THE REVISED CONSTITUTION AS FUNDAMENTAL LAW: AS TO RIGHTS, REAFFIRMATION AND REDEDICATION*

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"Law must be stable and yet it cannot stand still."[1] So intoned Dean Pound in his survey of legal history. The aphorism may well serve as the starting point in our appraisal of the Revised Constitution, in terms of the innovations introduced and the precepts adhered to, both as to rights, which I propose to take up with you today, and as to the structure and operation of government, our topic for tomorrow.

Before proceeding any further, let me say this. As you probably know, in lecture series or seminars of this nature, the closing speaker is under a temptation, well-nigh irresistible at times, to give his conformity to what has been said, especially so when as in this case the papers read thus far readily commend themselves for acceptance. And why not? Was it not Oscar Wilde who said that the best way to meet temptation is to yield to it? The eloquent plea in the keynote address of President Salvador P. Lopez for the primacy of freedom in accordance with the Western liberal tradition strikes a responsive chord. It bears repeating that two of the giants in the legal and intellectual sphere, the late Justices Claro M. Recto and Jose P. Laurel, did assert in their writings as well as in their speeches that as far back as the close of the nineteenth century, we Filipinos were not strangers to such system of political thought in view of our familiarity and acquaintance with the best that had been written on the subject in both the Philippines and the United States. Certainly also, the paper read by Dean Irene Cortes on the historical aspect bears as usual the impress of lucidity, wit and thoroughness, qualities that have justly earned for her a well-deserved reputation in the lecture circuit. The pressure of official work prevented me from hearing Director Froilan Bacuñgan yesterday, but judging from the intimations he gave me as to the approach he would follow concerning the social and economic rights, I can very well affirm that on such basis I am not disposed to dissent.

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[1] POUND, INTERPRETATIONS OF LEGAL HISTORY 1 (1923).

A word more. The subject of credentials came up in the course of the keynote address of President Lopez. My being asked to speak on the Revised Constitution may for some raise such a question. After all I was one of the dissenters in the *Javellana* decision.[2] This much I can say though. My basis for not concurring with my brethren on the dismissal of the petitions in question was due to my belief that there was no proper ratification. I was very careful to point out, however, in my separate opinion that as to its provisions, the Revised Constitution has much to recommend itself. Thus: "With the foregoing legal principles in mind, I find myself unable to join the ranks of my esteemed brethren who vote for the dismissal of these petitions. I cannot yield an affirmative response to the plea of respondents to consider the matter closed, the proceedings terminated once and for all. It is not an easy decision to reach. It has occasioned deep thought and considerable soul-searching. For there are countervailing considerations that exert a compulsion not easy to resist. It can be asserted with truth, especially in the field of social and economic rights, that with the revised Constitution, there is an auspicious beginning for further progress. Then too it could resolve what appeared to be the deepening contradictions of political life, reducing at times governmental authority to near impotence and imparting a sense of disillusionment in democratic processes. It is not too much to say therefore that there had indeed been the revision of a fundamental law to vitalize the very values out of which democracy grows. It is one which has all the earmarks of being responsive to the dominant needs of the times. It represents an outlook cognizant of the tensions of a turbulent era that is the present. That is why for some what was done represented an act of courage and faith, coupled with the hope that the solution arrived at is a harbinger of a bright rosy future."[3] I do not feel I am in estoppel then.

1. *The clamor for revision: The 1971 Constitutional Convention*

For our inquiry to be meaningful, it is unavoidable that we look into the circumstances that led to the framing of the new Constitution. As far back as the early sixties, about a decade before the Constitutional Convention met on June 1, 1971, there was manifest a feeling of concern as to how effective the then fundamental law was in the solution of grave problems of state, primarily in the socio-economic sphere. The pessimists, fortunately confined to a few individuals, were even then worried as to the survival of the body-politic. The more realistic among the observers of the

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[2] Javellana v. The Executive Secretary, G.R. No. 36142, March 31, 1973, 50 SCRA 30 (1973).

[3] *Ibid*, 331-332.

contemporary scene suffered from no such fears, but they saw the need for changes in the Constitution to make it more responsive to the needs of the times. Such an attitude grew stronger with the years. It acquired momentum. Late in the sixties, a sense of urgency was in the air. If, in the language of Justice Laurel, the 1935 Constitution was adopted at a "time of surging unrest and dissatisfaction,"[4] as much, if not more, can be said of the revised charter. When the 1971 Convention opened its proceedings, the atmosphere was one of disquiet, even turmoil. It did appear, to borrow from the language of McIver, that there were "eruptive forces that [could] precipitate a grand event of history."[5] Fortunately, in our case, the forces of discontent and radicalism did not prevail. The counsel of moderation was heeded, and the revised charter is hardly notable for its novelty, much less a departure from our constitutional tradition. We still have the regime to which we have grown habituated, with the rights reaffirmed to secure which the government is instituted, with the only difference that it is parliamentary rather than presidential. Even in that respect, it is my submission that the reality as against the appearance argues against the conclusion that things have been altered beyond recognition. Far from it, as I trust tomorrow's lecture will attempt to demonstrate.

It has been said that deliberative bodies, not excluding constitutional conventions, may begin with ineptitude and end in disaster, or the resulting product may be fitly characterized as conceived in apathy, weariness and boredom. Such strictures could not, with justice, be applied to the 1934 Constitutional Convention, notable for its galaxy of dedicated and able national figures led by Claro M. Recto, Manuel Roxas, Jose P. Laurel and Rafael Palma. There were fears that the 1971 Constitutional Convention would not fare as well, considering that some of the outstanding parliamentarians in the Senate and the House of Representatives did not choose to run, but these turned out to be unjustified.[6] Its roster of delegates, including some members of the earlier Convention, was graced with men of stature and first-rate

[4] Laurel, J., concurring in Ang Tibay v. Court of Industrial Relations, G.R. No. 46496, May 29, 1939, 7 Lawyers J. 487, 494 (1939).

[5] McIver as quoted in READ, (ED.), THE CONSTITUTION RECONSIDERED, 51 (1938).

[6] Moreover, in Imbong v. Comelec, G.R. No. 32432, September 11, 1970, 35 SCRA 28 (1970), the prohibition against a candidate for delegate representing or holding himself out as belonging to any political party and barring political parties, political groups, political committees as well as civic, religious, professional or other organizations, was sustained by a divided Court. It was felt in certain quarters that there would be a lesser number of candidates qualified by training and experience for the position of delegates than would otherwise have been the case.

ability. It had as its first President, the late Carlos P. Garcia, who, from 1957 to 1961, was the head of the Republic. Upon his sudden death three days later, his successor was another former occupant of such position, Diosdado Macapagal. The President *pro tempore* was Sotero H. Laurel, a noted educator and son of Jose P. Laurel. Its temporary Presiding Officer was former Speaker Antonio de las Alas and its temporary Chairman, former Senator Juan Liwag. Two outstanding men of the law, former Supreme Court Justices Jesus Barrera and Jose Ma. Paredes, were among its members.

