inhabitants." Accordingly, the President was authorized to promulgate rules and regulations on the following:

1. To suppress espionage and other subersive activities;
2. To require all able-bodied citizens not engaged in any lawful occupation (a) to engage in farming or other productive activities or (b) to perform such services as may be necessary in the public interest;
3. To take over farm lands in order to prevent failure or shortage of crops and avert hunger and destitution;
4. To take over industrial establishments in order to insure a continual production, controlling wages and profits therein;
5. To prohibit lockouts and strikes whenever necessary to prevent the unwarranted suspension of work in productive enterprises or in the interest of national security;
6. To regulate the normal hours of work for wage-earning and salaried employees in industrial or business undertaking of all kinds;
7. To insure an even distribution of labor among the productive enterprises;
8. To commandeer ships and other means of transportation in order to facilitate the free and continued movements of goods and merchandise;
9. To requisition and take over any public service or enterprise for the use of or operation by the Government;
10. To regulate rents and the prices of articles or commodities of prime necessity, both imported and locally produced or manufactured; and
11. To prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculations, and private controls affecting the supply, distribution, and movement of food, clothing, fuel, fertilizers, chemicals, building materials implements, machinery, and equipment required in agriculture and industry.[119]

The foregoing enumeration shows how far a government would go in assuming powers and curtailing individual rights when driven by the tremendous pressure of a total war emergency. The Act authorized practically every form of governmental intervention into the economic life and activity of the people—all in the supreme effort of "safeguarding the integrity of the Philippines and insuring the tranquility of its inhabitants." Property rights, right to liberty, right of contract and other economic rights, and political rights were all placed within the power of the President to control, even to the extent of curtailment or deprivation. But one very noticeable thing about the Act is its emphasis on and detailed treatment of economy controls, including controls on occupation,[120] controls on labor,[121] controls on concerted labor activities,[122] controls over means of production,[123] controls over means of trans-

[119] *Ibid.*, sec. 1.
[120] *Ibid.*, sec. 1, cl. 2.
[121] *Ibid.*, sec. 1, cl. 6 and 7.
[122] *Ibid.*, sec. 1, cl. 5.
[123] *Ibid.*, sec. 1, cl. 3 and 4.

portation and other public services,[124] price control[125] and controls on food, clothing, fuel and other essential supplies.[126] Intervention in and control of the political rights of the people could be effected through the President's power to provide for the "suppression of espionage and other subversive activities." [127]

A survey of the measures actually taken and adopted by President Quezon in pursuance of the above Emergency Powers Act would make more real and clear the distinctions between a normal and a crisis government. On April 1, 1941, President Quezon created the Civilian Emergency Administration,[128] the main function of which was to coordinate and control civilian organizations for the protection of the civilian population during the war emergency. In another executive order,[129] the formation of civilian organizations known as *Volunteer Guards* was imposed upon every city and town mayor. The functions of each *Volunteer Guards* unit as specified in said executive order were: (1) to assist in the suppression of espionage and sabotage; (2) to assist in the maintenance of peace and order; (3) safeguard public utilities, bridges and manufacturing plants engaged in industries; and, (4) to succor, aid and assist the populace in emergencies caused by fire, flood, earthquakes, typhoon, epidemics, air raids or other local or national disaster. The other executive orders issued provided for price control,[130] export control,[131] control on radio,[132] control on dealers of foodstuffs,[133] commandeering of food, fuel, and other articles of prime necessity,[134] compelling able-bodied citizens to engage in productive activities,[135] and immediate arrest on sight without warrant of persons committing lawless acts against the civilian population.[136]

After the enactment of the above Emergency Powers Act, the danger of war reaching Philippine shores did not abate, but became more apparent every passing day. There was felt in governmental circles the necessity for a still more comprehensive grant of emergency powers. Thus, about a year after the passage of Commonwealth Act No. 600, the National Assembly enacted Commonwealth Act No. 620, amending section (1) of the former so as to include other subjects over which the President may exercise his emergency powers. Accordingly, the policy declared in the earlier Emergency Powers Act was enlarged to

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[124] *Ibid.*, sec. 1, cl. 8 and 9.
[125] *Ibid.*, sec. 1, cl. 10.
[126] *Ibid.*, sec. 1, cl. 11.
[127] *Ibid.*, sec. 1, cl. 1.
[128] Exec. Order No. 335.
[129] Exec. Order No. 337, April 16, 1941.
[130] Exec. Order No. 371, 1941.
[131] Exec. Order No. 374, 1941.
[132] Exec. Order No. 354, 1941.
[133] Exec. Order No. 340, 1941.
[134] Exec. Order No. 382, 1941.
[135] Exec. Order No. 392, 1941.
[136] Exec. Order No. 389, 1941.

