

SEVEN YEARS OF MARTIAL LAW: ITS IMPACT ON SOCIAL AND LEGAL INSTITUTIONS

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"The poignant wish for a tranquil life will find no sanctuary in today's world. We live in a revolutionary era. It is an era of swift, violent, often disruptive change, and rather than lament that vainly, we have to decide whether we should be the masters or victims of change."

— President Marcos ¹

"The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertion of authority."

— Justice Frankfurter ²

I. INTRODUCTORY NOTE

HISTORY TEACHES US either of two things: condemnation or exoneration. To a nation wracked and confused by the painful, albeit ebbing ² "conflicts from within", which ushered seven-odd years ⁴ of blanket martial rule as had been long unknown to the Filipino people, the imminent and necessary reassessment of current doctrines, intermittent dialogues and even

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¹ MARCOS, *TODAY'S REVOLUTION: DEMOCRACY 1* (1971).

² *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 591 (1952).

³ This is even a moderate assessment in the face of a report by a team of distinguished international jurists who over a period of one and a half years investigated the Philippine phenomenon and declared, "we received no convincing evidence that the continuation of martial law . . . is still justified over four years after its introduction . . . we are forced to conclude that the . . . Government is now employing the power . . . not primarily to protect the nation from . . . rebellion or imminent danger thereof, when the public safety requires it . . . but rather to perpetuate the personal power of the President . . ." BUTLER, HUMPHREY & BISSON, *THE DECLINE OF DEMOCRACY IN THE PHILIPPINES* 46 (1977) [hereinafter referred to as BUTLER].

⁴ The time frame considered is from 1972-1979.

prophecies is but a justifiable exercise of vigilance. Although the continued existence of martial rule elicits the *legal* inference that "considerations of safety" are still "tied up or mingled with the exercise of power", it is felt that the "temper of the times" allow us now "a calmness in deliberation" for an objective reappraisal of current situation.⁶

The political upheavals, described as an end to the "long experiment with Western style democracy" in a country popularly regarded as its "showcase",⁶ has generated an impact that deserve a much closer scrutiny than they have so far been accorded.

II. A GENETICAL PERSPECTIVE: WHY WAS MARTIAL LAW DECLARED?

The past will always rule us from its grave lest its incipient roots be pried open from hardened grounds. To this end, political scientists, legalists, and observers have offered a range of interpretation on the genesis of martial rule, wide enough to permit a taxonomy of opinion.⁷

A. THE OFFICIAL VIEW

1. *The Critical Setting: DEMOCRACY UNDER ANAESTHESIA*

The imperative ordination of martial rule is *officially explained* by President Marcos himself in his historic Proclamation 1081⁸ of September 21, 1972. Summarized, it formally diagnosed that the Republic was in *grave danger* of violent overthrow by the "fanatical pursuit of the conspiracy" of Communist subversives, Muslim secessionists, urban terrorists and student demonstrators. In bringing about "fear and chaos" and the clear paralyzation of the government and the economy, they sought "refuge under the protection of our constitutional liberties to promote *their* ends". The synergetic effect had the "magnitude of actual war." Thus, all these compellingly precipitated the regrettable but temporary imposition of martial rule. Proclamation 1081 emphasized that the Presidential findings were on the basis of carefully evaluated and verified information.

⁶ The U.S. Supreme Court waited four years before it decided to clip the exercise of executive power in the Martial law case of *Duncan v. Kahanamoku*, 327 U.S. 304 (1946). See Gutierrez, *Human Rights: An Overview*. THE 1973 CONSTITUTION AND HUMAN RIGHTS 17-8 (1979) [hereinafter referred to as Gutierrez]; Barrett & Ferenz, *Pacetime Martial Law in Guam*, 48 CAL. L. R. 1, 25 (1958).

⁷ TATAD, *MARCOS OF THE PHILIPPINES* (1978) [hereinafter referred to as TATAD].

⁸ The four-tiered classification of views by Rosenberg has been adopted for the genetical perspective. Rosenberg, *Introduction: Creating a New Society, MARCOS AND MARTIAL LAW IN THE PHILIPPINES* 13 (1979) [hereinafter referred to as Rosenberg].

⁹ 68 O.G. No. 39, 7624 (Sept. 25, 1972).

In performing the major surgical operation, democracy had to be anaesthetized. However, no change of government was intended. On the contrary, President Marcos explicitly declared that martial law did not mean a military takeover of the civilian leadership and that *strict* fealty to the Constitution confined his actions.⁹

2. *The Ultimate Objective:* SAVE THE REPUBLIC

Subsequent unveiling Presidential declarations retrospectively claimed a much *broader* societal illness. Those not embodied in Proclamation 1081 included the right wing oligarchs, corrupt officialdom, criminal political syndicates, private armies, the deteriorating economy and increasing social injustice — all lumped up as *additional* threats to the nation,¹⁰ all requiring the antidote of "martial necessity". From these premises sprung the longer-term justification of martial rule. Closing Pandora's box required the removal "not only of the conflict, but of the *causes* of conflict."¹¹ A drastic overhaul of the governmental set-up was an obvious necessity. Urgent socio-economic reforms were implemented as fast as they were decreed. The creation of a "New Society of Equals" surfaced as the dominant underlying ideology.¹²

From a mailed fist policy, an increasing shift to a policy of attraction was pursued. The initial package of the New Society program encompassed agrarian reforms, sustained long-run economic development and an innovated system of popular representation thru the "citizens assemblies." Moreover, reform proposals, especially, the economic and administrative reforms were unmeasureably important in mobilizing the "commitments of the entrepreneurship of the private business sector and the technocrats of the public planning sector to the New Society."¹³

Vividly, *saving* the Republic, required the utilization of the entire gamut of resources and techniques. At an accelerated pace, the initial thrusts of what President Marcos terms the counter-revolution from the center",¹⁴ were made possible only under a condition of anaesthetized democracy.

⁹ TATAD, *op. cit.*, *supra*, note 6, at 7.

¹⁰ MARCOS, NOTES ON THE NEW SOCIETY 121 (1973) [hereinafter referred to as NOTES].

¹¹ TATAD, *op. cit.*, *supra*, note 6, at 8.

¹² NOTES, *op. cit.*, *supra*, note 10, at 93.

¹³ Rosenberg, *op. cit.*, *supra*, note 7, at 15.

¹⁴ MARCOS, THE DEMOCRATIC REVOLUTION IN THE PHILIPPINES 83 (1977).

B. A SUPPORTIVE VIEW

1. *The Theoretical Background: DEMOCRACY FAILED*

Other scholars insistently posit that the current armagedon is but a patent "*symptom of a much deeper flaw*".¹⁵ *Breakdown* was the inevitable result of the mistaken not to say coercive grafting of a copied democratic system. Juxtaposed governmental institutions were increasingly inadequate to meet the rising crises and in the long run became more and more prone to destabilization. Finally, it faltered, intermittent responsive leadership and reforms merely delayed its expected collapse. As succinctly put by one American correspondent, "it never occurred to the American colonial officials that our essentially Protestant tradition established in an under populated vast [continent] and reared from English legal habits might not serve as a necesasrily useful model to a Catholic [bred nation of a relatively overpopulated tiny archipelago] of mixed Iberian and Malay Culture, poor and inexperienced".¹⁶ Indeed, the circumstance, that these loaned institutions were *spontaneously* evolved, not imposed nor bequeathed, from a long and different American experience, was belittled.

2. *The Thrust: AN ODYSSEY IN EXPERIMENTATION*

Carlos Romulo, easily one of the most respected statesmen, in the Philippines and internationally, admittedly lamented that "we never had the substance of democracy . . . The *old* system was in chaos". The *new* system was "an attempt to find *middle* ground, an effort to restore national discipline".¹⁷ Western style democracy having failed an account of an inherent incompatibility between a concept and its milieu, experimentation became exigent. "Grassroots democracy" thru the *barangays*, and direct consultations *via* referenda were the foremost of novel ideas which were pushed into realities. The constitutional shift from an American patterned presidential system to a uniquely modified parliamentary set-up became easily justifiable. Questionable and continuously changing governmental actions and policies were compensably justified as part of an oscillating experiment to find what was best suited for the Filipino nation.

The difference between the first two explanations is only one of emphasis. The first, relying on the theory that with proper adjustments, Western-style democracy will eventually survive; and the second, positing that Western democratic institutions will never outlast an incongruent Filipino context. Both place great emphasis on the maintenance of social

¹⁵ Rosenberg, *op. cit.*, *supra*, note 7, at 17.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

and political stability as the fundamental prerequisite for other governmental objectives. Both explanations are widely accepted and espoused within the military and governmental bureaucracy.

The next two explanations however, although starting from essentially the same facts lead to sharply divergent conclusions.

C. AN ANTI-THESIS

1. *The Philippine Milleau: DEMOCRACY NEVER EXISTED*

The left-wing, radical critique rejects the first two views and argues that genuine democracy *never* existed in the first place in the Philippines. Martial law was only the "end of an illusion".¹⁸ Nominally democratic institutions had long been abused and subverted by indigenous oligarchs and foreign imperialists. "Exploitation and brutalization", historically antedates back to the Spanish colonial regime,²⁰ and were merely *passed on* in different forms to the American and Japanese masters, until the Philippines was given the "dance" to be ruled by "puppet" Filipino leaders. Even innate Filipino cultural manifestations were suppressed.²¹ Thereupon, true independence and democracy could not be claimed. Hence, martial law did not and could not fundamentally change the basic structure of power in the country.

2. *The Underlying Purpose: OPPRESSION AND POLITICAL RETALIATION*

Concomitantly, the extreme left posits that since the total lack of real democracy was an indissoluble hematoma which could not be cured, the martial law rulers had nothing to lose by engaging in the same oppressive exploitation of the masses, as well as the political obliteration of any opposition, but this time sheltered by the absence of formal restraint.²²

The value of this "unmasked tyranny" is prominently shown in the Fourth Anniversary Statement of the New People's Army of March 20, 1973 which professed that martial rule "has become more than ever made the situation excellent for armed struggle". It proclaimed:

¹⁸ From the title of an early but thorough critique of Martial Law: *The Philippines: End of an Illusion*, J. CONTEMPORARY ASIA 1 (1973).

¹⁹ Rosenberg, *op. cit.*, *supra*, note 7, at 18.

²⁰ Sison, *The Need for a Cultural Revolution, STRUGGLE FOR NATIONAL DEMOCRACY* 1 (1971).

²¹ *Ibid.*, at 2.

²² Rosenberg, *op. cit.*, *supra*, note 7, at 18.

"The national united front has greatly broadened and has become ever more firmly anchored on the necessity of armed struggle Even the most backward sections of the population are roused to the spectacle of the ruling clique tearing to shreds every semblance of bourgeois democratic progress. The ruling system has hopelessly cracked up from top to bottom. No amount of cloaking it as a 'new society' will conceal its bankrupt and decadent condition; it is unmitigatingly the old society becoming ever *more oppressive* and exploitive." ²²

D. A "MESNE" PROFILE

1. *The Local Arena: DEMOCRACY WAS SUCCEEDING*

An intermediary explanation takes the position that the political institutions in the Philippines, despite their flaws, were improving and branching rapidly. ²⁴ No human conceived system is perfect. Necessary reforms were forthcoming, but martial rule overtook and aborted the process. Butressing this view they cite as evidence the increasing political awareness and consequent expanding political activity and influence in the years prior to martial rule. ²⁵ Urban and rural workers, subsistence laborers, without being coaxed, were being systematically organized into unions, federations and cooperatives for their mutual aid and protection. ²⁶ Intra-religious segments had been imbibed in the gauntlet for progressive reform. Economic and foreign policies were steadily acquiring a nationalistic outlook. ²⁷ All of these newly articulated and organized interests synergetically came together in the late sixties echoing for a major overhaul of the 1935 constitution and for a more filipinistic one. ²⁸ Serious and lengthy deliberations and elaborate preparations ushered the 1971 constitutional convention filtered from a broad spectrum, to initiate responsive socio-politico-economic reforms.

2. *For Whom did the Bells toll?: PERPETUATION OF INTERESTS MOTIFF*

Exponents of the democracy-was-succeeding view argue that reversible defects in the Philippine milieu merely required medication, but adven-

²³ *Fourth Anniversary Statement of the New People's Army*, Ang Bayan, March 29, 1973, p. 1.

²⁴ This view is espoused by former President Diosdado Macapagal. See MACAPAGAL, *DEMOCRACY IN THE PHILIPPINES* (1976) [hereinafter referred to as MACAPAGAL].

²⁵ Rosenberg, *op. cit.*, *supra*, note 7, at 19.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

turous surgery was nevertheless unnecessarily prescribed. *Why?* The thesis is: that the reform momentum was perceived as an increasingly grave threat to the dominant elites of the country. To protect their interests, neutralization was imperative.²⁹ Thus, bribery, blackmail, violence and as a last resort, martial law were resorted to.³⁰ This was rhetorically amplified by Reverend Bruno Hicks, Franciscan missionary in the Philippines, "could this have been the reason why martial law was declared: because democracy was just beginning to work [and] the grievance of the masses were finally getting aired, bringing pressure to bear on the political institutions?"³¹

But for whose interests?

The explanatory model comes with its own deviants depending on how the dominant elites of the country are operationally defined. In its simplest form, martial law is viewed as essentially a one-man coup by a power-hungry politician.³² President Marcos is just another Asian strongman, who plotted for several years to seize power unconstitutionally, imprison or paralyze his opponents, and thereby circumventing the constitutional two-term limit on his presidential tenure.³³ Hence, no lifting of martial law can be expected until he has soundly *consolidated* himself politically.

Another variation argues that martial law was more than a one-man affair; that "it represents a major realignment of elite factions, resulting in a sharp concentration of power and wealth within the national elite."³⁴ It is premised on the proposition that the family remains the crucial and basic unit of capital accumulation and investment and that fewer families are amassing greater economic and political power.³⁵ Hence, martial law ushered the dominance of the elite family alliance headed by Ferdinand Marcos and his wife, Imelda Romualdez Marcos, over the other rival national elites and the more traditional local elites.³⁶

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ This view is amplified in Hick's U.S. Congressional testimony before the Fraser Subcommittee which contained testimonies exemplifying the alternative explanations of Martial Law. Human Rights in South Korea and the Philippines: Implications for U.S. Policy, HEARINGS: SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS OF THE COMMITTEE ON INTERNATIONAL RELATIONS, (1975).

³² Rosenberg, *op. cit.*, *supra*, note 7, at 20.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

Still another variation argues that the anti-reform alliance extends even further, to foreign, principally American, interests. The picture sought to be projected is that the U.S. government's principal consideration was to maintain its military bases while her multinational corporations wanted to maintain their access to supply and demand; and both these groups provided the necessary support to the Marcos administration to install a regime friendly to foreign commerce and American security interests.³⁷

III. IMPACT ANALYSIS: AN INSTITUTIONAL APPROACH

The genetical perspective runs through a broad spectrum of explanations on *why* martial rule was declared. More confusion is spawned by the lengthy and heated annual reassessment on *how* martial rule has fared partly stemming from the shifting or even absence of a viable framework of analysis from the diametrically polarized adherents. This has been aggravated by a flourish for polemics,³⁸ transposing the continuing debate into more of a propaganda war. The task of the assessor is made more difficult by several factors. Under martial rule, only such events are published as the authorities deem fit to make known to the masses.³⁹ Public announcements or news items are generally couched in a language affected by the viewpoint of, if not favorable to, the administration.⁴⁰ The supposedly objective statistical indicators have been criticized, and not only occasionally, as not being the most accurate *indicia* of measurement.⁴¹ Thus, separating the grain from the shaft becomes a task of considerable magnitude.

Breaking the log jam styming the current doctrinal issues initially necessitates a definitive response to two basic approaches: (1) What is the framework of analysis? and (2) What is the unit of analysis?

A single framework will be endeavored: that of a *political* framework — to ascertain the political impact viewed from the perspective of a power struggle.

³⁷ *Ibid.*

³⁸ Gutierrez, *op. cit.*, *supra*, note 5, at 27.

³⁹ Concepcion, *Administration of Justice under Martial Law, THE DECLINE OF DEMOCRACY IN THE PHILIPPINES* 50, (1977).

⁴⁰ *Ibid.*

⁴¹ Mangahas, *Social Indicators in the Philippines*, PHILIPPINE INDICATORS PROJECT 23 (1977).

The unit of analysis shall be taken from the level of institutions.⁴² However, both the terms "social institutions" and "legal institutions" have varied from one publicist to the other,⁴³ that despite superficial similarities, one may safely say that there is no *definite enumeration* of what these institutions are, upon which a clear preponderance of writers agree. For a balanced analysis, we shall operationalize both terms within the functional context of the martial rule phenomenon.

IV. A POLITICAL FRAMEWORK OF ANALYSIS: THEORY AND FACTS RECONCILED?

From a *political* standpoint, no one can rationally deny that the devastating impact of martial rule — described in theory as "the law of necessity," "circumscribed by necessity" but of which itself "knows no law" — is succinctly depicted in a pictured system which has submerged all other institutions by the superimposition of a dominating personalistic institution in the structure of a single person: President Marcos. Indeed, so personalistic, that for a long time no provisions were made for presidential succession.

But there is more to it than just a mere overview of power structure. Each component part must be dissected to be able to evaluate the more concerning impact question: As it is now, is martial rule functional or dysfunctional? Are there discerned patterns?