In both conventions, there was in reality a test of leadership, that of Senate President Quezon in 1934 and that of President Marcos in 1971. There is this difference though. In 1934, there was hardly a ripple of objection to the program of President Quezon; in 1971, the opposition of a number of delegates headed by former Senator Raul S. Manglapus and Teopisto Guingona, both of whom tried and failed to win the presidency of the Convention, made itself felt. Their ranks were strengthened by several among the younger elements in the Convention who were well-informed and articulate. This vocal group went further than merely registering dissent with the presidential policy. It was their view that there was an exigent need for a complete overhauling of the then fundamental law. For them, it was archaic. It was not long, however, before they realized the futility of advocating radical changes in the face of an unresponsive Convention, even if during the first few weeks they were encouraged by what they considered to be its uneasy mood and uncertain temper with things as they were. The disenchantment with the 1935 Constitution colored their speeches. At any rate, they contributed more than their fair share of giving expression to novel ideas of constitutionalism. They were among those who were devotees of new cults that seemed to be eroding ancient faiths.

Surprisingly, a few of the more mature delegates, perhaps under a sense of disillusionment, appeared to be in agreement. That was understandable in the case of some with but a slight acquaintance as to what actually took place in the 1934 Convention and apparently unsure of their footing in the domain of American doctrines of constitutional law which supplied the explanation for some of the provisions objected to. It certainly was unexpected when iff-founded criticism came from those delegates with sufficient background and therefore ought to have known better. There were not, however, enough of them. Even prior to the declaration of martial law on September 21, 1972, it was clear that the supporters of the Marcos Administration had the votes. After the announcement that martial law was in force, the Convention, with more

sobriety and hardly any signs of dissent, moved faster. The result was the Revised Constitution, approved on November 30, 1972. There was inevitability almost in the undeniable fact that in the end the stamp of the Marcos approach to constitutional problems was affixed to the revised charter.[7]

Nor was there anything unusual in such being the case. The Constitution is a product both of the time it was framed and the people responsible for its adoption, more specifically in the latter case, the dominant personalities of the era. Here in the Philippines, with its fidelity to the tradition of a strong executive, it was to be expected that in 1971 as it was in the 1934-35 Constitutional Convention, the administration in whom the responsibilities of leadership were then confided could not have been ignored. Its views as to the state objectives and how they could be attained through the fundamental law had to be reckoned with. So it turned out, and there was nothing unique in our experience. The Constitution of the French Republic approved in 1958 was inspired by de Gaulle.[8] Parliamentarism survived but with the President having enough authority to act as a counterpoise. No other fundamental law could suit his purpose or personality.[9] For that matter, the American Federal Constitution of 1787 to many bore the earmarks of a charter suited to the program of government of a George Washington. This is not to deny that historical, economic and other sociological forces cannot be ignored by the framers. It is only to underscore that a sense of realism compels the admission that whoever is in control of the political forces is likely to have his say.[10]

To pursue the matter further, but on a theoretical level this time, using the terminology of Maddocks, at either extreme of the contending forces in a constitutional convention would be those for whom constitutionalism partakes of fanaticism, the real zealots, and those for whom it connotes constitutionalism as stagnation. In a more matter-of-fact language, the radicals and the conservatives would usually be found, ranged against each other. Neither group, however, is likely to prevail, with the objectives of each completely realized. Here as in other aspects of political life, the group less intransigent in its demands, and more receptive to compromise, would carry the day. For persons of such per-

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[7] *Cf.* MARCOS, TODAY'S REVOLUTION: DEMOCRACY (1971).

[8] *Cf.* WOLF-PHILIPS, CONSTITUTION OF MODERN STATES 12-13 (1968).

[9] Even in the 1946 Constitution it was pointed out by Professor Freeman that Gen. de Gaulle having been responsible for the liberation of France influenced greatly the nature and scope of its provisions. *Cf.* Freeman, *New Constitution of Europe, Asia and South America*, 34 CORNELL L. Q. 1 (1948).

[10] *Cf.* BEARD, AN ECONOMIC INTERPRETATION OF THE CONSTITUTION (1913); Lenhoff, *The German (Bonn) Constitution*, 34 TUL. L. REV. 1 (1949).

suasion, constitutionalism is identified with gradualism, always on the move yet slowly with measured tread.

That is one way of looking at the Revised Constitution. The finished product thus hardly reflected the bitterness in tone and the extreme proposals that at times fueled the wide-ranging debates in the Convention. As a result, the changes in the 1935 Constitution were far more epochal. A great number of delegates, champions of moderation, were convinced that some of the Cassandra-like predictions that could come about if there were no rejection of the then accepted concepts were contingent on events that had yet to occur and circumstances that had yet to develop. They could view matters then with more equanimity. The clouds perhaps were indeed dark, but they were optimistic enough to believe that these would be lifted. Moreover, some of the alterations proposed could for them result in building a fragile temple of illusions. Nor were they reconciled to the atmosphere of bitterness and recrimination, which in their opinion precluded calm analysis. While cognizant of what could be looked upon as grim realities, they did not despair. Much less did they lay the blame entirely on what for some were the self-evident imperfections of the 1935 Constitution. They knew fully well that with a sense of history lacking, the remedy proposed may be worse than the disease.

In the end, such an attitude appeared to be shared by an overwhelming number of delegates. That was to heed the counsel of realism. For the Convention did not start on a blank slate. Experimentation with something new may be fraught with danger. It was well-advised then not to have done so. For government, if viewed as a science, involves problems and difficulties formidable in character. If the technique of leadership by which it is carried out is looked upon as an art, it is quite baffling and complex. There is need then for caution and prudence, not the duty but the necessity, to paraphrase Holmes, to keep continuity with the past, to adhere to what has been insofar as it has not led us astray or involved us in events we now consider deplorable or unfortunate. Nor is this to advocate an idolatrous reverence for history. The 1935 Constitution, while deserving of the utmost respect, for some even fulsome veneration, was not a sacred object to be left untouched and kept intact. If that were the view, then it is better that no Convention were held at all. There certainly was room for innovation, but not on an extensive scale. So it did turn out. The forces of gradualism prevailed.

Of even greater significance, considering that it was during a period of martial law that the Revised Constitution came into being, is its

responsiveness to the needs of the times. Here, the words of the man whose influence was felt in the Convention Hall, President Marcos, are relevant. To quote from his latest publication: "Everyone recognized the legal basis for the martial necessity; this was the simplest thing of all. National decline and demoralization, social and economic deterioration, anarchy and rebellion were not just statistical reports: they were documented in the mind and body and ordinary experience of every Filipino. But, as a study of revolutions and ideologies proves, martial rule could *not, in the long run,* secure the Philippine Republic unless the social inequities and old habits which precipitated the military necessity were stamped out."[11] Nonetheless, with the recognition of the significance and urgency of a new charter, there was no disruption of the ways of public life we have been accustomed to. There was progress. There is hope for a better future, but in terms of the fundamental law, the past is still with us.