include the taking by the President of measures to facilitate "the speedy evacuation of the civilian population, the establishment of air protective service and to adopt such other measures as he may deem necessary for the interest of the public."[137]

Finally on December 10, 1941, the Japanese Army landed in various parts of the Philippines. We were materially unprepared for the war. We were weak. For the most part of the war we found our troops in a hopeless and helpless defensive. President Quezon quickly realized the probability that the entire Philippines would sooner or later be engulfed by the invaders, thereby necessitating the evacuation of the seat of the Philippine Government to a foreign country, and ultimately resulting in the complete paralyzation of the other branches of the then Commonwealth Government. President Quezon hastily called the National Assembly to a special session. The specific purpose of such special session was to make possible the establishment of a "presidential crisis government," if such be necesary to cope with the total war emergency and enable the government to go on when evacuted to a foreign land. This special session gave out the last Emergency Powers Act,[138] which after declaring a "state of total emergency," proceeded accordingly to empower the President to:

> (1) transfer the seat of the Government or any of its subdivisions, branches, departments, offices, agencies or instrumentalities;
> (2) reorganize the Government including the determination of the order of precedence of the heads of the Executive Departments;
> (3) create new subdivisions, branches, departments, offices, agencies, or instrumentalities of government and to abolish any of those already existing;
> (4) continue in force laws and appropriations which would lapse or otherwise become inoperative, and to modify or suspend the operation or application of those of administrative character;
> (5) impose new taxes or to increase, reduce, suspend, or abolish those in existence;
> (6) raise funds through the issuance of bonds or otherwise, and to authorize the expenditure of the proceeds thereof;
> (7) authorize the national, provincial, city or municipal governments to incur in overdrafts for purposes that he may approve;
> (8) declare the suspension of the collection or credits or the payment of debts;
> (9) exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce its authority.[139]

It is evident that Commonwealth Act No. 671 was confined almost exclusively to investing the President with tremendous powers over the organization and reorganization, the operation and the maintenance of the government. The reason obviously is the impending evacuation of

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[137] Com. Act No. 620, sec. 1.
[138] Com. Act No. 671.
[139] *Id.*, sec. 1.

the seat of the Commonwealth Government to the United States. To make the preparation for such transfer complete, the President under clause (4) as abovementioned, was authorized to continue, modify or suspend laws and appropriations, and under clause (9) likewise abovementioned, he is invested with the general power "to exercise such other powers as he may deem necessary to enable the Government to fulfill its responsibilities and to maintain and enforce its authority." In two instances, the Act authorized him, in addition to those instances provided for in Commonwealth Act No. 620,[140] to interfere directly with the private affairs of the people, through the exercise of the power of taxation[141] and the power to declare debt moratorium.[142] With Commonwealth Act No. 620 providing for governmental controls on the people and the national economy, and Commonwealth Act No. 671, providing for presidential control on the organization, operation and maintenance of the government, the Philippine Commonwealth Government was made ready for the impending and necessary transition from normal or peacetime government to a war government of the presidential type. When the seat of the Commonwealth Government was finally transferred to the United States, the "presidential crisis government" existed and functioned in full swing.

The last Emergency Powers Act, Commonwealth Act No. 671, has been described as a "total relinquishment of legislative powers,"[143] and criticized as "a legislative abdication in its worst form."[144] We believe, however, that that was the obvious and precise and even exclusive need of the moment. It was plain and the National Assembly itself knew it, that it cannot continue to exist and function to meet the needs of the war government. When the seat of the Philippine Commonwealth Government was transferred to Washington D.C., United States of America, there was left only, the Executive Department. It was left alone to bear the abnormal responsibilities and execute the delicate and vital functions of a war government. There was no legislative body to enact needed laws or appropriate needed sums of money, nor raise such needed sums. Could the President have discharged the responsibilities of a war government without the delegation in his favor of the legislative powers contained in Commonwealth Act No. 671? We believe not. At any rate, suffice it to say that the Philippine Commonwealth Government was enabled to function well and successfully by Commonwealth Act No. 671, not only in spite, but because, of the disregard it has taken against a doctrinaire adherence to the doctrine of separation of powers.

