

THE LEGAL IMPLICATIONS OF THE LIFTING OF MARTIAL LAW IN THE PHILIPPINES

CARLO A. CARAG*

INTRODUCTION

The agenda for the 80's seem to be the lifting of Martial Law and the elimination of all vestiges of Philippine crisis government. Antecedents direct this prognosis. Way back in September, 1979, President Ferdinand E. Marcos promised that martial law will be dismantled come March 1981 if two conditions are met: the improvement of the Mindanao situation and the alleviation of our national economic miseries. In August of 1980, a reiteration of this message of hope was made by the Chief Executive in reaction to the demand of the United Democratic Opposition for a return to "a truly free and just society."¹ The filing of Parliamentary Bill 1227 at the Batasang Pambansa granting the President emergency powers in the interregnum between the lifting of martial law and the convening of the regular national assembly and the fuss about the proposed election for a transition President which had been junked served to bolster this expectation.² The reassuring words for the skeptic came on the occasion of the University of the Philippines law alumni reunion on December 12, 1980 when the President declared: "We must erase once and for all from the public mind any doubts as to our resolve to bring martial law to an end and to minister to an orderly transition to parliamentary government."³ The apparent forthright irrevocable commitment was cast at the 45th anniversary celebration of the Armed Forces of the Philippines on December 22, 1980 when the President proclaimed: "A few days ago, following extensive consultations with a broad representation of various sectors of the nation and in keeping with the pledge made a year ago during the seventh anniversary of the New Society, I came to the firm decision that martial law should be lifted before the end of January, 1981, and that only in a few areas where grave problems of public order and national security continue to exist will martial law continue to remain in force."⁴

Various explanations are given to these signals of the imminence of the revocation of martial law. Martial law as a "temporary constitutional

* *Vice-Chairman*, Student Editorial Board, Philippine Law Journal

¹ *Bulletin Today*, August 31, 1980, p. 1, col. 6.

² *Bulletin Today*, September 12, 1980, p. 1, col. 8; *Bulletin Today*, December 19, 1980, p. 1, col. 6.

³ *Bulletin Today*, December 13, 1980, p. 16, col. 1.

⁴ Address of the President on the Occasion of the 45th Anniversary Celebration of the Armed Forces of the Philippines, Camp Aguinaldo, December 22, 1980.

expedient," cannot be unduly prolonged beyond its necessity.⁵ A regime of liberal democracy as an aspirational polity is always in the offing. If extended beyond its legitimate bounds, martial law soon becomes "counter productive." A more realistic analysis would be couched in these terms: "Exigencies arising from continuing harmonious relationships with the United States, with material rewards contingent on fulfillment of certain expectations, are a principal force in the oft-announced moves of the martial law regime toward normalization — that is, to say, the organization and operation of the government according to the regular provisions of the 1973 Constitution."⁶ Others would say that the lifting of martial law is an imperative transitional phase, or a systemic response to neo-colonial domination. Or it could be merely cosmetics for the miscarriage of a case of Platonic social engineering where the vision was intended to operate by a "revolution from the center."⁷

Indeed, the lifting of martial law is subject to varied frameworks of analysis. A legal exposition is chosen for this paper. Legal history now becomes legal palmistry. Legal "possibilities" shall be expounded on.

PERSPECTIVE OF THE PRESENT AND ITS ROOTS

During the regime of martial law, our country has charted new directions on the legal plane. Chief Justice Fernando puts it aptly:

... it is to be admitted that in coping with the urgencies of the times, in accordance with what is ordained by the fundamental law and thus have its promise fulfilled, this Court is compelled to enter a domain much less clearly mapped out than before. It has to find its way as best it can with the light supplied by applicable precedents and the promptings of reasons at times rendered obscure by clouds of the emergency conditions. Moreover, there must be an awareness that the complexities of an era may not yield to the simplicities of a constitutional fundamentalism as well as the pitfalls of merely doctrinaire interpretations. The notion of law in flux carried it far indeed from a fixed mooring in certainty. There must be, it cannot be denied, greater sensitivity to the shifts in approach called for by the troubled present.⁸

From a "fixed mooring" to an "odyssey" then.

Today, a new constitutional structure prevails — a "constitutional authoritarianism." The veering away of the Philippine constitutional system from the liberal democratic principle of balance established through division

⁵ See Rossiter, *Constitutional Dictatorship: Crisis Government in Modern Democracies* (1948); Winthrop, *MILITARY LAW AND PRECEDENTS* 817 (1920); *Home Building and Loan Association v. Blaisdell* 78 L. Ed. 413 (1934).

⁶ Fernandez, *From Javellana to Sanidad: An Odyssey in Constitutional Experimentation*, in 1976 AMENDMENTS AND THE NEW CONSTITUTION.