2. *The regime of liberty in terms of the rights secured under the Revised Constitution*

It is about time that we discuss in some detail, as much as the limited time at our disposal will allow, the rights secured under the Revised Constitution. To repeat, it is my submission that as to them there is reaffirmation and rededication. The mode of approach I intend to follow will gain significance, I trust, if they are identified with liberty viewed from its negative as well as positive aspects. Liberty may be identified with the freedom to think as one wills or to behave as one pleases. It is freedom of belief, whether religious or secular, including its expression in speech or press, and freedom of action. In the realm of thought, the utmost freedom is assured. Its expression likewise is on the whole left untouched. It is not so as to freedom to act. That is readily understandable as we live in society with the need for adjusting our conduct so that we do not infringe on the freedom that our fellowmen are equally entitled to. Liberty implies that one can ordinarily act in accordance with the dictates of his will. He should not be prevented from doing what his heart is set on. To paraphrase Stevenson, he should be able to nurture the hope that what he aims at could be accomplished and what he decides to do could be done. He is not then to be subjected to coercion. If it were thus, he bows to an outside force. If he has to yield something he would not otherwise give, there is a diminution of his freedom. There is to that extent a corresponding restriction of his sphere of autonomy. Liberty

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[11] MARCOS, NOTES ON THE NEW SOCIETY OF THE PHILIPPINES 35-36 (1973).

though is not limited solely to the absence of restraint. That is to view it in a negative sense. It has a positive aspect as well. It is not enough that one is let alone. It is equally important that there be room for the growth and unfolding of his personality, an opportunity for attaining his best self. It thus becomes, to follow Lien, an aspect of the basic right of self-realization. It is perhaps even more important, considering the present situation we find ourselves in, that such opportunity be not deemed the exclusive preserve of the rich, the well-born, the economically secure. Precisely, those whose lives are blighted by poverty have greater need for it. Unfortunately, all too often, such is not the case. Their poor and modest origins stand in the way of any significant achievement. That is to make a mockery of liberty. They are entitled to a juridical order that allows room for self-improvement.[12]

It is likewise implicit in the above formulation followed that the right to property itself could be justifiably looked upon not as something separate and apart from a regime of liberty but as a corollary thereof. An early leading case, *Rubi v. Provincial Board*,[13] decided in 1919, with Justice Malcolm as *ponente*, emphasized: "As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion."[14] So for Dean Pound, the individual interest of substance begins "with [his] claims * * * to control what he discovers and reduces to his power, what he creates by his own labor, physical and mental, and what he acquires under the prevailing social, economic or legal system by exchange, purchase, gift or succession."[15] As he correctly noted, the claim based on labor dates back to Locke, who wrote around the end of the seventeenth century. For that philosopher, who influenced so greatly the American Declaration of Independence, "whatsoever a person hath mixed his labor with and joined it to something that is his own, [becomes] his property."[16] It cannot escape attention that the stress is on the individual. It is the human being as such whose interest is protected. One does not, as Professor

[12] *Cf.* FERNANDO, THE BILL OF RIGHTS 45-46 (1972). The reference was to STEVENSON in PUTTING FIRST THINGS FIRST 37 (1960), as well as to LIEN in A FRAGMENT OF THOUGHT CONCERNING THE NATURE AND FULFILLMENT OF HUMAN RIGHTS IN HUMAN RIGHTS 26 (1950).

[13] 39 Phil. 660 (1919).

[14] *Ibid*, 705.

[15] 3 POUND, JURISPRUDENCE 105-106 (1959).

[16] *Ibid*, 107.

Hamilton noted, dissociate "property from the personality of which it is an expression." Locke had in mind consumption goods, land used by its owner, and the tools of handicraft, certainly not corporate wealth, the apparatus of large scale production, and business enterprise, whether in agriculture or industry.[17] The property right viewed thus as an aspect of personality comes within the shelter that the fundamental law affords. Where, however, bigger business units, whether conducted by single proprietorship or juridical entities, press their claim to constitutional protection, there is no compulsion on either the legislative body, or the judiciary thereafter, so display the same degree of sympathy and receptivity. For the imperatives of general welfare cannot be felt unsatisfied, except on pain of widespread dissatisfaction, not to say injustice. Property rights then cannot be pressed to an unreasonable extreme. As was announced in the leading case of *Guido v. Rural Progress,* what is safeguarded by the Constitution is property, used legitimately; what is protected is "economic freedom [and] freedom * * * within reasonable bounds and under proper control."[18] From such a perspective, a discussion of liberty in the positive sense would be incomplete if the previously referred-to provisions in the Declaration of Principles on social justice and protection to labor were ignored. There is likewise the specific mandate on the government to formulate and implement an agrarian reform program.[19] For clearly, they do affect property.

There is need, therefore, for us to inquire into such provisions found in the Declaration of Principles intended to translate into reality positive liberty or freedom for.

3. *The Bill of Rights: Reaffirmation of liberty in a negative sense*

To repeat, the article on the Bill of Rights in the Revised Constitution contains the provisions as found in the 1935 fundamental law. They are intended to secure liberty in a negative sense or freedom from. One is to be let alone to work out his destiny. There is to be no impairment of his autonomy of will, unless restriction be demanded by compelling public interest. Even then, the presumption must be in favor of absence of restraint. This should especially be the case where freedom of the mind is involved. Such an age-old postulate still possesses

[17] *Cf.* Hamilton, *Property—According to Locke,* 40 YALE L. J. 864-868 (1932).

[18] 84 Phil. 847, 851 (1949).

[19] According to Art. XIV, Sec. 12: "The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."

validity for this modern day and age. The Constitutional Convention did well in its task of reaffirmation.

The Bill of Rights as a whole is a guarantee of those traditional civil liberties which in our country date back, juridically speaking, from the inception of the American tutelage on April 11, 1899. If viewed, however, from the aspirations that kindled the patriotic ardor of the generation of Rizal, Del Pilar, Bonifacio, Aguinaldo, Luna and Mabini, they have a longer history. For in the last quarter of the nineteenth century, the Filipinos, at least the ones fortunate enough to belong to the *ilustrado* class, already nurtured the hope that here in this country, our people would enjoy the blessings associated with the Western liberal tradition. The Bill of Rights, it bears repeating, is an assurance of such a basic aim and purpose. What is therein provided may be spoken of as the traditional civil liberties. There is thus a reaffirmation of what has been, with certain modifications, and the addition of two new provisions. It is timely to repeat that freedom from is the essence of the article on the Bill of Rights. There is to be no invasion in the realm of the intellect and the spirit—freedom of the mind—and there must be no restraint on the freedom of the person to be where he wants to be and to act in the way he chooses, subject to valid police power regulations—freedom of his bodily movements.

What is immediately discernible is that the amendments introduced in the Bill of Rights[20] are in essence minimal. Where formerly there were twenty-one paragraphs in one section, now there are twenty-three sections. The two new rights noted consist of an express recognition of the right of the people to have access to official records and to documents and papers pertaining to official acts, transactions, or decisions, subject to such limitations as may be provided by law.[21] The other right that is now included in such article assures the speedy disposition of cases before all judicial, quasi-judicial or administrative bodies.[22] What implication does the adherence of the article on the Bill of Rights to such traditional phraseology yield? It appears quite obvious that it has survived the scrutiny of the most critical. The objection in some quarters that it is couched in the language of venerable Anglo-American

[20] Art III of the 1935 Constitution and now Art. IV of the Revised Constitution.

[21] According to Section 6 of Art. IV of the Revised Constitution: "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen subject to such limitations as may be provided by law."

[22] According to Section 16 of Art. IV of the Revised Constitution: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

fundamental precepts and therefore no longer responsive to present needs fell on deaf ears. Nor was there any acceptance of the view that such terminology does not sufficiently take account of Philippine conditions. Instead, for many delegates, it was desirable to let well enough alone. The wording of the specific guarantees, "of technical precision and perspicuous brevity", according to Madison,[23] did prove to be a source of strength. For such quality notwithstanding, there is likewise an element of generality to meet changing conditions. What is more, there is also the distinct advantage in retaining the tried and tested phraseology constituting as it does an affirmance of the views expressed in leading decisions, both Philippine and American. That is to lessen the danger of any misinterpretation of the scope of such rights.

