PERSPECTIVE ON HUMAN RIGHTS: THE PHILIPPINES IN A PERIOD OF CRISIS AND TRANSITION*

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The belief by Filipinos in the primacy of the rights of man is not of recent origin. Their first constitution was framed in 1898 after their successful revolt against Spain. It contained twenty-one articles on human rights. It was, however, short-lived.[1] Their independence was transient as Spain, the then colonial power, ceded the Philippines to the United States under the Treaty of Paris signed at the close of that year and ratified in April of 1899. The Filipinos fought the Americans, but superior force of arms prevailed. The Philippines thus became an unincorporated territory of the United States. The Congress of the United States enacted two organic acts, which included provisions of the American Bill of Rights, except as to the right to bear arms and trial by jury. Human rights thus continued to be part and parcel of the basic laws of the Philippines. As will be shown in more detail later, both her 1935 and the 1973 Constitutions did not only reaffirm such fundamental freedoms but also expanded their scope.

The Philippines has all the while been a champion of human rights. Professor John Humphrey, for two decades the Director of Human Rights Division of the United Nations Secretariat, made this observation: "In 1951, the Supreme Court of the Philippines seems to have considered the Universal Declaration binding law in the decided case of *Borovsky v. Commissioner of Immigration.*"[2] There is an even greater merit to the fact that while the present Constitution was framed during a time of stress and turmoil and ratified when an emergency regime, proclaimed according to the Constitution, was in force human rights were safeguarded anew,

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* Paper submitted to the World Peace Through Law Conference held in Madrid, September of 1979.

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1 Malolos Constitution, Titles III & IV, art. 5 to 25.

2 LUARD, ED., THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 58 (1967). Borovsky, a 1951 decision, is reported in 90 Phil. 107. Mejoff, Chirskoff and Andreu, like Borovsky, cases against the Commissioner of Immigration, and found in the same volume at pp. 70, 107, and 256, held that stateless aliens who could not be deported as no country would accept them were entitled to be temporarily freed on habeas corpus, until lawfully deported.

not only in civil and political spheres but also, and much more, in the economic, social, and cultural realm.

President Ferdinand E. Marcos in his keynote address to the World Peace Through Law Conference in Manila on August 22, 1977, emphasized the importance of human rights in these words: "But if the human rights movement has fallen short of creating positive international law to protect and defend rights all over the world, it has succeeded eminently in establishing the observance of human rights at the forefront of world consciousness. While the Universal Declaration is not as binding as a convention, its moral and legal value cannot be gainsaid. As a development of the United Nations Charter, it brought human rights within the scope of positive international law. In point of fact, international agreements, new constitutions, and legislation in various parts of the world have cited the Universal Declaration either specifically or by reference. In this manner, it has grown into 'the final arbiter and standard of reference to which every new text on human rights must conform.' There may be differences among the nations about the value or wisdom of the method for enforcement of the Covenants; there may be contentions about certain rights cited in the Universal Declaration; but there is no quibble today about the irreducible minimum of fundamental values, the violation of which must subject any nation to international censure and disapproval."[3]

He did not stop there. Of even greater significance was his pledge of continuing respect for human rights even in a troubled era: "There is anxiety that this interval of crisis rule may have resulted in a prolonged and prevalent suppression of human rights. To this we only commend a zealous examination of events and developments in the Philippines. And we stand by our record as a measure of how we protect and promote the fundamental rights of our people and seek to expand the meaning of freedom for all. And I will point out further that in this interval of emergency, we have not lost sight of our commitments to fundamental values and human rights. The rule of law has fully operated in our society. The Republic of the Philippines will rigorously adhere to the Rule of Law."[4] Further, he laid stress on social and economic rights: "Now there is no question that both these conceptions of human freedom — of social and economic emancipation on the one hand, and political liberty on the other — have their claim to the agenda of every society. Recognition of both is well established in the United Nations program for human rights and in the very covenants that have sought to protect human rights in the world."[5]

[3] MARCOS ON LAW, DEVELOPMENT AND HUMAN RIGHTS 21 (1978).
[4] *Ibid*, 25.
[5] *Ibid*, 22.

1. *Human rights: a cherished goal*

It is the thesis of this essay that a nation-state must at all times manifest deep commitment to human rights and fundamental freedoms.[6] It should not relax in its efforts, both earnest and determined, to translate into reality the hopes and aspirations expressed in the Universal Declaration of Human rights.[7] Moreover, for those countries, signatories to the United Nations Covenant on Economic and Social Rights[8] and the Covenant on Civil and Political Rights,[9] the obligation to do so rests on much firmer foundation. The doctrine of *Pacta sunt servanda* calls for observance. That is to assure respect for the dignity of every individual. In the memorable language of Gandhi: "It has always been a mystery to me how men can feel themselves honored by the humiliation of their fellow human-beings."[10] Mabini, the leading Filipino intellectual of the closing years of the nineteenth century and a great jurist, stressed the "love of freedom guaranteeing to each citizen the exercise of certain rights which make communal life less constricted."[11] From the British political scientist, Laski, this eloquent pronouncement: "What, here, it is important to realize is the fact that in its making the state was never itself an end, but always a means to an end; that the individual, finite, separate, identifiable, was always regarded as existing in his own right, and not merely as a unit serving the state to which he belonged. His happiness, and not its well-being, was the criterion by which its behavior was to be judged. His interests, and not its powers, set the limits to the authority it was entitled to exercise."[12] Justice Frankfurter of the American Supreme Court shared such a sentiment: "The cardinal article of faith of our civilization is the inviolate character of the individual. A man can be regarded as an individual and not as a function of the state only if he is protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person."[13]

2. *Obstacles to the implementation of human rights: emergency conditions*

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[6] One of the purposes of the United Nations is: "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and encourage respect for human rights and for fundamental freedoms for all***". *Vide* Art. 1, par. 3, United Nations Charter.

[7] The Universal Declaration of Human Rights was proclaimed on December 10, 1948.

[8] The Covenant on Economic and Social Rights was approved by the General Assembly in 1966.

[9] The Covenant on Civil and Political Rights was approved by the General Assembly in 1966.

[10] HERSCH, BIRTHRIGHT OF MAN 30 (1969).

[11] MABINI, THE PHILIPPINE REVOLUTION 10 (1969). The source is from a translation by Ambassador Leon Ma. Guerrero from the Spanish text first published in 1931, although the work itself was written by Mabini while he was an exile in Guam.

[12] LASKI, THE STATE IN THEORY AND PRACTICE 50 (1934).

[13] American Communications Asso. v. Douds, 339 US 382, 70 S. Ct. 674, 941 L. Ed. 925 (1950).

If one is to be realistic, however, he is compelled to admit that the actual may approximate but may never reach the ideal. Expectations may not be fulfilled; hopes may be frustrated. There are obstacles, formidable in character, that stand in the way of attaining cherished goals. Fallible human beings occupy positions of authority; they may not always be sufficiently alert to intrusions into the domain of human rights. It is quite understandable for any national leader to be less than enthusiastic about any sign of opposition to policies he may deem to be necessary, or, at the very least, essential. Dissent, even if not identified with disloyalty, is not likely to receive encouragement from such a source. Social cohesion more than individual freedom is given emphasis. Centripetal rather than centrifugal forces are again, understandably, looked upon with favor especially by the new nation-states with their emphasis on nationalism. The truth must be faced that there are limitations to what can be achieved — even with the best of intentions on the part of the government concerned.