With the Philippine experience illuminating as a test case, another important question comes to fore: Is President Marcos correct when he argues, as many Third World leaders have, that the loss of civil liberties

⁴² An Institution consists of a *concept* plus a *structure*; a *concept* consist of a set of attitudes, ideas or beliefs which define the functions of the institutions while a *structure* refers to the organization by which the concept becomes effective. BOWEN, *TOWARDS SOCIAL ECONOMY* 16 (1977). An institution is defined as "widespread social habit" by professor Hamilton as a "cluster of social usages", and also as "a definite and established phase of the public mind." See Hamilton Institution, 8 *ENCYCLO. Soc. Sc.* 84-9 (1937); CHAPLIN, *CONTEMPORARY AMERICAN INSTITUTION* 319-320 (1935).

⁴³ There is no fixed classification of social institutions. Even Prof. Malinowski says that every culture must be analyzed into the following aspects; politics, the mechanism of law and custom, education, *magic*, religion, traditional knowledges, technology and art. Malinowski, *Culture as a Determinant of Behavior*, *SCIENCE MONTHLY* 440-9 (1936) Justice William Douglas refers to the legal institutions as the total administrative agencies, Douglas, *Legal Institutions in America*, *LEGAL INSTITUTIONS* 274 (1959); Lord Alfred Dennings limits the term to parliament and the courts of law. Dennings, *Legal Institutions in England: Today and Tomorrow*, *LEGAL INSTITUTION* 249 (1959); while Professor Hay considers legal institutions as the entire governmental matrix. HAY, *AN INTRODUCTION TO UNITED STATES LAW* 14 (1977).

and representative government is the necessary price that must be paid by developing countries to achieve political stability and economic growth? Is authoritarianism more or less likely to implement socio-economic reforms than a competitive, democratic one?

A political genius and perceptive student of history, president Marcos has barely passed the *crux* dilemma of stability. All views, no matter how divergent, have converged on one point: that martial rule will always have to contend, as it has always contended, with the problematic mechanics of legitimization. What exactly are the supports of this regime styled as "constitutional authoritarianism"? To what extent does an authoritarian political system depend on external sources of support for its maintenance in power?

Consequently, it would be grossly inadequate to tackle the problem in a *compartmentalized* institution-to-institution impact study. A subsequent *cross-sectional* approach shall also be labored on.

A. THE COMPARTMENTALIZED APPROACH

1. *The Constituent Institution: A Legal Institution Receptacled With the Powers of Proposal and Ratification*

a. The Theoretical Background

Constitutional politics rank the constituent power the highest in the constitutional hierarchy of powers. Deference to the point of sacrosanctity is accorded to this "article of sovereignty."⁴⁴ The danger of its transgression was well expressed by King Charles I, before his execution by Oliver Cromwell with these words:⁴⁵ "If power without law may make law, and may alter the fundamental laws of the kingdom, I do not know what subject can be assured of his life or anything that he can call his own."

b. A Factual Perspective

Time was the mute witness to the dynamics of power shaping and sharing in the Philippines. Martial rule overtook the Constitutional Convention which had almost completed revising the 1935 Constitution, an instrument written by Filipino delegates under the American colonial rule. The major controversy centered on the proposed shift from a presidential form of government under which President Marcos would not be allowed

⁴⁴ CONST., Art. XVI; CONST. (1935) Art. XV.

⁴⁵ Cited in MACAPAGAL, *op. cit.*, *supra*, note 24, at 11.

to seek a third term as president, to a parliamentary system that would allow him to continue in power as prime minister.⁴⁶ Then Martial Law was declared. Minus some dozen opposition leaders who were detained, the convention was asked to hasten its historic task.⁴⁷ In seventy days, the delegates complied by adopting a parliamentary form of government with an extremely strong prime minister.

The Constitution's most maligned provision was, and still is, the article on transitory provisions. It is plainly described from one view as: the vehicle for an orderly metamorphosis from martial law and the old constitution to the new one, and anathemically described by another as: a mechanism "tailored to the requirements of martial law to enable President Marcos to enforce the constitution selectively."⁴⁸

In January 1973, the President hastily called an *informal referendum* on the proposed constitution through the "broadened citizen assemblies", instead of through an election required under the then existing 1935 constitution but only after he had "postponed indefinitely" a previously called for plebiscite for the same purpose. Referendum voting was by *viva voce* or acclamation in citizen assembly meetings, not by secret voting supervised by the Commission on Elections. While martial rule was in effect, the 1973 Constitution, under Proclamation 1102 was announced to have been "ratified" on the basis of a report that 95 percent of the voters had favored it, within 48 hours of the taking of the referendum."⁴⁹ "In the opinion of the most conservative observers, such a quick tally would be a physical impossibility in this large archipelago, especially as the voters are counted manually,"⁵⁰ and two weeks being the normal period for counting nationwide election results.⁵¹ However, in *Javellana v. Executive Secretary*,⁵² bowing to the *fait accompli*, the Supreme Court, declared by an equivocal process — "there is now no further obstacle to the new constitution."

By virtue of the 1973 constitutional transition, the constituent *proposing power* was slightly modified. Section 15, Article XVII, merely

⁴⁶ Abueva, *Ideology and Practice in the New Society*, MARCOS AND MARTIAL LAW IN THE PHILIPPINES 37 (1979) (hereinafter referred to as Abueva).

⁴⁷ *Ibid.*

⁴⁸ Del Carmen, *Constitutionality and Judicial Politics*. MARCOS AND MARTIAL LAW IN THE PHILIPPINES (1979) (hereinafter referred to as Del Carmen).

⁴⁹ *Ibid.*, at 14

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² G.R. No. L-36142, 50 SCRA 30 (1973).

provided for a majority vote of all the members of the *interim* National Assembly, amongst others, instead of the absolute two-thirds votes under the regular provisions of the old and new constitutions. But President Marcos, by issuing Proclamation 1103, three and a half years later indefinitely suspended the calling of the *interim* National Assembly and was never given a chance at all to "immediately" function.

On August 1976, President Marcos announced the "need" to ratify several far-reaching amendments to the 1973 Constitution. Unilaterally exercising the constituent proposing power, the President himself proposed amongst others, a 120-member *Batasan Pambansa* which would *ipso facto* eclipse the *interim* National Assembly. Once more impugned before the Supreme Court in *Sanidad v. Comelec*,⁵³ the majority upheld the unilateral exercise of the constituent power to propose amendments, under the now famed "vacuum theory." This time the constituent ratifying institution was thru a plebiscite styled a referendum-plebiscite.

The October 16, 1976 referendum-plebiscite is thus described by a team of distinguished international jurists:

"The Western press reported that the ballot papers were distributed only in English and not in the regional dialects as required by law; the booths provided no privacy and ballots were permitted to be marked in pencil only. The Official . . . results announced by the Commission on Elections on October 27 stated that . . . 20,791,888, or 87.16%, had voted in favor of the constitutional amendments and 9.6%, against."⁵⁴

Thus, after 39 months from the new constitutions existence, the transitory provisions themselves metamorphosed by amendment.

Under the current situation and with the advent of the *interim Batasan Pambansa* under the 1976 Amendments, a noted constitutionalist, Professor Tolentino doubts whether the incumbent President and Prime Minister can now exercise the constituent power to propose amendments.⁵⁵ But a legal opinion remains an opinion and politics under martial rule is another.

c. Impact and Historical Parallelisms

The influence of martial rule has substantially impaired the constituent institutions. The imprint of its deformities can no longer be erased, as it will always show a weak spot in our constitutional order. It becomes a

⁵³ G.R. No. L-44640, 73 SCRA 333, 368 (1976).

⁵⁴ BUTLER, *op. cit.*, *supra*, note 3, at 18-9.

⁵⁵ On television on September 23, 1973.

dangerous precedent always available to any chief executive, now and in the unknown future. The substantial fluctuating changes on the constituent structures, clearly portrays that like the proverbial pliant bamboo it must bend with whatever the holders of martial power conceive the situation to be.

The first substantial alteration of the constituent structure through an informal referendum under a broadened base which included 15 year olds whether or not they were illiterates, feeble minded or ex-convicts, instead of the established plebiscite practice, is explained by the President himself:

"... our southern backdoor was *strategically vulnerable* to the secessionists. An excruciatingly careful estimate of the situation convinced me that if the *entire* citizenry . . . were to approve the new constitution by a show of hands through the *barangays*, this would dishearten the rebels and the secessionists . . .

"I was taking a legal . . . gamble . . . but at stake was the integrity of the sovereign state rather than a technicality of law.

"As it turned out . . . the secessionist plan was upset."⁸⁸

Oppositionists have, however, refused to accept this argument. On the other hand, they allege that there was even no referendum to speak of — on the basis of the shocking Mijares admission:

"There was really *no* nationwide gathering of voters, but we somehow had to produce referendum results."

The truth or falsity of these assertions are bone deep in implications. But the fact remains, that under the extraordinary conditions of martial law, real or imagined, in the name of the safety of the Republic, constitutional provisions, high or low, may be treated as "technicalities of law."

The government strained long and hard, enough to substantially alter the constituent institutions, to have the 1973 Constitution in legal force and effect. The theory of perpetuation of power is one explanatory model. The socio-political restructuring theory is another. But in the face of apparent limitless powers, the theory of legitimization seems most viable. For proof, history reveals that President Marcos was successful where President Lincoln of the United States failed. During the Thirty-Seventh Congress' first sessions in July and August 1861, Massachusetts' Senator

⁸⁸ NOTES, *op. cit.*, *supra*, note 10, at 116.

Henry Wilson introduced a joint resolution seeking to *ratify*, amongst others, Lincoln's suspension of the Writ, which provided as follows:

"Be it resolved . . . that all of the extraordinary acts, proclamations, and others, herein before mentioned, be, and the same are hereby approved and declared to be in all respects *legal and valid*, to the same intent, and with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States."⁵⁷

Since a reading of the resolution would seemingly be legalizing the presidential suspension of the writ, thereby implying the illegality of the presidential measure, resisting Republicans voted the resolution down.⁵⁸

The aborted resolution's phraseology and our transitional section 3(2) run along similar tones. It is to be noted that the Filipino mastermind went three steps further than Massachusetts' Senator Wilson: President Marcos was conferred extraordinary *legislative* powers; all these promulgated laws "shall remain valid . . . even *after* the lifting of martial law"; and all these were incorporated into a *constitutional* provision. Later on, this provision also served as the court sanctioned implied basis for the President's constituent power to propose the 1976 Amendments.⁵⁹

One question deserves to be asked: Despite his limitless power potentials, why has President Marcos taken pains to meticulously project the image of constitutional rectitude as a living and vital process in the country? Convergent explanations are easily suggestible. Thus:

"Obviously, the admission of an overt power grab would be dis-functional and impolitic, for foreign as well as domestic consumption. The specter of the Philippines, long ballyhoed as the showcase of American democracy in Asia, [eviscerating] long-nurtured constitutional tenets would be traumatic to the Americans as well as to Filipinos. A repudiation of the patented American democracy — yes, but a complete absence of a constitutional process — no. There is need for a grasp at constitutionalism for everybody's peace of mind — including the president's. Images and symbols sometimes become more important than reality, the Philippines particularly. In the mind of the masses, the president's legendary law exploits give him the benefit of the doubt on constitutional questions gaining easier credence for governmental claims."⁶⁰

This is the pragmatism in Philippine constitutional politics.

⁵⁷ S.J. RES. CONG. GLOBE, 37th Cong., 1st Sess. 40 (1861).

⁵⁸ Harer, *Power Idealism, and Compromise: The Coordinate Branches and the Writ of Habeas Corpus*, 26 (EMORY L. J. 169 (1977)).

⁵⁹ Sanidad v. Comelec, *op. cit.*, *supra*, note 53, at 368.

⁶⁰ Rosenberg, *op. cit.*, *supra*, note 7, at 28.

2. *The Institution of Human Rights: Overlapping Social and Legal Institutions*

The notion and problem of human rights are as old as human society. Having been exercised since incipient time, each right has been considered as a separate institution. The modern times, as evidenced by the United Nation's Covenants, have classified a dyarchy of human rights, namely: (1) civil and political rights; and (2) economic, social and cultural rights. Both the 1935 and 1973 Constitutions embody the two-fold classification, albeit in a different form, the first in the form of self-executing negative rights and the second in the form of executory positive rights.

a. The Theoretical Yardstick: A Debated Question

Justice Tuazon's unqualified adherence to the observance of these rights ring with these words:

"These rights are *immutable*, inflexible yielding to *no* pressure of convenience, expediency or the so-called judicial statemanship."⁶¹

To the West, these fundamental rights by reason of their object, and goal are anterior and superior to the state and their imposition on the state itself is evidenced by the 'social contract'.⁶² To *some extent*, these notions have been transplanted to the Philippine context with the adoption of the 1935 Constitution.

(1) Human Rights in the Context of Geo-Culture

Doctrinal tones change in times of stress. The current line of assault posits that these doctrines are mere reflections of the American constitutional spirit devoid of social content for unlike the Filipino political thought, the American thinking was not conditioned by the social misery of the age.

Others opine that human rights institutions are not essentially nor necessarily a Western importation unsuited for Asians or Filipinos. The proof adduced is that Oriental or Asian thinkers were aware of the existence of human rights. The right to property is enshrined in the Ten Commandments of Oriental-Jewish origin. The Koran of the Muslims, the teachings of Buddha of India, the writings of Confucius and Lao Tse of China

⁶¹ *Nava v. Gatmaitan*, 80 Phil. 192, 206 (1951).

⁶² This concept seems to be the prevailing and accepted line in the United States, *THE NEW CONSTITUTION AND HUMAN RIGHTS* 182 (1979).

reflected on human rights institutions even antedating Locke, Rousseau, Jefferson or Karl Marx.⁶³

To the argument that modern leaders of Asia are of Western orientation, Professor Salvador P. Lopez responds:

"... though some of these came from the West, the west first got them from the East. The circle is now complete . . . In the end, this proves that in the matter of human rights, there are no Asians nor Europeans. There are only two kinds of people in the world — those who love liberty and those who don't."⁶⁴

(2) Human Rights in the Context of Socio-Economic Development

President Marcos brings home the point that we should dig deep into our history and culture for the real ideological answers. He reasons out that what really aroused the masses during the Philippine Revolution was "not the promise of liberty but deliverance from expropriation, not political freedom but the end of day-to-day oppression" and while the revolutionary ideologues and *illustrados*, "concerned themselves with political questions, the masses were really moved by social considerations."

"Even up to today," he says, "we have almost exclusively thought of our heritage in terms of the political and constitutional ideas of the Philippine Revolution," forgetting its causative social force.⁶⁴ Thus, the real fought-for hopes of the Filipinos were and still are social before they are political.

These words streamlined the unique Martial Law: Philippine style. In manifestly rebuking the politics of transitional elites of looking upon "the poor as nothing more than a base of power to be availed of in pursuit of sectarian ends,"⁶⁵ President Marcos has embarked on a policy of socio-economic restructuralization to reverse the process. In effect, the President meant to say that by declaring martial law, he has also declared an internal revolution *for* the poor.

The impact is ominously far reaching. It has broken off from the traditional concept that civil and political rights can go hand-in-hand with socio-economic development. It has precipitated a reaction that civil liberties and national development in the case of underdeveloped countries

⁶³ Lopez, *Social and Cultural Rights under the New Constitution*, THE NEW CONSTITUTION, AND HUMAN RIGHTS 148 (1979) (hereinafter referred to as Lopez).

⁶⁴ NOTES, *op. cit.*, *supra*, note 10, at 79.

⁶⁵ *Ibid.*, at 81.

cannot coexist — and that the theory becomes further bolstered in the face of local unrest. The martial law government's position is thus summed: the loss of civil liberties is the necessary price that Filipinos have to pay, if only temporarily, to achieve political stability and economic growth.

The issues may be muddled, but the governmental strategy was clear. In a scale of ordered values, it was to isolate the preferred civil and political rights on one end of the balance and align both the threat of public danger and the enforcement of economic, social and cultural rights on the other side of the fulcrum. This makes the weight of the latter end of the balance grossly heavier, and as long as there are no substantial shifting of weights, martial law will always exist as a "national imperative." After seven odd years, the same strategy has been maintained. One thing is certain, it has, in the minds of the masses, convincingly succeeded in deodorizing the concept of "martial law."

But what is doctrinal to the president is "myth" to the opposition. They have argued that the Philippine variant of this "myth" goes beyond than just simply balancing political democracy and national development, for the government's position, in effect, is a declaration that only through martial rule can society be restructured.⁶⁸ They point out that although President Marcos admits that "martial law was never conceived nor has it ever been utilized to attain revolutionary or radical reforms", he nevertheless would continue to impose it "beyond the simple need of restoring order, to meet the other and even more important imperative of reforming society." To the opposition, the Marcos theory is unacceptable, it being a faith which assumes that democracy cannot survive, much less progress, democratically.