⁷ See Marcos, *REVOLUTION FROM THE CENTER* (1978); Marcos, *TODAY'S REVOLUTION: DEMOCRACY* (1972); Marcos, *NOTES ON THE NEW SOCIETY OF THE PHILIPPINES* (1973); Marcos, *FIVE YEARS OF THE NEW SOCIETY* (1978).

⁸ Justice Fernando's concurring and dissenting opinion in *Aquino v. Military Commission*, L-37364, May 9, 1975, 63 SCRA 610.

and separation of powers under the 1935 Constitution to a situation of concentration of political powers in the executive is of transcendental import. The dynamics of this drift occurred in this sequence of significant legal developments: the declaration of martial law on September 21, 1972, approval of the 1973 Constitution as announced by the President under Proclamation No. 1102, suspension of the Interim National Assembly by virtue of Proclamation No. 1103, the adoption of the 1976 amendments to the Constitution.

Judicial precedents yield to this derivation. The case of *Planas v. Comelec* which sought to stop the ratification of the 1973 Constitution on the ground that the President did not have the power to call such a plebiscite, more so under a regime of martial law, was dismissed for being moot and academic — “impliedly” upholding the validity of the Presidential Decree calling for the plebiscite.⁹ The sequel petitions in *Javellana v. Executive Secretary* which challenged the validity of the 1973 Constitution were also dismissed thereby upholding “in effect” the legal validity of the 1973 Constitution. The dispositive portion of that case runs: “There is no further judicial obstacle to the Constitution being considered in force and effect.” This being the only conclusion of the court, there is no Supreme Court ruling that the 1973 Constitution has been validly ratified, because six out of ten justices held there was no valid ratification.¹⁰ That later decisions of the Court upheld the validity of the Constitution is another matter. In *Aquino v. Ponce Enrile*, petitions for *habeas corpus* were dismissed for being moot and academic, and “in effect” upholding the validity of the declaration of martial law.¹¹ The court, in *Aquino v. Comelec*, affirmed the validity of the decree calling for the February 27, 1975 referendum and declared it within the express powers vested in the incumbent President under the Interim Article of the 1973 Constitution, with the pronouncement that until a legislative body is convened, the incumbent President is vested with legislative power.¹² In the case of *Aquino v. Military Commission No. 2*, the court affirmed the jurisdiction of a military commission to try, hear and decide criminal cases for violation of the general penal code filed against civilians, even while civil courts are open, thereby recognizing the exercise of judicial power by the Commander-in-Chief of the Armed Forces during periods of national emergency.¹³ The exercise by the incumbent President of the specific constituent powers of adopting proposals for the amendment of the 1973 Constitution and sub-

⁹ *Planas v. Comelec*, G.R. No. 35925, January 22, 1973, 49 SCRA 105 (1973).

¹⁰ *Javellana v. Executive Secretary*, G.R. No. 36142, March 31, 1973, 69 OG 7975 (September, 1973), 50 SCRA 30 (1973).

¹¹ *Aquino v. Ponce Enrile*, G.R. No. 35546, September 17, 1974, 59 SCRA 183 (1974).

¹² *Aquino v. Comelec*, G.R. No. 40004, January 31, 1975, 62 SCRA 275 (1975).

¹³ *Aquino v. Military Commission No. 2*, G.R. No. 37364, May 9, 1975, 63 SCRA 546 (1975).

mitting the same at a plebiscite for ratification was upheld in *Sanidad v. Comelec*.¹⁴

WHAT WILL BE, WHAT COULD BE?

The analysis of the legal implications of the lifting of Martial Law inevitably involves inferences and deductions based on legal indicators. Hence, the discussion will proceed in two basic sets:

a) the "possibility" of proving that Proclamation No. 1102 is devoid of any legal and factual foundation in a post-martial law case thereby nullifying the 1973 Constitution, and b) an examination based on status quo assumptions — where the 1973 Constitution is operative. The question therefore is: What are the legal ramifications of the President's declaration of the lifting of Martial Law?

A. *Challenging of the Validity of the 1973 Constitution.*

The lifting of martial law will set loose like Pandora's box confusion and disorder if a revived case challenging the validity of the 1973 Constitution will prosper. The hierarchy of legal authority and the criteria for the validity of legal norms would lose basis¹⁵ if the 1973 Constitution's effectivity is impugned successfully after the termination of martial law.