4. *Reaffirmation as to intellectual liberty: Immunity of the mind and its manifestations in secular or religious matters including assembly and association.*

Intellectual liberty occupies a place inferior to none in the scheme of human values. The mind must be free to think what it wills, whether in the secular or religious sphere, to give expression to its beliefs by oral discourse or through the media and thus to seek other candid views in occasional gatherings or more permanent aggrupations. Embraced in such concept then are freedom of religion,[24] freedom of speech, of the press, assembly and petition,[25] and freedom of association.[26] The provisions as to such rights reproduce verbatim what was found in the 1935 Constitution.

a. *Freedom of access to information*

This brings us to one of the two new rights now found in the Revised Constitution expressly recognizing that the people are entitled to information on matters of public concern and thus to access to official records as well as documents of official acts, transactions, or

[23] *Cf.* Everson v. Board of Education, 330 U.S. 1, 31, 67 S. Ct. 504, 519, 91 L. Ed. 711, 731 (1946), Rutledge, J., diss.

[24] According to Article IV, Section 8 of the Revised Constitution: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

[25] According to Article IV, Section 9 of the Revised Constitution: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

[26] According to Article IV, Section 7 of the Revised Constitution: "The right to form associations or societies for purposes not contrary to law shall not be abridged."

decisions, subject to such limitations imposed by law.[27] Reference is made to the explicit character of such a right for under the 1935 Constitution, the Supreme Court did not go that far. In *Subido v. Ozaeta*,[28] a 1948 decision, it held that mandamus would lie to compel the Secretary of Justice and the Register of Deeds to allow a newspaper editor to examine the records of the latter office. Its ruling was based, however, on statutory rather than constitutional grounds. The concurring opinion of Justice Briones expressed for this lecturer the better view. He would grant the relief sought on the view that press freedom includes, as part and parcel thereof, this right of access to information. Now all doubts are set at rest. This provision in the Revised Constitution is thus a step in the right direction. The public has a legitimate interest in matters of social significance. News concerning them may be yielded by state papers and documents. They should be made available to representatives of the press, including all forms of mass media. There may be, of course, classified information involving national security. There would be justification then for secrecy in some cases, but the more limited they are, the more meaningful is press freedom.[29]

5. *Reaffirmation as to physical liberty: Freedom of the person embracing likewise his home and possessions and assurance that the loss thereof for the commission of a crime not arbitrary in character*

Physical liberty is obviously something to be treasured likewise. It is, in the apt language of Chief Justice Concepcion, "too basic, too transcendental and vital in a republican state, like ours, to be denied upon mere general principles and abstract considerations of public safety."[30] That is to recognize the freedom of the person including his home and possessions.[31] The privacy of his correspondence and com-

[27] According to Article IV, Sec. 6: "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen subject to such limitations as may be provided by law."

[28] 80 Phil. 383 (1948).

[29] *Cf.* FERNANDO, THE BILL OF RIGHTS 133-134 (1970).

[30] People v. Hernandez, 99 Phil. 515, 551 (1956).

[31] According to Article IV, Sec. 3: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

munication must be respected.[32] Reasonable search and seizure is not thereby precluded. It is essential, moreover, that one must be free to live or to stay where he chooses and to go where he pleases. The right to travel, one that is valuable in a fast-shrinking world with the rapid progress in transportation, is now constitutionally guaranteed.[33] He is to be exempt from the fear of detention unless he commits acts anti-social in character and as such duly penalized by law. Only thus may he be considered as being the master of his destiny, as far of course as living in society allows, with its minimum demand for the existence of order. In a regime of liberty, the compulsion on his person is to be the exception, not the rule.

Again there are limits. He is not to be heard to complain if by the transgression of the norms necessary for communal existence, he is made to answer for his acts. Even then he has rights as an accused that must be respected. Punishment should be visited on him only if the ways of the laws are duly followed. The most fundamental requirement of all is his immunity from criminal liability unless due process is observed.[34] Equally so, his being entitled to bail, unless charged with a capital offense with strong evidence of guilt, is fundamental.[35] Then there is the presumption of innocence coupled with various specific rights to assure him every opportunity not to be deprived of liberty arbitrarily.[36] Nor can he be compelled to incriminate himself, which of course does not rule out voluntary confessions if such really be the case.[37] Even if found guilty,

[32] According to Article IV, Sec. 4: "(1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety and order require otherwise. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

[33] According to Article IV, Sec. 5: "The liberty of abode and of travel shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health."

[34] According to Article IV, Sec. 17: "No person shall be held to answer for a criminal offense without due process of law."

[35] According to Article IV, Sec. 18: "All persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required."

[36] According to Article IV, Sec. 19: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

[37] According to Article IV, Sec. 20: "No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

he is not to be subject to excessive fines or cruel or unusual punishment.[38] Then, lastly, he is not to be twice put in jeopardy.[39] The proceedings against him are not to be tainted by an *ex post facto* character; nor may he be made to suffer through a bill of attainder.[40] There is, too, the expeditious remedy by the writ of *habeas corpus* if his confinement is tainted by any form of illegality.[41]

What has been said thus far may serve as introduction to a discussion of the other new right that has found its way in this article assuring the speedy disposition of cases before all judicial, quasi-judicial or administrative bodies[42] and the modifications on the traditional liberties of the person, home and possessions as well as the safeguards to an accused, reserving for the final portion a brief inquiry on the present *habeas corpus* provision.

a. *Promptness and dispatch in the disposition of cases before judicial, quasi-judicial or administrative bodies*

It would seem rather obvious that a person is entitled to having a case wherein he is involved disposed of speedily. This is so where the party belongs to the group which, in President Magsaysay's memorable phrase, "has less in life." Nowhere is there more truth to the saying that justice delayed is justice denied. If the Constitutional Convention of 1971 then felt the need for the express mention of such a right, it must be because of its conviction that between the inception and termination of a legal proceeding, considerable time did usually elapse. There could be cases therefore, unfortunately not too rare, of the prevailing suitor emerging with an empty victory. The need for such explicit requirement is thus understandable. Note should be taken that not only courts but administrative bodies, whether exercising quasi-judicial or purely executive functions, are duty bound to vitalize this right.

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[38] According to Article IV, Sec. 21: "Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted."

[39] According to Article IV, Sec. 22: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

[40] According to Article IV, Sec. 12: "No *ex post facto* law or bill of attainder shall be enacted."

[41] According to Article IV, Sec. 15: "The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, rebellion, or imminent danger thereof, when the public safety requires it."