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[140] See *supra* note 137.
[141] Com. Act No. 671, sec. 1, cl. 5.
[142] *Ibid.*, sec. 1, cl. 8.
[143] Moran, concurring in *Araneta v. Dinglasan*, see note 101.
[144] II TAÑADA AND FERNANDO, *op. cit. supra* note 36, at 933.

Under Commonwealth Act No. 671, President Quezon and later on President Osmeña were enabled to issue executive orders appropriating much-needed funds for the operation of the crisis government,[145] and also to back up essential public works.[146] Through this Act, President Osmeña was enabled to reorganize, create and abolish departments, bureaus and offices of the government, as the needs and necessities of the crisis required.[147] Likewise, executive orders establishing a government bank,[148] declaring debt moratorium,[150] amending, suspending, repealing and reviving statutory laws,[149] reorganizing the judiciary,[151] and controlling the price of essential commodities were issued, according likewise, as the emergency demanded.

There is one vital defect though of Commonwealth Act No. 671. It failed in terms to specify the time limit of its effectivity. This defect was the bone of contention in the *Emergency Powers Cases— Araneta v. Dinglasan* and companion cases,[152] and the second case of *Rodriguez and Tañada v. Gella.*[153]

The first *Emergency Powers Cases* include five cases. The cases of *Araneta v. Dinglasan* and *Araneta v. Angeles* involved the validity of Executive Order No. 62 regulating rentals for houses and lots for residential buildings, issued on June 21, 1947. In *Guerrero v. Commissioner of Customs,* the validity of Executive Order No. 192 controlling exports from the Philippines, issued on Dec. 24, 1948, was attacked. The case of *Rodriguez v. Treasurer* dealt with the validity of Executive Order No. 225 appropriating funds for the operation of the government during the fiscal year July 1, 1949 to June 30, 1950, after Congress failed to pass the general appropriations bill for that year. In *Barredo v. Commission on Elections,* Executive Order No. 226, appropriating funds to defray the expenses of the national elections to be held later in November 1949, was sought to be invalidated. In all these five cases, the ground for attacking the validity of the respective orders was that the law under which they were issued, Commonwealth Act No. 671, was already of no force and effect. The question, therefore, was whether this Emergency Powers Act was still effective at the time these executive orders questioned were issued. The Supreme Court, however,

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[145] Exec. Orders No. 12-W, June 1944; No. 13-W, June 1944; No. 18-W, Aug. 1944; No. 19-W, Sept. 1944; No. 30, Mar. 1945; 54, June 1945; No. 56, July 1945; No. 57, July 1945; No. 59, July 1945.

[146] Exec. Order No. 43, May 1945; No. 52, June 1945; No. 73, Nov. 1946; and No. 93, Feb. 1946.

[147] Exec. Orders No. 12-W, June 1944; No. 13-W, June 1944; 14-W, 1944; No. 23, 1944; No. 27, 1945; No. 33, 1945; No. 37, 1945; No. 50, 1945; No. 53, 1945; No. 59, 1945; and No. 74, 1945.

[148] Exec. Order No. 33, 1945.

[149] Exec. Order No. 25, 1944; No. 32, 1945.

[150] Exec. Order No. 38, 1945; No. 40, 1945; No. 42, 1945; and No. 89, 1946.

[151] Exec. Orders No. 37, 1945; No. 50, 1945; 89, 1946.

[152] See *supra* note 101.

[153] See *supra* note 102.

failed to issue a decision on the status of the Act as it failed to obtain the six votes required to make a decision.[154] All of the questioned executive orders were nevertheless annulled on the ground that they dealt with subjects over which the President has no longer any emergency power, for Congress has legislated or at least shown its ability to legislate on them, and to that extent, Commonwealth Act No. 671 is no longer effective.