In *Javellana v. Executive Secretary*, the only conclusion of the Court was there is no further judicial obstacle to the New Constitution being considered in force and effect."¹⁶ In that case then, there is no Supreme Court ruling that the 1973 Constitution has been validly ratified because six out of ten Justices held that there was no valid ratification in accordance with Article XV, Section 1 of the 1935 Constitution, which provides only one way for ratification, i.e., "in an election or plebiscite held in accordance with law and participated in only by qualified and duly registered voters."¹⁷ Moreover, that Supreme Court "Resolution" cannot be considered an outright decision on the merits. It was not rendered after a meticulous consideration of the evidence submitted by the parties to the case. It should be noted that Mr. Francisco Cruz, the alleged President of the National Association of Presidents of Citizens Assemblies who purportedly reported the results of the ratification from January 10 to January 15, 1973 to the President, who accordingly, issued Proclamation 1102, is a case of classical John Doe. The records showed that Mr. Cruz was not even a member of any barrio council since 1972. Besides, the Solicitor General was then not able to submit to the Court a true copy of the report

¹⁴ *Sanidad v. Comelec*, L-44640, October 12, 1976; For a purely legal history of Martial Law in the Philippines, see Gupit, *Martial Law in the Philippines: It's Legal History*, 5 J. INTEG. BAR PHIL. 115 (1977).

¹⁵ *Mutuc v. Comelec*, 36 SCRA 228 (1970); *U.S. v. Butler*, 56 S. Ct. 312 (1936).

¹⁶ See note 10, *supra*.

¹⁷ Joint Opinion of Justices Makalintal and Castro, see note 10, 50 SCRA 153 (1973).

of Mr. Cruz to the President.¹⁸ And not being a decision on the merits, the doctrine of "res adjudicata" does not apply as one of its requisites for application is missing.¹⁹ The case can be reopened.

And if ever the "equivocal" character of the ruling in the Javellana case is deemed cured in subsequent cases, it is submitted on the contrary that they were merely implications. There is no occasion to talk about a valid ratification where it is not the bone of contention. *Magtoto v. Manguera* and its companion cases took for granted that the Constitution was validly ratified.²⁰

It can be said then that Proclamation No. 1102 is devoid of any factual and legal foundation.

B. *Status Quo Assumption*

1. *Lifting of Martial Law and Legislative Power: Presidential Participation.*

In an interview with reporters, President Marcos said that "the moment I lift martial law in general as a basic principle, the power of legislation is lost by the President — and that is the principal effect of lifting martial law; the Batasang Pambansa will now have to really start covering all aspects of legislation."²¹

This statement is at best an embodiment of policy which has no bearing in law, for the President shall still retain his legislative powers, as a matter of fact, even after the lifting of martial law. The Constitution and its amendments, the National Security Code²² and the Public Order and Safety Act²³ provide for this participation by the President in two ways: (1) in his own right as an independent legislator acting alone, and (2) as Prime Minister participating or sharing in the legislative authority of the Batasan. Amendment No. 6 allows the continuation of the President's exclusive legislative power as it provides:

Whenever in the judgment of the President, 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, he may, in order to meet the exigency, issue the neces-

¹⁸ *Javellana v. The Executive Secretary*, 50 SCRA 118 (1973).

¹⁹ 2 MORAN, COMMENTS ON THE RULES OF COURT, 353 (1979); *Manila Electric Co. v. Artiaga*, 50 Philippines 144; *S. Diego v. Carmona*, 70 Phil. 281, 283; RULES OF COURT Rule 39, par. (a).

²⁰ *Magtoto v. Manguera*, G.R. No. 37201-02, March 3, 1975, 63 SCRA 3 (1975).

²¹ *Bulletin Today*, December 19, 1980, p. 1, col. 7.

²² The contents of the National Security Code could not be availed of as of the date of this writing because it was allegedly in the process of the finalization and contained highly confidential matters. But it has been referred to in the dailies as including the guidelines for the exercise of the President's reserve legislative powers under amendment 6. See *Bulletin Today*, December 17, 1980, p. 14, col. 5.

²³ P.D. No. 1737, Public Order and Safety Act, was not yet available to the public as of the date of this writing but was referred to in the dailies. *Ibid.*

sary decrees, orders or letters of instructions, which shall form part of the law of the land.²⁴

Thus, after the lifting of martial law, President Marcos, if he sees it proper, could declare a state of grave emergency, or threat or imminence thereof, and continue to exercise full legislative power, whether the Batasan is already functioning or not. If he chooses not to declare a grave emergency or the threat or imminence thereof, and the Batasan has already come into existence, President Marcos would still have legislative authority under the same amendment no. 6 which empowers him to issue the necessary orders and decrees when 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.²⁵ The guidelines for the exercise of this exclusive legislative power by the President are enunciated in the National Security Code and the Public Order and Safety Act.²⁶ This retained power of the President covers even his existing constituent powers which shall not be altered nor diminished after the lifting of martial law.