An even greater obstacle to the domestic implementation of human rights is the existence of emergency conditions. As Rossiter put it: "There are three well-defined threats to its existence as both nation and democracy, which can justify a governmental resort to dictatorial institutions and powers. The first of these is *war*, particularly a war to repel invasion, when a state must convert its peacetime political and social order into a wartime fighting machine and overmatch the skill and efficiency of the enemy. The necessity of some degree of readjustment in the governmental structure and of contraction of the normal political and social liberties cannot be denied, particularly by a people faced with the grim horror of national enslavement. The second crisis is *rebellion*, when the authority of a constitutional government is resisted openly by large numbers of its citizens who are engaged in violent insurrection against the enforcement of its laws or are bent on capturing it illegally or even destroying it altogether. The third crisis, one recognized particularly in modern times as sanctioning emergency action by constitutional governments, is *economic depression*. The economic troubles which plagued all the countries of the world in the early thirties invoked governmental methods of an unquestionably dictatorial character in many democracies. It was thereby acknowledged that an economic crisis could be as direct a threat to a nation's continued and constitutional existence as a war or a rebellion. And these are not the only crises which have justified extraordinary governmental action in nations like the United States. Fire, flood, drought, earthquake, riots, and great strikes have all been dealt with by unusual and often dictatorial methods. Wars are not won by debating societies, rebellions are not suppressed by judicial injunctions, the reemployment of twelve million jobless citizens will not be affected through a scrupulous

regard for the tenets of free enterprise, and hardships caused by the eruptions of nature cannot be mitigated by letting nature take its course."[14]

3. *The reconciliation of the conflicting claims of liberty and of authority in times of emergency*

The vital question during such period is the primacy to be accorded to freedom. The reconciliation of the conflicting claims of liberty and of authority assumes an even greater complexity. A traditional orientation in favor of the former may not suffice. The approach taken cannot be characterized by rigidity and inflexibility. There is reason, plenty of it, for novelty and innovation. Doctrines deeply rooted in the past that have stood the test of time and circumstance must be made adaptable to the needs of the hour. Nonetheless, as set forth at the outset, it is the stand of the author of this paper that to the greatest extent permissible under the circumstances compatible with the efforts of the government to cope with the gravity of the situation, which could threaten the stability, not to say the existence of the political order, human rights may still be accorded the recognition due them. The possibility that time-honored precepts may be rendered obsolete with disconcerting rapidity must be zealously guarded against. There must be even then a stern and determined fealty to what they command.

4. *Full compliance with obligations under the Covenant of Civil and Political Rights in time of public emergency not always required*

It is the same sense of realism to which is attributable this provision in the International Covenant on Civil and Political Rights: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."[15] While States Parties to the Covenant may legally resort to measures "derogating from their obligations," imposed by it but only "to the extent strictly required by the exigencies of the situation," it must be shown that the action taken would not be "inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

What is even more significant is that the second paragraph of this Article expressly provides: "No derogation from articles 6, 7, 8 (para-

[14] ROSSITER, CONSTITUTIONAL DICTATORSHIP 6 (1948).
[15] Art. 4, first paragraph of the Covenant.

graphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."[16] Article 6 refers to the inherent right to life.[17] It is likewise made clear: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court."[18] Then, too, there is the prohibition of "deprivation of life [constituting] the crime of genocide," it being expressly stated "that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."[19]

Article 7 prohibits torture, cruel, inhuman or degrading treatment or punishment.[20] The first two paragraphs of Article 8 are equally explicit: "1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude."[21] So is Article 11: "No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation."[22] The rights of the accused are likewise accorded recognition even in times of emergency, no derogation being allowable: "1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby. 2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it

[16] *Ibid*, second paragraph.

[17] Art. 6, first paragraph of the Covenant provides: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

[18] *Ibid.*, par. 2.

[19] *Ibid.*, par. 3. The next three paragraphs of this Art. read: "4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. 6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."

[20] According to Art. 7 of the Covenant: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimentation."

[21] Art. 8, paragraphs 1 and 2 of the Covenant.

[22] Art. 11 of the Covenant.

was committed was criminal according to the general principles of law recognized by the community of nations."[23]

Equally so, there can be no derogation of this all-important right to assure at all times the dignity of a human being: "Everyone shall have the right to recognition everywhere as a person before the law."[24] Lastly, there can be no derogation either of the cardinal rights to freedom of thought or conscience and of religion. Thus: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conviction."[25]

Nor is this all. Article 4 that allows derogation of certain rights in times of public emergency likewise imposes this obligation: "Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the Present Covenant, through the intermediary of the Secretary-General of the United Nations; of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."[26]

Whatever misgivings may be aroused by the above provision of the Covenant on Civil and Political Rights would be minimized by the thought that this escape clause is operative only during times of emergency. Even then, a nation-state is not free from its basic obligation to comply as fully as circumstances permit to respect fundamental freedoms, no permissible derogation being allowable inconsistent with the requirements of human dignity. Realistically, the Covenant takes into account pragmatic considerations. It cannot be truly said then that there is unwarranted dilution of its effectiveness, much less of its being reduced to a mere expression of pious objectives stripped of much of its legal significance. Rather, such a provision reflects awareness of the insistent necessity that

[23] Art. 15, paragraphs 1 and 2 of the Covenant.
[24] Art. 16 of the Covenant.
[25] Art. 18, paragraphs 1 to 4.
[26] Art. 4, paragraph 3 of the Covenant.

a government be not reduced to importance in its efforts to cope with the real and actual danger. Even then, however, the clashing values of freedom and of power have to be balanced. In essence, the conflict may be between long run national health and immediate national survival. While the claims of liberty must ever be fully taken into account, it cannot be denied that circumstances of urgency may militate against their being pressed to extremes. Even a great civil libertarian, like Chief Justice Hughes, speaking during normal times, had these cautionary words: "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."[27] In the final analysis, reliance must be on strengthening the tradition of liberty. The spirit of reverence for human rights must be inculcated. For if they exist merely on parchment, their hold on the human heart is fragile and tenuous.

5. *The Philippine situation: The proclamation of martial law*

With such general considerations having been given expression, it is time that there be a focus on the Philippine situation. It must be stated that on September 21, 1972, President Ferdinand E. Marcos issued Proclamation No. 1081, placing the entire Philippines under martial law and commanding the armed forces "to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as well as any act of insurrection or rebellion and to enforce obedience to all decrees, orders and regulations promulgated by [him] personally or upon [his] direction." The rebel forces he identified as the New People's Army, the Maoists in the Philippines engaged in armed insurrection, including raids, ambushes, wanton acts of murder, plunder, looting, and attacks against civilian lives and property in Luzon and the Visayas, the former being the biggest island in the Philippine Archipelago, and the armed followers of the Mindanao Independence Movement, composed almost entirely of disaffected Philippine Muslims bent on dismembering the national territory by an act of secession, their objective being to separate the second biggest island of Mindanao as well as the Sulu group from the Philippines.

The casual impression that may be yielded by the above proclamation was the extent to which the Philippines had fallen victim to fragmentation. Certain minority groups were not only troublesome; they were engaged in insurrection. The signs appeared to point to a splintered society. For the rebels, there was clearly a retreat from, if not a total rejection of, the belief in constitutional democracy. The heritage of liberalism counted for naught. It was not enough that they manifested vehement displeasure with conditions as they existed; they would impose their own solution

[27] Cox v. New Hampshire, 312 US 569, 574, 61 S. Ct. 763, 856 L. Ed. 1049, 133 ALR 1396 (1941).

not through the process of consent but by coercive means. They were bent on fanning further the flames of disloyalty. That left the government with no choice except to take the appropriate counter-measures.

