THE PHILIPPINES AFTER THE LIFTING OF MARTIAL LAW: A LINGERING AUTHORITARIANISM

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I. INTRODUCTORY NOTE

In a recent speech before his fellow alumni of the University of the Philippines College of Law, President Marcos declared his intention to lift martial law by the end of January 1981.[1] Reactions to the announcement were varied. Some welcomed it as a measure long overdue,[2] others were skeptical as to its effects,[3] and many were apprehensive of its implications.[4] The Philippines has been — depending upon one's point of view — progressing or wallowing for more than eight years under martial law. The implications of its lifting was therefore a subject of much concern.

When President Marcos declared martial law on September 21, 1972, he undertook to "govern the nation and direct the operation of the entire government, including all its agencies and instrumentalities" in his capacity as Commander-in-Chief of all the Armed Forces of the Philippines.[5] Immediately thereafter, he began issuing decrees, instructions, orders and other directives "by virtue of the powers vested in [him] by the Constitution as Commander-in-Chief of the Armed Forces of the Philippinees."[6] The system of government established under the constitution gave way to a system of government by the Commander-in-Chief. The Constitution was in a state of anaesthesia[7] and the entire government was ran on the basis of the

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1 Speech during the Annual Reunion and Homecoming of the UP Law Alumni Association, December 12, 1980.

2 During the First National Convention of Lawyers held on April 7, 1979 in Cebu City, one of the Resolutions passed by the Convention was Resolution No. 18 which provides: "Resolution expressing the belief and sentiments of the Filipino Lawyers here assembled that as we represent provinces, cities and regions throughout the country, it is our consensus that the country has come to a point where further continuance of Martial Law is no longer justifiable." *Reproduced in* 87 SCRA 475, 479. (1979)

3 The United Democratic Opposition led by Former Senator Gerardo Roxas and the Nacionalista Party President Jose B. Laurel Jr., charged that the President was contemplating only a "paper lifting of martial law." Bulletin Today, Dec. 29, 1980, p. 1. col. 2.

4 The business sector in particular expressed fear of a spate of labor strikes after the lifting of martial law.

5 Gen. Order No. 1 (1972)

6 For an interesting observation on the enacting clauses of these Presidential issuances, *see* Cortes, *Executive Legislation: The Philippine Experience*, 55 PHIL. L. J. 1, 12 (1980).

7 Separate opinion of Justice Antonio Barredo in *Aquino v. Ponce Enrile*, G.R. No. 35546, Sept. 17, 1974. 59 SCRA 212, 420 (1974).

Commander-in-Chief clause.[8] This had far-reaching and monumental implications on the Philippine constitutional system.

A. *Concentration of Governmental Powers in the Executive*

All powers of government — executive, legislative and judicial — were exercised by the President. Although the declaration of martial law was predicated on the preservation of the Republic from rebellion, lawlessness and anarchy,[9] the President did not limit the exercise of his extraordinary martial law powers to such national security problems. He went further by directing the reformation of society.[10] A stream of Presidential Decrees, General Orders, Letters of Instructions, and other Presidential directives were issued to effectuate the two-pronged drive of the martial law government. They covered almost all subjects of legislation including: reorganization of the government, land reform, rice and corn supply, educational development, exploitation of natural resources, tax measures, social security, copyrights, public works, fishing, rental control, appropriations, and many others.

The President's exercise of powers which were legislative in character did not go unchallenged. The validity of Presidential Decree No. 73 which called for a plebiscite on the New Constitution proposed by the 1971 Constitutional Convention, and appropriated funds therefor, was questioned in the case of *Planas v. COMELEC*.[11] But a Proclamation by the President that said new Constitution has been ratified and was already in force led to the dismissal of the case for having become moot and academic.

With the effectivity of the New Constitution on January 17, 1973,[12] the exercise of legislative power by the President was given express constitutional sanction. Section 3(2) of the Transitory Provisions (Article XVII) of the New Constitution specifically provides:

> 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, binding, and effective even after... the ratification of this Constitution unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the *incumbent* President, or unless expressly and explicitly modified or repealed by the *regular* National Assembly.

In the case of *Aquino v. COMELEC*,[13] the Supreme Court affirmed the power of the President "to promulgate proclamations, orders and decrees

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[8] Const. (1935), art. VII, sec. 10, par. (2). "The President shall be the commander-in-chief of all armed forces of the Philippines.... In case of invasion, insurrection, or rebellion, or imminent danger thereof, when public safety requires it, he may... place the Philippines or any part thereof under martial law."

[9] Proclamation No. 1081, dated September 21, 1972 states in detail the dangers to the security of the Republic which justified the imposition of martial law.

[10] Radio-TV Statement by President Marcos on the Declaration of Martial Law, September 23, 1972, 68 O.G. 7805-A (1972)

[11] G.R. No. 35925, January 22, 1972, 49 SCRA 105 (1973)

[12] Proclamation No. 1102 (1973).

[13] G.R. No. 40004, January 31, 1975, 62 SCRA 275 (1975).

during the period of Martial Law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people and to the institution of reforms to prevent the resurgence of rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a worldwide recession, inflation or economic crisis..."[14] According to the Court in the same case, Section 3(2) of Article XVII of the New Constitution had placed beyond doubt the legality of such law-making authority of the President. This rule was reiterated in the case of *Aquino v. Military Commission No. 2*.[15]

President Marcos himself considers the above mentioned Transitory Provisions in the 1973 Constitution as the best authority for his regime which he calls "constitutional authoritarianism".[16] In his own words: "where under the old Constitution I exercised martial law powers to meet the national emergency, under the new Constitution, I am exercising extraordinary powers together with or even independently of martial law."[17] The effectivity of the New Constitution itself was maintained by the Court in the case of *Javellana v. Executive Secretary*.[18] When the new Constitution was amended in 1976, the legislative powers being exercised by the President were expressly preserved.[19]

The President also exercises judicial power under martial law. On his orders, military tribunals were created to try certain specified cases which have been removed from the jurisdiction of regular courts.[20] These military tribunals are instrumentalities of the Executive and do not form part of the Judicial system.[21] In *Aquino v. Military Commission No. 2*,[22] the Supreme Court upheld the jurisdiction of these military tribunals to hear cases against civilians even while civil courts are open and exercising their regular functions. As of December 23, 1980, there were 44 such military tribunals and provost courts all over the country.[23]

B. *Relegation of the Legislature*

Congress was not in session when martial law was declared on September 21, 1972. It was due to convene for its regular session the following January 22, 1973, but never had the opportunity to do so because it became *functus officio* when the New Constitution took effect on January 17, 1973.

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[14] *Id.* at 298.
[15] G.R. No. 37364, May 9, 1975, 63 SCRA 546 (1975).
[16] MARCOS, NOTES ON THE NEW SOCIETY OF THE PHILIPPINES 180 (1973).
[17] *Id.* at 180-181.
[18] G.R. No. 36142, March 31, 1973, 50 SCRA 30 (1973).
[19] Amendment Nos. 5 and 6.
[20] See Gen. Order Nos. 8, 12 (1972). Pres. Decree No. 39 (1972).
[21] Dissenting opinion of Justice Claudio Teehankee in Aquino v. Military Commission No. 2, *supra*, note 15 at 619.
[22] *Supra*, note 15.
[23] Philippine Daily Express, Dec. 23, 1980, p. 1, col. 6.

The Transitory Provisions (Article XVII) of the New Constitution provided for an *Interim* National Assembly[23a] which was intended to be the *interim* legislature during the period of transition from presidential to the parliamentary system of government established under the New Constitution. Section 3(1) of said Transitory Provisions empowered the President to initially convene the *Interim* National Assembly. The validity of his refusal to convene such body was one of the issues raised in the case of *Aquino v. COMELEC*.[24] The Supreme Court held in that case that the New Constitution gave the President the discretion as to when he should convene the *Interim* National Assembly. The Court further observed that the President's decision not to convene the *Interim* National Assembly was in accord with popular objection to its convening as expressed in the referenda of January and of July 1973.

The continued opposition of the people to the convening of the *Interim* National Assembly was interpreted as a desire on their part to have such body abolished and replaced. The President, therefore, called for a referendum-plebiscite to decide the necessary constitutional amendment. His power to propose amendments to the Constitution was upheld in the case of *Sanidad v. COMELEC*.[25] The proposed amendments were approved by the people in the plebiscite of October 16, 1976 and were proclaimed in full force and effect as of October 27, 1976.[26]

The 1976 Amendments established the *Interim* Batasang Pambansa[27] in lieu of the *Interim* National Assembly. Elections of Members of the Batasan was held on April 7, 1978 and the body was formally convened on June 12, 1978. The convening of the Batasan marked the establishment of the transition government and was hailed as a significant step towards normalization.[28] According to Amendment No. 2, "the *Interim* Batasang Pambansa shall have the same powers and its members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the *Interim* National Assembly and the regular National Assembly and the members thereof," except the power to ratify treaties. It is a recognized principle in constitutional law that the legislative body possess plenary

[23a] The *interim* National Assembly was composed of:
"... the incumbent President and Vice-President of the Philippines, those who served as President of the [1971] Constitutional Convention, those Members of the Senate and the House of Representatives who shall express in writing ... their option to serve therein, and those Delegates to the [1971] Constitutional Convention who have opted to serve therein by voting affirmatively for this Article [Transitory Provisions]." (Sec. 2, Article XVII before amendment).

[24] *Supra*, note 13.