In so assessing, theory must meet fact.

b. The Factual Situation and Its Impact on Human Rights

(1) An Overview

Martial law is a cruel-crippling calamity in the vicinity of human rights. Human experience will tell us, and the present Philippine experience so substantiates, that all forms of rights under martial rule merely exist as concessions. Thus, curfew and other forms of travel bans may be turned off and on. Government restrictions on the mass media fluctuate from

⁶⁸ A statement of the Civil Liberties Union of the Philippines, *THREE YEARS OF MARTIAL LAW*, 8 (1975) (hereinafter referred to as *THREE YEARS*).

time to time. Massive warrantless arrests or "invitations" is a potential occurrence anytime. Speedy disposition of cases depend on the speed of the issuance of Letter of Instructions. Torture frequency becomes discretionary. There are virtually no checks, not even public opinion. Like any discretionary power, martial rule is merely subject to the power-holder's conscience and better judgment.

Under the present dispensation, majority of the constitutional and legal rights are judicially enforceable, civilian positions have not been manned by the military, and reforms are instituted. It is therefore made easier for the administrators to claim that this is a more "humane" society than during the pre-martial law days. Even legalists have argued that minus the privilege of the Writ, all civil rights are in force under martial law. There is truth to this, but these rights exist and are in force only by way of *concession* from the power-holder and so long as the law of martial necessity exists, rights may fluctuatingly rise or ebb, as the regime's judgment deems it to be. The factor that really counts for the fixity of civil and political rights is the discontinuation of martial rule and nothing less.

A perplexing question that deserves to be answered is: Are the civil and political rights under the 1973 Constitution *diluted or strengthened*?

It has been said that the 1973 Constitution is the posthumous offspring of normalcy and at the same time the presumptively legitimate child of martial law. Being so, it affords a good basis upon which we can compare the present stature of civil and political rights.

There are 24 enumerated rights under the Bill of Rights of the new Constitution which is three more than the 1935 Constitution. The rights of the accused have been more meaningfully expanded, at least, constitutionally. Moreover, the suffrage article has been broadened by liberally stretching the age, property and literacy requirements. In this sense, positive innovations have been infused.

Not apparent are the forces which have watered them down. Justice Holmes states the truism that these "preferred rights" have acquired a "*gloss*" thru historical experience, upon which a value-hierarchy is built.⁶⁷ And the reason why the functional correlative term "duty" has been relegated to an *implied* concept — is to *preserve* that "*gloss*". Under the 1973 Constitution, however, duties and obligations have prominently *surfaced* as *express* provisions and by a constitutional mandate, the citizens

⁶⁷ Justice Frankfurter also makes a similar observation in *Rochin v. California*, 342 U.S. 165 (1952). See also, Gutierrez, *op. cit.*, *supra*, note 5, at 5.

are duty-bound to "contribute to its development and welfare . . . obey the laws, and to cooperate with the duly constituted authorities."⁶⁸ The impact on preferred rights, though not immediate, is of a considerable magnitude. The enactment of laws, taken from the concept of *duty*, may be used to tarnish the "gloss and luster" of preferred rights. National development and welfare policies are eminent prerogatives of government upon which citizens have the duty "to contribute." On the basis of this provision alone, the entire martial law rationale toward national development can be given constitutional justification. True, the *existence* of preferred rights may not be impaired by making express those duties previously implied, but we must not lose sight of the fact that the *position* of preferred rights in the ordered *hierarchy of values* may be seriously impaired by a strong emphasis on duties. So far, under the aegis of martial law, the duty to vote is compelled by a legal sanction — six months imprisonment. Others are likely to follow.

(2) Civil Rights

(a) The Institution of Property

A Brief Theoretical Perspective. Property rights have been considered as the lesser of preferred rights in any societal hierarchy of values. Transgressions on ownership by state action have been stamped with rubrical validity mainly on the basis of the state's power of eminent domain and its emergency powers. The history of countries experiencing upheavals show that, except when the "taking" or confiscation of property by the State had repercussions of international proportions, as in the nationalization of multinationals, dissent against such property interferences have been minimal and in low tones.

The Philippine Situation. Among the legal institutions spared from the sweeping effects of martial rule is the institution of property. For seven years since its imposition interferences on property rights have been limited to the "taking over" of the management and control of some industrial corporations, particularly steel mills.⁶⁹ Additionally, Letter of Instructions No. 2 authorized the Secretary of National Defense to "take over" the management and control of several vital public utility franchises, some of which were later handed back to their former owners, and others, the stocks of which were issued and distributed to their "users."⁷⁰ Govern-

⁶⁸ CONST., Art. V, Sec. 7.

⁶⁹ GLORIA, MARTIAL LAW IN THE PHILIPPINES: A CONSTITUTIONAL REVOLUTION 60-62 (1974) (hereinafter referred to as GLORIA).

⁷⁰ L.O.I. No. 27 (1972); L.O.I. No. 35 (1972); L.O.I. 84 (1973).

mental justifications for these property interferences ranged from "the necessary and essential resumption of their operation" to "helping the government solve and end the national emergency."

Property interferences of these kind have been limited to the initial two years of martial law. The tapering off has been attributed to an atmosphere of economic calm and the general feeling "that military control, especially over public utilities, is an unnecessary involvement in civilian functions."⁷¹

Noticeable is the lack of a visible common pattern of genuine interest over the property interferences initiated by government. The taking over, for example, of the Manila Electric Company has been largely viewed by many as being politically motivated. Neither can the thrust of these actions be understood from the reasoning that oligarchy is a rooted evil which must be stamped out considering that the "take overs" were visibly limited to a few industrial enterprises.

(b) Rights of the Accused

Since the proclamation of martial law, there have been very few presidential acts which directly concern civil rights and are still in force. The thrust of these laws have been focused on the rights of the accused.

One of the significant presidential acts is Presidential Decree No. 39 (1972), the law which governs the procedure in Military Tribunals. Initially, the said Decree denied the right to counsel during preliminary investigation of cases triable by Military Commissions. Only after it was amended by Presidential Decree 328 (1973) was the right restored to the accused. Presidential Decree No. 39, likewise prescribed that military tribunals may grant bail under such rules and regulations prescribed by the Chief of Staff of the Armed Forces of the Philippines with the approval of the National Defense Minister. Despite a lapse of seven years since the promulgation of Presidential Decree No. 39, no rules and regulations have been issued. As a result, military tribunals do not grant bail.⁷² Moreover, Presidential Decree No. 39, provides for trial *in absentia* from arraignment and where jurisdiction may be acquired through publication and service of notice to the "accused or his next of kin or his last known address." Manifestly, this contrary to Section 19 of Article IV of the 1973 Constitution where

⁷¹ GLORIA, *op. cit.*, *supra*, note 69, at 60.

⁷² Jimenez, *Civil Rights under the New Constitution*, THE NEW CONSTITUTION AND HUMAN RIGHTS 56 (1979) (hereinafter referred to as JIMENEZ).

trial *in absentia* can take place only *after* arraignment. To top it all, Presidential Decree No. 39 is not available for general circulation.

There are other manifestly noteworthy pieces of legislation on arrest which merit scrutiny.

General Order 62 provides for the procedure and instances in which arrest, search and seizure orders may be issued. At the same time, Letter of Instructions 621 outlines the procedure to be followed in the handling of detained persons by virtue of arrest, search and seizures orders and stresses the need to respect the civil rights of detainees. Like Presidential Decree No. 39, both General Order 62 and Letter of Instructions 621 have been unavailable for general circulation. A perusal of Section of Section 11 of Letter of Instructions No. 621 (1977) will show that:

"c. The policy of government against torture or any other form of cruel inhuman or degrading treatment of detainees shall remain inviolate.

"d. Scrupulous adherence to, and *respect* for, the Constitutional rights of detainees including their right to the *speedy* disposition of their cases shall at *all* times be observed."

The test of these legal policies is in their enforcement. Since the inception of Martial Law, the Government has arrested some 60,000 people. In May 1975 this number amounted to 50,551 persons of whom 45,958 had at that time been released from custody, leaving 4,553 still under detention.⁷³

In February 1977 precise figures were not available, but the Government stated that of the 60,000 persons arrested since the inception of Martial Law approximately 4,000 were still under detention.⁷⁴ Of these, 1,400 were "subversive detainees" and 2,500 were persons who allegedly had participated in the commission of a common crime.⁷⁵ None of these had yet been brought to trial.⁷⁶

Of the 1,400 "subversive detainees," it can be reliably estimated that approximately 250 to 300 had been held for long periods of time, many as long as seven years, or since the declaration of Martial Law in September

⁷³ BUTLER, *op. cit.*, *supra*, note 3, at 32-8; *Reports of Arrests and Releases*

⁷⁴ *Statement of Principles and Policies*. The Observer, February 5, 1977, pp. 1-2; *Status of Human Rights in the Philippines*, PRE-DEPARTURE ORIENTATION SEMINAR, 129 (1978) (hereinafter referred to as PRE-DEPARTURE ORIENTATION).

⁷⁵ BUTLER, *op. cit.*, *supra*, note 3, at 32.

⁷⁶ *Ibid.*

1972.⁷⁷ The remaining 1,100 or so are a floating population which changes from time to time depending upon the incidence of arrests and releases.

A report of a team of distinguished international jurists who over a period of time visited Philippine prisoners and detention centers point out innumerable instances of infliction of torture by security agents of the military during sometimes very lengthy interrogation processes, using methods as water treatment, electric shock, isolation for long periods of time, chaining to beds, as well as frequent physical beatings.⁷⁸ The International Commission of Jurists observed that these acts of torture occasionally resulted to death, the most shocking being the case of Purificacion Pedro.⁷⁹

The use of excessive force has been deemed inherent in any martial rule or military regime. The government, however, has released statistics to show its efforts in prosecuting military personnel for violating the Military Code prohibiting maltreatment and torture of prisoners.

A memorandum of the Secretary of Defense dated January 2, 1975, disclosed that out of thirty-two cases where members of the Armed Forces were charged with maltreatment of detainees, eleven were punished with unspecified sanctions, two were demoted in rank, one was admonished, six cases were dismissed for lack of evidence, and eleven were under investigation or trial.⁸⁰

In June 1976, it was revealed that court-martials have been ordered for "more than twenty" military personnel for torture or maltreatment of detainees. Trial proceedings reportedly commenced on September 14, 1976, for four members of the Philippine Constabulary.⁸¹

On November 9, 1976, the Philippine Government announced the dismissal of 327 members of the Philippine Armed Forces for various abuses, including torture and maltreatment.⁸²

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ This is an off-shoot of President Marcos' Statement "that as a matter of state policy, the Philippine Government has consistently sought to extend the most humane and benevolent treatment that the government has institutionalized measures to assure full protection to the rights and welfare of detainees. The International Committee of the Red Cross has conducted yearly visits to Philippine detention centers since 1973 and invariably found conditions to be, on the whole, satisfactory". PRE-DEPARTURE ORIENTATION, *op. cit.*, *supra*, note 74, at 129.

⁸¹ BUTLER, *op. cit.*, *supra*, note 3, at 39.

⁸² *Ibid.*

To date, less than 30 military personnel have been given punishment of separation and discharge, as well as reprimands and reduction in ranks for maltreatment.⁸³ The most severe punishment imposed has been "six months at hard labor."⁸⁴

Although the government has taken steps to prevent torture and has succeeded in reducing its incidence compared with the scale of torture which existed during the first two years of martial law, cases of torture still occur and is viewed by the International Commission of Jurists to be "on account of failure of the government to impose sufficiently strict control over some of the methods employed by certain interrogators to terminate the use of 'safe houses' and to bring to trial all those responsible for these illegal practices."⁸⁵

(c) The Mass Media: A Socio-Legal Institution

There is a universal consensus on the need to recognize the freedom of expression and the freedom of the press, despite ideological and political differences among nations.⁸⁶ It rests on the assumption that dissemination of information from diverse sources is imperative to the welfare of the public.⁸⁷ To express one's self is secured in almost every constitution of the world.⁸⁸ Conspicuously, however, there are strikingly variform deviations in concept and practice.

Each nation today provides for its own operational definition of freedom of the press. Along practical lines the focus of inquiry for each nation is: How much autonomy must be granted to each communications media? Policywise, every government in one way or another imposes censorship on the media according to its needs and resources.⁸⁹ But whether the ultimate objective is the formulation of sound public policy, the citizen's fulfillment of their latent capabilities or the maximization of the thinker's right to his thoughts, media is deemed crucial. The question

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ REPORT OF AN AMNESTY INTERNATIONAL MISSION 7 (1975) (hereinafter referred to as AMNESTY).

⁸⁶ Rosenberg, *Liberty versus Loyalty: The Transformation of Philippine News Media under Martial Law*, THE NEW CONSTITUTION AND HUMAN RIGHTS 145 (1979). (hereinafter referred to as News Media).

⁸⁷ Garcia, et. al., *A Critical Study of Press Freedom Under Martial Law: The Philippine Setting* 52 PHIL. L.J. 597 (1977) (hereinafter referred to as Press Freedom).

⁸⁸ News Media, *op. cit.*, *supra*, note 86, at 145.

⁸⁹ *Ibid.*

is not *whether* to control the media, but *how* to control it and *who* should control it.

Nations with liberal-democratic political culture have the proclivity to adopt a system of *professional* control.⁹⁰ Media being an economic pursuit is likewise governed by the dictates of *economic* control.⁹¹ All States canalize the mass media system to *legal* controls such as norms on national security, libel censorship, privacy and copyright.⁹² Neither should we exclude *social* controls which manifest itself in the form of social criticism, patronage, cultural norms, all of which provide a diffused boundary around the concept of the freedom of the press.⁹³

In the Philippines, typically of Republican systems, the freedom of the press generally refers to a particular pattern of control in which legal and governmental curbs are *at a minimum*.⁹⁴ This is consonant to the correlative right accorded to citizens: the right to independently think for themselves.⁹⁵

The Philippine Situation. Since the imposition of martial law in September 1972, few Philippine institutions have been transformed as drastically as the mass media.⁹⁶ Prior to martial law the Philippine press was widely considered as one of the freest in Asia. Today, being a period under stress, the press and all other media were targetted as the objects of stringent governmental constraints.⁹⁷ This transformation challenges several old assumptions about the status of the freedom of the press in the Philippines. A basic reexamination is called for. What are the political costs and benefits of a government censored press? What should be the role of the Fourth Estate in a developing society?

⁹⁰ *Ibid.*, at 146.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ ERNST & SCHWARTZ, *CENSORSHIPS: THE SEARCH FOR THE OBSCENE* 229 (1964) (hereinafter referred to as *CENSORSHIP*).

⁹⁶ News Media, *op. cit.*, *supra*, note 86, at 150. Rosenberg also states, "The Philippine Government's actions against the mass media have no parallel in the whole of Asia. A complete shutdown of media has not been attempted in Park Chung Hee's Korea, Ayub Khan's Pakistan, Thanarat's Thailand, Sukarno's Indonesia, or Lee Kuan Yew's Singapore. There are two general considerations that help to explain this abrupt transition. The first has to do with the historical experience of the Philippine media; the second, with the pattern of oligarchic control that dominates political life in the Philippines. It is worth examining these factors in greater detail in order to understand what may lie ahead for the Philippine press. For a full discussion, see also ROSENBERG, *THE DEVELOPMENT OF MODERN MASS COMMUNICATIONS IN THE PHILIPPINES* (1972).

⁹⁷ Press Freedom, *op. cit.*, *supra*, note 87, at 603.

The proliferation of State imposition was *legally* justified as a governmental design to thwart the use of mass media as a catalyst for agitation and chaos.⁹⁸ The *political* justification of the martial law administrators was on the basis that the freedom of the press never existed before martial law, being abused and subverted by the communists and oligarchs both from within and from without. It emphasized the need for an orchestrated social responsibility from the press as an instrument for national development.⁹⁹

In a speech delivered before high ranking officials of the armed forces on September 26, 1972, President Marcos rationalized that the government takeover of the mass media was merely a preventive cudgel:

"The enemy uses the weapons of modern revolution, the mass media — newspapers, television, and radio — to promote anything that assaults and destroys the foundation of society. Therefore the commander-in-chief must meet this threat not only with modern artillery, tanks, bullets, and rifles, but with the most sophisticated weapons of *preventive* operations, of even media.

"This is the *rationale* for the arrest of some in media who participated in subversion by allowing *consciously or unconsciously* the printing, publication, dissemination and spreading of stories to undermine the system in which we live; strengthened the morale and gave aid and comfort to the enemy."

Thus, the thread of the Philippine story supercharged with a current of turbulence partly generated by press irresponsibility and indifference made it necessary for the rulers to regulate mass media in order to assure their responsible role in the development program of the New Society.

Such broad charges, against conscious or unconscious subversive involvement, invited serious skepticism. President Marcos, however, promised a fair trial for incarcerated mediamen and that newspapers which did not participate "openly and frankly in subversion, or participated least, or without malice . . . would be permitted to operate later on."¹⁰⁰ However, none of the detained newsmen ever had a trial of any kind. Nor were formal charges ever made against any of them. No evidence of subversion was offered to justify the detentions.¹⁰¹ The accusations were quietly dropped; the detained newsmen were gradually all released; and no official

⁹⁸ *Ibid.*, at 602.

⁹⁹ News Media, *op. cit.*, *supra*, note 86, at 158, 162, 172.

¹⁰⁰ George, *The Party's Over*, FAR EAST ECO. REV. 14 (1972).