The danger that communism posed was not unexpected. Their followers in the Philippines formerly mostly in sympathy with Moscow, proved their tenacity and their effectiveness in guerrilla warfare against the Imperial Japanese forces during the period of enemy occupation in 1942-1945. After the Liberation of the Philippines in 1945, an undertaking in which the Filipinos helped the Americans, to be followed soon thereafter by independence in 1946, the local communists remained a cohesive force. Their dissatisfaction with what they considered the inability of government to cope with the social and economic problems they expressed at times in sporadic clashes with the military establishment. Part of their strength was due to the long festering tenancy problems in Central Luzon. The late Ramon Magsaysay, first as Secretary of National Defense and thereafter as President, in the first half of the decade beginning in 1950, was able to contain them with his vigorous social justice and land reform programs. The nationalistic policy followed by his successor, the late President Carlos P. Garcia, further diminished support on the part of the militant youth. While disillusioned with the workings of government, they were of the belief that reforms could be effected within the democratic system their ire being aroused more by what they considered economic dominance by alien interests.

Unfortunately, such a problem was further aggravated in the sixties with the resurgence of the Communist movement. The extremes between poverty and wealth became even more marked. While a few lived in unparalleled luxury, the lives of the great majority were spent in unrelieved misery. There were efforts to ameliorate the situation, but it appeared as if the country were polarized. Moreover, to the eager and impatient youth, idealistic but many of them misguided, what was felt to be the identification of the then administration with Western capitalism produced incurable wounds of disillusion. There was even grim humor in ideological purity being carried to such extremes as refusing entry to a Yugoslavian basketball team. In the meanwhile, a faction of the local Communists came under a new leadership identified with a Maoist creed. The corrosive forces at work became stronger. The disaffected youth were lured into their midst. They too sought violent release for their pent-up protests. They sought to engineer widespread collapse and social crisis.

The young people of such persuasion, able in the meanwhile to organize combat forces, resorted to intermittent acts of violence during the later sixties, apparently due to the belief that the success of reform measures undertaken would leave no justification for their dissident movement. They continued to intensify their rebellious activities. As a matter

of fact, the situation became so serious that in 1971 the privilege of the writ of *habeas corpus* was suspended.

The action taken by President Marcos was challenged in court in *Lansang v. Garcia*.[28] His proclamation to that effect was sustained unanimously by the Supreme Court of the Philippines in December of 1971. It rejected, however, the contention of the Solicitor General of the Philippines that the validity of the suspension of such privilege could not be inquired into judicially, the question of whether or not the President acted arbitrarily in suspending the privilege and held that he did not. There is a recognition in the opinion of the Court penned by the then Chief Justice Concepcion that while the power of the Executive "as regards the suspension of the privilege" cannot be denied, he must act "*within* the sphere alloted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department which, *in this respect* is, in turn, constitutionally *supreme.* In the exercise of such authority, the function of the Court is merely to *check* — not to supplant — the Executive, or to *ascertain merely whether he has gone beyond* the constitutional limits of his jurisdiction, *not to exercise the power vested in him* or to determine the wisdom of his act."[29] The suspension of the privilege lasted less than five months. It was restored in January of 1972.

The seriousness of the separatist movement on the part of the disaffected Muslims, under the auspices of the Mindanao National Liberation Front, was not quite apparent until it was almost too late. It is true that neither the Spaniards, nor the Americans for that matter, were able to make the Filipino Muslims accept fully alien rule. During the Spanish regime, they were pretty much left alone. The Americans were not too exacting either. With independence, however, and with the growing bonds of sympathy between them and their Christian brethren, who number close to ninety per cent of the total population, it was the hope that eventually they would be fully integrated in the mainstream and in the meanwhile could be counted upon to do their share in the cooperative endeavor for national progress and welfare. It must be recognized that there is a difference in culture that may pose obstacles to mutual understanding. That is the main cause for the uneasy relationship, not religion. Happily, the Philippines has long been past the stage where the profession of a creed or the mode of worship is a cause for strife. The diplomatic representatives of several Muslim countries found as a fact in early 1972 that there was no basis to the wild and fantastic charge that the Christian Filipinos were engaged in genocide. In addition to the conflict between inherited traditions and the novelty of change brought about by Western

[28] G.R. No. 33964, December 11, 1971, 42 SCRA 448 (1971).
[29] *Ibid,* 479-480. The author, being of the opinion that certain petitioners were entitled to freedom, dissented in part.

ways that did form part of the Philippine legal system, there was likewise the resentment arising from property disputes. The apprehension entertained by Muslim elements was that the laws would operate unjustly against their claims. Nonetheless, through the years, there were sincere and serious efforts to bring about amity. There were hopeful signs that in due time there would be gradual acceptance of the prevailing political and social institutions. Unfortunately, there were still some firebrands, especially among the younger elements, dissatisfied with the way things were being run, and not only with the Christian leadership. They vigorously contended that their destiny should be one of separation. They took advantage of the fact that the later sixties was a period of doubts and fears, protests and torments. This group paid legitimate authority the homage of their inveterate animosity. In their writings, the tone was bitter, the mockery desperate. For them the only solution to what they considered their grievances was secession. Their number was far from respectable. The best proof was that in the plebiscite held on April 17, 1977 on such a demand by the Mindanao National Liberation Front, the vote was overwhelmingly against a separate Muslim state. Nonetheless, the rebellion could not be considered at an end. With financial support from alien sources, they are well supplied with arms. It was the possession of formidable firepower, coupled with the admitted courage and bravery of their force, that had furnished a major reason for the declaration of martial law and that until now is a serious threat to national security.

6. *Proclamation of martial law based on and its scope tested by the Constitution*

"The proclamation of martial law," as President Marcos pointed out, "is not a military takeover. I, as your duly elected President of the Republic, use this power implemented by the military authorities to protect the Republic of the Philippines and our democracy. A republican and democratic form of government is not a helpless government. When it is imperilled by the danger of a violent overthrow, insurrection and rebellion, it has inherent built-in powers wisely provided for under the Constitution. Such a danger confronts the republic.... I repeat, this is not a military takeover of civil government functions. The Government of the Republic of the Philippines which was established by our people in 1946 continues."[30] He relied on the provision of the 1935 Constitution, wherein as Commander-in-Chief of all the armed forces in the Philippines, he was specifically empowered: "In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, [to] suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law."[31] During the period

[30] Proclamation No. 1081.

[31] Art. VII, Section 10, par. 2 of the 1935 Constitution. Under the present Constitution such a power is vested in the Prime Minister. *Cf.* Art. IX, Section 12.

of American regime, it was the Governor-General as the Chief Executive that was vested with such authority.[32] As is apparent in the opinion of Justice Black in *Duncan v. Kahanamoku*,[33] the source of such a provision was Section 67 of the Hawaiian Organic Act. The effect of declaring martial law, according to Willoughby, "goes no further than to warn citizens that the military powers have been called upon by the executive to assist him in the maintenance of law and order, and that, while the emergency lasts, they must, upon pain of arrest and punishment, not commit any acts which will in any way render more difficult the restoration of order and the enforcement of law."[34] Burdick,[35] Willis,[36] and Schwartz[37] wrote in the same vein. What is more even Rossiter, who was partial to an expanded executive authority during periods of crisis emphasized: "Finally, *this strong government, which in some instances might become an outright dictatorship, can have no other purposes than the preservation of the independence of the state, the maintenance of the existing constitutional order, and the defense of the political and social liberties of the people.*"[38]

7. *The validity of the proclamation of martial law: Aquino, Jr. v. Ponce Enrile*

The proclamation of martial law was challenged and upheld in *Aquino, Jr. v. Ponce Enrile*.[39] That this step taken by President Marcos could be justified only if it were in accordance with the then applicable 1935 Constitution was the basis for seeking a judicial declaration of nullity. It is even more significant that the action filed was an application for *habeas corpus*. On the very morning Proclamation No. 1081 was made public, September 23, 1972, two such petitions for *habeas corpus* were filed.[40] The Supreme Court, holding a special session on a Saturday, issued the writs immediately returnable not later than the following Monday, September 25, 1972. The hearing was held the next morning. As other petitions for *habeas corpus* with the same purpose came during the week, the matter was heard anew on September 29, 1972.[41] Resort was

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[32] According to Section 21 of the Philippine Autonomy Act (1916), he "may, in case of rebellion or invasion or imminent danger thereof, when the public safety requires it suspend the privilege of the writ of *habeas corpus* or place the Islands or any part thereof under martial law.***"

[33] 327 U.S. 304, 66 S. Ct. 606, 90 L. Ed. 688 (1946).