[25] G.R. No. 44640, Oct. 12, 1976, 73 SCRA 333 (1976).

[26] Proc. No. 1595 (1976).

[27] Hereinafter referred to as the Batasan. The Members of the Batasan includes: "the incumbent President of the Philippines, Representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by the incumbent President from the members of the Cabinet." (Amendment No. 1).

[28] The President/Prime Minister's Address at the Inaugural Session of the Interim Batasang Pambansa, June 12, 1978, 74 O.G. 4768 (June 1978).

powers for all purposes of civil government. The legislative power of the Batasan is therefore complete, subject only to the limitation that it shall not exercise the power to ratify treaties.[29]

Under the original Transitory Provisions, the *Interim* National Assembly had no power to amend or repeal the decrees, orders, proclamations and other acts of the incumbent President, because the power to do so was reserved only to the President and/or the regular National Assembly. The 1976 Amendments which give the Batasan "the same powers . . . as the *Interim* National Assembly and regular National Assembly" may be construed to have removed the restriction of the power to amend Presidential decrees, etc., because of inconsistency, in which case the later enactment or amendment must govern. The grant of the same powers as the regular National Assembly must include the full amendatory power of that Assembly.[30] In fact the Batasan has been exercising such power to amend existing Presidential Decrees.[31]

But if we take into account the powers of the incumbent President, the legislative function of the Batasan is necessarily circumscribed. Both the Batasan and the President share legislative powers under the Amendments. This irregular and unusual arrangement was intended to be the first step towards the speedy return to normalcy.[32] But while this arrangement continues, the President will be the dominant organ of legislation. The legislative enactments of the Batasan will be purely concessions from the President. This is so because the 1976 amendments made the incumbent President (Marcos) the President and Prime Minister at the same time.[33] He will thus be able to dominate the Batasan. One feature of the parliamentary system adopted by the 1973 Constitution is that no bill except those of local application can be calendared without the prior recommendation of the Cabinet.[34] The Cabinet here is the alter ego of the Prime Minister because he appoints its members and can remove them at his discretion.[35] No legislative measure can therefore reach the Batasan floor if it is opposed by President Marcos.

On the other hand, the Batasan has no control over the exercise of legislative power by President Marcos. No constitutional nor statutory procedure governs his issuance of a decree, order or proclamation. However

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[29] Occeña v. COMELEC, G.R. No. 52265, Jan. 28, 1980, 95 SCRA 755, 759 (1980).

[30] Tolentino, *The effect of the 1976 Amendments on the Legislative Process: the Batasang Pambansa*, in 1976 AMENDMENTS AND THE NEW CONSTITUTION 55, 73 (1978).

[31] Batas Pambansa Blg. 2, dated August 18, 1978, expressly repeals Presidential Decree No. 31. The following are some Acts of the Batasan in 1978 and 1979 which expressly amended Presidential Decrees: Batas Pambansa Blg. 3, 4, 5, 6, 9 (1978); 24, 31, 32, 38, 41, 45 (1979).

[32] Castro, *The Legislative Power in the Present Constitutional Set-Up of the Philippines*, 83 SCRA xliii (1978).

[33] Amendment No. 3.

[34] Art. VIII, sec. 19, par. (3).

[35] Art. IX, sec. 4.

a decree may originate or whoever may initiate it, so long as it is signed and issued by the President, it becomes a binding legislation.[36] The President is therefore the more efficient, the more effective, and the dominant of the two organs of legislation.

This conclusion is supported by the legislative output of the Batasan compared to that of the President within the period from June 12, 1978, when the Batasan was first convened, up to December 31, 1980. Speaker Querube C. Makalintal of the Batasan reported that the Assembly had enacted 17 bills in 1978, 40 bills in 1979, and 66 bills in 1980.[37] That is a total output of 123 legislative Acts from the time the Batasan was first convened. Within the same period, the President had issued at least 149 Presidential Decrees.[38]

Of the 123 bills passed by the Batasan, less than 50 are of general application. They include: General Appropriations Acts, tax measures, amendments to penal laws, election measures, a new Corporation Code, amendments to banking laws, the omnibus energy bill, amendments to the labor code, implementation of the metric system, regulation of dairy industry, regulation of rentals, and others. The majority of the bills of local application passed by the Batasan concerns the creation of municipalities and other local government units, and the establishment of hospitals and schools.

On the other hand, the bulk of the Presidential Decrees issued after June 12, 1978 were of general application. They include: increase of minimum wage and emergency allowances, amendments to labor and social legislations, tax measures, amendments to penal laws, amendments to election laws, amendments to charters of government controlled corporations, grant of additional powers to specified government agencies, creation of government agencies, amendments of laws on natural resources, amendments to the Decrees creating the Sandiganbayan (special anti-graft court) and the Tanodbayan (ombudsman), and others. Some of the Decrees provide for the creation of local government units.

C. *Judicial Review Neutralized*

On the very same day that martial law was enforced, the President issued General Order No. 3 wherein he ordered, among others, the Judiciary

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[36] Tolentino, *op. cit. supra,* note 30 at 63.

[37] Bulletin Today, Dec. 30, 1980, p. 8, col. 8.

[38] The first Presidential Decree issued after the Batasan had been convened was P.D. No. 1604, dated July 21, 1978 (granting franking privilege to Members of the Batasan). Among the last Decrees issued in 1980 was P.D. No. 1751, dated December 14, 1980 (integrating into the basic wage the emergency allowances provided for under P.D. No. 525 and 1123). In addition, there are at least two Decrees numbered with an "A", i.e., P.D. Nos. 1661-A and 1664-A (1980). The exact number of Presidential Decrees issued is still not known because some of these Decrees have not been made available to the public.

to continue functioning but removed from its jurisdiction cases involving the validity or constitutionality of the martial law proclamation or of any decree, order, or act issued by him or his duly authorized representative pursuant thereto. But the President did not deem it wise, or necessary, to enforce this order. The validity of the ratification of the New Constitution by the Citizens Assembly which was organized by decree was challenged in *Javellana v. Executive Secretary*.[39] But General Order No. 3 (as amended by General Order No. 3-A) was not enforced by the martial law government. As explained by President Marcos:

> Inasmuch as the issues... raised the question of the legitimacy of the entire Government..., I decided to submit to the jurisdiction of the Supreme Court...
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> This would, ..., calm the fears of every cynic who had any misgivings about my intentions and claimed that I was ready to set up a dictatorship. For who is the dictator who would submit himself to a higher body like the Supreme Court on the question of the constitutionality or validity of his actions?
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> ...I, and all those who counselled me, were sincerely convinced of the validity of my position,...[40]

In the Habeas Corpus cases,[41] the respondent government officials, in their returns to the writ and in their answers to the several petitions, had insisted on a disclaimer of jurisdiction of the Supreme Court on the basis of General Orders Nos. 3 and 3-A. But when some petitioners subsequently filed motions to withdraw their petitions, the Solicitor General interposed, for the government, objections to the granting of said motions. This, taken together with the avowal of the President that he is submitting to the decision of the Supreme Court, must be construed as a revocation of said General Order Nos. 3 and 3-A insofar as they tended to oust the Judiciary of jurisdiction over cases involving the constitutionality of proclamations, decrees, orders or acts issued or done by the President.[42]

In fact, the Solicitor General, as lawyer for the Republic of the Philippines, was instructed to defend all challenged acts of the martial law government squarely on their merits instead of using emergency power as the justification for its own exercise.[43] Thus, when a trial court declared itself without jurisdiction to try a case because of the injunction in General Order No. 3, the Supreme Court admonished:

> Respondent court's invocation of General Order No. 3... is nothing short of an unwarranted abdication of judicial authority, which no judge

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[39] See note 18, *supra*.

[40] See note 16 *supra* at 129-130.

[41] Aquino v. Ponce Enrile, G.R. No. 35546, Sept. 17, 1974 with eight companion cases, 59 SCRA 183 (1974).

[42] Separate opinion of Justice Fred Ruiz Castro in Aquino v. Ponce Enrile, *Id.* at 277.

[43] Gutierrez, *Constitutional Law*, in SURVEY AND ANALYSIS OF 1978 SUPREME COURT DECISIONS AND PRESIDENTIAL DECREES 1, 15 (1979).

> duly imbued with the implications of the paramount principle of independence of the judiciary should ever think of doing. It is unfortunate indeed that respondent judge is apparently unaware that it is a matter of highly significant historical fact that this Court has always deemed General Order No. 3 including its amendment by General Order No. 3-a as practically inoperative even in the light of Proclamation 1081 of September 21, 1972... placing the whole Philippines under martial law. While the members of the Court are not agreed on whether or not particular instances of attack against the validity of certain Presidential Decrees raise political questions which the judiciary would not interfere with, there is unanimity among Us in the view that it is for the Court rather than the Executive to determine whether or not We may take cognizance of any given case involving the validity of acts of the Executive Department purportedly under the authority of the martial law Proclamations.[44]

But the Supreme Court did not offer a meaningful check on the exercise of extraordinary powers by the President. The petitions in the Ratification Cases[45] were dismissed in a 6-4 decision. Actually, six justices rendered opinions expressly holding that the New Constitution has not been validly ratified in accordance with the pertinent provisions of the 1935 Constitution. But two of these Justices, nevertheless, voted to dismiss the petition because it was their view that "the effectivity of the said Constitution, in the final analysis, is the basic and ultimate question posed by these cases to resolve which considerations other than judicial, and therefore beyond the competence of this Court, are relevant and unavoidable."[46] The Court thus declared that "there is no further judicial obstacle to the new Constitution being considered in force and in effect."