¹⁰¹ News Media, *op. cit.*, *supra*, note 86, at 172.

explanation has ever been offered.¹⁰² Even up to now government has difficulty in dispelling the conclusion that the wholesale clampdown of the press and the rash arrest of mediamen was a punitive measure against hostile publishers and outspoken political foes.¹⁰³

The *alternative* view holds that the shortcomings of the pre-martial law news media did not warrant the wholesale censorship, licensing and other restrictions imposed by the New Society. The exponents of this view argue that President Marcos merely found it necessary to whip the free press in line to reduce the influence of his political opponents and prevent any criticism of his martial law regime.¹⁰⁴

Balancing Press Freedom and National Development. In a democratic State, as contradistinguished from a totalitarian State, control is not a part nor an extension of the normal operation of political power.¹⁰⁵ But this distinction, it is argued, is obliterated by the advent of abnormal conditions considering that the freedom of the press which is embodied in the bill of rights is merely a peacetime document.¹⁰⁶ Other circumstances, political or otherwise, it is argued, must therefore be also considered to strike a proper balance.

¹⁰² *Ibid.*, at 175. It is further stated that "the major reason so many of these people were arrested in the first place was to provide Marcos with bargaining leverage in order to force them to cooperate with his martial law regime. Marcos bargained with the press in the same manner that he bargained with the church, the Federation of Free Farmers, the sugar lobby, and other powerful groups in the country. Those who cooperated — Andres and Jose Soriano — were permitted to resume their activities. Those who did not — Eugenio Lopez Sr. and Jr. and Joaquin Rocas were subjected to further harassment and dis-possession of their interests. In the euphemetic words of President Marcos 'They have rejected their responsibility to assist in land reform and to remedy other injustices,' Fois, *Marcos Stripping Power of Richest Families*, Los Angeles Times, April 19, 1973, pp. 1, 14.

¹⁰³ News Media, *op. cit.*, *supra*, note 86, at 176; THREE YEARS, *op. cit.*, *supra*, note 27, at 55. However, Justice Felix Q. Antonio states that "since the declaration of martial law in the Philippines there has existed abroad an erroneous belief that freedom of speech and of the press no longer exist in this country . . . and that the martial law attitude to redirect the mass media to the difficult process of development . . . for a reorientation towards the issues that matter in a developing society . . . for a licentious press is as much an offense to the constitution as the controlled press" Antonio, *The Freedom of the Press in a Nation in Transition: The Philippine Experience*, 53 PHIL. L.J. 24, 34 (1978).

¹⁰⁴ THREE YEARS, *op. cit.*, *supra*, note 66, at 62-65; *The Five-Year Record of Martial Law*, THE CITIZEN'S MANIFESTO, 7-8 (1977) (hereinafter referred to as *Five Years*).

¹⁰⁵ MCKEON, *et. al.*, THE FREEDOM TO READ 15 (1957).

¹⁰⁶ Press Freedom, *op. cit.*, *supra*, note 87, at 598.

¹⁰⁷ For a comprehensive analysis of Southeast Asia, see Rocas, *Democracy and Press Freedom*, 2 PHIL. INT'L L.J. 600-3 (1963).

The existing Philippine news media situation is not unusual in Southeast Asia, but is it necessary or desirable?¹⁰⁷ Is it true, as President Marcos assert, that "the loss of civil liberties is the necessary price that Filipinos must pay for political order and economic growth"? Is it possible that political stability is a condition *sine qua non* for national unity and that a free and outspoken press is in fact a grave threat to both stable government and national unity? The martial law administration has calculated that the national purpose is not well served by the free expression of conflicting, confusing, and often critical views. It seems to reason out that the administration must strengthen itself before it can pursue national development effectively.

Concomitantly, a qualified Philippine situational analyst observes:

"It can be seen in the Philippines, as elsewhere in Southeast Asia, that there are strong pressures against a libertarian pattern of control of the media. There is a widely recognized need to create a pervasive loyalty to the nation rather than to the family, the ethnic community, or the regional group. Strong, unified, ideological leadership is required to create this national consciousness. There is widespread popular support for economic development in the Philippines, but this support must be mobilized and harnessed. Social discipline must be instilled to generate capital and productive skills for the developmental effort. This also requires strong, unified leadership. The magnitude of the tasks confronting the Philippines is so great that the leadership demands and expects *full* popular support for its support to President Marcos and his plans to build a New Society, they would probably find little value in diverse and divergent views of the press or in competing political parties. But this is *not* the case. There are large segments of the population that, for a variety of reasons, have withheld their support. Because of multifaceted religious, regional, and ideological differences, they are unwilling to work under the leadership of the Marcos government."¹⁰⁸

In the absence of a free debate and effective exchange of ideas, both government and the people are likely to be dissatisfied with each other.¹⁰⁹ People cannot be expected to obediently accept and actively support, without question, a regime on the basis of personal fiat through proclamations and decrees. The widest array of opinion and information must thread the channels of legitimate deliberation in arriving at sound solutions and certainly not without perceiving what the involved values, priorities, and

¹⁰⁸ News Media, *op. cit.*, *supra*, note 86, at 176-7.

¹⁰⁹ *Ibid.*

factors are, as well as the arguments for and against the propositions to any social problem.

A reasonable ventilation of sides is more persuasive than the absolute acceptance of the final decree.

As it is now, the present government has imposed a system of press uniformity in pursuit of a higher degree of political stability and national unity.¹¹⁰ So far, it has been successful in avoiding sustained criticism, for the press has been understandably timid and partial to the regime, cautious and uncritical, preferring to be on the safe side.¹¹¹ But the long-term effects may soon outweigh the short-term advantages. Total consensus is impossible. Consensus of the governed can neither be convincingly obtained through a naive State monopoly of information, unless under prolonged conditions, it amounts to a dreadful state of imposed indoctrination. Moreover, if the "captured press" has no credibility, even to its chief architects, how can they expect the rest of the Filipino nation to believe it?¹¹² If the public is left out, how and to whom would the rulers be accountable?

National conscience and solidarity, is better served by a diversity of opinion, rather than a forced uniformity of opinion. Diversity of opinion offers the only *legitimate* forum for the discussion of public policy, reassessing popular response and feedback to government policy and mobilizing public consensus.¹¹³ The licentious state of the pre-martial law media does not warrant the scuttling of an opportunity for diversity, otherwise, participation becomes devoid of meaningful content.

Dramatizing the state of Philippine media, critical citizens stated in a manifesto published in October, 1976:

"The media's principal function is to flatter [the martial law regime] no end, smear and discredit those who disagree with them, hide or distort the truth, and manipulate public opinion."¹¹⁴

At any rate, criticism of certain subjects seems taboo by tacit understanding, unless clearance is first obtained. If this is the kind of uniformity of opinion sought for, how can the Philippine media face the world and

¹¹⁰ Abueva, *op. cit.*, *supra*, note 46, at 44.

¹¹¹ News Media, *op. cit.*, *supra*, note 86, at 178.

¹¹² *Ibid.*

¹¹³ "Manifesto on Martial Law and the Referendum of October 16, 1976", September 21, 1976, p. 7.

legitimately claim the media's maximization of the current impetus for change and in the strengthening of loyalties to the nation.

The next logical question should be: Must pre-martial law mass media be restored? The argument for diversity of opinion does not necessarily imply an affirmative answer. Cross-sectionally taken, Filipino mediamen do not expect nor are overjoyed over the return of the pre-martial mass media system, but neither are they happy over the continued press freedom vacuum under martial law.¹¹⁴ But they do not foresee any realistic alternatives. It is extremely difficult to calculate the degree of control that is not too tight to squeezingly kill nor too loose to be licentiously detrimental.

A possibility seems increasingly likely. President Marcos himself may voluntarily grant greater press freedom in order to better monitor, regulate synchronize policies and bureaucracy.

This motive was evident in the appeal Defense Secretary Enrile made to the press and other groups to help him specifically deal with military abuses of authority. His memorandum of August 12, 1975, offers the press ample protection from military harassment; it provides that the military shall not "summon, arrest, or detain" any member of the news media without *his* prior clearance in writing.¹¹⁵ A similar motive was evident in President Marcos' appeal of September 1975, in seeking for the support of all Filipinos, and in particular the press, in reporting all incidents of abuse of authority.¹¹⁶ Some Manila newspapers responded with front-page stories on corruption and scandal in high circles and with editorial-page columns clamoring for greater press freedoms. But there is considerable uncertainty on the extent of this new permissiveness of the regime, because these guarantees of press freedom, limited as they are, are *only personal*, not institutional.¹¹⁷ President Marcos could instantaneously change policies and clamp down again, as in previous occasions with or without cause. There are still no definite guarantees to ensure such liberties. However, the recent turn of events does provide emphatic evidence that even an authoritarian rule sordidly needs reliable public information for its own policies and an effective system of mass communication for public support¹¹⁸ — for it is a truism that:

¹¹⁴ *Ibid.* See also Rosenberg, *Redefining Freedom: The Changing Ideology of Filipino Journalist*, MW. ASSN. ASIAN STUDIES 4 (1975).

¹¹⁵ *Bulletin Today*, October 24, 1975, p. 1, col. 4.

¹¹⁶ *News Media*, *op. cit.*, *supra*, note 86, at 178.

¹¹⁷ *Ibid.*, at 179.

¹¹⁸ *Ibid.*, at 180.

"Mass communication is a two-way process; it involves both message and reply, information and feedback. Communication, literally, is the process of making a community. This is perhaps the best defense of freedom of expression: it is the best way to build a national community."¹¹⁹

(4) The Religious Institutions: A Socio-Legal Institution

A Brief Historical Perspective. The Spanish colonial legacy made the Philippines the only predominantly Christian country in Asia. Philippine history will show that religion has always been a highly volatile topic. The persistent Muslim resistance to the Spanish colonial rule is a living testimony of the Filipino sensitivity over this area.¹²⁰ The *crescendo* in the Philippine revolution is said to have been causatively linked to the execution of the Filipino seculars Gomez, Burgos and Zamora. The influence of religion had always been a factor to contend with, so much so, that the fundamental principle of the separation of church and state has been expressly embodied in both the 1935 and 1973 Constitutions.

The Factual Setting. The proclamation of martial law did not in any manner alter, much less dismantle any of the religious institutions. The promulgated General Orders nor subsequent Presidential Decrees never did touch so as to seriously impair the running viability of these institutions. Except for an altercation which involved a conflict between the duty to vote and the right to exercise religious practices and beliefs, popularly known as the Jehovah's Witness case, laws enacted under martial law rendered the right to religion nearly inviolate..

The avoidance of conflict between martial law administrators and the church is visibly seen from the fact that the present government is fully aware of the social force and influence generated by the various religious denominations.

On the other hand, religious institutions have sharply *reacted* on the imposition and perpetuation of martial law. It has been observed by foreign analysts that the Muslim insurgency in the South is a conflict rooted to religious causes. As a consequence, the present government has availed of all political and diplomatic recourses to pacify the Muslim unrest. The well publicized Libya trip of the First Lady in seeking to terminate the "Muslim secessionist movement" which has resulted into "over generous" concessions, attests to this fact.

¹¹⁹ *Ibid.*, at 181.

¹²⁰ MAJUL, *MUSLIMS IN THE PHILIPPINES* 341 (1973). The author professes that to be mainly on account of anti-proselytizing, control of territory and levy of the history of Philippine sultanates has been one of war and traces the causes tribute.

The *indirect* impact on the Christian sects, though less publicized, has been a rumored subject matter throughout the Philippines. The schism within the Christian sector crystallized during the February 1975 referendum. On September 11 of the same year, fourteen bishops made "A Declaration for Human Dignity at the Polls," which reaffirmed the statement by the bishop of the Philippines prior to the February 1975 referendum, because

"... the only too palpable fact is that martial law is a regime of coercion and fear, of institutionalized deception and manipulation and our people do not enjoy the ordinary human and civil liberties that are basic to the proper exercise of their rights of suffrage and to their free participation in government.

"We believe any referendum held under these oppressive circumstances cannot but a vicious farce. A most unconscionable mockery too of our people's dignity.

"This we cannot in conscience be party to. We will not participate in an act that further degrades and debases us and our people."¹²¹

Under the signature of its President, Julio R. Cardinal Rosales who has been labelled a pro-Marcos conservative, the Administrative Council of the Catholic Bishops' Conference issued a "Statement on the Referendum-Plebiscite,"¹²² which suggested that circumstances had changed since the last referendum, and said somewhat ambiguously:

"... We would like to tell our people that it is basically a moral duty (a) to vote in obedience to a legitimately established law of the land; and (b) to vote in accordance with a well-informed conscience, after a serious reflection on the issues involved.

"We hope and pray that we shall all perform our duty courageously."¹²³

In response to this, twelve bishops issued a statement on October 7, denying that the situation obtaining in this referendum was any freer than that obtaining in February 1975 and hence, defended the bishops' position on the right of conscientious abstention.¹²⁴

Notwithstanding the schism in the Catholic church it has nevertheless been the most effective opposition to martial law. As a consequence, they

¹²¹ Cited in BUTLER, *op. cit.*, *supra*, note 3, at 18.

¹²² *Ibid.*

¹²³ *The Forthcoming Referendum, Dialogue*, September 26, 1975, p. 3.

¹²⁴ *Special Issue on Human Rights. The Scholastic*, December 12, 1976, p. 2.

have been the subject of scrutiny by the government. Thus, the International Commission of Jurists observed:

"The attack initially was limited to the closing down of their publications and the seizure of their radio stations, but in the latter part of November 1976, a decision at the highest level was made to further silence the growing voice of the Church and impose a severe restraint on the right of the hierarchy and the faithful to associate among themselves in the common pursuit of their ministry."¹²⁵

Because of these events and more, the opposition of the Church to the government hardened and grew. As a result, the government in December of 1976 issued an order for the arrest of 208 members of the Catholic church including 11 members of religious orders and many lay leaders charging them with rebellion and inciting the people to sedition.¹²⁶

At a bishops' meeting in February 1977, for the first time since martial law, a majority of the bishops, 66 out of a total of 82, signed a statement condemning the action of the Government in its attack on the Catholic Church. One clause stated:

"It is most unfortunate that in many cases . . . evangelizing work has been misunderstood by the government and led to the arrests of priests, religious and lay workers and even the deportation of foreign missionaries."

On January 8, 1977, the distinguished Bishop Francisco Claver issued a pastoral letter which ex-communicated all those who engaged in the torture of political detainees.¹²⁷

Thus, the International Commission of Jurists concludes: "It is unclear why the Government chose to take the most unusual step of holding a judicial inquiry in public on this scale unless it was to intimidate those Church members actively opposing Government programs."¹²⁸

(3) Political Rights

(a) The Institution of Suffrage

A Brief Historical Sketch. Under the Spanish rule, no right of suffrage could be spoken of. But suffrage in the Philippines, has historically grown along parallel and complementary lines. Along one line, suffrage

¹²⁵ BUTLER, *op. cit.*, *supra*, note 3, at 19. . . .

¹²⁶ *Ibid.*

¹²⁷ *A Church that serves the People*, Dialogue, January 15, 1977, p. 12. . . .

¹²⁸ BUTLER, *op. cit.*, *supra*, note 3, at 20.

starts as a statutory right, then it blooms into a constitutional *right*, until finally it becomes encased as a constitutional *obligation* enforceable by penal law.¹²⁹ Along another line, it starts as a right monopolized by the male "illustrado", then it is shared with the literate woman, until finally, it becomes a right even of the unlettered eighteen-year old.¹³⁰

The Factual Situation. Upon the declaration of Martial Law, the "ratification" of the 1973 Constitution came as a natural course, or more succinctly, as an "imperative" for the legitimation of the current Martial Law regime. The net effect of the new constitutional provisions on suffrage¹³¹ was to create a much more broadened electoral base. Literacy, property and substantive requirements were deleted out of existence.

An innovation brought about by the New Society was the introduction of referenda¹³² whereby the government from time to time could seek consultations with the people in concomitance with the basic principle that sovereign power rested with them. Conceptually, confusion may arise because the 1973 Constitution having been "ratified" through a referendum process *vis-a-vis* the citizens' assemblies gives the inference that referenda are basically *constituent* in character. The unorthodox utility of referenda then may however be largely dispelled by the *current* use of the present government since the advent of the 1973 Constitution as a *consultative* procedure as evidenced by the February and July 1975 referenda and the 1976 referendum-plebiscite. The inconsistency in the utility of referenda has been explained earlier from the political standpoint of the martial law government's desire to legitimize its perpetuation.¹³³ The broadening of the mass

¹²⁹ Bernas, *Political Rights under the New Constitution*, THE NEW CONSTITUTION AND HUMAN RIGHTS 83 (1979) (hereinafter referred to as Bernas).

¹³⁰ *Ibid.*

¹³¹ CONST., Art. VI, Sec. 1.

¹³² In a way, consultation can be viewed as an adjunct of the right to vote. An objection to this deduction could probably be based on the fact that a lower age requirement of 15 years attaches as a limitation in the exercise of a referendum and that it does not seek to elect any person to office. But considering its far-reaching political implications, for purposes of this paper, this aggragation must be pursued.