[34] 3 WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES 1951 (2nd ed., 1929).

[35] BURDICK, THE LAW OF THE AMERICAN CONSTITUTION 261 (1922).

[36] WILLIS, ON CONSTITUTIONAL LAW 449 (1936).

[37] SCHWARTZ, THE POWERS OF GOVERNMENT 244 (1963).

[38] ROSSITER, *op. cit.*, 7.

[39] G.R. No. 35546, September 17, 1974, 59 SCRA 183 (1974).

[40] G.R. No. 35538, Roces v. Ponce Enrile and G.R. No. 35539, Diokno v. Ponce Enrile. Then came, two days later, a third one, G.R. No. 35540, Soliven v. Ponce Enrile.

[41] The reference is to such other petitions, docketed as G.R. No. 35547, Voltaire Garcia v. Gen. Fidel Ramos; G.R. No. 35556, Yuyitung v. Ponce Enrile; G.R. No.

had to the writ of liberty as petitioners were under detention. If successful in their plea that the proclamation of martial law was tainted by nullity, then they would be set free. It was not until September 17, 1974 that the Supreme Court could definitively rule on the question in a single decision.[42]

The Court, speaking through the then Chief Justice Makalintal, found no constitutional objection to the proclamation of martial law. Thus: "In the first place I am convinced (as are the other Justices), without need of receiving evidence as in an ordinary adversely court proceeding, that a state of rebellion existed in the country when Proclamation No. 1081 was issued. It was a matter of contemporary history within the cognizance not only of the courts but of all observant people residing here at the time. Many of the facts and events recited in detail in the different 'Whereases' of the proclamation are of common knowledge. The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion where there is no actual fighting. Underground propaganda, through of the most subtle kind, necessarily clandestine and operating precisely printed newssheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt within that context."[43]

There was an exhaustive concurring opinion from the then Justice, later Chief Justice, Castro, now deceased. He likewise was of the view that there was nothing arbitrary in the proclamation of martial law. He indicated clearly why the declaration of martial law could not be declared unconstitutional: "The suspension of the privilege of the writ was lifted on January 7, 1972, but soon thereafter chaos engulfed the nation again. A large area of the country was in open rebellion. The authority of the Government was frontally challenged by a coalition of forces. It was

35567, Doronila v. Ponce Enrile; G.R. 35571, Guiao v. Ponce Enrile; G.R. No. 35573, Rondon v. Ponce Enrile. Respondent in such suits was either the Secretary of National Defense or General Fidel Ramos, Chief of the Philippine Constabulary.

42 The period that elapsed was taken up with the consideration of an even more exigent matter, the ratification of the 1973 Constitution, upheld in Javellana case as well as the most intensive scrutiny of all relevant constitutional factors that again was time-consuming not only because of the intricacy of the issues involved but also because in the meanwhile two Justices had retired and three new members, Justices Fernandez, Muñoz Palma and Aquino, had to familiarize themselves with the case.

43 G.R. No. 35546, September 17, 1974, 59 SCRA 183, 240-241 (1974).

against this backdrop of violence and anarchy that martial law was proclaimed on September 21, 1972. Personally. I take notice of this condition, in addition to what the Court has found in cases that have come to it for decision, and there is no cogent reason for me to say as a matter of law that the President exceeded his powers in declaring martial law. Nor do I believe that the Solicitor General's manifestation of May 13, 1974 to the effect that while on the whole the military challenge to the Republic has been overcome there are still large areas of conflict which warrant the continued imposition of martial law, can be satisfactorily controverted by the petitioners or by any perceptive observer of the national scene."[44]

8. *Human rights in the Philippines: the 1935 Constitution*

At the time of the organization of the United Nations in 1945, the Philippines was under the 1935 Constitution. It contained a Bill of Rights with the traditional freedoms guaranteed and safeguarded, its provisions, as noted at the outset, not only influenced by what was found in the United States Federal Constitution but by her own Malolos Constitution framed as far back as 1898. What is even more notable was that even then, the Philippines included in its fundamental law social and economic rights. Thus it was declared a fundamental principle: "The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State."[45] A related provision reads: "The State shall afford protection to labor especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture."[46] The policy of land redistribution was explicitly provided for: "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."[47] This, too: "The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens."[48] It was not until December 19, 1948, that the Universal Declaration of Human Rights proclaimed rights of an economic, social and cultural character.[49] Thus the Philippines may be listed as among

[44] *Ibid.*, 262. The author filed a concurring and dissenting opinion.
[45] CONST. (1935), art. II, sec. 5.
[46] CONST. (1935), art. XIV, sec. 6.
[47] CONST. (1935), art. XIV, sec. 4.
[48] CONST. (1935), art. XIV, sec. 5.
[49] Art. 22 of the Declaration reads: "Everyone, as member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." *Cf.* Arts. 23 to 27, where the rights to decent working conditions, rest and leisure, decent standard of living, education, and participation in the cultural life of the community are enumerated.

the first nation-states to enshrine in its fundamental law the concept that liberty has a negative and positive aspect as well. It is not only freedom from but freedom for. It is not enough that one is let alone. It is even more important that he should have the opportunity for achievement and for the attainment of his potential. Freedom as thus rightly conceived is the means for the release of one's energies, for the fulfillment of one's personality.

The Bill of Rights in the 1935 Philippine Constitution had one section with twenty-one paragraphs. The first, in some respects the most fundamental, states: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."[50] That was followed by the recognition of and limitation on the power of expropriation: "Private property shall not be taken for public use without just compensation."[51] The non-impairment clause was an added guarantee to the right of property: "No law impairing the obligation of contracts shall be passed."[52] The security of home and possessions were safeguarded thus: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."[53] Further to the same effect: "The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired."[54] The Malolos Constitution was the source. The scope of such protection is enlarged with the assurance of the privacy of communication and correspondence being "inviolable except upon lawful order of the court or when public safety and order require otherwise."[55] Again, the Malolos Constitution inspired this provision.

Intellectual freedom was the subject of the next four paragraphs. First, there is the "right to form associations or societies for purposes not contrary to law [which] shall not be abridged."[56] Then came freedom of conscience: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."[57] The basic right to freedom

[50] CONST. (1935), art. III, sec. 1, par. (1).
[51] CONST. (1935), sec. 1, par. 2.
[52] CONST. (1935), sec. 1, par. 10.
[53] CONST. (1935), sec. 1, par. 3.
[54] CONST. (1935), sec. 1, par. 4.
[55] CONST. (1935), sec. 1, par. 5.
[56] CONST. (1935), sec. 1, par. 6.
[57] CONST. (1935), sec. 1, par. 7.

of belief and expression is worded thus: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."[58] Except for freedom of association the language employed was that of the First Amendment of the American Constitution. Freedom of association traced its origin to her own Malolos Constitution.