Apart from the legislative power which President Marcos has under the 1976 amendments as circumscribed by the National Security Code and the Public Order and Safety Act, he has powers derived from applicable provisions of the 1973 Constitution which give him a significant and vital role as Prime Minister in the law-making function of the Batasan.²⁷

Article IX, Section 2 provides: "The Prime Minister and the Cabinet shall be responsible to the National Assembly for the program of government and shall determine the guidelines of national policy."²⁸ Made more concrete, Article VIII, Section 19 paragraph 3 provides: "No bill except those of local application shall be calendared without the prior recommendation of the Cabinet."²⁹ Strengthening his hold over the Batasan, Article VIII, Sec. 20, par. 1, states: "Every bill passed by the National Assembly shall, before it becomes a law, be presented to the Prime Minister. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same, with his objections to the National Assembly. The bill may be reconsidered by the National Assembly, and if approved by two-thirds of all its members, shall become a law. The Prime Minister shall act on every bill passed by the National Assembly within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it."³⁰

Unlike the old Congress under the 1935 Constitution, the Batasan cannot enact measures affecting the whole nation without clearance from

²⁴ Constitution, 1976 Amendments, No. 6.

²⁵ Tolentino, *Significance of the 1976 Constitutional Amendments*, 5 J. INTEG. BAR PHIL. 53 (1977).

²⁶ See notes 22 and 23, *supra*.

²⁷ Tolentino, *op. cit.*, *supra*, note 25, at 54.

²⁸ CONST., Art. IX, sec. 2.

²⁹ CONST., Art. VIII, sec. 19, par. 3.

³⁰ CONST., Art. VIII, sec. 20, par. 1.

the cabinet, which is represented in the assembly by the Batasan steering committee. This steering committee is headed by the President, who is also a member of the assembly, as chairman.³¹ By clear implication, the Prime Minister and his Cabinet appear to be the prime mover of proposed legislation, and the National Assembly a mere vehicle for its enactment into laws.³² It is noteworthy that the Cabinet only plays a supportive role rather than joint authority with the Prime Minister in this function, for after all, it is the Prime Minister who appoints the members of the Cabinet, and all of them must enjoy the absolute confidence of the Prime Minister.³³

Under the two last cited constitutional provisions, President Marcos, as Prime Minister, can prevent the enactment of any legislation even against the known desire of an overwhelming majority of the members of the Batasan.

In the first place, if he does not like a bill, even if it is signed and filed by all the elected members of the Batasan as co-authors, he may never recommend it to be calendared and so it will never even be considered. It will never reach first base, so to speak. This decision cannot be overruled or reversed by the majority.

In the second place, if a bill is calendared with his recommendation, but in the course of its consideration, amendments are introduced and approved, by vote of the majority but against his wish, then he can veto and thus kill the bill. Theoretically, it can be reconsidered and repassed by the affirmative vote of two-thirds of all the members of the Batasan. But in practice, this is unlikely, because the Prime Minister may not recommend the vetoed bill to be calendared for reconsideration."³⁴

It is thus patent that the legislative powers of the President will continue after the lifting of martial law, till the members of the regular National Assembly shall have been elected on a regional basis on the second Monday of May, 1984 as proposed,³⁵ and convened, and even after. This negates Amendment No. 5 which states "the incumbent President shall continue to exercise legislative powers until martial law shall have been lifted,"³⁶ and the Supreme Court ruling that the President's authority to legislate is part of his power "as commander-in-chief and enforcer of martial law,"³⁷ both of which imply the termination of the President's legislative power upon the lifting of martial law.

³¹ Bulletin Today, December 29, 1980, p. 5, col. 1.

³² Serrano, *The Dynamics of the Relationship of the Prime Minister and the National Assembly Under the New Constitution*, in *THE GOVERNMENT UNDER THE NEW CONSTITUTION*.

³³ ESPRITU, *I PARLIAMENTARY GOVERNMENT* 71 (1976).

³⁴ Tolentino, see note 27, *supra*.

³⁵ *Supra*, see note 2, citation 2.

³⁶ CONST., 1976 Amendments, No. 5.

³⁷ *Aquino v. Comelec*, *supra*, note 12 at 298.