That equivocal ruling was firmed up in the subsequent Habeas Corpus Cases where Chief Justice Makalintal stressed that the issue as to the effectivity of the new Constitution "has been laid to rest by [the Court's] decision in [the Ratification Cases] and of course by the existing political realities both in the conduct of national affairs and in our relations with other countries."[47] This was reiterated by the Court in the case of *Aquino v. COMELEC*.[48]

With the effectivity of the New Constitution, the Court maintained consistent deference to the exercise of extraordinary powers by the President. One paragraph — Section 3(2)[49] — in the Transitory Provisions (Article

[44] Lina v. Purisima, G.R. No. 39380, April 14, 1978. 82 SCRA 344, 351 (1980).
[45] Javellana v. Executive Secretary, *supra*, note 18
[46] Summary made in the opinion of Chief Justice Roberto Concepcion in Javellana v. Executive Secretary, *supra* at 140.
[47] See note 41, *supra* at 241.
[48] *Supra*, note 13.
[49] Art. XVII, sec. 3(2) provides:
"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, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

XVII) was interpreted to mean, in effect, that all acts of the President were placed beyond judicial review. By virtue of this single provision, the Supreme Court upheld all of the challenged acts of the President in the cases of *Aquino v. Ponce Enrile,*[50] *Aquino v. COMELEC,*[51] and *Aquino v. Military Commission No. 2.*[52]

In the words of Chief Justice Makalintal, "... the question of validity of [martial law] Proclamation No. 1081 has been foreclosed by the transitory provision of the 1973 Constitution [Art. XVII, Sec. 3(2)]..."[53] This was reiterated in *Aquino v. COMELEC* where Justice Makasiar further said that "To dissipate all doubts as to the legality of [the] law-making authority of the President during the period of Martial Law, Section 3(2) of Article XVII of the New Constitution expressly affirms that all the proclamations, orders, decrees, instructions and acts he promulgated, issued or did prior to the approval by the Constitutional Convention on November 30, 1972 and prior to the ratification by the people on January 17, 1973 of the New Constitution, are 'part of the law of the land...' "[54]

In *Aquino v. Military Commission No. 2,*[55] the majority of the Court through Justice Antonio declared that: "Pursuant to the aforesaid Section 3(1)[56] and (2) of Article XVII of the Constitution, General Order No. 8, ... (authorizing the creation of military tribunals), [General Order] No. 12, ..., (defining the jurisdiction of military tribunals and providing for the transfer from civil courts to military tribunals of cases involving subversion, sedition, insurrection or rebellion, etc.) and [Presidential Decree] No. 39, ... (prescribing the procedure before military tribunals), are now 'part of the law of the land.' "[57]

In all those cases, the Supreme Court also considered the results of the various referenda, which were all overwhelmingly in favor of the President's exercise of extraordinary powers under martial law, as expressions of sovereign will to which the Court must give due deference. As stated by Chief Justice Makalintal:

> ... any inquiry by this Court in the present cases into the constitutional sufficiency of the factual bases for the proclamation of martial law has become moot and purposeless as a consequence of the general referendum of July 27-28, 1973. The question propounded to the voters

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[50] See note 41, *supra.*
[51] See note 13, *supra.*
[52] See note 15, *supra.*
[53] Aquino v. Ponce Enrile, *supra.*
[54] *Supra,* note 13.
[55] *Supra,* note 15.
[56] Art. XVII, sec. 3(1) provides:
"The incumbent President of the Philippines shall initially convene the *interim* National Assembly and shall preside over its sessions until the *interim* Speaker shall have been elected. He shall continue to exercise his powers and prerogatives under the [1935] Constitution and the powers vested in the President and the Prime Minister under this Constitution. ..."
[57] See note 15, *supra,* at 574.

> was: "Under the (1973) Constitution, the President, if he so desires, can continue in office beyond 1973. Do you want President Marcos to continue beyond 1973 and finish the reforms he initiated under Martial Law?" The overwhelming majority of those who cast their ballots, including citizens between 15 and 18 years, voted affirmatively on the proposal. The question was thereby removed from the area of Presidential power under the Constitution and transferred to the seat of sovereignty itself. [And] ... this Court is precluded from applying its judicial yardstick to the act of the Sovereign.[58]

This declaration that the result of the referendum was a decision of the sovereign people which cannot be reviewed by the Court was reiterated in the case of *Aquino v. COMELEC*.[59] The referendum as an instrument for expression of popular will was finally given constitutional basis in the 1976 Amendments.[60]

According to Justice (now Chief Justice) Fernando, the Supreme Court by the conclusion it reaches and the decision it renders does not merely check the coordinate branches, but by its approval stamps with legitimacy the action taken by the political branches of the government.[61] Considering the martial law cases, the Supreme Court has become more important in legitimizing acts of the President which are of doubtful validity, rather than being an effective check against excesses in the exercise of power by the President.

D. *Curtailment of Constitutional Rights*

As a result of police measures instituted to suppress the dangers which threaten the security of the Republic, and because of the dismantling of the traditional system of checks and balances in the government, many constitutional rights were curtailed under martial law.

The privilege of the writ of *habeas corpus* has not been available to persons arrested and detained for offenses set forth in the various General Orders issued by the President. According to the Supreme Court, the declaration of martial law automatically suspends the privilege of the writ of *habeas corpus*.[62] The Court also concedes that the President has "the power to detain persons even without charges for acts related to the situation which justifies the Proclamation of Martial Law."[63] And a person who is detained by virtue of an arrest, search, and seizure order (ASSO) may be kept in detention until released by the President or the Minister of

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[58] Aquino v. Ponce Enrile, *Supra,* note 41 at 241-242.
[59] *Supra,* see note 11.
[60] Amendment No. 7, par. 2 provides:
"Referenda conducted through the Barangays and under the supervision of the Commission on Elections may be called at any time the government deems it necessary to ascertain the will of the people regarding any important matter whether of national or local interest."
[61] Dissenting opinion in Javellana v. Executive Secretary, *supra,* note 18 at 311.
[62] Aquino v. Ponce Enrile, *supra,* note 41.
[63] *Id.,* at 242.

National Defense. Such detention is legal and the detainee cannot be released by means of *habeas corpus*.[64]

The martial law government has been quite liberal in resorting to preventive detentions. The International Commission of Jurists had estimated that some 60,000 people had been arrested since the inception of martial law.[65] In December 1974 President Marcos revealed that there [were] 5,234 people under detention in direct consequence of the martial law proclamation."[66]

From the beginning of martial law, the Minister (formerly Secretary) of National Defense has been authorized to order the arrest of individuals and their detention for offenses enumerated in General Order No. 2, dated September 22, 1972, as expanded by its various amendments. This authority to issue arrest, search and seizure orders (ASSO) was limited by General Order No. 60, dated June 24, 1977, to offenses falling within the exclusive jurisdiction of military tribunals (with exceptions) as redefined in General Order No. 59, also dated June 24, 1977. Subsequently, his authority to issue ASSO was expanded again under General Order No. 62, dated October 22, 1977. The latest Presidential order on the matter is General Order No. 68, dated October 24, 1980.

In its preamble, General Order No. 68 states that "it is in the national interest to define the crimes and offenses which adversely affect or undermine national security and/or public order, as well as those which although not directly involving the national security and/or public order, are so pernicious and inimical to the social and economic stability of the nation and of the government, as to frustrate or hinder the realization of the objectives of the New Society; . . ." It therefore redefines the acts, crimes and offenses for which an arrest, search and seizure order may be issued. In so doing it gave the most comprehensive list to date.[67]

More than half of the crimes and offenses found in the list are actually defined and penalized under the Revised Penal Code.[68] Specifically, the

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[64] Dañganan v. Ponce Enrile, G.R. No. 47540, March 21, 1978, 82 SCRA 185, 189 (1978), *citing* Go v. Olivas, 74 SCRA 230 and Romero v. Ponce Enrile, 75 SCRA 429. Justice Fernando concurs with the observation that Go v. Olivas case likewise stands for the proposition that a case triable by a military tribunal may be terminated and the accused released by a *habeas corpus* petition if it could be shown that said tribunal acted without or in excess of jurisdiction. He dissented from the sweeping conclusion of the majority, his view being under appropriate circumstances a person detained by virtue of an ASSO may be released through a *habeas corpus* proceeding. (p. 190).

[65] The Decline of Democracy in the Philippines, International Commission of Jurists, August, 1977, Geneva, Switzerland.

[66] A Nation-Wide Radio-TV Statement, Historical Papers and Documents, 70 O.G. 10606 (Dec. 1974).

[67] The Times Journal issue of December 14, 1980 reproduced the long list of acts, crimes and offenses enumerated in General Order No. 68 *at* p. 1, col. 4, continued in p. 8, col. 5.