As for physical freedom, there was this explicit prohibition: "No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have been duly convicted."[59] Before that was a prohibition against a person "being imprisoned for debt or nonpayment of a poll tax."[60] The writ of liberty was stressed in the Bill of Rights. Thus: "The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection or rebellion when the public safety requires it in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist."[61] The rights of an accused person are specified, starting with: "No person shall be held to answer for a criminal offense without due process of law."[62] Then there was the right to bail: "All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required."[63] The safeguards to a person on trial were enumerated: "In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf."[64] There was an explicit reference to the right against self-incrimination: "No person shall be compelled to be a witness against himself."[65] Then came this provision: "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted."[66] There was a ban on double jeopardy: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."[67] There was this provision likewise protecting an accused person: "No ex post facto law or bill of attainder shall be enacted."[68]

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[58] CONST. (1935), sec. 1, par. 8.
[59] CONST. (1935), sec. 1, par. 13.
[60] CONST. (1935), sec. 1, par. 12.
[61] CONST. (1935), sec. 1, par. 14.
[62] CONST. (1935), sec. 1, par. 15.
[63] CONST. (1935), sec. 1, par. 16.
[64] CONST. (1935), sec. 1, par. 17.
[65] CONST. (1935), sec. 1, par. 18.
[66] CONST. (1935), sec. 1, par. 19.
[67] CONST. (1935), sec. 1, par. 20.
[68] CONST. (1935), sec. 1, par. 11. It was likewise provided in Section 1, par. 9, that: "No law granting a title of nobility shall be enacted, and no person holding any office of profit or trust shall, without the consent of the Congress of the Philip-

9. *Human rights in the present Constitution*

What of the Bill of Rights under the present Constitution, which took effect on January 17, 1973? What is immediately discernible is that the amendments introduced in the Bill of Rights[69] are in essence minimal. Where formerly there were twenty-one paragraphs in one section, now there are twenty-three. There are thus two new rights added, one being an express recognition of the right of the people to have access to official records and documents and papers pertaining to official acts, transactions, or decisions, subject to such limitations as may be provided by law.[70] The other right, impressed with equal significance, assures the speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies.[71] It thus clearly appears that there is hardly an element of novelty introduced. The right to access to information can very well be embraced in the right to free speech and free press of the 1935 Constitution.[72] The promptness required in the disposition of cases may be looked upon as implied in the due process clause.[73]

Now for the modifications introduced. The search and seizure clause at present reads: "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."[74] It is immediately noticeable that any possible ambiguity as to this guarantee being applicable to a warrant of arrest has been dissipated. The former language gave rise to doubts as a literal reading could confine its scope only to search warrants. Now there is the express requirement that for such arrest to be constitutionally permissible, there must be a "probable cause to be determined by the judge, or such other responsible officer as may be authorized by law." The last mentioned phrase is an

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pines, accept any present, emolument, office, or title of any kind whatever from any foreign state."

69 Art. III of the 1935 Constitution, now Art. IV of the 1973 Constitution.

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

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

72 According to Sec. 1, par. 8, of Art. III of the 1935 Philippine Constitution: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

73 According to Sec. 1, par. 1 of Art. III of the 1935 Philippine Constitution: "No person shall be deprived of life, liberty, or property without due process of law...."

74 CONST., art. IV, sec. 3.

alteration. Where formerly it was only a judge who could do so, now legislation may be enacted vesting such competence on "such other responsible officer." In the 1935 Constitution, it was made clear that communication and correspondence "shall be inviolable except upon lawful order of the court or when public safety and order require otherwise."[75] A second paragraph has been added in the present Constitution. It is therein explicitly provided: "Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."[76] This is a feature of the present Constitution that is most welcome. It gives a constitutional sanction to the ruling in a leading Supreme Court decision, *Stonehill v. Diokno*.[77] The accused under the 1935 Constitution is entitled to the presumption of innocence and is vouchsafed certain rights at his trial.[78] Such a provision is found in the present Constitution, with this last sentence added: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."[79] It is thus apparent that now after he is arraigned, the fact of his absence is no bar to the trial proceeding, if there is a showing that he was duly notified thereof and there was no justification for his absence. The present Constitution is also notable for the added vitality accorded the guarantee against self-incrimination. It now reads: "No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."[80] The epochal American Supreme Court decision in *Miranda v. Arizona*,[81] the opinion being rendered by Chief Justice Warren, has now found a place in the Philippine constitutional scheme.

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[75] CONST. (1935), art. III, sec. 1, par. 5.

[76] CONST., art. IV, sec. 4, par. 2.

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

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

[79] CONST., art. IV, sec. 19.

[80] Art. IV, sec. 20. Only the first sentence was found in the former Bill of Rights, art. III, sec. 1, par. 18.

[81] 384 US 436, 16 L. ed. 2d. 694, 865 S. Ct. 1602, 10 ALR 3d. 974 (1966).

As for social and economic rights, in terms of freedom for, liberty in its positive aspect, the innovations in the present Constitution are much more significant. Even under the 1935 Charter, the Philippine Supreme Court could state: "The welfare state concept is not alien to the philosophy of our Constitution."[82] In a 1970 decision, such a view was again given expression in terms of the rejection of the *laissez-faire concept*.[83] The social justice mandate has been expanded. There is a restatement of such a principle in the present charter with a clearer enunciation of how it affects property rights. Thus: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."[84] This provision is equally relevant: "The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living."[85] So is this: "The State shall formulate and implement an agarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."[86] The protection to labor guarantee has been made more specific: "The State shall afford protection to labor promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."[87] The National Assembly, likewise under the present Constitution, "may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens."[88] Moreover, the State is now required to "maintain a system of free public elementary education and, in areas where finances permit, establish and maintain a system of free public education at least up to the secondary level."[89] The State also is called upon to "provide citizenship and vocational training to adult citizens and out-of-school youth, and create and maintain scholarships for poor and deserving students."[90] The high respect accorded human dignity in terms of assuring that decent living standards prevail and that education opportunities be afforded the economically underprivileged is

[82] Alalayan v. National Power Corporation, G.R. No. 24396, July 29, 1968, 24 SCRA 172 (1968).
[83] *Cf.* Edu v. Ericta, G.R. No. 32096, October 24, 1970, 35 SCRA 481 (1970).
[84] CONST., art. II, sec. 6.
[85] CONST., art. II, sec. 7.
[86] CONST.,art. XIV, sec. 12.
[87] CONST., art. II, sec. 9.
[88] CONST., art. XIV, sec. 13.
[89] CONST., art. XV, sec. 7, par. 5.
[90] CONST., art. XV, sec. 7, par. 6.

evident. The provisions just mentioned make manifest the intent to give due emphasis and importance to social and economic rights.

10. *Human rights: preventive detention under martial law*

It was pointed out in the opinion of the then Chief Justice Makalintal in *Aquino Jr. v. Ponce Enrile:* "The power to detain persons even without charges for acts related to the situation which justifies the proclamation of martial law [is conceded]...."[91] That was the same view expressed in the concurrence of the then Justice Castro, who passed away during his incumbency as Chief Justice: "Given then the validity of the proclamation of martial law, the arrest and detention of those reasonably believed to be engaged in the disorder or in fomenting it is well-nigh beyond questioning. Negate the power to make such arrest and detention, and martial law would be 'mere parade, and rather encourage attack than repel it.'"[92] The doctrine announced in the American Supreme Court case of *Moyer v. Peabody*[83] through Justice Holmes that a state governor may temporarily hold in custody one whom he believed "to stand in the way of restoring peace,... [as] long as such arrests are made in good faith and in the honest belief that they are needed in order to head the insurrection off,"[94] is of persuasive weight in the Philippines. Accordingly, with the proclamation of martial law, the device of preventive, as distinguished from punitive, detention was resorted to. In due time, after the first few weeks when the crisis had eased considerably, the detainees were gradually released. There were later occasions when it was felt by the defense establishment that other individuals had to be confined. Again, the temporary character of such detention was not lost sight of. It is to be admitted that with the bureaucratic delay attendant to the processing of papers, legitimate complaints came from persons who felt entitled to but were not granted their freedom. At any rate, in a policy address made on January 7, 1977 before the University of the Philippines Law Alumni Association, President Marcos categorically affirmed: "In the first place, I would like to state that if by political prisoners we accept the original connotation of the word in international law, which means those who have been detained without proper criminal cases filed against them, we have no political prisoners in the Philippines. Secondly, and if there are, as of tonight, I ordered the release of any person detained by the military or by the civil government against whom there are no charges filed as of today."[95] As of the moment of writing, such policy continues to be implemented.