[42] According to Article IV, Sec. 16: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

It could be asserted though that such a mandate is implicit in the due process clause.[43] It is a requirement for the validity of any governmental action amounting to deprivation of liberty or property. As emphasized by the then Justice, now Chief Justice, Concepcion: "Indeed, acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding."[44] It is a standard, which, to borrow from the language of *Ermita-Malate Hotel and Motel Operators Asso. v. City Mayor*,[45] "must exist both as a procedural and a substantive requisite to free [any governmental action] from the imputation of legal infirmity sufficient to spell its doom." This is the answer given by the above decision: "It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly it has been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought.' It is not a narrow or 'technical conception with fixed content unrelated to time, place and circumstances,' decisions based on such a clause requiring a 'close and perceptive inquiry into fundamental principles of our society.' Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases."[46] There is this restatement of the above formulation in a recent opinion: "It is a mandate of reason. It frowns on arbitrariness, it is the antithesis of any government act that smacks of whim or caprice. It negates state power to act in an oppressive manner. It is, as had been stressed so often, the embodiment of the sporting idea of fair play. In that sense, it stands as a guaranty of justice. That is the standard that must be met by any governmental agency in the exercise of whatever competence is entrusted

[43] The Revised Constitution employs the same language as that found in the 1935 Constitution as to due process. Thus, according to Article IV, Sec. 1: "No person shall be deprived of life, liberty or property without due process of law * * *." Article IV, Sec. 17 adds: "No person shall be held to answer for a criminal offense without due process of law."

[44] Cuaycong v. Sengbengco, 110 Phil. 113, 118 (1960).

[45] G.R. No. 24693, July 31, 1967, 20 SCRA 849 (1967). The lecturer wrote the opinion.

[46] *Ibid*, 860-861.

to it."[47] An unjustifiable delay in the disposition of cases could then properly be looked upon as, in effect, a deprivation of liberty or property, considering the taint of unfairness or arbitrariness that thus mars the proceeding.

b. *Modification of the search and seizure clause and the right to privacy of communication and correspondence*

This was how the 1935 Constitution worded the search and seizure clause: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."[48] The Revised Constitution specifies that "no search warrant or warrant of arrest shall issue except upon probable cause"[49] thus removing any ambiguity as to the applicability of this section not only to the former but to the latter kind as well. There is, however, this additional change. For the issuance thereof, the probable cause could be "determined by the judge or such other responsible officer as may be authorized by law, * * *."[50] Where formerly it was only the former that possessed such competence, now legislation may be enacted vesting such competence on "such other responsible officer." This innovation may be fraught with undesirable consequences. If it were a judge, the element of impartiality is easier to attain. He is not under pressure, unlike a fiscal or some other executive official, to have the party before him indicted so that the prosecution could be started. It is to be hoped that the "responsible officer" spoken of should not only perform functions quasi-judicial in character but also possess the requisite degree of objectivity and disinterestedness in the performance of such task.

In the 1935 Constitution, it was made clear that communication and correspondence "shall be inviolable except upon lawful order of the court or when public safety and order require otherwise."[51] A second

[47] This excerpt is from the prevailing opinion in J. M. Tuason and Co. v. The Land Tenure Administration, G.R. No. 21064, February 18, 1970, 31 SCRA 413 (1970), penned by the lecturer and concurred in by Justices Zaldivar, Sanchez and Villamor. Reference was therein made to the above Ermita-Malate Hotel and Motel Operators decision as well as to Morfe v. Mutuc, G.R. No. 20387, January 31, 1968, 22 SCRA 424 (1968); Santiago v. Alikpala, G.R. No. 25133, September 28, 1968, 25 SCRA 356 (1968); Tinio v. Mira, G.R. No. 29488, December 24, 1968, 26 SCRA 512 (1968).

[48] Article III, Sec. 1, par. 3.

[49] Article IV, Sec. 3.

[50] *Ibid.*

[51] Article III, Sec. 1, par. 5.

paragraph has been added in the Revised Constitution. It is therein explicitly provided: "Any evidence obtained in violation of this or the preceding section shall be inadmissable for any purpose in any proceeding."[52] This is a feature of the new Constitution that is most welcome. It gives a constitutional sanction to the ruling in *Stonehill v. Diokno.*[53] What was involved in that *certiorari* and prohibition proceeding was the validity of a number of search warrants against petitioners as well as the corporations, of which they were officers, for the search of their persons, their residences and the premises of their offices for "[b]ooks of accounts, financial records, vouchers, journals, correspondence, receipts, ledgers, portfolios, credit journals, typewriters, and other documents and/or papers showing all business transactions including disbursement receipts, balance sheets and related profit and loss statements."[54] The persons named were accused of violating "Central Bank Laws, Tariff and Customs Laws, Internal Revenue (Code) and Revised Penal Code."[55] The Supreme Court, in an opinion by Chief Justice Concepcion, decided that there was lacking a cause of action to assail the contested warrants and the seizure made in pursuance thereof insofar as personal property belonging to the corporations, of which they were officers, were concerned, on the well-settled principle that the legality of a seizure can be contested only by the party whose personal rights have been impaired thereby. "Upon mature deliberation, however, we are unanimously of the opinion that the position taken in the *Moncado* case must be abandoned. Said position was in line with the American common law rule, that the criminal should not be allowed to go freely merely 'because the constable has blundered,' upon the theory that the constitutional prohibition against unreasonable searches and seizures is protected by means other than the exclusion of evidence unlawfully obtained, such as the common-law action for damages against the searching officer, against the party who procured the issuance of the search warrant and against those assisting in the execution of an illegal search, their criminal punishment, resistance, without liability to an unlawful seizure, and such other legal remedies as may be provided by other laws."[56] In support of what is undoubtedly the better view, there was an invocation of an oft-cited passage from Learned Hand: " 'As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege. In earlier times the action of trespass against

[52] Article IV, sec. 4, par. 2.

[53] G.R. No. 19550, June 19, 1967, 20 SCRA 383 (1967).

[54] *Ibid*, 393.

[55] *Ibid*, 391.

[56] *Ibid*, 393-394.

the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that *it cannot profit by their wrong, will that wrong be repressed.*' "[57]

There is this further modification on this cluster of rights. The liberty of abode likewise includes the right to travel.[58]

c. *Innovations as to the rights of the accused*

Now as to the innovations, not too radical at that, as to the rights of an accused. Under the 1935 Constitution, he is entitled to the presumption of innocence and is vouchsafed certain rights at his trial.[59] Such a provision is found in the present Constitution, with a last sentence added: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."[60] It is thus apparent that now after he is arraigned, the fact of his absence is no bar to the *continuation of the trial,* if there is a showing that he was duly notified thereof and there is no justification for his absence.

The Revised Constitution is notable for the added vitality accorded the guarantee against self-incrimination. It now reads: "No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."[61] The epochal American Supreme

[57] *Ibid,* 394.

[58] According to Article IV, Sec. 5: "The liberty of abode and of travel shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health."

[59] Article III, Sec. 1, par. 17 of the 1935 Constitution reads: "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf."

[60] Article IV, Sec. 19.

[61] Article IV, Sec. 20. Only the first sentence was found in the former Bill of Rights, Article III, Sec. 1, par. 18.

Court decision in *Miranda v. Arizona*,[62] the opinion being rendered by Chief Justice Warren, is thus now a part of our fundamental law. Such doctrine was promulgated in response to the question of the admissibility of statements obtained from an individual interrogated under police custody, considering that at such a time and under the stress of such conditions, his right against self-incrimination could be rendered futile. It was laid down by the American Supreme Court that it is a constitutional prerequisite that for such statements to be admissible, the suspect must, in the absence of a clear, intelligent waiver of his constitutional rights, be warned prior to questioning that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. There was a concurring and dissenting opinion by Justice Clark, who expressed the view that the admissibility of a confession obtained by custodial interrogation should depend on the "totality of circumstances." In the main dissenting opinion of Justice Harlan, it was noted that such a doctrine is not sound constitutional law and entails harmful consequences for the country at large. Another dissent, from Justice White, was premised on the view that there was no significant support in the history of the right against self-incrimination or in the language of the American Constitution for the decision reached.