[68] Act 3815 (1930), as amended.

crimes enumerated under the following chapters of the Revised Penal Code are included:

1. Crimes against national security and the law of nations (Arts. 114, 115, 116, 118, 119, 121, 121, 122, 123 Rev. Penal Code);
2. Rebellion, sedition and disloyalty (Arts. 134, 136, 137, 138, 139, 141, 142 Rev. Penal Code);
3. Illegal assemblies and associations (Arts. 146 and 147 Rev. Penal Code);
4. Public disorders (Arts. 153, 154, 155 Rev. Penal Code);
5. Forgeries (Arts. 161, 162, 163, 166, 167, 168, 173, 172, 171 Rev. Penal Code);
6. Other falsities (Arts. 177, 178, 179, Rev. Penal Code and R.A. No. 493);
7. Frauds (Arts. 185, 186, 187, 188, 189 Rev. Penal Code);
8. Gambling and betting (Arts. 195, 196, 197, 198 Rev. Penal Code, P.D. Nos. 449 and 483);
9. Offenses against decency and good customs (Arts. 200, 201, 202, Rev. Penal Code, as amended by P.D. Nos. 960 and 969);
10. Malfeasance and misfeasance in office (Arts. 204, 205, 206, 207, 208, 210, 211 Rev. Penal Code and R.A. No. 3019);
11. Frauds and Illegal exactions (Arts. 213, 215, 216 Rev. Penal Code);
12. Malversation of public funds and property (Arts. 217, 218, 220, 221 Rev. Penal Code);
13. Infidelity of public officers (Arts. 223, 225, 226, 227, 228, 229 Rev. Penal Code);

In addition, the following specific crimes under the Revised Penal Code are included in the list:

1. Direct assault (Art. 148 Rev. Penal Code);
2. Murder (Art. 248 Rev. Penal Code);
3. Kidnapping and serious illegal detention (Arts. 267 and 268 Rev. Penal Code);
4. Robbery (Arts. 294, 295, 297, 298, 299, 300, 302, 303, 305 Rev. Penal Code);
5. Swindling in large scale or by a syndicate (Arts. 315, 316, 318 Rev. Penal Code);
6. Arson (Arts. 320, 321, 322 Rev. Penal Code as amended by P.D. No. 1613);
7. Rape (Art. 335 Rev. Penal Code);
8. White slave trade (Art. 341 Rev. Penal Code).

Aside from those crimes defined and penalized under the Revised Penal Code, the list in General Order No. 68 includes violations of 28 special penal laws including, among others:

1. Violation of Anti-Subversion Law (P.D. No. 885 as amended by B.P. Blg. 31);
2. Cattle rustling (P.D. No. 533);
3. Illegal Fishing (P.D. No. 704);
4. Illegal logging (P.D. No. 705);
5. Violation of the Dangerous Drugs Act (Secs. 3, 4, 7, 8, 9, 14, 14-A, 15 R.A. No. 6425, as amended);

6. Hijacking (R.A. No. 6235);
7. Carnaping (R.A. No. 6539);
8. Piracy and highway robbery (P.D. No. 532);
9. Illegal telephone, water and electrical connections (P.D. No. 401);
10. Possession of deadly arrow (R.A. No. 3553);
11. Violation of the Anti-Dummy Law (C.A. No. 108);
12. Violation of the Food, Drug and Cosmetic Act (R.A. No. 3720);
13. Rumor-mongering and spreading false information (P.D. No. 90);
14. Illegal recruitment (Art. 39 of the Labor Code—P.D. No. 442, as amended);
15. Violation of immigration laws.
16. Violation of postal laws;
17. Fraudulent acts and practices in connection with government professional/civil service examinations;
18. Price manipulation in the sale and hoarding of essential prime commodities and supplies in violation of law.

And, finally, there is that open ended "[a]ll other crimes which have the effect of undermining national security and/or public order [as determined by the Minister of National Defense]."[69]

Most of the offenses included in that Order have little or nothing to do with the threat to the security of the Republic. But they are, according to that Order, "so pernicious and inimical to the social and economic stability of the nation and of the government, as to frustrate or hinder the realization of the objectives of the New Society." Since the Supreme Court had validated the use of martial law powers for the reformation of society, any and all acts considered by the incumbent President as inimical to the reformation of society could be included in the list of acts for which ASSO could be issued, and for which the privilege of the writ of *habeas corpus* is not available.

The power of preventive detention has been used to harass and silence critics of the martial law government. Arrest, search and seizure orders have been issued even against student leaders who were vocal against government policies.[70] In many instances, dissent has been equated with subver-

[69] Par. 1 (bbb) of Gen. Order No. 68 makes reference to Section 3 of Gen. Order No. 60, dated June 24, 1977. The latter provides that "... the [Minister] of National Defense may cause the arrest and detention of persons or search of places, persons, papers or effects, or the seizure of things, for crimes which although not cognizable by the military tribunals likewise have the effect of undermining national security or public order as determined by him."

[70] In the month of June 1980, nine student leaders were arrested by military authorities in the wake of massive protest actions initiated by various student groups in universities against the tuition fee increases, as well as the Education Act being deliberated upon by the Batasan. More arrests were reported in the months of July and August. Some 52 students are now detained in Camp Bagong Diwa in Bicutan. Sancho-Liao, *When Things Began to Move for Political Detainees,* WHO, January 3, 1981, p. 18, 20-21. Those who were detained includes: Jose Alcantara (Vice Chairman of the League of Filipino Students), Roberto Coloma (Editor of Philippine Collegian), Malou Mangahas (Chairman of the University of the Philippines Student Council), and Lina de Guzman (Secretary of the U.P. Law Student Government).

sion in order to justify the arrests and detentions.[71] This is a clear case of deprivation of liberty without due process.

The Constitution provides that "[a]ll persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties."[72] According to the Court in the case of *Teehankee v. Rovira*,[73] "in order that a person can invoke this constitutional precept, it is not necessary that he should wait until a formal complaint or information is filed against him. From the moment he is placed under arrest, detention or restraint by the officers of the law, he can claim this guarantee.... Indeed if, ... the precept protects those already charged under a formal complaint or information, there seems to be no legal or just reason for denying its benefits to one as against whom the proper authorities may even yet conclude that there exists no sufficient evidence of guilt. To place the former in a more favored position than the latter would be, to say the least, anomalous and absurd. If there is a presumption of innocence in favor of one already formally charged with criminal offense [ ], *a fortiori*, this presumption should be indulged in favor of one not yet so charged, although already arrested or detained."[74]

Inspite of that pronouncement of the Supreme Court, the right to bail was denied to persons who were detained by virtue of ASSO's. Presidential Decree No. 39, dated November 7, 1972 provides that military tribunal may grant bail under such rules and regulations to be prescribed by the Chief of Staff of the Armed Forces of the Philippines with the approval of the Minister of National Defense. But the Chief of Staff never issued the necessary rules, and consequently, military tribunals did not grant bail.[75]

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[71] In a statement issued after her arrest, Malou Mangahas said: "... My ASSO, ... was issued when I was still editor of the *Philippine Collegian*, but was enforced only 13 months after. There was every occasion for the military to arrest me, immediately after the issuance of the ASSO, because I was regularly at the University in my official capacity as editor, now as USC chairperson, and enrolled as a regular student. If indeed the military has strong evidence of my alleged 'subcersive' activities, why then did it tarry in enforcing the ASSO? I am bound to believe, sad to say, that persons openly espousing dissent are at once presumed guilty of 'subversion' without benefit of due formal and legal investigation...." (Statement of Dec. 8, 1980).

[72] Art. IV, sec. 8.

[73] 75 Phil. 634 (1945).

[74] *Id.* at 640-641.

[75] Jimenez, *Civil Rights under the New Constitution*, in THE NEW CONSTITUTION AND HUMAN RIGHTS 56 (1979). According to Col. Vicente Pascual Jr., Deputy Judge Advocate General: "... the stand of the Chief of Staff is that the power given him by this provision of P.D. No. 39 is discretionary in nature.... the Chief of Staff has not come out with any such rules and regulations on account of the experience that this country had before martial law in connection with the issuance of bail bonds in our civil judicial system. In lieu of such a set-up, the Chief of Staff, under three or four different memoranda, has authorized the particular military tribunal before which the case of a civilian accused is referred for trial to specify the type of restraint that they would want to impose on the accused while the case is pending in the military tribunal, pursuant to which many military commissions have allowed the accused before them to be placed on house arrest or to be confined, let's say within the limits of the town or city free of charge on his part...." Statement made in an open forum during the Institute on the Administration of Justice by the Military in 1974. ADMINISTRATION OF JUSTICE BY THE MILITARY 1974 (Open Forum), p. 363.

Under General Order No. 68, persons arrested by virtue of an ASSO may be released on bail, but only after criminal charges have been filed against them. This is manifestly contrary to the above-quoted ruling of the Supreme Court. But what is worse is that the right to bail under that Order did not apply to persons arrested and detained for crimes against national security and public order, all crimes and offenses within the exclusive jurisdiction of the military tribunals, and those which the President may direct to be tried, "in the public interest", by military tribunals.[76]

Arrest, search and seizure orders have rendered meaningless the constitutional right against unreasonable searches and seizures.[77] The right to privacy sought to be guaranteed by such constitutional injunction against unreasonable searches and seizures can only be secured by the requirement that no warrant shall issue except upon an objective determination of probable cause made by a neutral and detached judge or officer.[78] As the government official entrusted with the duty of maintaining public peace and security, it is evident that the Minister of National Defense is engaged in the "competitive enterprise of ferreting out crime" and therefore does not have the requisite neutrality, detachment and objectivity necessary to safeguard the right to privacy.[79]

Since the Courts do not intervene in the issuance of ASSO's, there is no safeguard against "fishing expeditions". Another unfortunate consequence of this arrangement is the recognition, in effect, of the validity of such authority to search and seize, therefore precluding the application of the exclusionary rule[80] enshrined in the 1973 Constitution with respect to the "fruits" of those "fishing expeditions".