Although the first *Emergency Powers Cases* resulted in a non-decision, yet the opinions of the individual justices therein, particularly Justices Tuason and Paras, paved the way for the nine to one decision in the *Second Emergency Powers Case*.[155] This was an action for prohibition against respondents for the purpose of restraining them from spending the funds appropriated in certain executive orders,[156] which were alleged to be null and void. These executive orders were issued by President Quirino in November 1952, after Congress, notwithstanding a request from the former, failed to pass the appropriation bill specified in the request. Added to the fact of denial of the President's request was the resolution adopted by the House of Representatives urging him to use his emergency powers for the purpose of providing for the requested appropriations. The funds appropriated by these executive orders were to be used for "essential and urgent public works," and for the "relief in provinces and cities visited by natural calamities." It is also to be noted that previous to the aforementioned resolution by the House, House Bill No. 727 was enacted by Congress repealing all Emergency Powers Acts. This bill, however, did not become a law for it was vetoed by the President. The question again presented before the Supreme Court was whether Commonwealth Act No. 671, which was President Quirino's basis in issuing the questioned executive orders, was still operative or not. The court, by a vote of nine to one finally declared that Commonwealth Act No. 671 was no longer in force and effect.

Briefly, the reasons advanced by the court, speaking through Chief Justice Paras, in support of its conclusion were:

> *First*: The lapse of the limited period prescribed by the Constitution for the effectivity of an Emergency Powers Act, which limited period is co-existent with the national emergency giving rise to the grant of powers.[157]
>
> *Second*: The repeal of the Act by House Bill No. 727, which although vetoed by the President, had the effect of a concurrent resolution, which is sufficient to repeal an Emergency Powers Act.

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[154] Judiciary Act of 1948 (Rep. Act No. 296), sec. 9.

[155] See *supra* note 102.

[156] Exec. Orders Nos. 545 and 546.

[157] Padilla, concurring in the same case, explained that "The reason why the Constitution is silent on or does not provide for the manner the delegation of legislative powers may be withdrawn, revoked or ended, is because if it is for a limited period it lapses at the end of the period and because if the war or other national emergency which prompted it ceases the delegation ceases also ipso facto."

Third: The principles of agency that the principal (Congress) cannot be forced to keep the agency relation in eternity or at the will of the agent (the President), and, the other, that powers granted to an agent are impliedly withdrawn or revoked by a direct exercise by the principal of the powers delegated.

Fourth: The reason for the enactment of the Act, which is the inability of the National Assembly to meet, has already ceased, as the Congress can and in fact has already met in session.

In connection with the necessity of repeal to terminate the life of an Emergency Powers Act, which does not in terms specify the duration of its effectivity, the court made it clear that congressional repeal is not necessary, as an Emergency Powers Act is self-liquidating upon the lapse of the "limited period" or the "national emergency" giving rise to the grant in conformity with the constitutional prescription on the point. The court reasoned out that if repeal is "necessary to a cessation of the emergency powers delegated to the President, the result would be obvious unconstitutionality, since it may never be repealed by the Congress or if the latter ever attempts to do so, the President may wield his veto."

As to who is the proper authority to determine when the emergency, which occasioned the grant of emergency powers, has come to an end for the purpose of ascertaining whether an Emergency Powers Act is still in force, Chief Justice Paras, in the same case, gave the following answer:

> "If x x x there is dispute or doubt as to whether the national emergency which prompted the Congress to pass the law delegating legislative powers to the President continues or has ceased, such dispute or doubt may be determined in an appropriate case by the courts."

The policy reason behind the Supreme Court's conclusion that Commonwealth Act No. 671 has already ceased to be operative, is given thus:

> "Indeed to hold that although Congress has, for about seven years since liberation, been normally functioning and legislating on every conceivable field, the President still has any residuary powers under the Act, would necessarily lead to confusion and overlapping, if not conflict."

An analysis of the *Emergency Powers Cases* reveals that an Emergency Powers Act terminates in either one of the following ways:

(1) If the Act fixes a period for its duration, by the lapse of such period.
(2) If the Act fixes no period, by the lapse of a limited period taking into consideration the emergency contemplated by the Act.
(3) By congressional repeal of the Act, which may be effected by another law or just a concurrent resolution.
(4) By Congress itself exercising or showing ability to exercise directly the powers granted in the Act.