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[91] Aquino Jr. v. Ponce Enrile, G.R. No. 35546, September 17, 1974, 59 SCRA 183, 242 (1974).

[92] *Ibid.*, 272. The quotation is from Luther v. Borden, 7 How. 1 (1849).

[93] 212 US 78, 29 S. Ct. 235, 53 L. Ed. 410 (1909).

[94] *Ibid.*, 84.

[95] Address of President Marcos, January 7, 1977, 14.

11. *Human rights: habeas corpus available during the period of martial law*

It was explicitly provided in the 1935 Philippine Constitution, in force and effect when martial law was proclaimed: "The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist."[96] It cannot be any clearer. Only the privilege of the writ is suspended, not the writ itself. It is thus still available during the period of martial law. Persons who were held in custody can still invoke this remedy to demonstrate that they should not have been confined and thus obtain their freedom. It should be noted likewise that as clarified in the *Aquino, Jr. v. Ponce Enrile* decision, while it was admitted that with the declaration of martial law, the privilege of the writ was suspended, that is so 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. The preservation of society and national survival take precedence."[97]

It likewise follows from both logical and practical grounds that even as to the above individuals, they could still avail of this writ of liberty to challenge the validity of the proclamation itself. So it did turn out. Petitioner Aquino Jr., in his application, assailed as beyond presidential authority the declaration of martial law. The fact that he was unsuccesful does not militate against the well-settled principle that in the first instance at least, given the power of judicial review enabling the Supreme Court to annul act of the legislative or executive departments a person as to whom the privilege of the writ had been suspended could still rely on a *habeas corpus* petition if detained on the premise of the illegality of the martial law proclamation.

Where the party filing an application for this suit or the person in whose behalf it is made is not among those as to whom the privilege has been suspended martial law is no bar to the assumption of jurisdiction by the courts. As a matter of law, they are called upon to act. The cases may fall under either of two main categories. One exists where no connection with the military is discernible. It is quite obvious that the regime of martial law is of no moment in such cases. It suffices that there is illegal restraint, a detention for causes other than those recognized by law. The party respondent usually may be a public official, but he could be a private citizen. Whoever he may be, he is called upon to produce the person deprived of freedom in court and to justify, if he can, such custody. The other instance, of more serious concern because of its relation to martial

96 CONST. (1935), art II, sec. 1, par. 4.
97 G.R. No. 35546, September 17, 1974, 59 SCRA 183, 242-243.

rule, is where confinement is traceable to an order of the armed forces. It may happen that the individual who suffers a loss of liberty is outside of the terms of the proclamation of martial law. Nonetheless, for reasons best known to the defense establishment, it is deemed proper to detain him. Under such circumstances, because there is no suspension of the privilege as to him, resort to *habeas corpus* is clearly appropriate.

The first category deals with applications for the writ with public officials as respondents but not connected with the military. Martial law, to repeat, was proclaimed on September 21, 1972. On September 28, 1972, in *Rodriguez v. Director of Prisons*,[98] the Philippine Supreme Court stated: "We applied in Gumabon the settled rule that only the crime of simple rebellion exists in our legal systems, and therefore any penalty imposed upon the person convicted of such offense in excess of that prescribed by law for such offense, is void only as to the excess, and after serving so much of the valid sentence, the convict can seek his discharge on a writ of *habeas corpus*."[99] The Gumabon doctrine was not applicable, however, as petitioner here was tried for and duly convicted of thirteen separate cases of *estafa* or swindling. Mention may likewise be made of two other decisions, *Pamplona v. Municipal Judge*[100] and *De Gracia v. Warden*.[101] In the first case, the petitioner prevailed, the lower court having mistakenly assumed that a judgment for conviction had become final when it turned out that there was an appeal, with the accused possessing the right to ask for bail. In *De Gracia v. Warden,* petitioner alleged that charged with the commission of frustrated homicide, he pleaded not guilty, but when the information was amended to one of serious physical injury, he entered a plea of guilt. Moreover, upon being sentenced then and there, with the penalty of four months and one day of *arresto mayor,* he started serving the sentence until the date of termination according to law. The above facts notwithstanding, he was not set free because in the meanwhile the prosecution filed a motion to hold his release, as according to the father of the victim his son died and, therefore, the criminal liability of petitioner should be one for murder. The lower court was amenable to such a plea. He went to the Philippine Supreme Court on an application for *habeas corpus.* It did not even have to be squarely decided as the judge in question came to the realization that the petitioner had completed the service of his sentence and therefore was entitled to be set free. So he informed the Court on being required to submit a return. A moot and academic aspect was thus impressed on such petition. It did serve its purpose though as the applicant was released from custody.

[98] G.R. No. 35386, September 28, 1972, 47 SCRA 153 (1972).
[99] *Ibid.*, 156.
[100] G.R. No. 40879, July 25, 1975, 65 SCRA 477 (1975).
[101] G.R. No. 42032, January 9, 1976, 69 SCRA 4 (1976).

Of greater relevance for the purpose of this paper is when the writ is directed against a military official. Even with the announced policy by the President to limit case of preventive detention only when a connection with the insurrection is shown, still the probabilities are that its implementation, especially in places far from Manila, the seat of the national government, may result in the oppressive exercise of state authority. The remedy usually availed of is likely to be supplied by the Executive Department. Nonetheless, the regime of liberty, which martial rule is not intended to supplant but precisely to protect against internal disorder and subversion, could also be assured by a resort to the judiciary. This writ is, therefore, even more indispensable during a period of martial law for the abuses may come from minor officials and functionaries, especially in the remote areas, rather than from the top people in the government.

One of the earliest *habeas corpus* petitions filed against a military official during this period was that of *Patron v. Commanding Officer.*[102] It did not reach the Philippine Supreme Court until the middle of 1973. Thereafter, the wife of the person detained, the petitioner, filed an urgent motion for the dismissal of her appeal "on the ground that the military authorities concerned have agreed to temporarily release" her husband. Her wishes were accordingly respected. In two other petitions *Duque v. Ver,*[104] the Philippine Supreme Court likewise acceded to the plea of petitioners that they would leave to the military authorities concerned the determination of whether or not their confinement should end. There was therefore no occasion for a judicial ruling.