¹³³ BUTLER, *op. cit.*, *supra*, note 3, at 13. It further concludes that "the technique of the use of referenda in an attempt to justify or legitimize the perpetuation of personal power is not without precedent in modern society. It has, for example, been used by President Park in South Korea, allegedly to give the *imprimatur* of public approval to his dictatorship." Moreover, it cites, "The objections to the referenda held in the Philippines may be summarized as follows: (1) Martial Law is in effect (2) Free public debate is prohibited, (3) Political opponents are in jail and some have been tortured or maltreated, (4) There is no free press, radio, or television, (5) The public media, especially television and radio, are used only as an instrument of Government propaganda, (6) There is no freedom of assembly, (7) Military forces dominate the nation,

base is better understood in the context of political participation. Political scientists have considered that greater participation from a polity makes any consultation or election a good and viable *indicator* for the measurement of involved politicalization of the masses. From this framework, this also explains why it has been made as a constitutional obligation sanctioned by presidential decree, the breach of which results to six month's imprisonment.

The real impact of martial law is more felt from a psychological standpoint in relation to the exercise of the right to vote. A unique feature of the Philippine martial rule is the temporary lifting of speech and assembly restrictions in the *isolated* instances where the people have exercised their "duty to vote"; giving the minimally enlightened masses the notion that suffrage is still a *fixed* prerogative notwithstanding martial law. Those cognizant of the fact that referenda, elections, and the "duteous power" to vote are presently at the President's pleasure, are slowly convinced that these isolated and intermittent exercises of suffrage are timely acts of benevolence evidencing a benign power geared towards serious reformation. What disinfecting power could have possibly changed the Filipino attitude?

Aside from legitimization motives, the ruling elite knew that, notwithstanding the evils attendant to Philippine elections, the exercise of suffrage has been a way of life for the Filipino. Easily explained by the psychological theory of systematic desensitization — "the breaking down of neurotic anxiety-response habits in piecemeal" — the conscious or unconscious *wise spacing* of referenda and elections which employs the *temporary relaxation* of martial law restrictions, thus accustoms the Filipino to the situation he fears, making him lose completely his ability to evoke anxiety.¹³⁴ The long termed psychological impact, thus, serves to obliterate sustained objections to the monopoly of naked political power in the hands of one man.

Popular participation cannot be meaningfully operationalized in any society unless psychological, penal and physical restraints have been lifted and a truly viable opposition is maintained. Votation and consultations, having been exercised while martial law is imposed, public media under

(8) The secrecy of the ballot is not preserved, with the inevitable effect of a substantial element of intimidation, (9) the country and evaluation of the voting is done by Government nominees, (10) The issues presented are framed by the Government in a manner likely to achieve a certain response, (11) There is limited judicial review and no legislative control. Under these conditions and circumstances the results of these referenda cannot be considered, in any way, as a true measure of the will of the people."

¹³⁴ WOLPE, *THE PRACTICE OF BEHAVIOR THERAPY*, 91-3 (1969).

strict governmental reigns and political opponents under detention, taints the results of the few referenda as well as the 1978 election as a true measure of the will of the people. Consequently, the exercise of referenda or elections are considered by some as essentially empty participations that would merely serve as harnessed expressions of repressive conditions under which no meaningful transformation of society can take place.

The second aspect of the right of suffrage is in the nature of the right to public office. At the onset of martial law, one of the first acts was the padlocking of the doors of Congress under the 1935 Constitution in order to prevent the bicameral body from reconvening. A series of general orders sought to restructure local governmental institutions as well as the bureaucracy by compelling them to submit their resignations. Governmental justifications ranged from the weeding out of corrupt and undesirable officials to the desire in increasing efficiency in public service. A consequence attendant to the process of dismantling the political system was the inevitable disregard of the right to continue in public office. Constitutionally, no valid legal objection can exist in lieu of the transitional provision of Article XVII, section 9, which vests in the incumbent president the power to remove them upon the "appointment and qualification of their successors." These considered facts thus, tend to reinforce the observation that the transitional provisions were tailor-suited to fit martial law requirements.

Restructuralization to the extent of dismantling public offices is no concern of martial law being an invoked power merely to meet the threat of *public danger*. The invocation of the transitory provision authorizing such transgressions if employed on a massive and indiscriminate scale would only unveil pretensions for genuine social and governmental reform and thus become a purely manipulative device for personal motivations. While public officers should, under the constitution, serve with the "highest degree of responsibility" and shall "remain accountable to the people" their fealty should be directed to the polity and not to the single institution of the chief executive.

(b) The Right to Assemble and Petition the Government

A General Perspective. A cardinal right, under a republican form of government, is the right of assembly and petition where the attitude of the state for the exercise of such right, should be one of greatest tolerance. The limitations to the right of assembly and petition so as to make it punishable, are congruent to the rules on punishable speech. The rationale for making assembly and petition, a preferred right, dates back to the

Magna Carta of England as well as to the root causes of the Philippine revolution under the Spanish regime. Such prominence accorded is predicated on the principle that every single individual has the right to complain to the government about offenses of the government and the dissatisfaction one has about the way the government is being run. Thus, genuine participation or even mobilization, as a feedback reaction, is guaranteed.

The Philippine Situation. The declaration of martial law has virtually rendered this right unexercisable. President Marcos has linked the problem of subversion and domestic unrest to irresponsible and violent demonstrations during the pre-martial law days, despite his pronouncements that "the right to disagree is one of the bulwarks of our society."¹³⁵ The events in the Philippines show that demonstrations, irrespective of its movers, have always been accompanied with mass arrests of the participants. Only on rare occasions was the right to assemble tolerated by the current administration. The best examples have been occasioned when the martial law government sought to obtain the consensus or votes of the electorate — as in the assemblies and public meetings conducted during the various referenda and elections — made possible only under a situation, where "the effects of martial law" have been temporarily lifted but without having martial law itself lifted.

Though President Marcos in his speech entitled "The Quiet Subversive,"¹³⁶ has drawn the line between right and license, between the exercise of freedom and abuse of liberties", martial law has been and still is used as a *carte blanche* to curtail the right of assembly and to petition their grievances to the government.

(2) Economic, Social and Cultural Rights

Economic and social rights, as well as cultural rights, are sometimes referred to as "positive rights"; they are the "protection to individuals for basic bodily needs."¹³⁷ Positive rights promise and provide such aid and shelter against the problems of the individual such as unemployment, sickness, old age, inadequate education, food, clothing and shelter, and similar conditions. They are also meant to guarantee that every human

¹³⁵ *The Meaning of Involvement*, 4 MARCOS, CHALLENGE LIBERATION AND HOPE: A COLLECTION OF SPEECHES 184 (1972).

¹³⁶ *The Direct Subversive*, 5 MARCOS, IN THE SEVENTIES: A COLLECTION OF SPEECHES 184 (1972).

¹³⁷ Quisumbing, *Human Rights in the 1973 Philippine Constitution: Implementation and Enforcement*, THE NEW CONSTITUTION AND HUMAN RIGHTS 154 (1979).

being shall have a fair share of the "advancing gains of civilization — freedom from want and fear".¹³⁸

In case of the "positive rights" — social, cultural, and economic — government and society, in general must take positive action to create the necessary conditions for their enjoyment and existence.¹³⁹ Quite unlike the case of political and civil rights where the government is the potential violator of such rights and against whom the individual must seek redress, in the case of positive rights, the government and the social commonwealth are essentially the tools and vehicles for their realization.¹⁴⁰ The realization of these rights is said to heavily depend on three factors: (1) economic potential, (2) political will and (3) administrative capacity.¹⁴¹

(a) Land Reform: Emancipation or Counterinsurgency?

Presidential Decree No. 27 of October 21, 1972 proudly announced "The Emancipation of Tennats from the Bondage of the Soil". It was one of the earliest and most publicized of martial law reform measures. On the first anniversary of the declaration of martial law, President Marcos reviewed his government's achievements and again declared that "easily the most meaningful reform in the society is the emancipation of the farmer from his age-old bondage to the soil."¹⁴² Shortly thereafter, he further emphasized that "the land reform program is the only gauge for the success or failure of the New Society. If land reform fails, there is no New Society."¹⁴³

The President has also termed this program as *man* reform, to transform the tenant to a landowner and the landlord into an industrialist. He also stated that:

"It is not merely social justice through the equitable distribution of the product of the land. Beyond this, it is ultimately the *total economic development of the country*, through an equitable distribution and wise utilization of the land."¹⁴⁴

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² Daily Express, October 23, 1973, p. 1.

¹⁴³ *Philippine Prospects*, Advertisement Supp. New York Times, June 10, 1973, p. 4.

¹⁴⁴ *Living Forces for Change and Renewal*, 2 MARCOS, CHALLENGE AND RESPONSE: A COLLECTION OF SPEECHES 284-288 (1970).

A Reassessment. Previous agrarian reforms, starting from President Quezon's social justice program in the 1930's to President Ramon Magsaysay's agrarian program in the 1950's have been candidly described as "never having been intended to reduce significantly the chasm between the peasants and elites"¹⁴⁵ Instead, the "purpose of land redistribution and related programs was to undercut the existing potential unrest."¹⁴⁶

In arriving at a reliable conclusion, several factors have to be considered. First of which is the *record* of the President in relation to land reform.

Frances Starner, who carefully analyzed earlier land reform efforts, reports that in the 1950's Marcos, who was then a congressman," was one of the most vocal critics of the agrarian reform legislation of the Magsaysay administration." He further states:

"Today he is also one of the largest landholders in the country. Reportedly, among the agricultural lands of Marcos and his family are 20,000 hectares in Cagayan Province, 10,000 hectares in Isabela Province, the Carlota sugar estate and sugar centrals in Negros Occidental, and several hundred hectares in Davao, other parts of Mindanao, and Panay. But the land reform program that Marcos now affirms, does not touch these holdings. Thus an observer now concludes: "Because of his record, it is difficult to believe President Marcos will emancipate all tenants and destroy the landed elites."¹⁴⁷

Another consideration is the *scope* of land reform. Under the present dispensation, its scope is *limited* as land reform excludes tenants or farm crops other than rice and corn. It also excludes rice — and corn-farming tenants should their landowners own less than seven hectares. Therefore, if it were implemented fully and if affected tenants could pay for their lands within fifteen years, it would include 34 percent of all tenant farmers and only 8 percent of all peasants who owned no land as of 1972.¹⁴⁸ By omitting owners with less than seven hectares of rice and corn land, the reform additionally removes another 560,000 tenants (56 percent of 1 million).¹⁴⁹ Altogether considered, the land reform program excludes

¹⁴⁵ Kervliet, *Land Reform: Emancipation or Counterinsurgency?* MARCOS AND MARTIAL LAW IN THE PHILIPPINES 117 (1979) (hereinafter referred to as Land Reform); Kervliet, *Peasant Society and Unrest Prior to the Huk Revolution in the Philippines*, ASIAN STUDIES 172-204 (1971); Richardson, *Does Grass-Roots Action Lead to Agrarian Reform*, VIEW FROM THE PADDY 143-50 (1959); Kervliet, *THE HUK REBELLION: A STUDY OF PEASANT REVOLT IN THE PHILIPPINES* 110 (1977) (hereinafter referred to as HUK REBELLION).

¹⁴⁶ HUK REBELLION, *ibid.*, at 198.

¹⁴⁷ Cited in Land Reform, *op. cit.*, *supra*, note 145, at 119.

¹⁴⁸ *Ibid.*

¹⁴⁹ ESTRELLA, *DEMOCRATIC ANSWER* 62 (1973), hereinafter referred to as ESTRELLA); also see ESTRELLA, *A COMPREHENSIVE REPORT TO THE PRESIDENT OF THE PHILIPPINES* 7 (1973).

840,000 tenants (66 percent) and includes 440,000 (34 percent).¹⁵⁰ This is not to say that all tenants want to own their land and be rid of their landlords. Many may not. The point here is that government's claim that its reform will "emancipate *all* tenant farmers" is obviously false. Only a third of *all* tenants even qualify for the program.

A third factor is the *pace* of implementation. Consistent inconsistencies and delays in land reform implementation reflect the government's desire to enjoy a reputation for distributing land without doing much of it.¹⁵¹ Agrarian reform officials and President Marcos himself have vacillated on such significant points as: the *guidelines* for implementing the reform, the *number* of hectares landlords may retain, the *amount* of land tenants will get, and the *completion* date.¹⁵² Initially, President Marcos vowed that landowners might retain up to seven hectares if they farmed the land themselves.¹⁵³ Within a few months, however, the President altered the amount to 50 hectares and then later to 24 hectares.¹⁵⁴ Only in late 1974 did the government revert back to the seven-hectare limitation, but it obliterated the "self-cultivation" clause.¹⁵⁵

In 1972, President Marcos decreed that all tenants would eventually own around three to five hectares of agricultural land. But, agrarian reform officials concedingly acknowledged that this was arithmetically impossible because only 1.5 hectares of rice and corn land actually exist for 1 million Filipino tenants.¹⁵⁶ With this factual impossibility, amends had to be made for the insufficiency of agrarian lands. As a consequence, agrarian reform officials publicly manifested that virgin lands in Mindanao and elsewhere would be tapped to cover the inadequacy in land. But in addition to the unlikelihood that such alternative resettlement plan is feasible, the alternative scheme was already compromised because President Marcos and other officials have said that "landowners whose big estates have been expropriated under the agrarian reform program would be given the first crack in exploiting these virgin agricultural lands."¹⁵⁷ In 1973, government officials promised that all rice and corn tenants would own land by the end of that year.¹⁵⁸ Later they postponed the targeted date to 1975.¹⁵⁹

¹⁵⁰ *Ibid.*

¹⁵¹ Land Reform, *op. cit.*, *supra*, note 145, at 121.

¹⁵² *Ibid.*

¹⁵³ ESTRELLA, *op. cit.*, *supra*, note 140, at 63.

¹⁵⁴ Land Reform, *op. cit.*, *supra*, note 145, at 121.

¹⁵⁵ *Ibid.*

¹⁵⁶ Summary: Operation Land Transfer, DAR Rep., November 3, 1975, p. 1 (hereinafter referred to as Operation Land Transfer).

¹⁵⁷ Bulletin Today, May 16, 1973, p. 1; Wideman, *The New Society at Home: Philippines*, FAR EAST ECO. REV. 18 (1973).

¹⁵⁸ Land Reform, *op. cit.*, *supra*, note 145, at 120.

¹⁵⁹ *Ibid.*

Came 1975, they came up with the excuse that they needed until late 1977 to distribute all land-transfers certificates (not titles) to qualified tenants.¹⁶⁰

Obviously, at the rate land-transfer certificates are distributed, it will take an additional fourteen years before *less than half* of the 1 million tenants get to own them.¹⁶¹ The 206,000 tenants with certificates as of late 1975 represented less than a quarter of all rice and corn tenants and certainly less than half of approximately 440,000 covered tenants, farming for landlords who own more than seven hectares of agricultural lands.¹⁶²

Because, as an observer sympathetic to the reform has noted, the certificates "are almost meaningless until land has been valued and amortization has begun," the number of tenants paying for their land is a better indication of implementation.¹⁶³ After three years, October 1972 to November 1975, 15,400 tenants had begun to pay for the 29,000 hectares to which they held certificates.¹⁶⁴ They represent less than 2 percent of all rice and corn tenants, and 3.5 percent of those landlords with over than seven hectares.¹⁶⁵ At this rate, eighty-five years will pass before all qualified tenants begin to amortize.¹⁶⁶ In the meantime, they continue to pay to their landlords.¹⁶⁷ The number of landowners compensated as of November 1975 was 550 — less than .2 percent of the roughly 350,000 owners of rice and corn lands of 1.5 percent of the 38,000 landlords with more than seven hectares of rice and corn lands.¹⁶⁸

Agrarian reform administrators sometimes attribute the unmet deadlines and sluggish implementation to landlords' resistance to *reform redistribution*. Because the martial law government prides its reform for being "compassionate" to landowners, it cannot push them too hard, too fast. Meanwhile, the piecemeal approach and the fluctuating exemptions give "the owners time and incentive to backdate their titles and to parcel out their holdings illegally to relatives in hopes that the loopholes . . .

¹⁶¹ Strauss, *Manila's Mixed Results*, FAR EAST. ECO. REV. 4-15 (1975). Strauss provides a table showing monthly printings of certificates for 1973-1975. Also see TAKIGAWA, A NOTE ON THE AGRARIAN REFORM IN THE PHILIPPINES UNDER THE NEW SOCIETY 17-25 (1974).

¹⁶² Land Reform, *op. cit.*, *supra*, note 145, at 121.

¹⁶³ OVERHOLT, REPORT OF MEETING; LAND REFORM IN THE PHILIPPINES 25 (1975) (hereinafter referred to as OVERHOLT).

¹⁶⁴ Operation Land Transfer, *op. cit.*, *supra*, note 156 at 1.

¹⁶⁵ OVERHOLT, *op. cit.*, *supra*, note 163, at 27.

¹⁶⁶ Land Reform, *op. cit.*, *supra*, note 145, at 121.

¹⁶⁷ *Ibid.*

would eventually be sufficient to avoid losses.”¹⁶⁹ A land reform expert thus, assesses “With a reform like this, time is of essence. The longer the reform drags out, the more difficult it is to implement, the more abuses and resistance there are, the more negotiation and arbitration it takes.”¹⁷⁰

Professor Kervliet of the University of Hawaii observes:

Political stability is necessary not only *to stay in power* but also *to attract* large amounts of foreign investments. One keystone of the Marcos administration's policies since martial law has been to prime economic development with foreign investments, and a principal attraction for foreign businessmen is the government's steps to assure “peace and order” in the cities and countryside.