The *Miranda* doctrine as summarized by Chief Justice Warren follows: "Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual

[62] 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966).

is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned."[63]

It remains to be added that the provision in the 1935 Constitution as to the ban on cruel *and* unusual punishment,[64] is modified to read as follows: "Excessive fines shall not be imposed, nor cruel or unusual punishment inflicted."[65] The ruling in the early case of *Legarda v. Valdez*[66] is thus merely of historical interest. There, it was explicitly announced: "To be prohibited by this provision the punishment must not only be unusual but it must also be cruel."[67] Now, it suffices that it is objectionable on either count.

d. *Clarification in the provision on the suspension of the privilege of the writ of* habeas corpus

There is aptness and accuracy in the characterization of the writ of *habeas corpus* as the writ of liberty. Rightfully it is latitudinarian in scope. It can dig deep into the facts to assure that there be no toleration of illegal restraint. Detention must be for a cause recognized by law. The writ imposes on the judiciary the grave responsibility of ascertaining whether a deprivation of physical freedom is warranted. This it has to discharge without loss of time. The party who is keeping a person in custody has to produce him in court as soon as possible. What is more, he must justify the action taken. Only if it can be demonstrated that there has been no violation of one's right to liberty will he be absolved from responsibility. Unless there be such a showing, the confinement must thereby cease. Nor may it suffice that there be a court process, order, or decision on which it is made to rest. If there be a showing of a violation of constitutional rights, the jurisdiction of the tribunal issuing it is ousted. Moreover, even if there be a valid sentence, it cannot, even for a moment, be extended beyond the period provided for by law. When that time comes, he is entitled to be released.

It is in that sense then, as so well put by Holmes, that this great writ "is the usual remedy for unlawful imprisonment."[68] It does afford,

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[63] *Ibid*, 444-445.
[64] Article III, Sec. 1, par. 19 of the 1935 Constitution reads: "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted."
[65] As now worded in Article IV, Sec. 21.
[66] 1 Phil. 146 (1902).
[67] *Ibid*, 148.
[68] Chin Yow v. United States, 208 U.S. 8, 13, 28 S.Ct. 201, 52 L.Ed. 369 (1908).

to borrow from the language of Birkenhead, "a swift and imperative remedy in all cases of illegal restraint or confinement."[69] Not that there is need for actual incarceration. A custody for which there is no support in law suffices for its invocation. The party proceeded against is usually a public official, the run-of-the-mill petitions often coming from individuals who for one reason or another have run afoul of the penal laws. Confinements could likewise come about because of contempt citations,[70] whether from the judiciary or either chamber of Congress. It could also be due to statutory commands, whether addressed to cultural minorities[71] or to persons diseased.[72] Then too this proceeding could be availed of by citizens subjected to military discipline[73] as well as aliens seeking entry into or to be deported from the country.[74] Even those outside the government service may be made to account for their action as in the cases of wives restrained by their husbands or children withheld from the proper parent or guardian.[75] It is thus apparent that any deviation from the legal norms calls for the restoration of freedom. It cannot be otherwise. It would be sheer mockery of all that such a legal order stands for, if any person's right to live and work where he is minded to, to move about freely, and to be rid of any fears that a knock on the door, whether by day or some unholy hour of the night, means being jailed, is not accorded full respect. The significance of the writ then for a regime of liberty cannot be over-emphasized. Rightly could Chafee refer to the writ as "the most important human rights provision" in the American Constitution.[76] He explained why: "Perhaps Dr. Johnson went too far in telling Boswell, 'The Habeas Corpus is the single advantage our government has over that of other countries.' Still, such great liberties as worship and speech will go on somehow, despite laws, but not liberty of the person. Censorship can be evaded; prosecutions against ideas may

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[69] Secretary of State of Home Affairs v. O'Brien, A. C. 603, 609 (1923).

[70] *Cf.* Finnick v. Peterson, 6 Phil. 172 (1906); Jones v. Harding, 9 Phil. 279 (1907); Villaflor v. Summers, 41 Phil. 62 (1920); Carag v. Warden, 53 Phil. 85 (1929); Lopez v. De los Reyes, 55 Phil. 170 (1930); Estacio v. Provincial Warden, 69 Phil. 150 (1939); Arnault v. Nazareno, 87 Phil. 29 (1950); Arnault v. Balagtas, 97 Phil. 358 (1955).

[71] *Cf.* Rubi v. Provincial Board, 39 Phil. 660 (1919).

[72] *Cf.* Lorenzo v. Director of Health, 50 Phil. 595 (1927).

[73] *Cf.* cases from *In re* Carr, 1 Phil. 513 (1902) to Miquiabas v. Phil. Ryukyus Command, 80 Phil. 262 (1948) and Dizon v. Phil. Ryukyus Command, 81 Phil. 286 (1948).

[74] *Cf.* Cases from Lo Po v. McCoy, 8 Phil. 343 (1907) to Borovsky v. Commissioner of Immigration, 90 Phil. 107 (1951).

[75] *Cf.* Reyes v. Alvarez, 8 Phil. 723 (1907); Lozano v. Martinez, 36 Phil. 976 (1917); Pelayo v. Lavin Aedo, 40 Phil. 501 (1919); Bancosta v. Doe, 46 Phil. 843 (1923); Sanchez de Strong v. Beishir, 53 Phil. 331 (1929); Makapagal v. Santamaria, 55 Phil. 418 (1930); Zalvaña v. Gaela, 55 Phil. 680 (1931); Ortiz v. Del Villar, 57 Phil. 19 (1932); Flores v. Cruz, 99 Phil. 720 (1956); Murdock v. Chuidian, 99 Phil. 821 (1956).

[76] CHAFEE, HOW HUMAN RIGHTS GOT INTO THE CONSTITUTION 51 (1952).

break down; a prison wall is *there*. Only habeas corpus can penetrate it. When imprisonment is possible without explanation or redress, every form of liberty is impaired. A man in jail cannot go to church or discuss or publish or assemble or enjoy property or go to the polls."[77] Without such a guarantee, as Fraenkel was at pains to point out, "much else would be of no avail."[78] Cooley and Willoughby did stress its pivotal role as a "safeguard to personal liberty", thus precluding "arbitrary and illegal imprisonment by whomsoever detention may be exercised or ordered."[79] There was thus no hyperbole when Burdick referred to it as "one of the most important bulwarks of liberty."[80]

It is then understandable why its availability to all who suffer from illegal deprivation of liberty is beyond question, the fundamental law speaking only of its suspension under exceptional circumstances. The grounds under the 1935 Constitution were invasion, insurrection, or rebellion as the basis, for the suspension of the privilege of the writ of *habeas corpus*.[81] In designating the President, however, as the official who may order such a suspension, it would suffice for such a step being taken if there be an "imminent danger"[82] as distinguished from the actual existence of invasion, insurrection, or rebellion. In *Montenegro v. Castañeda*,[83] the Supreme Court rejected the contention that the power to suspend, being the exception, should be construed as limited by the Bill of Rights enumeration, the reference to "imminent danger" notwithstanding.[84] In the language of the opinion of the then Justice, later Chief Justice, Bengzon: "The difference between the two constitutional provisions would seem to be: whereas the bill of rights *impliedly denies* suspension in case of imminent danger of invasion * * * Article VII, Sec. 10 *expressly authorizes* the President to suspend when there is im-

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[77] *Ibid.*

[78] FRAENKEL, OUR CIVIL LIBERTIES 6 (1944).