2. *Lifting of Martial Law and the Personal Powers of the President*

Even after the lifting of martial law, the incumbent President shall continue to exercise "highly personalized powers" thereby perpetuating "constitutional autocracy." Amendment No. 3 provides:

"The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions and likewise he shall continue to discharge his powers and prerogatives under the nineteen hundred and thirty-five Constitution and the power vested in the President and the Prime Minister under this Constitution."³⁸ By this amendment, President Marcos becomes both Prime Minister and President under the 1973 Constitution even without an election. The amendments do not specify any termination date or time limit when President Marcos will cease to be both Prime Minister and President, hence, even after the transition period and the regular National Assembly shall have begun to function, he is intended by the 1976 amendments to be both President and Prime Minister.³⁹ This view is strengthened by the following inferences: "(1) while under the 1973 Constitution an interim Prime Minister was to be elected by the interim National Assembly, under the 1976 amendments, President Marcos, by constitutional mandate shall be the prime minister. This means that while the Interim National Assembly could change the Interim Prime Minister that it elected, the Batasan could not withdraw confidence from one upon whom they had not reposed confidence by election. (2) While under the 1973 Constitution, the Prime Minister elected by the interim National Assembly was carefully designated as interim or temporary, the 1976 amendments have omitted this qualification in referring to the Prime Minister but retained it consistently in referring to the Batasan, implying that the Prime Minister named by the Constitution, unlike the Batasan is not temporary. (3) While under the 1973 Constitution, the combined powers of President Marcos would have ended when the interim National Assembly should have elected the interim President and the Interim Prime Minister, the 1976 amendments continue his exercise of the combined powers of President/Prime Minister even after the Batasan shall have begun to function, without specifying a time or duration for such exercise. (4) Amendment No. 6 provides: '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, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instructions, which shall form part of the law of the land.' The inclusion in this amendment of the regular National

³⁸ CONST., 1976 Amendments, No. 3.

³⁹ Tolentino, *op cit.*, *supra*, note 25 at 47.

Assembly implies the continuation of the combined powers in President Marcos even after normalization of the regular National Assembly."⁴⁰

The personal character of the awesome powers of the President imposes striking consequences on the question of succession, parliamentary practice, and the exercise of executive powers after martial law shall have been lifted.

As regards the matter of succession, President Marcos cannot designate any particular person to succeed him in case of death, resignation or permanent disability because his powers attach to him personally and not to an office. It is the Batasan, exercising the functions of the regular national assembly, which will have the sole power to elect two successors to the President, one as President and another as Prime Minister.⁴¹ This appears to have been the intent of two separate resolutions pending before the Batasang Pambansa special committee on constitutional amendments. One resolution makes the Speaker of the Batasang Pambansa act as Prime Minister until the Prime Minister has been duly elected by the Batasan within three days after the vacancy occurs; while the other resolution mandates the elected successor to submit himself to a plebiscite called by the Batasan for the purpose of affirming the mandate of his leadership.⁴² The position is not to be filled in succession during the transition period in the light of these resolutions. Hence, Presidential Decree 1514, which provides that the speaker shall act as President and the senior deputy prime minister as prime minister, is amended once the two aforementioned resolutions prevail.⁴³

As regards parliamentary practice after martial law, the basic rule of control by the people, through their elected representatives in the legislative body which is usually translated into action by the removal of a Prime Minister who does not enjoy the confidence of the majority will not be realized. "Under the Constitution and the 1976 amendments, there is, in effect, a reversal of power in the Batasan. President Marcos has been installed by Amendment No. 3 as Prime Minister; he owes his office to the Constitution and not to the will of the majority. There is nothing that the majority can do to change him."⁴⁴ The Interim Batasang Pambansa and the regular National Assembly cannot remove the President.

As regards the exercise by the President of his executive powers, its full range and breadth shall still be effective after the lifting of martial law. More prominent among them would be the continued operation of the commander-in-chief powers. In the words of the President himself. "Now let me emphasize this, that power of the President does not disappear with

⁴⁰ *Id.*, at 48.

⁴¹ *Id.*, at 50.

⁴² Bulletin Today, December 21, 1980, p. 1, col. 5.

⁴³ *Ibid.*, see P.D. No. 1514.

⁴⁴ Tolentino, *op. cit.*, *supra*, note 25 at 55.

the lifting of martial law. And the call to our Armed Forces to meet and quell any public disorder and any rebellion has not been withdrawn, and will not be withdrawn when the hour of decision on the lifting of martial law come."⁴⁵ As Commander-in-Chief, "the legal ascendancy of the Prime Minister over the military establishment"⁴⁶ is undoubtedly sustained. President Marcos shall also continue to be the authoritative exponent of the nation's foreign policy. His power and duty to take care that laws be faithfully executed, his power of appointment, of removal, and of control remain after the lifting of martial law. He shall still be the final source of all executive decision. An assurance that the tradition of the strong executive shall be carried on in the President, the constitution grants him unspecified powers: "All powers vested in the President of the Philippines under the 1935 constitution and the laws of the land which are not herein provided for or conferred upon any official shall be deemed and are hereby, vested in the Prime Minister, unless the National Assembly provides otherwise."⁴⁷