General Order No. 5, dated September 22, 1972, prohibits all rallies, demonstrations and other forms of group actions, including strikes and picketing. This effectively circumscribes the right of the people peaceably to assemble and petition the government for redress of grievances.[81] Another fundamental right which is curtailed under martial law is the right to strike

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[76] Times Journal, Dec. 14, 1980, p. 1, col. 5. Bulletin Today, Dec. 14, 1980, p. 1, col. 8, p. 16, col. 8.

[77] Art. IV, sec. 3 provides:

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

[78] See Johnson v. U.S., 333 U.S. 10, 14 (1948).

[79] Fr. Joaquin G. Bernas of the Ateneo Law School believes that a "responsible officer" within the meaning of Art. IV, sec. 1(3) must be one who is competent and neutral, that is, one whose role is not prosecutorial. "Fair play demands that the arbiter of human rights be impartial and neutral." Statements and answers of Fr. Joaquin G. Bernas, S.J. in VALERA-QUISUMBING & BONIFACIO, HUMAN RIGHTS IN THE PHILIPPINES AN UNASSEMBLED SYMPOSIUM, at 86 (1977).

[80] Art. IV, sec.4, par. 2.

[81] Art. IV, sec. 9.

of workers in the pursuit of their just demands vis-a-vis the management. Presidential Decree No. 823, dated November 3, 1975, as amended, prohibits and penalizes all forms of strikes, picketing and lockouts in vital industries. The Decree and its implementing Letters of Instructions have given the concept "vital industries" so broad a meaning such that it encompasses even first class hotels and restaurants, tourist transports, banks, schools, manufacturing industries, export industries, and many others.[82] All workers in these broad sector of the economy are deprived of an important instrument for effective bargaining.

There are other security measures and police legislations such as the imposition of curfew,[83] ban on international travel,[84] and control of the mass media,[85] which have been lifted or relaxed by the martial law government. But it should be clear that the lifting or relaxation of those restrictions are unilateral acts of President Marcos. But just as he can lift any security measure which is restrictive of constitutional rights, he has all the power and authority to reimpose them if he deems it necessary, proper or convenient.

E. *Indefinite Tenure of the Executive*

The duration of martial law is left solely to the determination of the incumbent President. It is the view of the Supreme Court in the martial law cases that, since it is to the President that the Constitution has committed the discretion to impose martial law, he alone has the discretion and the prerogative to declare when it should cease or be lifted.[86] And so long as martial law is in effect, the incumbent President will continue to wield extraordinary powers. His tenure of office is, therefore, practically indefinite.

This arrangement was carried over in the Transitory Provisions of the 1973 Constitution and was reinforced in the 1976 Amendments. By express provision of Amendment No. 3, the incumbent President was made President and Prime Minister of the transition government at the same time. Since he acquired such office by virtue of an express Constitutional Amendment, he can be removed from such office only by another Constitutional Amendment, the possibility of which is practically zero considering his dominance in the government.

The incumbent President shall cease to hold the office of the President/Prime Minister only when the Regular National Assembly convenes and elects the regular Prime Minister in accordance with Article XVII, Section 1 of the New Constitution, as amended. But the same section requires first the election of the members of the regular National Assembly to be called

[82] L.O.I. No. 368 (1976).
[83] Gen. Order No. 4 (1972).
[84] L.O.I. Nos. 4, 5, 6, 7 (1972).
[85] L.O.I. No. 1 (1972), L.O.A. No. 1 (1972).
[86] Separate opinion of Justice Barredo in Aquino v. Ponce Enrile, *supra*, note 7.

by the Batasan. If the Batasan will not call for such an election, the regular National Assembly will never be able to convene at all. Again, considering the control which the incumbent President exercises over the Batasan, it is safe to conclude that such an election will never be called without the approval of the incumbent President. The incumbent President (Marcos) can therefore legally stay in office for as long as he wants to.

Thus, it is clear that the regime established under martial law is a radical departure from the traditional limited and representative government which the Filipinos have known since the establishment of the Commonwealth in 1935.[87] It is definitely not a representative government in the tradition of liberal democracy.[88] It is in the light of these radical changes brought about by the declaration of martial law that particular significance is attached to its lifting.

II. LEGAL IMPLICATIONS OF THE LIFTING OF MARTIAL LAW

At the outset it is evident that the lifting of martial law will not automatically bring into operation the system of checks and balances provided under the main body of the 1973 Constitution. The present Philippine government is a transition government established and operating under the Transitory Provisions and the 1976 Amendments of the New Constitution.

A. *Extraordinary Powers of the President/Prime Minister*

Even if martial law is lifted, the incumbent President remains as both President and Prime Minister of the transition government by virtue of Amendment No. 3 which provides that "[h]e shall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers vested in the President and the Prime Minister under the New Constitution."

There are two opposed views regarding the effect of the lifting of martial law on the power of the incumbent President to legislate by decrees. The first may be denominated as the expansive view while the other may be called the restrictive view.

1. Expansive View

Under the expansive view, the lifting of martial law will not deprive the President of legislative power because Amendment No. 6 will come into operation. Under said Amendment: "Whenever in the judgment of the President (Prime Minister) there exists a grave emergency or a threat or imminence thereof, or whenever the *Interim* Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action,

[87] Except during the military occupation by the Imperial Japanese Forces during the Second World War.

[88] P. V. Fernandez, *From Javellana to Sanidad: An Odyssey in Constitutional Experimentation*, in 1976 AMENDMENTS AND THE NEW CONSTITUTION 38 (1978).

he may in order to meet the exigency, issue the necessary decrees, orders or letters of instructions, which will form part of the law of the land."

This provision retains with the incumbent President the extraordinary powers that he had been exercising under martial law, even after martial law itself has been lifted. Under both the old and the new Constitutions, martial law may be declared only "in case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it."[89] The invocation of martial law is therefore circumscribed to cases involving danger to the security of the Republic. And if such is not present, there will be no occasion for the exercise of the extraordinary martial law powers. But the 1976 Amendments only speak of "grave emergency or a threat or imminence thereof" as the first ground for the exercise of decree powers by the President. It is not limited to emergencies involving the security of the Republic. The second ground provided is "whenever the *Interim* Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in [the President's] judgment requires immediate action." From this it is not difficult to conclude that the incumbent President can legislate on almost *anything substantial.*

As observed by Assemblyman Tolentino:

> In both cases, the President shall be sole judge in determining whether a case for his exercise of legislative power exists. The determination as to what is a "grave emergency or a threat or imminence thereof", or as to whether it exists, or when the Batasan fails or is unable to "act adequately" or what matter "requires immediate action" is vested in him exclusively.[90]

The sufficiency of the factual basis for his determination cannot be inquired into by the Judiciary; the Courts cannot substitute their *judgment* for his. Even the liberal test of arbitrariness adopted by the Court in *Lansang v. Garcia*[91] will not be applicable because the Amendment uses only "judgment" of the incumbent President as the measure for determining the facts on which his action is based.[92] There is therefore no meaningful limitation to the exercise of legislative power by the incumbent President even after martial law is lifted.

2. Restrictive View

Under the restrictive view, the only basis of the exercise of decree power by the incumbent President is the existence of a state of emergency which necessitates the imposition of martial law. Once the emergency has ceased — and this can only be the reason for the lifting of martial law — such extraordinary power will also *ipso facto* cease to exist. Therefore,

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[89] Const. (1935), Art. VII, sec. 10, par. (2). Const. Art. IX, sec. 12.
[90] Tolentino, *op. cit., supra,* note 30 at 62.
[91] G.R. No. 33964, Dec. 11 ,1971, 42 SCRA 448 (1971).
[92] Tolentino, *supra.*

the incumbent President will, as a general rule, lose the power to legislate by decree the moment he lifts martial law. Since Amendment No. 6 presents an exception to this general rule, it must be strictly construed.

The incumbent President may invoke his decree power under Amendment No. 6, but only if the conditions provided for by said amendment, that "there exists a grave emergency or a threat or imminence thereof", are present. His "judgment" regarding the existence of such conditions can be reviewed by the Court. If the ultimate power to declare martial law can be reviewed by the Court as to the factual sufficiency of its exercise to determine whether it was arbitrary or not,[93] it would be absurd to hold that the exercise of a lesser power under Amendment No. 6 cannot be reviewed by the Court. The decree power under Amendment No. 6 is a lesser power because it can be invoked only when martial law has been lifted. So long as martial law is in force, said decree power is subsumed under martial law. Therefore, the "judgment" of the incumbent President as to the existence of a grave emergency or a threat or imminence thereof cannot be arbitrary. Furthermore, he may exercise the decree power on account of the existence of such emergency only to the extent needed "to meet the exigency."[94]

The decree power which the President can exercise "[w]henever in his judgment the *interim* Batasang Pambansa...fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action," is a reserved, conditional, and limited authority.[95] "*Conditional* because it depends on the failure or inability of the Batasang Pambansa to act quickly and adequately. *Limited,* because the ensuing decree, order or instruction must refer to the legislation being considered by the Batasan. *Reserved,* because its exercise cannot precede the start of deliberations by the Batasang Pambansa on the proposed law."[96] This authority terminates with the issuance of the decree, order or instruction necessary for the legislation.[97]

But even under the restrictive view of Amendment No. 6, the incumbent President still wields ample legislative powers after martial law itself has been lifted.