In February of 1975, in *Herrera v. Ponce Enrile,*[105] the principal respondent named being the Secretary of National Defense, petitioner alleged that she was detained in Camp Crame presumably because of her possession and distribution of leaflets, handbills, and propaganda materials. A return was made but no hearing was necessary, as the Court was informed that there was a release order and that it had been implemented. A *per curiam* opinion sufficed: "With the above manifestation, it being shown that respondents had in fact released Trinidad Herrera, this petition for *habeas corpus* has become moot and academic. No further action need be taken by this Court therefore, as she is no longer under detention."[106]

In *Cayaga v. Tangonan,*[107] filed against the military official in charge of a Philippine Constabulary stockade in a province not too far from Manila, there were indications that the detention of the persons on whose behalf the petition was filed arose from tenancy disputes that could have led to a disturbance of the peace. Again, the return alleged that they

[102] G.R. No. 37083, May 30, 1974, 57 SCRA 229 (1974).
[103] G.R. No. 40060, March 21, 1975, 63 SCRA 206 (1975)
[104] G.R. No. 42399, January 30, 1976, 69 SCRA 295 (1976).
[105] G.R. No. 40181, February 25, 1975, 62 SCRA 547 (1975).
[106] *Ibid.*, 551.
[107] G.R. No. 40970, August 21, 1975, 66 SCRA 216 (1975).

had been thereafter "unconditionally released," the prayer therefore being that the suit be considered moot and academic, as the only issue in a *habeas corpus* proceeding is the validity of detention. Accordingly, the Philippine Supreme Court so ruled. There is, however, this relevant excerpt in its opinion: "There is merit to such a defense. It appears undoubted that the persons detained have now been released. The matter, therefore, has become moot and academic. It is the involuntary and illegal restraint that *habeas corpus* as a swift and efficacious remedy is intended to reach. Nonetheless, there is pertinence to the observation that the military is called upon to exercise care and prudence to avoid incidents of this character. Martial law has precisely been provided in both the 1935 Charter and the present Constitution to assure that the State is not powerless to cope with invasion, insurrection, or rebellion or any imminent danger of its occurrence. When resort to it is therefore justified, it is precisely in accordance with and not in defiance of the fundamental law. There is all the more reason then for the rule of law to be followed. For as was so eloquently proclaimed in *Ex parte Milligan:* 'The Constitution is a law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances.' It is true, of course, as admitted by Willoughby, who would limit the scope of martial law power, that the military personnel are called upon to assist in the maintenance of peace and order and the enforcement of legal norms. They can therefore act like ordinary peace officers. In effecting arrests, however, they are not free to ignore, but are precisely bound by, the applicable Rules of Court and doctrinal pronouncements."[108]

There is also *Reyes v. Ramos,*[109] where the application for *habeas corpus* filed by Wellington Que Reyes, through a sister, is premised on his having been "confined, restrained and deprived of his liberty" in the stockade or detention cell at Camp Crame, Quezon City, notwithstanding the absence of a formal complaint or accusation for any specific offense imputed to him, or of any judicial writ or order for his commitment. It was further alleged therein that he had not committed any offense for which he could be arrested or deprived of his liberty. While General Fidel Ramos, Chief of the Philippine Constabulary, was named as respondent, it was specifically made clear that such detention was ordered by respondent Major Rolando Abadilla of Camp Crame. Its last paragraph is worded thus: "That the new Constitution being in full operation and the civil courts not [having] been abolished, the confinement of your petitioner under circumstances above narrated is utterly illegal, unjust and without any jurisdiction." In the return of the Solicitor General, submitted five days later there was an allegation of the petitioner having been released from detention as evidenced by a copy of a release order. Once again, the

[108] *Ibid.*, 219-220. The opinion was penned by the author of this paper.
[109] G.R. No. 40027, January 29, 1970, 69 SCRA 153 (1970).

petition had become moot and academic. Nonetheless, the opinion stressed the significance of the remedy in times of martial law. "The petition has thus become moot and academic. In the very recent case of *Cayaga v. Tangonan,* also a *habeas corpus* application, there was a reiteration of the principle that the release of a person under detention renders the petition moot and academic. So we rule again. It is not amiss though to refer to recent pronouncements after martial law was instituted, on the subject of confinement at the instance of military authorities. It remains undoubted that where the restraint of liberty is premised under Proclamation No. 1081 and in pursuance of its express terms, the individual whose release is sought falls within the class of persons as to whom the privilege of *habeas corpus* has been suspended. Since the writ itself, however, is never suspended, there is no bar to a petition of this character, especially so where on the face of the application itself it appears that there is no justification for such detention. It is in that way that this writ of liberty serves a highly useful purpose. While it is to be assumed, and with reason, that no abuse of the broad powers under martial law would be attempted by military officials, still, especially on the part of those in the lower echelon, and possibly due to excess of zeal, there could be detention without color of law. Should such a regrettable incident occur, certainly, the courts are open for redress. Nor does the mere fact that the record of this petitioner, as set forth in the Compliance, attested to his frequent brushes with the law, preclude him from availing himself of the remedy. Quite apropos is this observation from Justice Frankfurter: 'It is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very nice people.' "[110]

In *Cruz v. Montoya,*[111] relying on the Constitution, which as pointed out in his petition, "safeguards and enshrines individual freedoms,"[112] petitioner sought release from his detention in the Constabulary stockade in Camp Vicente Lim, Laguna, under the command of respondent General Alfredo Montoya. His principal allegation was that there was no legal basis for his confinement, there being therefore a denial or deprivation of personal liberty. A return was ordered and the matter duly heard. Subsequently, there was a manifestation by the Solicitor General in behalf of respondent that there had been formal charges for estafa filed before the Municipal Court of Antipolo, Rizal, with the warrant having been issued for the arrest of petitioner. The petitioner was given an opportunity to comment on such pleading which likewise sought the dismissal of the petition in view of the charges for estafa having been filed and a warrant for his arrest having been issued. Petitioner was not heard from, the clear

110 *Ibid.,* 158-159. Cf. Kintanar v. Amor, G.R. No. 42975, March 15, 1976, 70 SCRA 61 (1976); The opinion came from the author of this paper. Cf. Maolos v. Ramos, 78 SCRA 238 (1976); Bala v. Ramos, G.R. No. 17426, January 31, 1978, 81 SCRA 480 (1978).

111 G.R. No. 39823, February 25, 1975, 62 SCRA 543 (1975).

112 *Ibid.,* 543.

implication being that there was no inaccuracy in the manifestation of the Solicitor General. Accordingly, in the opinion of the Court, it was set forth: "It would appear therefore that the writ had served its purpose and whatever illegality might have originally infected his detention had been cured. In that sense, his petition has become academic. What is undeniable is that the ordinary civil process of the law is now being followed. The grievance complained of therefore no longer exists. What is more, there is adherence to the basic aim and intent that inform this great writ of liberty which, in the apt language of Justice Malcolm in the landmark case of *Villavicencio v. Lukban,* 'is to inquire into all manner of involuntary restraint as distinguished from voluntary and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.' This it could accomplish, for as emphatically stressed by Justice Holmes, it 'cuts through all forms and goes to the very tissue of the structure.' "[113]

As will be discussed more at length later, military tribunals were instituted after the proclamation of martial law to try certain classes of offenses. They were likewise given jurisdiction over civilians, a power sustained as valid by the Philippine Supreme Court in *Aquino Jr. v. Military Commission No. 2.*[114] The principal reliance was on this provision in the 1973 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 lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, order, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."[115] Even if there be a prosecution being conducted by a military tribunal, the person accused therein could sue out a writ of *habeas corpus.* That was the situation in *Go v. General Prospero C. Olivas,*[116] where the jurisdiction of such a tribunal was assailed. As set forth in the opinion of the Philippine Supreme Court, which had to dismiss the petition as there was no showing of jurisdictional infirmity: "This Court in Aquino v. Military Commission No. 2 ruled that there is no constitutional objection to military tribunals conducting trials of civilians for certain specified offenses, among which is kidnapping. That does not preclude the judiciary, of course, from

[113] *Ibid.,* 546. Villavicencio v. Lukban, decided in 1919, is reported in 93 Phil. 778 (1919). The excerpt from Justice Holmes comes from Frank v. Mangum, 237 US 300, 346, 35 S. Ct. 582, 59 L. Ed. 969 (1915). The author of this paper was the ponente. Cf. De la Plata v. Escarcha, G.R. No. 46367, August 1, 1977, 78 SCRA 208 ((1977); Canas v. Director of Prisons, 78 SCRA 271; Anas v. Ponce Enrile, G.R. No. 44800, April 13, 1978, 82 SCRA 333 (1978).