[79] The first quoted portion comes from 2 COOLEY, CONSTITUTIONAL LIMITATIONS 709 (8th ed., 1927), and the latter from 3 WILLOUGHBY ON THE CONSTITUTION 1612 (1929).

[80] BURDICK, THE LAW OF THE AMERICAN CONSTITUTION 27 (1922).

[81] According to Article III, Sec. 1, par. 14: "The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist."

[82] Article VII, Sec. 10, par. 2 of the Constitution reads as follows: "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. In case of 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."

[83] 91 Phil. 882 (1952).

[84] Such a plea was made by the Civil Liberties Union *amici curiae*, now Justice Teehankee and the lecturer.

minent danger of invasion* * *."[85] The conclusion reached was that "the constitutional authority of the President to suspend in case of imminent danger of invasion, insurrection or rebellion under Article VII may not correctly be placed in doubt."[86] There is no such doubt in the Revised Constitution. As now worded: "The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, rebellion, or imminent danger thereof, when the public safety requires it."[87] The suspension of such privilege, as well as the declaration of martial law, is vested in the Prime Minister.[88]

In one respect, the present Constitution is less hospitable to the claims of liberty. Under the 1935 charter, there was this express restriction on the power to suspend: "wherever during such period the necessity for such suspension shall exist."[89] There was thus a limitation imposed as to place and as to time. Failure to observe strictly any of the above requirements would suffice for invalidating a proclamation suspending the privilege of the writ of *habeas corpus*. Now, the Prime Minister is not so cabined or confined. His discretion is much broader. Short of arbitrariness, duly shown,[90] he is left at large as to the area embraced and the duration of the period of deprivation of this most valuable right.

6. *Rededication to liberty in its positive aspect: Emphasis on social justice and protection to labor in the Declaration of Principles*

With the foregoing inconclusive, some might even say hasty, survey of the article on the Bill of Rights as reaffirmation of what has been, we turn to those provisions in the Declaration of Principles intimately, not to say inextricably, connected with vitalizing a regime of liberty not as just immunity from governmental restraint but as the assumption by the State of an obligation to assure a life of dignity for all, especially the poor and the needy. More specifically, the reference is to the expanded social justice and protection to labor provisions of the Revised Constitution. This is not to say that we are here speaking of something novel. What we have is a rededication to accepted national ideals. Even under the 1935 charter, the Supreme Court could state: "The welfare state concept

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[85] 91 Phil. 882, 889 (1952).

[86] *Ibid*, 890.

[87] Article IV, Sec. 15.

[88] Article IX, Sec. 12, reads: "The Prime Minister 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. In case of invasion, insurrection or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law."

[89] Article III, Sec. 1, par. 14.

[90] *Cf.* Lansang v. Garcia, G.R. No. 33964, December 11, 1971, 42 SCRA 448 (1971).

is not alien to the philosophy of our Consttiution."[91] In a 1970 decision, such a view was again given expression in terms of the rejection of the *laissez-faire* theory. Thus:

> "What is more, to erase any doubts, the Constitutional Convention saw to it that the concept of *laissez-faire* was rejected. It entrusted to our government the responsibility of coping with social and economic problems with the commensurate power of control over economic affairs. Thereby it could live up to its commitment to promote the general welfare through state action. No constitutional objection to regulatory measures adversely affecting property rights, especially so when public safety is the aim, is likely to be heeded, unless of course on the clearest and most satisfactory proof of invasion of rights guaranteed by the Constitution. On such a showing, there may be a declaration of nullity, but not because the *laissez-faire* principle was disregarded but because the due process, equal protection, or non-impairment guarantees would call for vindication.
>
> "To repeat, our Constitution which took effect in 1935 erased whatever doubts there might be on that score. Its philosophy is a repudiation of *laissez-faire*. One of the leading members of the Constitutional Convention, Manuel A. Roxas, later the first President of the Republic, made it clear when he disposed of the objection of Delegate Jose Reyes of Sorsogon, who noted the 'vast extensions in the sphere of governmental functions' and the 'almost unlimited power to interfere in the affairs of industry and agriculture as well as to compete with existing business' as 'reflections of the fascination exerted by [the then] current tendencies' in other jurisdictions. He spoke thus: 'My answer is that this Constitution has a definite and well defined philosophy, not only political, but social and economic. * * * If in this Constitution the gentleman will find declarations of economic policy they are there because they are necessary to safeguard the interests and welfare of the Filipino people because we believe that the days have come when in self-defense, a nation may provide in its Constitution those safeguards, the patrimony, the freedom to grow, the freedom to develop national aspirations and national interests, not to be hampered by the artificial boundaries which a constitutional provision automatically imposes.' "[92]

It cannot be denied, however, that under the 1935 Constitution, the provisions on social justice[93] and protection to labor[94] were cast in terms

[91] Alalayan v. National Power Corporation, G.R. No. 24396, July 29, 1968, 24 SCRA 172 (1968). The opinion was penned by the lecturer.

[92] Edu v. Ericta, G.R. No. 32096, October 24, 1970, 35 SCRA 481, 491-492 (1970). The lecturer again spoke for the Court.

[93] As to social justice, according to Article II, Sec. 5: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."

[94] As to protection to labor, according to Article XIV, Sec. 6: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and agriculture. The State may provide for compulsory arbitration."

of the utmost generality. As will be shown, the Revised Constitution, by way of lending emphasis to such fundamental principles, is much more categorical and specific. It has thus made even more manifest the commitment of our polity to its assumption of its inescapable responsibility to assure the welfare of each and every Filipino in terms of a decent existence. We aspire, in the felicitous language of the First Lady, to have "a compassionate society."[95]

a. *Social justice*

Now as to the social justice provision. It was provided in the 1935 Constitution: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."[96] Under the present charter, there is a restatement of the principle made more specific as to its effects on property rights. Thus: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."[97] This provision is equally relevant: "The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living."[98] So is this: "The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."[99] The first comprehensive definition of what social justice signifies was announced in *Calalang v. Williams*[100] in terms hard to distinguish from the police power. That decision upheld the validity of the regulation of traffic on national roads, which would exclude at certain hours horse-drawn vehicles used mostly by the lower-income groups, as not violative of such a principle. According to Justice Laurel, speaking for the Court: "Social justice is 'neither communism, nor despotism, nor atomism, nor anarchy,' but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the government of measures calculated to insure economic stability of all the component elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the mem-

[95] *Cf.* ROMUALDEZ-MARCOS, THE COMPASSIONATE SOCIETY 1-8 (1973).
[96] Article II, Sec. 5.
[97] Article II, Sec. 6.
[98] Article II, Sec. 7.
[99] Article XIV, Sec. 12.
[100] 70 Phil. 726 (1940).

bers of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*."[101]

Thus stress was rightfully laid on the utilization of the extensive authority that police power implies, enabling the government to attain and achieve the objectives of a welfare state. In *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corporations*,[102] there was an affirmance of the continuing vitality of such a doctrine, the opinion being penned by the then Justice, now Chief Justice Makalintal. Thus: "The growing complexities of modern society, however, have rendered this traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only 'because it was better equipped to administer for the public welfare than is any private individual or group of individuals,' continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course this development was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principles concerning the promotion of social justice."[103]