According to President Marcos: "the lifting of martial law will mean the termination of the powers of the President to legislate and the passing of the powers of principal legislation to the hands of the Batasang Pambansa."[98] The President also said that he has issued guidelines for the use

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[93] Lansang v. Garcia, *supra.*

[94] Tolentino, *supra,* at 63.

[95] Tolentino, *Significance of the 1976 Constitutional Amendments,* J. INTEG. BAR PHIL. 44, 53 (1977).

[96] *Ibid.*

[97] Tolentino, *supra,* note 30 at 62.

[98] Speech at the 45th Anniversary Celebration of the Armed Forces of the Philippines, December 22, 1980. *Reproduced in* Philippine Daily Express, Dec. 23, 1980, p. 8, col. 1, 17.

of his decree powers under Amendment No. 6, and these are found in the Public Order Act and the National Security Code.[99] The National Security Code, Presidential Decree No .1498, dated June 11, 1978, is a compilation of all Decrees, General Orders, Letters of Instructions and policies as they pertain to national security and public order. It also provides for the circumstances under which the President will exercise the emergency powers provided for under Amendment No. 6.[100] But this important piece of legislation, as well as the equally vital Public Order Act, has not been made available to the public as of this writing. It should be noted that the preamble of General Order No. 68 states that under the Public Order Act, the concept of national security encompasses national strength not only in the politico-military but also in the socio-economic sense.[101] This means that the President will not limit the exercise of his decree powers under Amendment No. 6 to strictly security problems. The expansion of the concept to national security was meant to perpetuate the use of extraordinary powers for the-reformation-of-society scheme.

B. *Tenure of the President/Prime Minister Independent of the Legislature*

As noted earlier, the Transitory Provisions of the 1973 Constitution, and the 1976 Amendments thereto, made the tenure of President Marcos virtually indefinite and dependent only on his own will. This arrangement will remain even after lifting of martial law.

But the first step towards ending this anomalous situation has been taken with the announcement of the election of Members of the regular National Assembly in 1984.[102] Under the Transitory Provisions, as amended by the 1976 Amendments, the Batasan shall continue "until the Members of the regular National Assembly shall have been elected and shall have assumed office following an election called for that purpose by the [Batasan]."[103] Once the regular National Assembly is convened, it will proceed to elect from among its Members the regular President, and another one as the regular Prime Minister, in accordance with the pertinent Provisions of the 1973 Constitution.[104] From that moment, Mr. Marcos will cease to be the President/Prime Minister. The assembly may elect him

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[99] Bulletin Today, Dec. 19, 1980, p. 14, col. 5.

[100] Bulletin Today, Dec. 20, 1980, p. 5, col. 1-2.

[101] Philippine Daily Express, Dec. 14, 1980, p. 8.

[102] The Batasan Special Committee on Constitutional Amendments approved on December 15, 1980, the proposal that the election of members of the regular National Assembly will be held on the Second Monday of May 1984. Majority Floor Leader Jose A. Roño said the election date will be incorporated in a proposed amendment providing for an end to the transition period upon the assumption of office of the elected assemblymen. The proposal is expected to be approved by the Batasan when it meets to consider the matter on January, 1981. Times Journal, December 16, 1980, p. 1, col. 5.

[103] Art. XVII, sec. 1, as amended by Amendment No. 1.

[104] The following are the pertinent provisions:

as the President, or as the Prime Minister, but not as both President and Prime Minister.[105] This extraordinary dual office will become *functus oficio* upon the election of the President and the Prime Minister by the regular National Assembly. The Government headed by President Marcos has taken the official stand that the 6-year term of office of Members of the regular National Assembly[106] applies to Members of the Batasan. Since the Batasan was first convened on June 12, 1978, its term will end in 1984. The calling of the election for Members of the regular National Assembly at that time would, therefore, be a mandatory duty of the Batasan. That would mark the end of the transition government, and also of the applicability or effectivity of Amendment No. 6 and the other provisions pertaining to the transition government in the Transitory Provisions and in the 1976 Amendments.

C. *Legislature Remains Subordinate to the President/Prime Minister*

Since the separate power of the incumbent President to legislate by decrees remains, and his tenure is still independent of the Batasan, the conclusion is inescapable that the Batasan will not be able to improve from its present subordinate position vis-a-vis President Marcos even after martial law is lifted.

As Prime Minister, President Marcos remains in control of the Batasan, and as earlier observed, no proposed bill can reach the Batasan floor if it is opposed by him. The parliamentary system adopted under the 1973 Constitution maintains a system of checks and balances. The Prime Minister is elected by a majority of all the Members of the National Assembly from among themselves.[107] But he has the power to dissolve the National Assembly and call for a general election.[108] On the other hand, the National Assembly may dismiss the Prime Minister at any time by electing a successor by a majority vote of all its Members.[109] This withdrawal of confidence from the Prime Minister — the most potent constitutional weapon of the National Assembly to check the powerful Prime Minister — is not available to the Batasan because President Marcos became Prime Minister by virtue of the 1976 Constitutional Amendments. The Batasan, therefore, remains virtually impotent against President Marcos. It cannot enact any legislative

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"The President shall be elected from among the Members of the National Assembly by a majority of all its Members. . . ." (Sec. 2, Art. VII).

"The Prime Minister shall be elected by a majority of all the Members of the National Assembly from among themselves." (Sec. 3, Art. IX).

"The election of the President and the Prime Minister shall precede all other business [of the National Assembly] following the election of the Speaker." (Sec. 7 (1), par. 2, Art. VIII).

[105] Article VIII, sec. 2 provides:

". . . Upon taking his oath of office, the President shall cease to be a Member of the National Assembly and of any political party. He shall be ineligible to hold any other elective office during his term."

[106] Art. VIII, sec. 3 (1).

[107] Art. IV, sec. 3.

[108] Art. VIII, sec. 13, par. (2).

[109] Art. VIII, sec. 13, par. (1).

measure of general application, much less repeal any decree, if the President opposes it.

President Marcos has said that the lifting of martial law means "the passing of the powers of principal legislation to the hands of the Batasang Pambansa,"[110] and that "the Batasang Pambansa will now have to really start covering all aspects of legislation."[111] But this is not a guarantee that he will be austere in the exercise of his decree power under Amendment No. 6. When the Batasan was first convened on June 12, 1978, the President said he will stop exercising his legislative powers to allow the Batasan to perform its function. He said, "I want to make it clear that I have no wish to deprive the *Interim* Batasang Pambansa the opportunity to discharge its legislative authority on any issue, especially on those of great import and urgency to the nation."[112] But as it turned out, he issued more legislative measures than the Batasan.

D. *Judicial Activism or Avoidance: Choice for the Court*

How will the lifting of martial law affect judicial review? It was observed that the Supreme Court had always assumed jurisdiction in proper cases brought before it challenging the acts of the incumbent President. But because the Court maintained an attitude of deference to the exercise of extraordinary powers by the President, it legitimized rather than check the contested acts of the incumbent President. When the Court agreed to the use of martial law powers not just for the preservation of public order and safety but also for institution of reforms in society, it placed itself in a position where it cannot question the validity of any and all acts of the President, because any act can be justified as a measure for the reformation of society, and, therefore, a proper subject of the vast martial law powers.

From the martial law cases, it is clear that the Court has given full credence to the declaration by the President that the security of the Republic was at stake, and that all acts done by him were necessary to preserve the Republic. This view was candidly expressed by Justice (later Chief Justice) Fred Ruiz Castro during a lecture-forum in 1974 in his answer to a question regarding the continuing "necessity" for martial law:

> There are many surface *indicia* of peace and order which you can see in the Philippines: this is a site of international conferences; we have just had a Miss Universe contest here; we have an increase in tourism. Many other surface *indicia*... are given as grounds for the termination of martial law.
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> My friends, I don't know whether I am privileged to reveal what I am about to tell. But since the question calls for a definitive statement from me, I will risk it, even though the recent Armed Forces briefing to

110 Speech before the AFP, *supra*, note 98.
111 Bulletin Today, Dec. 19, 1980, p. 1, col. 7.
112 The President/Prime Minister's Address at the Inaugural Session of the Interim Batasang Pambansa, June 12, 1978, 74 O.G. 4768 (June 19, 1978).

> the Supreme Court was given in confidence. This is actual war — not mere skirmishes — in Sulu, in Zamboanga, in the whole province of Cotabato, in the two provinces of Lanao, with all the sophisticated panoply of battle. If you see the captured arms that were shown to us, all of them sophisticated weapons from foreign sources; if you know that there were two boats, each loaded with about 5,000 arms of all assortments and sizes (one of them sunk because of a typhoon) destined to be landed in the Philippines; if you know that there is also armed conflict in Bicol, in Cagayan Valley, and that the Maoists and the Communists are very active in the Ilocos Region; if you know that the Greater Manila Area is the hub of continuing nationwide subversion: the abundant food, Miss Universe contest, site of national conferences, increased tourism — all these do not detract from the President's positive assessment of the need for continued martial law. The necessity-angle of martial law has to be judged by the President himself. Let us have faith in the President....
>
> There was a time when armed conflict was almost always frontal, when men in uniform would go to the field of battle and clash frontally, killing one another. The Communist form of subversion rarely involves frontal clashes. One of these days, if we don't take care, we'll wake up to suddenly find that we have lost all our cherished freedoms.
>
> When the President says, "Martial law must continue," let us give it to him. I am confident that the President is doing his level best to eliminate the continuous threat to our safety as a nation and improve our lives as a people.... if he says that existing conditions justify the continuation of martial law, who are we to say that he is wrong?[113]

Justice Barredo stressed the fact that "the Court is not equipped in any way with the means to adequately appreciate the insidious practices of subversion."[114] Because of this limitation the Court was not disposed to interfere with the acts of the President.