3. *Lifting of Martial Law and Military Commissions*

In *Aquino v. Military Commission No. 2*, the Supreme Court held "that the respondent Military Commission No. 2 has been lawfully constituted and validly vested with jurisdiction to hear the cases against civilians, including the petitioner. The court has previously declared that the proclamation of Martial Law by the President is valid and constitutional and that its continuance is justified by the danger posed to the public safety. To preserve the safety of the nation in times of national peril, the President of the Philippines necessarily possesses broad authority compatible with the imperative requirements of the emergency. On the basis of this, he has authorized in General Order No. 8 the Chief of Staff, AFP, to create military tribunals to try and decide cases "of military personnel and such other cases as maybe referred to them." In General Order No. 12, the military tribunals were vested with jurisdiction "exclusive of the civil courts," among others, over crimes against public order, violations of the Anti-Subversion Act, violations of the laws on firearms, and other crimes which, in the face of the emergency are directly related to the quelling of the rebellion and preservation of the security of the Republic."⁴⁸

As of the date of writing, there are 30 military tribunals located all over the country.⁴⁹ Some 1380 cases are ready for filing before them after having been investigated by the military, 774 cases disposed of and pending review by higher authorities, 140 cases are on trial stage, and 12 have been submitted for decision.⁵⁰

⁴⁵ See note 4, *supra*.

⁴⁶ FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES* 297 (1974).

⁴⁷ CONST., Art. IX, Sec. 16.

⁴⁸ See note 13, *supra*.

⁴⁹ Bulletin Today, December 29, 1980, p. 11, col. 8.

⁵⁰ Bulletin Today, January 3, 1981, p. 1, col. 5.

What effect has the lifting of martial law on military tribunals and the cases before them? According to the President, once he lifts martial law, the various military commissions shall be dismantled and the pending cases, except those ready for decision, shall be transferred to the civil courts.⁵¹ This oral manifestation of political will if carried out through the medium of law in actuality realizes the theoretical disappearance of the *raison d'être* for the existence of military tribunals with the end of martial law. Otherwise, their continued existence is assured by Section 3, paragraph 2 of the Transitory Provision of the Constitution: "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 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."⁵²

4. *Lifting of Martial Law and Civil Liberties*

The Supreme Court has said:

"... individual rights may be adversely affected by the exercise of police power to the extent only — and only to that extent — that may fairly be required by the legitimate demands of public interest or public welfare. If such demands are brought about by a state of emergency, the interference upon individual rights resulting from the regulations adopted to meet the situation, must be, by and large, coextensive, coeval or coterminous with the existence thereof. And since an emergency is by nature temporary in character, so must the regulations promulgated therefor be."⁵³

Martial Law being the law of necessity, the "reasonable" restrictions to carry out its purpose lost their validity when martial law is lifted. *Ratione cessat lex, et cessat lex.*⁵⁴ Hence, the lifting of martial law should necessarily involve the restoration of cherished liberties enshrined in the constitution which had been suppressed "justifiably" to cope with the emergency. For, in the words of President Marcos himself, the declaration of martial law "is done precisely to preserve that order and tranquility in which alone rights can be respected and enjoyed."⁵⁵ And is not the lifting of martial law a ready indication that we can now enjoy these rights fully?

⁵¹ Bulletin Today, December 19, 1980, p. 1, col. 5; the President has reserved the right to transfer cases from civil courts to military courts and vice versa in the public interest — see GO 59, Sec. 2.

⁵² CONST., Art. XVII, Sec. 3, par. 2.

⁵³ Homeowners Association of the Philippines, Inc. v. Municipal Board of Manila, 24 SCRA 856, 861 (1968).

⁵⁴ HANDBOOK OF LEGAL MAXIMS, 112 (1972).

⁵⁵ Marcos, *Human Rights Under the New Society* in MARTIAL LAW AND HUMAN RIGHTS, 36.