Similarly, the government uses land reform *to disarm* its critics. This is the first time the republic has known martial law. Political and economic power have been concentrated in even fewer hands than before, the military have assumed a major role in national and local government, civil liberties are nearly dead, and foreigners permeate the economy more than before. None of these things would have been possible prior to martial law, certainly not without an uproarious national debate and broadbased dissent. But government programs like land reform, which the government — controlled media publicize uncritically, have persuaded many people, inside and outside the Philippines, to support the regime or *at least* not actively oppose it.¹⁷¹

Land reform, therefore, has been calculated as an effective vehicle to maximize political stability and the legitimacy of martial rule with minimum concessions to the rural masses at a proportionate expense to the wealthy elites and foreign investors. The over all facts seem to clearly point out that this is the reform's major political goal. Concomitantly, it logically implies that the administrators will push land redistribution only far enough to keep *unrest* below a tolerable level or probably until the land reform scheme jeopardizes higher priorities. Counter-insurgency as an underlying

¹⁶⁸ OVERHOLT, *op. cit.*, *supra*, note 163, at 27. The figures 350,000 and 38,000 come from Bulletin Today, March 13, 1974, p. 24; and an open letter from Wolf Ladyinsky to Secretary Conrado Estrella, October 7, 1974, first published in the Wall street Journal and *reprinted* in the Association of Major Religious Supervisors in the Philippines, Various Reports, Dec. 20, 1974, p. 2. Probably most of the 550 compensated landlords are among the 6,000 owning more than 24 hectares (and 40 percent of all tenanted land).

¹⁶⁹ Land Reform, *op. cit.*, *supra*, note 145, at 123.

¹⁷⁰ *Ibid.*, at 125.

¹⁷¹ *Ibid.*

rationale gains credence in the light of the fact that a larger number of the land reform recipients live in central Luzon, scene of the prolonged Huk rebellion twenty years ago, where the government has concentrated its reform activities.

Seven years after martial law was declared, the incessant press publicity previously accorded to the land reform program has noticeably been toned down. Without having *fully* fulfilled its promises and commitments to the rural tillers, urban land reform has been the most recent policy shift. This makes it doubly difficult to believe that genuine emancipation has been the ruler's selfless intention in pursuing the on-going land reform program with the unadulterated view of "democratizing private wealth" and "socializing" it so as to free those bonded to the soil.

(b) The Educational Institution: A Socio-Legal Institution

James Madison's letter to Barry, contained meaningful words:

"A people who mean to be their own governors must arm themselves with the power knowledge gives."¹⁷²

The Filipino cannot be considered as an exception to what Madison declared. As a matter of record, the educational and literacy level of the Filipino people is one of the nation's strongest social resources.¹⁷³ In the Asian context, the Philippines has one of the highest literacy standards. Considering that education is a major instrument in the molding of society, quantitative statistical data based on obsolete indicators must give way to qualitative considerations.

The educational institution operates in a reciprocal basis: the learning process and the teaching and researching process. Both processes being primarily geared to meet the demands in the modernization of a society becoming more complex by the year, the institution of education must perform its mission as an agent of change. And change can come about only by the robust exchange of ideas without unnecessary restraints.

¹⁷² Letter of J. Madison to W.T. Barry, August 4, 1822 in MARCOS AND MARTIAL LAW IN THE PHILIPPINES 7 (1975).

¹⁷³ BUTLER, *op. cit.*, *supra*, note 3, at 23. They also state that "the Philippine Educational system has shown steady expansion in the years since the attainment of independence; school enrollment rose by 330% in the period 1946-75, with considerable expansion in the early 1970's. Of the 13,200, 730 students enrolled in 1975, 8,520,990 were in the elementary sector, 3,258,210 in the secondary, and 1,421,530 in the tertiary. Although literacy is widespread in the Philippines, outreach programs have been instituted in which 300,000 out-of-school children have been enrolled, together with adult literacy programs."

The Factual Situation. The present government under martial law has professed a "new educational system" by the enactment of Presidential Decree No. 6-A which has manifested as its declared policy: to ensure, within the context of a *free* and *democratic* system, maximum contribution of the educational system to the attainment of the three national development goals, to wit: (a) to achieve and maintain an accelerating rate of economic development and social progress, (b) to assure the maximum participation of all the people in the attainment and enjoyment of the benefits of such growth, and (c) to strengthen national consciousness and promote desirable cultural values in a changing world.¹⁷⁴ To achieve these ends, the same Decree, seeks to provide for a broad general education, train the nation's manpower, develop high-level professions *vis-a-vis* a 10 year national program.¹⁷⁵

Not different from past laws relating to education, policies remain clouded in *rhetoric* and differ in its implementation. An example could be made of the 10 year program's democratization of access to education. In principle it is not to be denied its merit, but its implementation, especially in the fields of funding, recruitment, select-mechanisms, among many others, has been controversial.

It, however, can be said that the reorientation of education towards national development under martial law, *policy-wise*, has moved the first-stepping stone towards a more responsive society.

However, the real impact of martial rule on education is in the form of legal and psychological restraints.

University surveillance and legal restraints are probably best understood from the viewpoint that universities are the *weakest links* in a societal chain, always susceptible as autolytic organs of criticism and dissent.

¹⁷⁴ Pres. Decree No. 6-A (1972).

¹⁷⁵ President Marcos states in 1972 that the reasons for the thrust of educational programs under the New Society are: First, as it approached the decades of the sixties, the educational system became too irrelevant prompting President Marcos in 1972 to call it our "misaligned" educational system. The President stated that our educational system must undergo a change in its goals, contents, methods and structure to become relevant to a changed and changing society. . . . To meet middle level manpower needs, we should put new stress on technical and vocational. Second, the system has failed to develop a value orientation favorable to social and economic development. Third, the system has been slow in the development of national identity. PRE-DEPARTURE ORIENTATION, *op. cit.*, *supra*, note 74, at 76.

On the other hand, freedom of expression and communication is an indispensable factor in the educational process without which no intelligible progress can be measured. Innovations and discoveries in the field of law and science cannot be pursued without guaranteeing the dissenter's right to test and defend his deductions.

A balance between social and legal control on one hand and individual and academic freedom on the other must be struck. Unnecessary restrictions must be dispensed with. To this end, some Departmental Orders¹⁷⁶ issued by the Ministry of Education leave nothing to be desired. The creation of security and intelligence units in the Ministry of Education,¹⁷⁷ and restrictions on the academic freedom of teachers where prohibitions under sanction of dismissal, bordering on vague concepts as "gratuitous criticisms" and "irresponsible disseminations"¹⁷⁸ have been a cause of fear and apprehension in the academe. These circumstances plus the real possibility of arrest and detention have engendered, intellectual timidity and suspicion in the academic community and could stifle bold thinking and healthy skepticism.¹⁷⁹

Only fitting is the blunt reminder of Chief Justice Warren:

"Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die."¹⁸⁰

(c) The Institution of Labor: A Socio-Legal Institution

There is a general feeling of relief over the enactment of the "pet" code of the martial law regime—the Labor Code. Concededly, should the basis of labor welfare be the Labor Code *as compared* to prior Labor Laws, then the martial law regime can pride itself to be pro-labor.

Other factors on a broader scale have, however, not been dissocialized to be considered in precipitating a proper perspective, notably, the over-all

¹⁷⁶ DEC Ed. O. No. 32 (1972); DEC Ed. O. No. 34 (1972); DEC Ed. O. No. 35 (1972).

¹⁷⁷ DEC Ed. O. No. 35 (1972); GLORIA states that these departmental orders are warranted by the present situation (1972). GLORIA, *op. cit.*, *supra*, note 69 at 102.

¹⁷⁸ DEC. Ed O. No. 32 (1972).

¹⁷⁹ Agabin, *Academic Freedom and the Larger Community*, 52 PHIL. L.J. 338-39 (1977).

¹⁸⁰ *Sweezy v. New Hampshire*, 354 U.S. 234, (1957); *Cited* approvingly by Justice Makasiar, *dissenting* in *Garcia v. The Faculty Admission Committee*, Loyola School of Theology, G.R. No. L-40779, 68 SCRA 277 (1975).

strategy of development to which martial law appears committed. The cornerstone of the government's policy of development is predicated on the expansion of exports and the attraction of foreign capital into the Philippines. Appurtenant, incentives so as to operationalize these programs have been offered. Amongst these incentives, is the projected picture that the Philippines has a comparatively "cheap, abundant, competent and docile labor force", which provides for a substantial competitive margin for products exported from the Philippines.¹⁸¹ It is the selling point in inducing foreign investment which the government depends on for a rapid industrial expansion. As a result this has created a negative feedback on the interests of the working class, in the form of a bias against raising their standard of living.¹⁸² The underlying reason is that the success of the strategy is dependent on a policy of maintaining as low a labor cost as possible, as a primary instrument of export promotion, along with a cheap currency. Cheap labor becomes an essential ingredient of an export based development program.

Another factor to be contended with is inflation. Indeed, it can be said that the progressive increase in minimum wages during the last three year has been a genuine reaction of the government to inflation. But it affords no ground for over-zealous claims that the increase in minimum wages has raised income standards. As a matter of fact, the June, 1979 issue of the Far Eastern Economic Review has painted a dark picture based on statistics:

"GNP has risen by 50% since martial law was declared in 1972, but real wages fell by one third up to March this year and inflation-adjusted farming incomes today are only 60% of what they were in 1974, according to official statistics. The peso is worth only 40 centavos relative to 1972 prices, and, according to the Ministry of Labor, the wages of nearly 90% of rural and urban workers in 1977 were barely enough to meet subsistence needs."¹⁸³

The most important economic right of the workers based on the doctrine of self-help is the right to strike. Despite the Philippines' rati-

¹⁸¹ THREE YEARS, *op. cit.*, *supra*, note 66, at 41-45.

¹⁸² *Ibid.*, at 39-40.

¹⁸³ Ho Kwon Ping, *The Mortgaged New Society*, FAR EAST. ECO. REV. 52 (1979). The far left argues: "The value of the peso based on 1965 has presently dropped to an all-time low of P.29 this year, from P.59 in 1972.. Put in another way, the peso of 1972 has been slashed in value by more than one-half as of 1978. This is in line with the regime's policy to keep the peso cheap in terms of foreign currencies and as an instrument of trade promotion." See *Six years of Oppression*, Liberation, September 31, 1978, p. 3.

fication of the International Covenant's Article eight on the right of labor to organize in trade unions which includes the right to strike, this economic right has been consistently been withheld from labor since the imposition of martial law. The most recent Decree relating to the right to strike is Presidential Decree No. 823,¹⁸⁴ which has still banned the right to strike, except under very severe restrictions. Notable was the opposition of organized labor to the implementation of Presidential Decree 823, which manifested its peak in the form of a 6,000 strong demonstration in 1975 during the visit of U.S. President Ford to Manila.¹⁸⁵ Concerned with the increased opposition of labor, the International Commission of Jurists submitted that the severe limitations on the right to strike is in derogation of the Philippine Government's obligation under the International Covenant on Economic, Social and Cultural Rights to respect the worker's right to strike.¹⁸⁶

(d) The Institution of Arts: A Socio-Legal Institution

Least attacked by the opposition is the institution of arts for a variety of reasons. Considered by the opposition as one of the opiates of the masses, it has been argued that the institution of arts is of least concern in times of crisis. The more convincing reason appears to be the significant positive changes brought about by the present government in the "rehabilitation of this institution." Film and Song Festivals have been a source of exultation among its circle and entrepreneurs, notwithstanding strict censor standards. Increased patronage to locally produced films and Filipino songs, both in the urban and rural areas can easily be conceded as a positive indicator for impact reassessments. The rising prominence of Filipino performers in the art, tagged as ambassadors of goodwill, in the international arena, especially in the field of music is something easily observable.¹⁸⁷

On the whole, it cannot be fairly disputed that the administration has considerably contributed to the upliftment of the art institution.

¹⁸⁴ 71 O.G. No. 49, 8330 (December 7, 1975).

¹⁸⁵ BUTLER, *op. cit.*, *supra*, note 3, at 26. The International Commission of Jurists also factually observed that "the implementation of Decree No. 823 faced increasing opposition from organized labor and particularly from church groups interested in the rights of worker. On November 8, 1975, the National Council of Churches in the Philippines passed a "Resolution on the Right of Labor to Strike." At the same time, a letter signed by Archbishop Jaime L. Sin of Manila and cosigned by 2,000 bishops; priests, and members of religious orders, protesting Decree No. 823 was sent to the President. A similar letter was sent to the President signed by Archbishop Antonio Mabutas of Davao and bishops Joseph Regen, Carlos Van Quivelant, and Fernando Capella. On November 16, 1975, the priests and religious of the diocese of Imus issued a declaration protesting the decree."

¹⁸⁶ *Ibid.*

¹⁸⁷ Valencia, *Over a Cup of Coffee*; Daily Express, August 15, 1979, p. 4, col. 4.

3. *The Institution of Government: Rapid Dismantling and Restructuring*

President Marcos, in his notes on the New Society, declared, "having proclaimed martial law, I [am] responsible for its repercussions. The step I took is, to my mind, a clear case of the Constitution saving the *Republic of the Philippines*".¹⁸⁸ It was to the judgment of the President "an imperative of national survival and permissive of constitutional authoritarianism".¹⁸⁹ He has also adjudged as one of "seven grave threats to the existence of the Republic", the "rampant corruption on *all* levels of society".¹⁹⁰ The recourse he has taken is known far and wide: the swift and drastic dismantling and restructuralization of government.

a. The Legislative Institution: On-Going Metamorphosis

A Brief Historical Perspective: From the principle of republicanism arose the basic doctrine of separation of powers. Under the 1935 Constitution the seat of central government has been canalized to three main branches: the executive, legislative and judicial organs of government. Since Proclamation 1081, drastic mutations have been compellingly created, and of the three departments of government, the most severely affected has been the legislature.

Martial rule was proclaimed while the 1935 Congress was in recess, and one of the first acts of the martial law administrators was the padlocking of the congressional doors and military "safeguarding" of the building.¹⁹¹ Four months afterwards, the 1973 Constitution was proclaimed by the President as having been overwhelmingly "ratified" by the people. The law making function transformed from General Orders to Presidential Decrees, Proclamations, General and Executive Orders, Instructions and "Acts" of the incumbent President, all having equal force as "laws of the land".¹⁹² The structure, however, did not change as the law making power remained in one man. The transitory provisions of the New Constitution

¹⁸⁸ NOTES, *op. cit.*, *supra*, note 10, at 95.

¹⁸⁹ *Ibid.*, at 35.

¹⁹⁰ *Ibid.*, at 121. However, former President Macapagal states ". . . to rationalize the assumption of (authoritarianism) through martial law is detected by the changing and enlarging justifications for the Martial Law proclamation 1081 dated September 21, 1972 which is now called the September 21 Movement. Proclamation 1081 itself shows the two bases for its issuance, namely, the communist rebellion and the Muslim secessionist insurgency. One year later in his Notes on the New Society, Mr. Marcos has added five more after thought justification for Martial Law." MACAPAGAL, *op. cit.*, *supra*, note 24, at 87.

¹⁹¹ Javellana v. Executive Sec., G.R. No. L-36142, 50 SCRA 72 (1973).

¹⁹² CONST., Art. XVII, sec. 3 (2).

provided for an immediately existing *interim* National Assembly, though still convenable by the incumbent President. It was constitutionally mandated with the urgent task of providing for "the orderly transition from the presidential to the parliamentary system, the reorganization of the government, eradication of graft and corruption," among others.¹⁹³ Presidential Proclamation 1103, however, held in suspended animation the interim National Assembly, composed of opting members of the defunct Congress, and members of the Constitutional Convention who affirmatively voted for the transitory provisions, including the Vice-President and President under the 1935 Constitution. As a consequence, the Philippines continued to be ruled thru presidential edicts. The existing but unconvened *interim* National Assembly was dismantled and substituted by an *interim Batasan Pambansa*, by the force of the 1976 Amendments. The Amendments, deemed by many as a necessary step towards "normalization", provided a legislating step-up where the *interim Batasan Pambansa* for the duration of martial law, is relegated to a purely consultative body or in the opposition's words, a "stamp-pad congregation", with legislative *situs*, still in the hands of the incumbent President.¹⁹⁴ Only after martial law has been lifted, would legislative powers ooze to the *interim Batasan Pambansa*, though still conditionally qualified by the Prime Minister-President's better judgment to issue decrees in its place.¹⁹⁵ To date, the *interim Batasan Pambansa* with the symbolic function of "primary consultation" prior to the Presidential enactment of laws, is the legislative system prevailing while patiently waiting for the regular National Assembly and other provisions of the 1973 Constitution to come to life.

A Reassessment. Within a time frame of seven years, the Philippines has witnessed four legislatorial mutative variants: martial rule by general orders, an unconvened *interim* National Assembly, extraordinary legislation by decrees, orders and instructions, and the current consultative *interim Batasan Pambansa* set-up.

The non-convening of the *Interim* Assembly has caused widespread moments of uneasiness. As others have argued, "if the 1973 Constitution has been validly and effectively ratified as maintained by [the Supreme Court], it follows that he cannot legally decree the suspension of the *interim* National Assembly" being part of the new constitution, since the

¹⁹³ NOTES, *op. cit.*, *supra*, note 10, at 121.

¹⁹⁴ Paguio & Lagos, *The "Part-of-the-law-of-the-Land" Clauses: A Reexamination of the Transitory Legislative Power*, (unpublished) September 16, 1979) (hereinafter referred to as Paguio & Lagos).