IV. Observations on Crisis Government in the Philippines

We have examined how the Philippine Constitution attempts to enable the government established under it, to respond adequately and with success to emergency situations. We have also examined how the Philippine Government, construing its crisis powers under the Constitution, actually responded to crisis situations. Acting pursuant to section 26, Article VI of the Constitution, our lawmaking body enacted several Emergency Powers Acts containing broad and extraordinary assumption of powers by the government, and entrusting all of these with the President. As a consequence, and in proportion thereof, individual rights and liberties suffered. The right to choose one's employment, and the exercise thereof, the freedom of physical movement, the right of association, the landlord's right to fix the rent on his property, and the proprietor's right to the exclusive enjoyment and use of his factory, industry, transportation company, business and other property suffered severe restrictions from presidential executive orders. In short we had a "presidential crisis government." We had a government ran, operated and financed by presidential executive orders.[153] No one dared deny their necessity. We knew that the encroachments upon and deprivation of personal and property rights would only be temporary. We did not mind then, if we had what Rossiter terms a "constitutional dictatorship." One man was, during the entire course of the war, the commander-in-chief of all armed forces, sole repository of executive power, grantee of the totality or near totality of legislative powers, chief enforcer of the laws, seat of the power to suspend the privilege of the writ of habeas corpus, controller of the executive departments, bureaus and offices and the authority to declare martial law, all at the same time. If this one man was a "constitutional dictator," as in all likelihood he was, we nevertheless welcomed him. We were certain that his term of office as such "constitutional dictator," would last no longer than the crisis.

Looking back at all the many and radical transformations in the political structure and power of our government, and the resulting intervention and encroachment into the political and economic life of our people, during and immediately after the last global war, one may ask whether this is not a precarious weakness of our democracy. To all those who have these doubts, we can only show the facts of our history. Notwithstanding any and all abstract rationalizations to the contrary, the fact remains that we are as much a democratic government now, as we were before the war; this, regardless, and maybe even because, of section 26, Article VI of the Constitution, the Emergency Powers Acts

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[153] It was only when executive orders were still being issued under the Emergency Powers Acts, at a time when Congress was already definitely in a position to discharge, as it has been discharging, all its functions, that their validity were challenged in court. For instance, the *Second Emergency Powers Case* dealt with executive orders issued 7 years after the war.

enacted pursuant to it, and the emergency executive orders in turn issued under such Acts. This to our mind is the more important thing. Then we must admit, the Philippines is a small nation, hence with very limited strength. In time of crisis, it needs a strong and powerful government, quick to organize its forces and utilize its resources, if only to overcome its handicap in size and strength.

However, as a margin of safety, we believe it reasonable to fear the abuse of this constitutional provision. Surely, an imprudent and indiscriminate use by our Congress of its power to delegate emergency powers is a potential culture medium for the virus of totalitarianism. And, even if the grant of emergency powers is justified by an emergency, still there is the need to use reasonable discretion in defining the scope and duration of the grant of power. Both of them, as far as consistent with the requirement of the crisis, must be set out with precision in the enabling act. Such restraints and safeguards against abuse of power, moreover, must be provided for. True the Congress may be able later on to pass curative laws to correct any imperfection in an emergency powers law, but, subsequent remedial action can never be a substitute for a preventive measure. Upon Congress, therefore, principally lies the duty to take care that section 26, Article VI works in a way consistent with the general good and welfare and as intended by the framers. To this end, we believe that a faithful compliance by Congress with the constitutional requirements for a grant of emergency powers would help very much in preventing or at least minimizing presidential abuse of emergency powers. Court intervention in the form of judicial review is likewise a potential check, in fact a double-edged check to abuse. Abuse by Congress, when it does not comply with the requisites prescribed by the emergency powers clause of the Constitution, is certainly a proper subject of judicial review. Then, presidential abuse of emergency powers may also be checked, as it has been checked by our courts in the *Emergency Powers Cases*. Nevertheless, the courts, conscious of their lack of machinery to enforce their decisions, their deficient fact-finding facilities, and the all important fact that reality must be met with reality,[159] must at all times when called upon to intervene in questions entwined with national survival and safety, proceed with utmost prudence and caution, and let the principle of "judicial statesmanship" guide its action whenever proper.

Finally we submit that in the matter of establishing a crisis government, it is best to consider and appraise well the crisis at hand, and assume such powers and curtail such rights only, as in the exercise of sound judgment would be necessarily required by the crisis. Furthermore, in the excitement and alarm of protecting the existing constitutional order, one should not forget to give due regard to the mean-

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[159] ROSSITER, *op. cit. supra* note 2.

ing and implications of a democratic constitutional system. As far as consistent with the needs of the crisis, the rights and liberties of the individual enshrined in and guaranteed by our Constitution should be respected and protected. But to be sure, respect for individual rights and liberties must never be tolerated to stand in the way of saving the existing constitutional system from an imminent danger of ruin. Always, the guiding principle should be: Break the crisis and save the existing constitutional order, but, do not break the crisis and also break the constitutional order.