The lifting of martial law would be a clear admission on the part of the incumbent President that the Republic is no longer in danger. Perhaps, then, the Supreme Court will adopt a more critical attitude towards any act in derogation of the constitutional system established under the 1973 Constitution. If the Court adopts this critical attitude, the effects of martial law can be kept in check after the lifting of martial law.

The change of judicial attitude towards restricting the effects of martial law legislations to those strictly connected with the requirements of national security was incipient in recent cases decided by the Court concerning Presidential Decree No. 9, which prohibits and penalizes possession of deadly weapons. In the case of *Abril v. People of the Philippines*,[115] the Petitioner was convicted for violation of Paragraph 3 of Presidential Decree No. 9 which provides:

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[113] Castro, *The Legal Basis of Military Tribunals in a Martial Law Situation* (Open Forum), in ADMINISTRATION OF JUSTICE BY THE MILITARY 1974, at 199-201.

[114] Separate opinion in Aquino v. Ponce Enrile, *supra*, note 7 at 399.

[115] G.R. No. 46265, Feb. 28, 1978, 81 SCRA 750 (1978).

> 3. It is unlawful to carry outside of residence any bladed or blunt weapon such as "fan knife", "spear", "dagger", "bolo",... except where such articles are being used as necessary implements to earn a livelihood and while being used in connection therewith; and any person found guilty thereof shall suffer the penalty of imprisonment ranging from five to ten years...."

The Petitioner contends that he was not covered by the Decree because he did not have any political motive. The Court did not find it necessary to decide whether or not the Decree penalizes only an act committed by a person having political motive as contended by Petitioner but acquitted him on another ground.

Subsequently, in *People v. Purisima,*[116] Petitions for Review were filed by the People of the Philippines which squarely raised the issue whether or not conviction for violation of P.D. No. 9, par. 3 requires that the carrying of the prohibited weapons be connected with the crime of rebellion, subversion, insurrection, lawlessness, chaos and disorder. The Solicitor General advanced the argument that paragraph 3 of P.D. No. 9 proscribes an act which is essentially a *malum prohibitum* penalized for reasons of public policy. The City Fiscal further adds that the Decree condemns the carrying of said weapons in connection with criminality in general, so as to eradicate lawless violence which characterized the pre-martial law days.

The Supreme Court, through Justice Cecilia Muñoz Palma, held that because of the problem in determining what acts fall within the purview of P.D. No. 9, it became necessary to inquire into the intent and spirit of the decree. This can be found among others in the preamble or "whereas" clauses of said decree which, with its enacting clause, provides:

> WHEREAS, pursuant to Proclamation No. 1081 dated September 21, 1972, the Philippines has been placed under a state of martial law;
>
> WHEREAS, by virtue of said Proclamation No. 1081, General Order No. 6 dated September 22, 1972 and General Order No. 7 dated September 23, 1972, have been promulgated by me;
>
> WHEREAS, subversion rebellion, insurrection, lawless violence, criminality, chaos and public disorder mentioned in the aforesaid Proclamation No. 1081 are committed and abetted by the use of firearms, explosives and other deadly weapons;
>
> NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines, in order to attain the desired result of the aforesaid Proclamation No. 1081 and General Orders Nos. 6 and 7, do hereby order and decree that:

On the basis of the above-quoted preamble and enacting clause, the Court concluded that it is only that act of carrying a blunt or bladed weapon with a motivation connected with or related to subversion, rebellion, insurrection, lawless violence, criminality, chaos, or public disorder that is within the intent of P.D. No. 9, par. 3, and nothing else.[117]

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[116] G.R. No. 42050-60, Nov. 20, 1978, 86 SCRA 542 (1978).
[117] *Id.* at 561.

The same rule was maintained in the case of *Bermudez v. Court of Appeals,*[118] where the Court held that the definite purposes of Presidential Decree No. 9 stated in its preamble "leave no room for doubt that indeed said Decree is one of those issued by the President to further the ends for which Martial Law was declared, that is, to repeal, or at least to prevent the spread of rebellion, insurrection, lawless violence, sedition, criminality, chaos and public disorder.... the *raison d'etré* for P.D. No. 9 is primarily linked with the political purposes for which Proclamation No. 1081 was proclaimed."[119]

In these cases the Court obviously made a strained construction of the decree so as to limit its application. The significance of this move goes beyond the application of the principle that a penal law should be construed strictly against the state and liberally in favor of an accused. In fact, there was not much emphasis of this principle in the Purisima Case, and it was not even mentioned in the Bermudez Case. These cases are more significant as incipient attempts of the Court to limit the effects of martial law legislations to "the political purposes" for which martial law was declared.

E. *Martial Law Measures as Part of the Law of the Land*

It was observed that certain constitutional rights were effectively curtailed with the declaration of martial law. Will the restrictions on these rights be lifted together with the lifting of martial law? An affirmative answer will be most logical but the correct answer is in the negative.

By an express constitutional provision: "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, binding and effective *even after lifting of martial law*..., unless modified revealed, or superseded by subsequent... acts of the President, or unless expressly and explicitly modified or repealed by the regular National Assembly."[120] Thus, all police measures decreed during the period of emergency under martial law will remain in full force and effect even after the emergency had lapsed and martial law itself has been lifted, *unless* the President repeals them, personally or through the Batasan.

The above-quoted provision was necessary for an orderly transition from the martial law period to the post-martial law period, considering the fact that the President did not limit the exercise of his extraordinary powers to measures which were necessary for the restoration of public order and safety, but instead he went further to institute measures aimed at the reformation of society. The latter measures were intended to be permanent and, therefore, effective beyond the period of the emergency.

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[118] G.R. No. 47121, July 30, 1979, 92 SCRA 373 (1980).
[119] *Id.* at 374.
[120] Art. XVII, sec. 3(2). Emphasis added.

Of course the framers of the New Constitution expected the swift repeal of purely martial law restrictions after the lifting of martial law. Unfortunately, such intentions did not find constitutional expression. As it is, whether or not the effects of martial law should be lifted with the lifting of martial law depends solely on President Marcos. The constitutional rights curtailed by the police legislation decreed under martial law, will remain curtailed if the President, refuses to repeal those police legislation.

As noted above, the lifting of martial law would be a clear admission by the incumbent President that the security of the Republic is no longer in danger. In the absence of such dangers which would justify the stringent police measures under martial law, the Court must go back to the basic principles underlying the Philippine constitutional system. As expressed by Chief Justice Concepcion:

> ... our political system is essentially democratic and republican in character and ... the most fundamental element of that System, ..., [is] individual freedom. Indeed, such freedom includes and connotes, as well as demands, the right of every single member of our citizenry to freely discuss and dissent from, as well as criticize and denounce, the views, the policies and the practices of the government and the party in power that he deems unwise, improper or inimical to the commonwealth regardless of whether his own opinion is objectively correct or not. The untramelled enjoyment and exercise of such right — which, under certain conditions, may be a civic duty of the highest order — is vital to the democratic system and essential to its successful operation and wholesome growth and development.[121]

The immoderate tendency of the government to equate dissent with subversion must therefore be checked. This requires the dismantling, neutralizing or strictly limiting the instruments for suppression of dissent of the martial law government, or of the post-martial law transition government. Foremost is the unbridled power of search and seizure, and of arrest and detention under arrest, search and seizure orders (ASSO). The power to issue arrest, search and seizure orders stems from the extraordinary martial law powers of the President during the period of the emergency. When such an emergency has elapsed, the extraordinary power also ceases to exist. The transition government is not an emergency government. It was established to oversee the smooth transition from the system of government under the 1935 Constitution to a system of government under the 1973 Constitution. The period of transition is not a period of emergency. The existence of an emergency situation has no integral connection with the transition period. The mere fact that the Philippines is in a period of transition does not mean there is a continuing crisis. The existence of an emergency power is not justification for its exercise.

With the lifting of martial law, the Court must also discard the consistent deference that it had accorded to the exercises of extraordinary powers

[121]Lansang v. Garcia, *supra*, note 91 at 474-475.

by the incumbent President. All decrees, orders, instructions and other acts of the President must be viewed in a critical light, free from the constraints of considerations for national security. The controversial Section 3(2), Article XVII of the New Constitution should especially be viewed in the light of a different circumstance obtaining after the lifting of martial law. The view expressed by Justice Muñoz Palma is most appropriate. Reacting to the claim by Respondents that with the approval and effectivity of the New Constitution, all orders, decrees, and other acts of the President are expressly declared legal and binding in Art. XVII, Sec. 3(2) thereof, she said:

> I cannot give my unqualified assent to respondents' sweeping statement which in effect upholds the view that whatever defects, substantive or procedural, [that] may have tainted the orders, decrees, or other acts of the President have been cured by the confirmatory vote of the sovereign people through their ratification of the 1973 Constitution. I cannot do so, because I refuse to believe that a people that have embraced the principles of democracy in "blood, sweat, and tears" would thus throw away all their precious liberties, the sacred institutions enshrined in their Constitution, for that would be the result if we say that the people have stamped their approval on all the acts of the President executed after the proclamation of martial law irrespective of any taint of injustice, arbitrariness, oppression, or culpable violation of the Constitution that may characterize such acts. Surely the people acting through their constitutional delegates could not have written a fundamental law which guarantees their rights to life, liberty and property, and at the same time in the same instrument provided for a weapon that could spell death to these rights.[122]

Martial law legislation which are restrictive of constitutional rights must be subjected to a more exacting standard. Otherwise the anomalous situation where a people in normal times is subject to martial law restrictions would prevail. The dismantling of martial law restrictions must not be left entirely in the hands of the incumbent President. Because the danger for which they were instituted had passed, there would be no reason for their retention. Yet the President may find it convenient, proper or necessary, as a matter of policy, to maintain the restrictions even after martial law is lifted.[123] In such case, the Court must not hesitate to strike down as unconstitutional and void, any such measure which is in derogation of specific constitutional safeguards. The Transitory Provisions and the 1976 Amendments should not be read as a blanket authority for the incumbent President or the Batasan to "suspend" the efficacy of the rest of the Constitution, especially the Bill of Rights.