¹⁹⁵ *Ibid.* Tolentino, *The Effect of the 1976 Amendments on the Legislative Process: The Batasang Pambansa, THE 1976 AMENDMENTS AND THE NEW CONSTITUTION* 61 (1978).

"function of the *interim* National Assembly has explicit constitutional functions during the transition period as expressed in Article XVII, Section 5 of the 1973 Constitution.¹⁹⁷ They further argue that the Constitution cannot be ratified but yet be made effective in parts, for it is either ratified or not ratified *en toto*. Then came the event when the President proposed several constitutional amendments and they additionally argued, that since the President was *duty bound* to convene the *interim* Assembly, the same person could not legally propose amendments to circumvent this imperative constitutional duty.¹⁹⁸

The incumbent President and other officials counter-argued that the constitutional membership of the *interim* Assembly, aside from being unwieldy in number, were *politicos* from the old society and would not effectively serve the goals of social and political reformation.¹⁹⁹ Subsequently, the Supreme Court in *Sanidad v. Comelec* validated the President's constitutional proposals, rendering *passé* the controversial issue on a different legal ground now popularly known as the "vacuum theory".

The advent of the *interim Batasan Pambansa* despite having no fixed term, is probably welcomed, in the light of the criticism that under the prior martial law set-up, presidential decrees, orders, proclamations have been issued forth in rapid succession without conscious deliberation on the part of the law-maker. But neither can the current *interim Batasan Pambansa* set-up escape the criticism, that it has not been given substantial powers to check the president in context of an "accountable government" under a parliamentary system.

From a political standpoint, it cannot be helped but be observed that the legislative system as well as the entire political system, the constitution notwithstanding, is in a very liquid and malleable state. This offers, if not emboldens, the ambitious leaders of the future into xeroxing the current pattern and invoking it is a legitimate precedent. These discerned patterns become dangerous precedents, considering the model's process, whereby goals and policies are merely formulated from the top and dictated as values to the bottom without their meaningful participation. And history shows that it can be repeated provided a farsighted anticipatory strategy is carefully laid down.

¹⁹⁶ MACAPAGAL, *op. cit.*, *supra*, note 24, at 36.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ NOTES, *op. cit.*, *supra*, note 10, at 14-15, 31, 34; Abueva, *op. cit.*, *supra*; note 46, at 37; MARCOS, *TODAY'S REVOLUTION: DEMOCRACY* 99 (1971).

b. The Judicial Institution: A Question of Judicial Independence

The delicate and inescapable role of an independent judiciary, as the conscience of the nation, cannot be overstressed.²⁰⁰ It has been said that should the faith of the citizenry in the courts of law be eroded then the last line of defense for any republican system has been breached.

The Factual Situation. It would be best to inquire into the judicial institution with the 1973 Constitution as a point of reference, the constitution being the offshoot of martial rule.

The new Constitution is a "mixed bag" for the judiciary.²⁰¹ On the one hand, it contains innovations designed to accommodate public needs, strengthen control over the judiciary's internal operations, clarify ambiguous provisions, and expedite the disposition of cases. But it also introduces sections that hamper the flexibility of the judiciary, threaten its independence, and by conscious design relegate that body to a subordinate position *vis-a-vis* the two other branches of government.²⁰²

The most damaging sections in the new constitution are those contained in the transitory provisions. Section 10 of the transitory provisions states that "the incumbent members of the Judiciary may continue office until they reach the age of seventy years, *unless sooner replaced in accordance with the preceding section.*" The "preceding section" referred to provides that "all officials and employees in the existing government . . . shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines . . ." ²⁰³ More than seven years after the people's "acquiescence" to the new constitution, the Philippines is still in a period of transition. Since the transitory provisions are operative for an *indefinite* length of time, a judge may be dismissed by the president at *any time* by the appointment of his successor without the official being told the reason for his removal or without his being informed beforehand that he was to be removed. Otherwise stated, judicial security of tenure is but a chimerical notion as the executive threat of a judicial "purge" remains omnipresent indefinitely.

Contiguous to the power to remove is the executive power to appoint. Under the present constitutional set-up, the previous legislative check to

²⁰⁰ Pe, *The Legislative Power of the Incumbent President of the Philippines, THE SUPREME COURT UNDER THE NEW CONSTITUTION* 46 (1977).

²⁰¹ Del Carmen, *op. cit.*, *supra*, note 48, at 100.

²⁰² *Ibid.*, at 101.

²⁰³ CONST., Art. XVII, sec. 11.

or control over the power to appoint members of the judiciary has been deleted. This seemingly innocuous omission definitely affords President Marcos to *pack* the court with his own proteges.²⁰⁴ The change is of more than passing significance because it also reflects a conscious rejection in the constitution of one of the salient features of the doctrine of checks and balances.²⁰⁵ Aside from extremely weakening the judicial conscience to check, it harnesses the courts as a validating and legitimizing ally in the adjudication of questionable executive excesses.

Another section *preempts* the power of the judiciary to pass on the constitutionality of whatever the president did *before* the approval of the new Constitution and pursuant to martial law. This constitutional provision mandates that "all proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal and binding, and effective even after lifting martial law or the ratification of this Constitution . . ." ²⁰⁶ The approval of the constitution through the citizens assemblies therefore, *ipso facto* retroactively validated all prior presidential acts regardless of constitutional merit and thereby deprived the Supreme Court of the power of judicial review over what must be conceded to be highly sensitive and controversial executive pronouncements.²⁰⁷

To compound this institutional injury on the judiciary, a decree was issued by President Marcos immediately upon proclamation of martial law which removed from the jurisdiction of the judiciary all cases involving the validity, legality, or constitutionality of decrees, orders, or acts issues, promulgated, or performed by him or his designated representatives pursuant to his martial law proclamation.²⁰⁸ The President also divested the judiciary of the power to rule on crimes committed by public officials and those against the public order.²⁰⁹ Interpreted broadly, this encompasses any and all crimes ranging from the most serious to the trivial, from subversion to vagrancy. The net result is a situation where, through

²⁰⁴ Del Carmen, *op. cit.*, *supra*, note 48, at 103.

²⁰⁵ *Ibid.*

²⁰⁶ CONST., Art. XVII, sec. 3(2). Also see Paguio & Lagos, *op. cit.*, *supra*, note 194, at 43-60.

²⁰⁷ This conclusion was arrived at by Justice Makalintal and Justice Antonio who both state that the validity of Proclamation 1081 has been foreclosed by the Transitory Provisions of the 1973 constitution. Justice Palma, however, withholds her assent to any sweeping statement that the same in effect has been validated in the constitutional sense. All that she concedes is that the Transitory Provision, section 3(2) merely gives them the imprimatur of law and not a constitutional mandate. *Aquino v. Ponce Enrile*, G.R. No. L-35546-47 59 SCRA 183 (1974).

²⁰⁸ Gen. O. No. 3(1972); Gen. O. No. 3-A (1972); Also see GLORIA, PHILIPPINE MILITARY LAW 403-14 (1973).

²⁰⁹ Gen. O. No. 3 (1972); Gen. O. No. 12 (1972).

executive edict, jurisdiction can be withheld from civilian courts *at will* and military tribunals are authorized to try anybody at any time for any crime, according to military procedures. Part of the above jurisdiction has been given back to the civilian courts by presidential edict, but is withdrawable at any time "in the public interest".

What does the overall picture offer for the judiciary, the least powerful of the three branches of government? Prominently, it has lost a considerable chunk of its autonomy. The incumbent President has the ultimate power and hold over the entire judiciary as he may "dismiss" any justice, judge or employee of the court, at his prerogative. All decisions of the military tribunals attain finality only upon his approval. Additionally, the shrinkage of civil court jurisdiction, the existence of several military courts, the suspension of certain civil and political rights — all tend to undermine official assertions of judicial independence.²¹⁰ This observation is not without support. In its report on the "State of the Nation", the Philippine Civil Liberties Union noted: "Veteran judges of long service have been dismissed through court notices of acceptance of their compulsory resignations."²¹¹ In the qualified opinion of the Amnesty International mission, "the judiciary . . . has become totally ineffective in preventing the violation of human rights. The rule of law under martial law is authoritarian presidential-military rule, unchecked by constitutional guarantee or limitations."²¹² In its weakened and subordinate status, "the judiciary headed by the Supreme Court, has survived by adopting well to its new martial-rule environment". Thus, it is not outrightly shocking to come across the observation of the Civil Liberties Union: "For many, it is futile to invoke the rule of law," especially so, if against a dominant and highly strengthened executive. The illustrative fate of the Philippine judiciary probably pictures:

"the fact that . . . a determined Chief Executive, acting under real or imagined national crisis and confident of military support, can effectively neutralize the judiciary as a constitutional watchdog or reduce it to virtual impotence if he so wishes."²¹³

c. The Executive Institution: A Case of Concentration of Power

Never in the history of a republican Philippines, has the chief executive been accorded an apoplexy of powers, than President Marcos. He is the incumbent president and prime minister at the same time, thus exercising

²¹⁰ Abueva, *op. cit.*, *supra*, note 46, at 42.

²¹¹ THREE YEARS, *op. cit.*, *supra*, note 66, at 33.

²¹² AMNESTY, *op. cit.*, *supra*, note 85, at 85.

²¹³ DEL CARMEN, MARTIAL LAW 32 (1975).

a monopoly of executive power. He is the current commander-in-chief of all armed forces, exercising emergency and martial law powers during the period of "abnormalcy". While martial law is in effect, he exercises extraordinary legislative powers. Even after the lifting of martial law, he still has a vestige of extraordinary legislative powers which he may exercise over the *interim Batasan Pambansa*. He is the titular head of the *Kilusan Bagong Lipunan* and the *Nacionalista Party*, both dominant political parties in the Philippines.

The Rationale. The official rationale for martial law is expressed by the President, when he declared "I did not become President to preside over the death of the Philippine Republic." The awesome concentration of powers in the centrum has also been ably explained by the President: to give the "*crisis* government the real power to make quick decisions and to implement them without obstruction from any source . . . to attack problems with immediacy and directness . . . to deal with both the unknown, the uncertain and the unexpected, and to adjust with swiftiness, adequacy and efficiency to unprecedented situations."²¹⁴

The political dyarchy under martial rule has been assessed as beneficial because policy can be fine-tuned in the sense that legislation can be issued in a series of steps, with modifications and amendments easy to insert in later steps, depending on the public's reaction to the earlier ones.²¹⁵

A Reassessment. The entire situation may be summed up in 13 words: the submerging of all other institutions to the institution of the chief executive.

Public participation has incurably been wanting, notwithstanding the consultative set-up constitutive of the *barangays* and the *interim Batasan Pambansa*. Santiago Simpas similarly reached this cautious conclusion:

"The danger lies in the possibility that present policy-making has been reduced to a 'conspiracy of friends.' Policy-makers are accountable to only one man whose knowledge of the situation in the field might be flawed and limited to what his close associates feel would conform to his wishes. Without newspaper exposes and criti-

²¹⁴ Abueva, *op. cit.*, *supra*, note 46, at 77.

²¹⁵ MANGAHAS, EQUITY AND INSTITUTIONAL CHANGE: THE CASE OF LAND REFORM IN THE NEW SOCIETY, 5 (1976).

cisms, without investigations, without public hearings before the elected representatives of the people, the call [of politically conscious citizens] for 'accountability' could be easily ignored. That the government should evaluate itself reduces the 'accountability' to the bootlicking sort of devotion to one's job. The public seems to have been left out."²¹⁶

Another important facet for reexamination is the efficiency of the executive branch under martial law conditions. In practice, the supposedly greater potential of the New Society government structure for policy formulation and execution that are at once speedy, synchronized, coordinated, as well as rational and effective, is not readily realized. This is so because of some priorities dictated by the requirements of authoritarian leadership, and the consequences of haste, secrecy, faulty knowledge, bureaucratic politics, and inertia. But on the whole, it cannot be impartially denied that the executive branch has vastly improved the efficiency of its machinery in comparison with pre-martial law days. How so? One factor, could be gleaned from the enormously enlarged powers of the government, sufficiently broad to capably "induce" the compliance and cooperation of public officials and citizens. The more credible causative factor is probably on account of the massive infusion of "civilian technocrats" in the exercise of delegated presidential authority some appointed as cabinet members and others as heads of bureaus, agencies and government corporations".²¹⁷ Drawn from the University of the Philippines, other reputable educational institutions, the military and private concerns, they assist the president in the wielding of his tremendous executive and legislative powers, uninhibited by a viable opposition or by a critical press. As probably correctly observed:

"Given unusual opportunities to test their developmental ideas and apply their professional expertise — and responding to the allurements of power, prestige, and material advantages — the technocrats willingly assume the risks of success or failure in their high positions and in their commitment to the martial law regime."²¹⁸

Their "drive" may be explained by a common outlook:

"they all believe in the goals and dreams of the President, for they have shared with him in forging the strategies and tactics of carrying them out; they have no solid political base which was the principal attribute of the well-known oligarchs of the pre-martial law political system; and the incentives of working devotedly and faithfully with the President do not only involve the fear of losing honor, life and

²¹⁶ SIMPAS, *POLICY-MAKING UNDER MARTIAL LAW* 23 (1976).

²¹⁷ Abueva, *op. cit.*, *supra*, note 46, at 40.

²¹⁸ *Ibid.*

fortune were the martial law administration to fail, but also the joy and pride of fathering the birth of a new society."²¹⁹

Local Governments. The martial law administration prides itself with the local governmental units structured in its own conceived concept of "participatory democracy". The creation of the *Sanguniang Bayan* which replaced the old provincial boards and city councils, the introduction of a commission type of government for Metro Manila, and the renamed *barangays* have been its principal innovations. However, while the *Sanguniang Bayans* have been given broadened citizen participation in the legislative body, the Metro Manila commission on one hand, has a relatively limited membership in policy and law making. Although *barangays* have been raised to the status of a municipal corporation, no action from the central government has been initiated to reinforce their new status.²²⁰ Moreover, government has been focusing on the status of *barangay officials* in its support for the martial law regime rather than on the status of the *barangay* as a *body*,²²¹ on the membership to the *barangay* council rather on the powers of these bodies.

Otherwise stated, there is change without *real* impact. While local governments, especially the renamed *barangays*, have gained the public eye as "symbols", they have never acquired real authority to the ends of "self-reliance", but on the other hand have been more than ever been dependent on the central government.

How and why has President Marcos, nurtured his civilian political base by increasing the already over-dependent local units' reliance on the executive?

²¹⁹ Agpalo, *The Political Elite in a Post Traditional Society: The case of the Philippines*, ELITES AND DEVELOPMENT 59 (1975). R. Stauffer also posits: "they share an ideology of modernization, an aversion to politics, a belief in the free enterprise system and yet a need for governmental planning, an elitist view of society and a commitment to development". See STAUFFER, PHILIPPINE AUTHORITARIANISM: FRAMEWORK FOR PERIPHERAL DEVELOPMENT 8(1976).

²²⁰ Aldon, et. al., *Some Changes and Developments in the Local Governments in the Transitory Period*, 54 PHIL. L.J. 134 (1979) [hereinafter referred to as Aldon]. Dean I. Cortes states that "If the barangay is to become the fountainhead of citizen's participation in government it will have to heap upon it one assignment after another in the multifarious areas in which government now operates. For the barangay whether taken as the individuals who compose it . . . there is a very real danger of giving such emphasis on the organizational aspect such that the heart of reform efforts, namely the human factor, could be overlooked. Lasting results can only be achieved if the members (and that includes you and me) of the 42,000 barangays were to make participation on these diverse activities a part of their being and internalize so to speak, citizen participation. Structures can be changed as the need arises but when citizen participation. Structures a way life, then the sovereign people can impose their will. Cortes, *Citizen's Participation in Government from the Grassroots: Some Reflections on the Legal Aspect of Contemporary Developments*, 51 PHIL. L.J. 483-4 (1976).

²²¹ Aldon, et. al., *ibid.*

It must be remembered that through the 1975 referendum, the incumbent president was given an *additional* basis for appointing or replacing provincial, city and municipal officials whose elective terms had expired as of December, 1973, let alone the constitutional transitory provision which directly empowers him to do so. By this direct control over their tenure, the restructuring of local government units, and the consolidation of some local jurisdictions to form Metropolitan Manila and placing the helm of this region under the governorship of the First Lady, the president has effectively strengthened his nationwide power base, serving (1) to fulfillingly legitimize his rule, and (2) to *balance* his dependence on military support.²²²

Over-reliance on the sustained support of the military arm would require reciprocal rewards, benefits and privileges to military officers as well as an increasing logistical budget for its expanding operations and arms. But since a balanced Philippine economy commands that military salary hikes and an increased military budget can no longer be soundly absorbed, control over the "other supports" of the New Society, particularly local government units, becomes imperative.

The structure in the executive branch explains the apparent governmental legitimizing strategy: the Chief Executive and cabinet initiates policies, the predominantly *Kilusan ng Bagong Lipunan interim Batasan Pambansa* initiates and proposes laws, a well armed and paid military enforces the policies and laws, and the local government units validate and legitimize all policies, controversial or otherwise, placed before it. The process proceeds on a one way channel, as the local government units do not complete the circuit by causing *feedbacks* for the presidential men to respond to. To avoid pattern imbalances, the dependency of local units have to be maintained, the dependency of local units have to be maintained, and elections at the local levels especially at the *barangay* level have to be either appropriately timed or guardedly postponed. So effective has been the legitimization process thru the restyled *barangays*, that even up to now, the manner in which these local units were "used" during the "referendum" of the 1973 Constitution is difficult to erase from the minds of the Filipinos.