Foremost of these rights is the privilege of the writ of *habeas corpus* — the writ of liberty. President Marcos grants: "The lifting of martial law will mean the restoration of the writ of *habeas corpus*, which means that no person can be arrested without being brought to court — except in Regions IX and XII and areas affected by actual conflict and combat. It would remain suspended, however, only with respect to security cases."⁵⁶ It is lamentable that exceptions are declared to the effectivity of the restoration of *habeas corpus*. For with the lifting of martial law and its appurtenant effects, there is no reason for, the continued suspension of the privilege of the writ of *habeas corpus* even for acts that caused the state of emergency or those related to it. "For the powers, rather expansive . . . allowable to, the administration under its aegis, with the consequent diminution of the sphere of liberty, are justified only under the assumption that thereby the beleaguered state is in a better position to protect and preserve itself."⁵⁷ The declaration of martial law impliedly including the suspension of the privilege of the writ, its lifting should also accordingly imply its restoration totally. Seemingly as concessions in exchange for these exceptions, the President has announced the transfer to civilian jails or release of non-security detainees, and the transfer of numerous cases from the military to the civil courts upon the lifting of martial law.⁵⁸ But the impatient cannot be appeased. The protection of government and the preservation of the sovereignty of the people do not require that the government deny political detainees any right it recognizes in criminal detainees simply by considering the former as also part of the latter.⁵⁹

After the lifting of martial law, no arrest, search and seizure order (ASSO) shall be issued by the President or his authorized subordinates⁶⁰ except in security cases as prescribed in the National Security Code and the Public Order and Safety Act.⁶¹ The President gave his word on this. If adhered to, a substantial amount of citizen's rights against preventive detention and arbitrary arrest, search and seizure will be restored. One can look forward to the court as an impersonal third party intervening whenever a search or seizure, or arrest is to be made in non-security cases. But the preventive exception of "security cases" lessens the significance of the President's statement. Legally, "security cases" could encompass any imagined threat to the stability of the government. The number of exceptions to the detainees under an arrest, search and seizure order who may post bail has likewise the same effect.⁶²

⁵⁶ Bulletin Today, December 19, 1980, p. 1, col. 6.

⁵⁷ Justice Fernando's concurring and dissenting opinion in *Aquino v. Ponce Enrile*, see note 11.

⁵⁸ Bulletin Today, December 23, 1980, p. 1, col. 6.

⁵⁹ Civil Liberties Union of the Philippines, *Legal Rights of Political Detainees Under Martial Law*, 6.

⁶⁰ See L.O.I. No. 621; Gen. Order No. 60; Gen. Order No. 59; Gen. Order No. 68 on the mechanisms for arrest, search and seizure under Martial Law.

⁶¹ See notes 22 and 23.

⁶² See Gen. Order No. 68.

Lifting martial law also means the enhancement of the freedom of the press as well as the freedom of the people to peaceably assemble and petition the government for redress of grievances. The freedom of thought, the freedom of speech, and the freedom of movement shall also be promoted. Access to the media shall hopefully also be boosted. The only limitations that would circumscribe these freedoms are those provided for in the constitution and in other laws. Primarily, "the rights of the individual impose upon him the correlative duty to exercise them responsibly and with due regard to the rights of others."⁶³ The restrictions against the media in the form of self-regulation, non-violation of the law on libel and subversion, and the restrictions against assemblies creating public disorders or inciting sedition or rebellion are factors that will come into play in the exercise of these rights once martial law shall be lifted. The fact that regulatory councils established during martial law shall continue operating because of Section 3, paragraph 2 of the transitory Provisions of the Constitution even after the lifting of martial law should not be a deterrent to the responsible exercise of these freedoms.

5. Lifting of Martial Law and Labor Relations

The question of the right to strike in vital industries is at once brought to the fore with the lifting of martial law. The President has definitively asserted a carry over of the policy on the ban on strikes⁶⁴ even after the lifting of martial law in vital industries such as companies engaged in the distribution of fuel gas, gasoline, and fuel or lubricating oil, in companies engaged in the production or processing of essential commodities or products for export, and in banking companies, as well as in hospitals and schools.⁶⁵ But can this declaration stand in the light of General Order No. 1 and Presidential Decree 823 as amended, both of which identify the ban of strikes as coterminous with martial law?⁶⁶ It would seem not for even if Section 3, paragraph 2 of the Transitory Provisions of the Constitution is invoked, these particular laws cannot remain valid, legal and binding even after martial law shall be lifted particularly because they contain within themselves a term — "during the national emergency." It would be a blatant contradiction to proclaim the lifting of martial law and yet recognize the existence of the emergency to justify the ban on strikes alone.

As to the other provisions and policies in the Labor Code which are not limited by a term, they shall remain operative even after the lifting of martial law. Hence, the strengthening of free collective bargaining and trade unionism within the framework of voluntary and compulsory arbitration shall persist.⁶⁷ Section 3, paragraph 2 of the Transitory Provisions

⁶³ CONST., Art. V, Sec. 2.

⁶⁴ Bulletin Today, December 28, 1980, p. 1, col. 6.

⁶⁵ See P.D. 823, as amended by P.D. 849, sec. 1.

⁶⁶ See Gen. Order No. 5 and P.D. No. 823.