Section 3(2), Article XVII of the New Constitution, insofar as it declares that all acts of the incumbent President shall remain valid, legal,

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[122] Separate Opinion of Justice Muñoz Palma in Aquino v. Ponce Enrile, *supra*, note 41 at 647-648.

[123] For example, the President has categorically declared that the strike ban under Pres. Decree No. 823 will remain after the lifting of martial law. Bulletin Today, Dec. 28, 1980, p. 1, col. 6.

binding and effective even after the lifting of martial law should be construed to mean only those acts, decrees and orders which are not contrary to specific provisions and safeguards in the Constitution. These acts includes those decrees which were meant to be permanent, e.g., social legislation, tax measures, creations of local government units, etc., as opposed to temporary or emergency measures which find their justification in the existence of the emergency.

For example, General Order No. 68 authorizes the Minister of National Defense to issue ASSO's with the approval of the President. With the lifting of martial law, the President himself (in the absence of any emergency contemplated in Amendment No. 6) loses the power to order any arrest, search or seizure. Since the principal has lost such power, the agent *ipso facto* loses the same authority to issue ASSO's which was merely delegated to him. Therefore, General Order No. 68, insofar as it authorizes the Minister of National Defense to issue ASSO's, becomes ineffective the moment martial law is lifted. This, notwithstanding Section 3(2) Article XVII of the New Constitution.

The military tribunals which have been established under martial law may continue to exist and try civilians for non-security offenses even after martial law itself has been lifted. This is one of the anomalous situations which will be created by that sweeping provision of Art. XVII, Sec. 3(2). Even this situation was not contemplated in *Aquino v. Military Commission No. 2*[124] which dealt with the problem in the strict context of "necessity" under martial law. Yet this situation is possible if the President finds it convenient to retain these military tribunals to try cases which are within their jurisdiction under existing decrees and general orders. This anomalous situation can be avoided by giving Section 3(2), Article XVII of the New Constitution a strict interpretation suggested above. It may also be avoided if the incumbent President unilaterally abolishes these military tribunals. A step towards this has been taken with the President's announcement that he is signing a Letter of Instruction calling for the dismantling of military tribunals.[125]

President Marcos has declared that the suspension of the privilege of the writ of *habeas corpus* will remain in Regions IX and XII in Mindanao and in areas affected by "actual conflict and combat" after martial law is lifted.[126] The suspension of the writ of *habeas corpus* in the two regions "will be complete", the President said, but in other areas, it would be suspended "only with respect to security cases."[127] Does this mean that a person in Manila cannot avail of the privilege of the writ of *habeas corpus*

[124] See note 15, *supra*.
[125] Speech before the AFP, *supra*, note 98, continuation in Philippine Daily Express, Dec. 26, 1980, p. 7, col. 4.
[126] Bulletin Today, Dec. 19, 1980, p. 1, col. 6.
[127] Philippine Daily Express, Dec. 19, 1980, p. 1.

if he is arrested and detained for subversion (a security case)? The answer is no, meaning he can still avail of the privilege because its suspension has been lifted in Manila. On the other hand, if the suspension of the privilege of the writ "with respect to security cases" would be effective throughout the Philippines, it would be quite misleading to say that the suspension of the privilege of the writ has been lifted. The Court has said that the suspension of the privilege of the writ of *habeas corpus* with the declaration of martial law is only "with respect to persons arrested or detained for acts related to the basic objective of the proclamation, which is to suppress invasion, insurrection, or rebellion, or to safeguard public safety against imminent danger thereof."[128]

Unless the President issues a specific proclamation maintaining the suspension of the privilege of the writ after the lifting of martial law, such suspension will automatically be lifted with the lifting of martial law. This can be inferred from the conclusion of the Court in *Aquino v. Ponce Enrile.*[129] The Court said in that case that the declaration of martial law automatically suspends the privilege of the writ of *habeas corpus,* because the latter is the lesser sanction and must necessarily be contained in the graver sanction. If martial law is lifted, that reasoning will no longer hold because then there would be no graver sanction under which the lesser sanction could be subsumed. Of course nothing can prevent the incumbent President from suspending the privilege of the writ despite the lifting of martial law, but the conditions for its suspension as provided in Section 15, Article IV of the New Constitution must be present. The factual sufficiency of such suspension can be reviewed by the Court in accordance with the Lansang Rule,[130] to determine whether the suspension is arbitrary or not. The invocation by the President of his decree power under Amendment No. 6 does not carry with it the automatic suspension of the privilege of the writ. The Constitution is explicit as to the antecedent conditions which will justify the suspension of the privilege of the writ. And the situation contemplated in Amendment No. 6 is not one of them. However, if the "grave emergency" which would justify the exercise of decree power under Amendment No. 6 also amounts to "invasion, insurrection, rebellion, or imminent danger thereof," and "public safety requires it" the President may suspend the privilege of the writ by virtue of his powers as Commander-in-Chief of the Armed Forces under Section 12 of Article IX of the New Constitution, but not on the basis of Amendment No. 6.

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[128] Aquino v. Ponce Enrile, *supra,* note 41 at 242-243. But as noted before, the martial law government has expanded the scope of these security cases to include even purely civil offenses. Note the expanded concept of "national security" under Gen. Order No. 68 and the enumeration of offenses therein for which an ASSO may be issued and for which the privilege of the writ is not available. The incumbent President may invoke this if he declares the existence of a "grave emergency" as contemplated in Amendment No. 6.

[129] See note 41, *supra.*

[130] See note 91, *supra.*

One practice of the martial law government which is anathema to all considerations of fair play is the withholding from the public of certain decrees, general orders or instructions. The number of these "secret" decrees, orders and instructions may be gleaned from a perusal of any list of these Presidential decrees, orders and instructions. One would often come across in such list statements like "Not yet Available" or "Not for General Circulation" after a Decree number. Among the prominent examples are: Presidential Decree No. 1498 — the National Security Code, and Presidential Decree No. 1500 — the Revised Administrative Code of 1978. Both decrees are dated June 11, 1978[131] but until today, two and a half years later, they are still not available to the public. According to the Supreme Court, it is a general principle and theory that before the public is bound by the prescriptions, especially the penal provisions, of a law, regulation or circular, it must first be published and the people officially and specifically informed of such prescriptions and penalties.[132] Therefore, it cannot be overemphasized that this anomalous practice must not be continued, without waiting for the lifting of martial law.

CONCLUSION

Martial law was invoked by the incumbent President not merely to save the Republic but also to reform society. While the authority for its declaration stems from the 1935 Constitution, its continuation was ensured by the adoption of the New Constitution in 1973. The essential features of martial law as it developed: the exercise of extraordinary powers by the incumbent President; his indefinite tenure; the relegation of the legislature; the neutralization of the Judiciary; and the curtailment of constitutional rights, were incorporated and institutionalized under the Transitory Provisions of the 1973 Constitution which was promulgated under martial law. These were reinforced by the 1976 Amendments to the Constitution which were also promulgated under martial law. This is what "constitutional authoritarianism" is in essence. What was originally a temporary security measure provided by the Constitution in case of specific dangers to national security and public order acquired permanence and was utilized for a more ambitious goal — the creation of a New Society.

Since the essential features of the martial law government has been incorporated into the transition government established under the New Constitution, as amended, martial law itself becomes superfluous. The incorporation of the institutions and police measures of martial law is almost total, such that the lifting of martial law *per se* will not have much effect

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131 There are 163 Presidential Decrees all dated June 11, 1978. (Pres. Decree cNos. 1405, 1442-1603). These are the so-called "midnight decrees" because they were signed or dated the day before the Batasan was formally convened, obviously to beat the deadline, because President Marcos had said that he would no longer exercise his legislative powers once the Batasan had been convened.

132 People v. Que Po Lay, 94 Phil. 640, 642-643 (1954).

on the existing authoritarian governmental system and legal order. *Martial law may be lifted, but the effects of martial law remain.* Unless the incumbent President repeals every martial law restriction or allow the Batasan to do so, the lifting of martial law will only be a lifting in name and not in substance. But the rigors of a "martial law system" after the formal lifting of martial law may be minimized *if* the Judiciary adopts a critical view of any act or legislation which is in derogation of the constitutional system established under the main body of the 1973 Constitution, especially those acts which are restrictive of basic constitutional rights. Since much of martial law institutions and measures is derogatory of fundamental constitutional principles and safeguards, the dismantling of the martial law apparatus after the formal lifting of martial law is as much a duty of the Court as it is the duty of the incumbent President.