B. A CROSS-SECTIONAL APPROACH

The compartmentalized approach must be tuned to *broader* lines to effectively picture the impact study of martial law.

At the present, competing sources of information and evaluative studies have been clearly delineated. By virtue of the current state of Philippine

²²² Abueva, *op. cit.*, *supra*, note 46, at 48-9.

media under martial law, we have an avalanche of lengthy local prints, epitomizing the "binignity and grace" that are the hallmarks of martial law which has "confused and confounded both hostile and friendly observers".²²³ Local anti-martial law materials have been pitifully impoverished. The bulk of foreign publications, however, have not been too friendly to the martial law regime. On the whole, both internal and external sources, affords the conscientious scholar a good basis on what to believe in.

1. *Competing Emphases on Scew Lines*

It is amusing to note, that despite the proliferation of data on martial law, argumental emphases from diametrically opposed camps do not frontally clash.

For a better perspective let us take *some* of the highlights.

Consider the issue of peace and order. Government cites the phenomenal decrease in the incidence of crime by a comparison of crime statistics between martial law and pre-martial law days. Skeptics, on the other hand, decry a resurgence of criminality which is nearly back to pre-martial law levels, but that such upsurge has not been faithfully tallied nor publicly disseminated. The current administrators have pinpointed the causes of the prevailing peace and order situation to the increased efficiency of *integrated* local police units and an imbibed internal discipline as well as confidence in the current administration. Critics, however, merely concede an *initial* decrease in crime, attributable to the fear of the civilian populace of being apprehended on the slightest suspicion and of indefinite incarceration without judicial recourse.

Consider now, the economic perspective. Technocrats pride the Philippine's yearly economic growth despite counter-productive external factors statistically indicating the increment in terms of GNP. The opposition, however, portrays a worsening economy *vis-a-vis* the run away inflation, spiralling prices and the Philippines' rising external debt. As for trade and industry, bureaucracy points to an increased industrialization pace, Philippine oil strikes and healthy foreign investments and trade. On the other-hand, the negative picture presented is: foreign dominance of domestic commerce and overseas trade as well as over Philippine natural resources, coupled with the shortage of prime commodities, the latter being blamed on the massive "diversion" of locally produced commodities to foreign markets.

²²³ Castro, Address to the World Law Conference, August 21, 1977.

Even the emphasis with respect to taxes are skewed. Philippine officialdom has emphasized the positive factor of an efficient tax collecting machinery and reduced tax evasion aided by extensive tax-information campaigns resulting into cooperative compliance from the citizenry under martial law. Opposing adherents, have chosen to emphasize that the tax burden has grown heavier by the year and that the national revenues have been appropriate and funneled through a scheme based on imbalanced governmental priorities.

Thus, not only are the *issues* contested for the controversion extends to the very indices of measurement.

Let us attempt to separate the grain from the shaft.

2. Ostensible Patterns of Martial Law: Is It Functionally Stable?

The New Society has produced a sharp increase in the concentration of political power with the Presidency. The fusion of the business technology with the coercive might of the military has made it possible and convenient for power and control to be purely localized within the enclaves of the central government. Centralization of power has considerably facilitated "effective administration" and rational planning", which appear to be the key catch-words of leadership.²²⁴

Widely acclaimed as the laurels reaped by the New Society are political stability as well as economic fruition. Specific achievements enumerated are the disbandment of private militias, confiscation of unlicensed firearms, factors which are deemed instrumental to the order and stability of the New Society. The weeding-out of undesirables in the various *strata* of government ostensibly create the picture that all is well on the bureaucratic front. To energize its sagging coffers, fiscal and monetary policies have been vastly improved and taxation policies reformed. It has therefore been posited that as a result of the commingling of these various factors, the desired aim of an inflationary decline as well as the corollary higher credit rating has been reached. As a further display of developmental growth the skeptic's glance is also veered towards the substantial increase of foreign investment as well as the influx of hoards of tourist encouraged by the improved peace and order situation prevailing under the aegis of the New Society. Concededly, the government can also validly lay claim to the improvement of developmental and infra-structure projects, especially

²²⁴ Rosenberg, *op. cit.*, *supra*, note 7, at 11.

in the public sector areas of roads, ports, transportation, power and land reclamations.

The gains that have been achieved, however, have led to a concentration of power and wealth within the economy similarly to that within the political system. By actively pursuing policies to create "an attractive environment inducive to foreign investment," the current administration has greatly favored large firms in the industrial and trade sectors of the economy, many of which have become the local junior partners of multinational corporations.²²⁵ One consequence has been that the Philippines has further increased its already high dependence on the world market to sell its key commodity exports: minerals, sugar, coconut products, and timber; and to get the necessary inputs: oil, technology, and capital, for the New Society developmental requirements. Many of the early economic successes and reversals of the martial law government may be more accurately keyed to favorable changes in the world prices of its key commodity exports and imports rather than to government management of the economy.²²⁶

At most, the martial law regime has applied temporary first-aid and not long term therapeutic measures aimed at curing the various ills plaguing Philippine society.

While the martial law administration has been hailed by some for the nation's economic growth, it has been criticized by others for not distributing the increments of this growth widely enough.²²⁷ Moreover, despite the prominent policies of national discipline and austerity under the regime, there is still ample evidence of ostentatious consumption and extravagant affluence. Economic reforms or social welfare programs, land reform included, have been implemented only to the extent needed to mitigate extreme duress, torniquet open rebellion and secure at least passive acceptance of the New Society.²²⁸

The problem of increasing class differentiation in the economy is paralleled by the problem of legitimacy in the political system.²²⁹ The

²²⁵ *THREE YEARS*, *op. cit.*, *supra*, note 66, at 31.

²²⁶ OCAMPO, *Philippines: The Seven Year Itch*, *FAR EAST. ECO. REV.* 24 (1979).

²²⁷ Rosenberg, *op. cit.*, *supra*, note 7, at 12; Ho Kwon Ping, *The Mortgaged New Society*, *FAR EAST. ECO. REV.* 51-3 (1979).

²²⁸ Rosenberg, *ibid.*

²²⁹ Five years, *op. cit.*, *supra*, note 104, at 6, which also states that "80% of Filipino people are poorer now than before martial law . . . After 5 years of martial law, the masses ended up with little food and no freedom". *THREE YEARS*, *op. cit.*, *supra*, note 66, at 15, also stating that "If at all, the gap between the poor and rich has widened because, as the paper on the economy shows, martial law has not solved the problem of unemployment; and the runaway inflation that afflict us, brought about more by the inflationary policies of the martial law regime than by world economic conditions, has battered the poor much more than it has hurt the rich."

thorough centralization of economic and political power has greatly reduced political activity in the New Society. The role of local governments has been sharply reduced. Other non-governmental, autonomous groups have been banned or placed under strict and extremely severe government controls. Martial rule has made only perfunctory experimental attempts to mobilize mass support or encourage popular participation. Contrary to the avalanche of public pronouncements, the New Society does not have a systematic or explicit ideology; major decisions are made on a pragmatic basis. A return to the "old practices" are slowly materializing. There are no coherent political organizations to explain or guide the New Society other than government, itself. The participatory institutions that have been proposed — the system of citizens' assemblies or the legislative advisory assembly — are more symbolic than substantial.

The pervading problem of legitimacy and the administrator's inability or unwillingness to do anything meaningful about it raise questions about how much popular support does the New Society rely on. Considerable support apparently comes from the business sector, the urban middle class, the public technocrats and the military and civilian bureaucracies; at present however, there are no reliable and accurate indicators of mass public opinion. The New Society has dealt with dissent in multifarious ways. Centralized control over the economy and all government agencies as well as a submissive mass media have been harnessed to ensure widespread compliance with the regime's peace-and-order policies. Arbitrary arrests and intimidations continue, but large-scale coercion has been used only selectively.²³⁰ However, local military units, often beyond the effective control of the central government, have frequently been accused of committing arbitrary violence.²³¹ To assure control of his own government bureaucracy, President Marcos "has resorted to a system of informants, frequent dismissals, and personal changes."²³² As long as economic performance is high, this brand of payoff policies is adequate to reinforce the ruling alliance and fundamental threat is the regime's diffused legitimacy.

On the whole, the New Society cannot with certainty, be said to be a very stable political system. The heightened vulnerability of an economy increasingly dependent on the world market, the unresolved local conflicts embedded in the secessionist movement, and the miscalculation of an un-

²³⁰ Rosenberg, *op. cit.*, *supra*, note 7, at 13.

²³¹ *Ibid.*

²³² Rosenberg, *op. cit.*, *supra*, note 7, at 13. This is made possible by sections 9 and 10 of the Transitory Provisions sustaining the earlier acts of the President in the dismissal of personnel and acceptance of resignation; Gutierrez, *The Supreme Court and Public Officers under the Constitution*, THE SUPREME COURT UNDER THE NEW CONSTITUTION 75 (1977).

informed bureaucracy all threaten the stability of the system. The most fundamental threat is the regime's defused legitimacy.

The Philippines, like many developing countries, is undergoing a profound metamorphosis in social and political structure. The New Society itself is formally dedicated to achieving revolutionary changes thru constitutional means. Professor Rosenberg, however, analytically comments:²³³

"... the current commitment of the Marcos administration to political order and economic growth at the expense of social equity and human rights only assures that social changes, when they do inevitably demand political accommodations, will be violent. At present, there are simply no institutions to provide for the peaceful accommodation of new and diverse interests and opinions. An authoritarian regime, installed to achieve political order, has been seen to contain its own inherent tendencies toward disorder."

3. *After Seven Years: Is Martial Law Necessity Still Necessary?*

Prescinding from the above premises, all lines convergingly point to an inescapable conclusion: martial law, at its seventh year, should be lifted. And the same conclusion is reached, using either the *political* or legal *framework* of analysis.

From a *political framework* of analysis, the yardstick used to arrive at this conclusion is in the form of a "balance", where the "scaled factors" are: human rights placed on one side of the fulcrum and public danger together with national development on the other. It is basically from this framework that President Marcos has explicitly justified the rationale as well as the continuance of the present martial law government.

A sensitive reassessment of the Philippine situation under martial rule, either from the *compartmentalized* or *cross-sectional* approaches, will show that national development has finally reached its titration point. Strategic gains achieved under a coercive atmosphere devoid of a responsive feedback mechanism have not been *maximized* primarily because economic profits are not being effectively filtered to the bottom and also due to an economy increasingly being dependent on foreign trade. On this observation alone, a *slight* shift on the "balance" may already be noted as it strongly indicates

²³³ Rosenberg, *op. cit.*, *supra*, note 7, at 14.

development in the wrong direction. Moreover, increasing class differentiation and the inability of the government to fully maintain its avowed reforms, creates a *further* shift in the "balance".

Absent the "minimum conditions" for a meaningful public participation: free press, public discussions of the issues and questions, freedom from fear and insecurity, freedom from dictation of societal values from the top, all negate any claim for genuine social development. Even if the speed of national development is to be accelerated and further branched out, planning has rarely been upon the articulated demands from the bottom. Lack of legitimacy and the concentration of power and wealth in a few hands, *additionally* shifts the weights of the "balance" to the other side. The fact that external factors — oil, foreign technology, foreign prices among others — have been a more causative influence than martial law, *plus* a much improved "peace and order" situation, *definitely* shifts the balance to the other side of the fulcrum. "Public danger" has been effectively contained by an improved and efficient military machine. The widely cited reforms, whether half-baked or not, have likewise alleviated the situation of "emergency". On the other hand, resultant docility, a prolonged atmosphere of fear and sustained military abuse are environmental conditions no longer justifiable. All these, including the Filipino yearning to be free, after seven long years of martial law are arguments conclusive enough to compel the lifting of martial law. Any institutional impact study will show that martial rule cannot do any better now. Any person, given almost absolute powers to achieve what he has and still is professing to be fixed Filipino goals, ought to realize after a protracted length of time, that Filipino freedoms rooted in the social order cannot wait forever.

From a *legal framework* of analysis, the measure of the "balance" is changed, for the exercise of that power is subject to *constitutionality denominated* circumstances. Of materiality is the constitutional phrase — "when the public *safety* requires it". It is significant that the constitution does *not* read: "when the public *welfare* requires it". The political argument that "we need martial law for national development, even at the expense of rights", therefore, cannot be constitutionally right. The single balance to be struck is between civil rights and "public danger". National development and socio-economic reforms, while being the primary concern of any sensible government, is, under the Philippine constitutional setting, more appropriately achieved through the ordinary democratic processes as these goals are not exclusively generated nor propelled by raw military force. To argue that an extended imposition of martial rule is necessary in order to "facilitate" the continuous improvement in the structures and institutions of governance, radical reforms and national development, *all unending challenges*, is actually to ridiculously confirm the hypothesis that

martial law is the best form of government, deserved by Filipinos, and should *indefinitely* stay. Constitutionalism, its essence being limited government, frown on anything conducive to a monopoly of absolute power and rejects the rationalization that national development is an "imperative" of martial law. This being so, the weight of the end upon which "public danger" rests becomes lighter compared to the balance under the "political framework" of analysis.

Utilizing the prior discussions, the *legal* analytical "balance" under the present situation, with more reason, after seven years, would have clearly tilted in favor of civil rights.

The novel theory espoused by President Marcos which contends that martial law must be imposed to initiate reforms is basically predicated on the concept of geopolitics. On this regard, Professor Bernas, a renowned constitutionalist, elucidatingly amplifies:

"According to this theory, the world as it is now is in a constant state of war between communism and democracy; between east and west. Ours is a state of continuing war. In the past you could make a distinction between civilians and the military, but now, because of this continuing state of war, the distinction between civilians and the military is no longer very relevant; the distinction between a military act and a non-military act is no longer relevant for the purpose of war; every economic act you do is an act of war either against the east if you are westerner or against the west if you are easterner. According to this theory, since there is a continuing state of emergency . . . it is always legitimate to impose martial law. [Concomitantly] economic sabotage or any economic act that is detrimental to the country . . . is an act of war. Thus, when you impose martial law for the purpose of preventing inflation . . . you are really imposing martial law in order to counteract some of the effects of this broader concept of war. It is a philosophy that is taught in the military college of Chile which justifies the dictatorial governments in South America."²³⁴

V. CONCLUSION

"From the time immemorial despots have used real or imagined threats to the public welfare as an excuse for needlessly abrogating human rights. That excuse is no less unworthy of our traditions when used in this day of atomic warfare or at a future time when some other type of warfare may be devised"²³⁵

²³⁴ Bernas, *op. cit.*, *supra*, note 29, at 115.

²³⁵ Justice Douglas in his concurring opinion in *Duncan v. Kahanamoku*, 327 U.S. 330, 90 L.Ed. 703 (1945).

True enough, today's *precedent* allows for a justifiable fear for the future. Who can assuagingly guarantee us now and the next generations to come, that future despots would not replicate today's precedent for an opportunity at power without bounds under the pretext of public welfare or probably on the basis of a disturbing inflation? Who can guarantee, that should history indeed replicate itself, it will be for a better turn? The pessimistic outlook seems warranted even if only on the basis of curtly reminding the future that the "rights of none are safe unless the rights of all are safe".

The opposite picture, however, presents a similar apprehension. For should the present leadership be toppled or dissolved, thru natural, accidental or compelled means, there is neither certainty for the future. Moreover, initiated reforms would have been wasted and the next occupants of power would not yet have been tested.

But there are no visible and announced viable alternatives. Neither has there been a *serious* inquiry on fairly possible and definitive alternative blue prints. For one, the lifting of martial law, despite steps toward normalization, is not in sight. President Marcos has made clear his awareness of such *unfinished* tasks of societal transformation faced by the Filipino nation. In 1975, he explicitly manifested: "the accumulated experience of the past three years promises *more* challenges, rather than relief. For once we set our program of reform in motion, there is *no* alternative but to prosecute it to its legitimate end." In 1977, the president stated: "All that we have done and achieved during the last four years has inexorably thrust us into tasks of *greater* magnitude and responsibilities requiring the utmost of each of us."

This invites the impatient inquirer to inevitably ask: To what *extent* must political stability be pursued? Cannot the thrusts of social transformation be pursued without the encasement of martial rule?

The present leadership must seriously reflect now on the realization of definite and specific alternatives other than the continuous perpetration of martial rule. The Filipino must "know" early enough on how to responsibly participate in the formulation of governmental policies, lest they forget that they too have rights to exercise, rights for their safety and protection, rights which cannot be wronged.

Perhaps a fitting reminder is the pertinent dialogue between Thomas Moore and William Roper in Bolt's "A Man for All Seasons".

Roper: So now you'd give the Devil benefit of law!

Moore: Yes, what would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

Moore: Oh! And when the last law was done, and the Devil turned around on you — where would you hide, Roper; the laws all being flat? This country's planted thick with laws from coast to coast — man's laws, not God's — and if you cut them down — and you are just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil the benefit of law, for my own safety's sake.²³⁶

²³⁶ BOLT, A MAN FOR ALL SEASONS: PLAY IN TWO ACTS 37-8 (1962).

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