There is likewise in the aforesaid decision a concurring opinion wherein adherence to the *Calalang* doctrine is further emphasized. An excerpt follows: "The regime of liberty contemplated in the Constitution with social justice as a fundamental principle to reinforce the pledge in the preamble of promoting the general welfare reflects traditional concepts of a democratic policy infused with an awareness of the vital and pressing need for the government to assume a much more active and vigorous role in the conduct of public affairs. The framers of our fundamental law were as one in their strongly-held belief that thereby the grave and serious infirmity then confronting our body-politic, on the whole still with us now, of great inequality of wealth and mass poverty, with the great bulk of our people ill-clad, ill-housed, ill-fed, could be remedied. Nothing else than communal effort, massive in extent and earnestly engaged in, would suffice."[104]

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[101] *Ibid*, 734-735.
[102] G.R. No. 21484, November 29, 1969, 30 SCRA 649 (1969).
[103] *Ibid*, 662.
[104] *Ibid*, 682. **The lecturer wrote the concurring opinion.**

What is therein stressed is that a fundamental principle as social justice, identified as it is with the broad scope of the police power, has an even more basic role to play in aiding those whose lives are spent in toil, with destitution an ever-present threat, to attain a certain degree of economic well-being. Precisely, through the social justice coupled with the protection to labor provisions, the government is enabled to pursue an active and militant policy to give reality and substance to the proclaimed aspiration of a better life and more decent living conditions for all. It is in that spirit that in 1969, in *Del Rosario v. De los Santos*, reference was made to what the social justice concept signifies in the realistic language of the late President Magsaysay: "He who has less in life should have more in law." After tracing the course of decisions, which speak uniformly to the effect that the tenancy legislation, now in the statute books, is not vitiated by constitutional infirmity, the *Del Rosario* opinion makes clear why it is easily understandable "from the enactment of the Constitution with its avowed concern for those who have less in life, [that] the constitutionality of such legislation has been repeatedly upheld."[105] What is thus sought to be accomplished by the above fundamental principle is to assure "the effectiveness of the community's effort to assist the economically underprivileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves."[106]

The doctrine has thus now become firmly established and consistently adhered to that social justice is rightly identified with governmental measures, whether exercised through police power, taxation, or eminent domain intended to redress the existing imbalance between the dominant economic groups and the vast majority of the laboring class, whether in industry or agriculture. Up to now, unfortunately unable, even if not guilty of sloth or laziness, to rise above the bare subsistence level, they must perforce rely upon state action to have access to the opportunity to enjoy the good life. It is thus obvious why the judiciary is called upon to view with the widest possible sympathy legislative or executive acts intended to accomplish such worthy objective and to sustain them, save on the clearest showing of undeniable constitutional infirmity.

b. *Protection to labor*

The broad and general language in which the constitutional policy on social justice is couched is given added significance by the 1935 Constitution explicitly requiring that the State "shall afford protection to

[105] G.R. No. 20589, March 21, 1968, 22 SCRA 1196 (1968). The lecturer wrote the opinion.

[106] Lopez Carillo v. Allied Workers Assn., G.R. No. 23689, July 31, 1968, 24 SCRA 566 (1968). The opinion was penned by the lecturer.

labor in industry and agriculture, especially to working women and minors."[107] The new fundamental law is much more definite. Thus: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."[108] Provisions of this character, in the language of Justice Laurel, "evince and express the need of shifting emphasis to community interest with a view to the affirmative enhancement of human values."[109] This principle given categorical expression in both the 1935 Constitution and the present charter is a mandate that must be lived up to. It is a command that must be fulfilled. It brooks no evasion, tolerates no circumvention. Attempts to defeat its purpose and frustrate its objectives are to be condemned. If it were otherwise, the Constitution becomes less than the paramount law that it should be.

The thought bears repeating that the state exists to promote the general welfare. It is judged, to paraphrase Laski, by the extent to which it contributes to the substance of man's happiness.[110] Necessarily, the whole citizenry is included. There is here a rejection of the elitist concept that only a favored few, the ruling class, should be the recipient of its beneficence. Rather, as was so stressed in the foregoing survey of the significance of social justice, those who are less fortunate in terms of economic well-being should be given preferential attention. If such be not the case, then the polity marks itself as failing in its basic objective. They constitute, by far, the greater bulk of the population. Their neglect may well cause a tear in the fabric of unity that binds a people together. There should not be the least doubt as to the validity of any legislation with that end in view, as long as it is reasonable and not arbitrary. The foregoing assertions do not suffer from any constitutional unorthodoxy.

This specific mandate, to repeat, makes more definite the state policy as to the favored position of labor in the scheme of things. It dispels any doubt that in weighing its claims as against those of management,

[107] Article XIV, Sec. 6 reads as follows: "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."

[108] Article II, Sec. 9.

[109] Justice Laurel's concurring opinion cited in Antamok Goldfields Mining Co. v. CIR, 70 Phil. 340 (1940).

[110] *Cf.* LASKI, GRAMMAR OF POLITICS 89 (3rd ed., 1934).

it is to be preferred. With such unequivocal command, it is difficult to see how the equal protection clause may be relied upon to invalidate social welfare legislation. The obligation to protect labor is incumbent on government. It calls for the enactment of the necessary legislation. What is more, the executive in its implementation and the judiciary in its interpretation, must equally be mindful of such constitutional injunction.

Anything less would not suffice. Only thus may fealty be manifested to what is ordained by the fundamental law. To follow a different norm is to disregard what the Constitution explicitly requires. That would be to defy, not to yield obeisance, for its basic assumption is support for the cause of labor. Positive steps may then be taken by the government to make a reality of this guarantee. At the time of the enactment of the Constitution in 1935, the problems of poverty, while not as grave as they are now, did occasion serious concern. Even then there was awareness that no loyalty could be expected from the overwhelming number of our country's economically under-privileged if their deplorable condition were not remedied. The affirmative duty is thus cast on whatever administration be in power to assure that the innate longing of every citizen for decent standards be attended to. Hence this provision.

It would imply at the very least, then, that the state cannot just afford to be a neutral umpire in any struggle between labor and management. It means that considering labor's lesser weight in the competition of the market, the balance is to be tilted in its favor through laws faithful to such a command. What is more, they must be translated into actuality both by the executive and the adjudicative branches of the government. It is not only justified but imperative that statutes not insensible to the sad plight of the laboring elements be enacted. There is thus reinforcement to the social justice principle, which as already noted, supplies a firm foundation. This command then, if faithfully adhered to, goes far in assuring the workers a better share in the fruits of their toil. It is thus easily understandable why with such an explicit mandate imposed on the government, the validity of statutes beneficial to labor has been invariably sustained.

7. *A brief epilogue*

If what has been said does not deviate too far from reality, it is apparent that the Revised Constitution is far from the radical charter that a few of the more articulate proponents of change did hope for. More specifically, as to constitutional rights, there certainly would be no warrant or justification for such a view. Instead, there was a well-nigh

full adherence to what has been. The changes introduced were minimal. On the whole, they tended to render more vital the safeguards of man's freedom whether in the sphere of intellectual or physical liberty. So it is with freedom as a negative concept or freedom from. That is reaffirmation. As for freedom in a positive sense or freedom for, there is a rededication in terms that possess the merit of being less abstract and general. So, at least, this lecturer views matters.