⁶⁷ LABOR CODE, Book V.

can be properly invoked to sustain this proposition — and even that on the continued use of tripartism in resolving issues on wages.

6. *Possibility of Suits Against Abusive Officials*

The rationale underlying martial law is that the Republic must be preserved — and all “reasonably necessary” measures to meet this end and to deal with the emergency situation are valid, legitimate and constitutional. “Correlatively, all acts that have no reasonable relation to the objective of overcoming the emergency, but are instead actuated by malice, ill-will, or wanton attitude, are outside the privilege, hence, a basis for liability under the civil law once martial law is terminated.”⁶⁸

Under any circumstance, on every occasion, every action that government takes must show “responsiveness to the supremacy of reason and obedience to the dictates of justice”⁶⁹ and must respect “the sporting idea of fair play.”⁷⁰ Hence, not only as a matter of morals, but as a matter of constitutional law “the enforcer and administrator of martial law”⁷¹ must act according to right reason and the elementary rules of fair play.⁷² And in anticipation of the possibility of suits against the President, a proposed amendment to the Constitution has been submitted for public hearings by the Batasang Pambansa special committee, which provides for immunity of the President and the Prime Minister from suit for official acts during their tenure.⁷³

And as for offenses committed by military personnel while in the performance of their official duty, and of other government officials, the Sandiganbayan would acquire the power to hear and decide criminal cases against them after the lifting of martial law.⁷⁴

7. *Continued Effectivity of All Presidential Issuances and Acts*

Promulgations, decrees, judgments, decisions and orders as well as letters of instruction of the President issued under Martial Law which cover practically the entire area of Philippine political, economic and social activity would continue to be valid and binding after the lifting of martial law.

Section 3, Paragraph 2 of the Transitory Provisions of the Constitution renders that all “proclamations, orders, decrees, instructions and acts promulgated, issued or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding and effective even after martial law or the ratification of the Constitution, unless modified,

⁶⁸ FERNANDO, *PHILIPPINE CONSTITUTIONAL LAW* 81 (1977).

⁶⁹ *Ermita-Malate Hotel v. City Mayor*, 20 SCRA 849 (1967); *Morfe v. Mutuc*, 22 SCRA 924 (1967); *Scott v. Inciong*, 68 SCRA 473 (1975).

⁷⁰ *Abaya v. Villegas*, 18 SCRA 1034, 1039 (1966).

⁷¹ *Supra*, *op. cit.*, see note 12 at 275 and 298.

⁷² *Supra*, *op. cit.*, see note 57 at 4.

⁷³ *Bulletin Today*, December 28, 1980, p. 1, col. 4.

⁷⁴ *Bulletin Today*, Editorial, January 3, 1981, p. 4, col. 1.

revoked, or superseded by subsequent proclamations, orders, decrees, instructions on other acts of the incumbent President, or unless expressly modified or repealed by the regular National Assembly." This constitutional provision stamps acts of the President during martial law with constitutional sanction.

CONCLUSION

The lifting of martial law opens a plethora of legal ramifications. Can a new suit be filed to challenge the validity of the 1973 Constitution against the odds of acquiescence? Obviously, "Constitutional authoritarianism" shall still prevail for this system has been institutionalized by law. With the highly personalized powers of the President in the Constitution, his continued participation in legislation, the retention of military safeguards, and the reversal of power in contradiction to basic parliamentary practice, there will be no substantial legal change from our present structural set-up. All his acts during martial law continue to be operational — and it is against this light that we take with a grain of salt his pronouncements as to his intentions to restore the privilege of the writ of *habeas corpus*, to dismantle military tribunals and transfer the pending cases to the civil courts, to inhibit himself from issuing ASSO's, and to release detainees. The fact that he declared the carry-over of the strike ban in vital industries even after martial law despite shaky legal foundations only creates reservations as to the President's motive in lifting martial law. A solace, of course, is the possibility of suits against abusive officials of the martial law regime and the hope for return of true civil liberties. It is regrettable that the parliamentary system cannot viably operate legally after the lifting of martial law.

But let history take its natural course.

To wrap it up, the lifting of martial law is "analogous" to the recognition of sovereignty which was grudgingly given by the Americans in the revision of the bases agreement. "It is only a formal gain in the sense that flag independence now formally encompasses the entire Philippine territory whereas in the past American authorities claimed that the bases lands were still owned by the United States. In effect, the process of transformation from a colony to a neocolony has been completed. Legally, there has now been a restitution in name but the substance of the relationship remains neocolonial despite token concessions such as the assignment of Filipino commanders and the flying of the Philippine flag..."⁷⁵

The message is clear.

⁷⁵ CONSTANTINO, *THE NATIONALIST ALTERNATIVE* 3 (1979).