[114] G.R. No. 37364, May 9, 1975, 63 SCRA 546 (1975).

[115] *Cf.* CONST., art. XVII, sec. 3, par. 2.

[116] G.R. No. 44989, November 29, 1976, 74 SCRA 230 (1976).

granting in appropriate cases applications for the return of *habeas corpus*. There is, however, this limitation. The jurisdictional question must be squarely raised. That is a doctrine implicit in the *In re Carr* 1902 decision, the opinion being penned by Justice Willard. The leading case of *Payomo v. Floyd,* a 1922 decision, made it explicit. As set forth by its *ponente,* Justice Street: 'The next point to be observed upon is that, where the detained person is held in restraint by virtue of a judgment rendered by a military or naval court, tribunal, or officer, no court entertaining an application for the writ of *habeas corpus* has authority to review the proceedings of that tribunal, court, or officer in the sense of determining whether the judgment was erroneous. The only question to be considered is whether the court, tribunal or officer rendering the judgment had jurisdiction to entertain the case and render judgment.' "[117]

12. *Human rights embraced in traditional civil liberties; physical freedom safeguarded in military tribunals*

On September 27, 1972, six days after the proclamation of martial law, there was an order from President Marcos empowering the Chief of Staff, Armed Forces of the Philippines "to create military tribunals to try and decide cases of military personnel and such other cases as may be referred to them."[118] Three days later, he issued an order "that the military tribunals authorized to be constituted under General Order No. 8 dated September 27, 1972 shall try and decide . . . exclusive of the civil courts," certain specified offenses including crimes against national security and the laws of nations; those constituting violations of the Anti-Subversion Law; those constituting violations of the Law on Espionage; those against the fundamental laws of the State as defined and penalized by the Revised Penal Code if committed by military personnel; those involving certain crimes against public order as rebellion or insurrection, conspiracy and proposal to commit rebellion or insurrection, disloyalty of public officers or employees, sedition, conspiracy to commit sedition, illegal associations; those involving other crimes committed in furtherance or on the occasion of or incident to or in connection with insurrection or rebellion; those involving crimes constituting violations of the Law on Firearms and Explosives; those involving certain crimes committed by public officers or employees; those involving violations of the Anti-Graft and Corrupt Practices Law; those constituting violations of the Dangerous Drugs Act of 1972; violations of Presidential decrees or orders pursuant to the martial law proclamation; and those involving crimes committed by officers and en-

[117] *Ibid.*, 4. In re Carr is reported in 1 Phil. 513 (1902) and Payomo v. Floyd in 42 Phil. 788 (1922). Cabiling v. Prison Officer, 75 Phil. 1 (1945) was also cited in the opinion. *Cf.* Romero v. Ponce Enrile, G.R. No. 44613, February 28, 1977, 75 SCRA 429 (1977).

[118] General Order No. 8.

listed personnel on the occasion of, in relation to, or as a consequence of the enforcement or execution of the proclamation of martial law. Crimes committed by public officers, violations of the Anti-Graft and Corrupt Practices Act and of the Dangerous Drugs Act are also triable by civil courts with the court or tribunal first assuming jurisdiction exercising it to the exclusion of the other.[119] While early in October and subsequently in November of 1972, the jurisdiction of military tribunals was expanded, the last General Order issued on June 24, 1977 limited such exclusive competence to: "a. All offenses committed by military personnel of the Armed Forces of the Philippines while in the performance of their official duty or which arose out of any act or omission done in the performance of their official duty:***. b. Crimes against national security and the law of nations as defined and penalized in Title I, Book II of the Revised Penal Code. c. Violations of the Anti-Subversion Law as defined and penalized in Republic Act No. 1700, or Presidential Decree No. 885, as the case may be. d. Espionage (Commonwealth Act No. 616). e. Crimes against public order as defined and penalized under the Revised Penal Code, as amended, namely: (1) Rebellion or insurrection (Art. 134); (2) Conspiracy and proposal to commit rebellion or insurrection (Art. 136); (3) Disloyalty of public officers or employees (Art. 137); (4) Inciting to rebellion or insurrection (Art. 138); (5) Sedition (Art. 139); (6) Conspiracy to commit sedition (Art. 141); (7) Inciting to sedition (Art. 142); (8) Illegal assemblies (Art. 146); and (9) Illegal associations (Art. 147). f. Crimes as defined and penalized under Presidential Decree No. 33 such as printing, possession, distribution and circulation of certain leaflets, handbills and propaganda materials, and the inscribing or designing of graffiti. g. Violations of the laws on firearms and explosives found in the Revised Administrative Code, as amended, and General Orders Nos. 6 and 7, as amended, in relation to Presidential Decree No. 9, including crimes committed with the use of illegally possessed firearms and explosives. h. Usurpation of military authority, rank, title and/or illegal manufacture, sale and/or use of military uniforms or insignia, as embraced in Articles 177 and 179 of the Revised Penal Code, as amended, and in Republic Act No. 493."[120] An equally important provision therein included is to this effect: "All cases not falling under Section 1 hereof in which the accused have not been arraigned as of the date of effectivity of this Order shall immediately be transferred to the appropriate civil courts. However, the case of an accused who has been arraigned may still be transferred to the civil courts under rules and regulations which the Secretary of National Defense is hereby authorized to promulgate."[121]

[119] General Order No. 12.
[120] General Order No. 59, Sec. 1, modifying General Order Nos. 12-A, 12-B, and 49.
[121] Gen. Order No. 59, Sec. 3.

As noted, in *Aquino, Jr. v. Military Commission No. 2,* the jurisdiction of military tribunals over civilians was sustained by the Philippine Supreme Court. As was set forth in the opinion of Justice Antonio: "We hold 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. 1. The Court has previously declared that the proclamation of Martial Law (Proclamation No. 1081) on September 21, 1972, by the President of the Philippines is valid and constitutional and that its continuance is justified by the danger posed to the public safety. 2. 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 (September 27, 1972) the Chief of Staff, Armed Forces of the Philippines, to create military tribunals to try and decide cases of military personnel and such other cases as may be referred to him.' In General Order No. 12 (September 30, 1972), 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 safety and security of the Republic. In order to ensure a more orderly administration of justice in the cases triable by the said military tribunals, Presidential Decree No. 39 was promulgated on November 7, 1972 providing for the 'Rules Governing the Creation, Composition, Jurisdiction, Procedure and Other Matters Relevant to Military Tribunals.' These measures he had the authority to promulgate, since this Court recognized that the incumbent President, under paragraphs 1 and 2 of Section 3 of Article XVII of the new Constitution, had the authority to 'promulgate proclamations, orders and decrees 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 the rebellion or insurrection or secession or the threat thereof....' Pursuant to the aforesaid Section 3 [1] and (2) of Article XVII of the Constitution, General Orders No. 8, dated September 27, 1972 (authorizing the creation of military tribunals), No. 12, dated September 30, 1972 (defining the jurisdiction of military tribunals and providing for the transfer from the civil courts to military tribunals of cases involving subversion, sedition, insurrection or rebellion....), and No. 39, dated November 7, 1972, as amended (prescribing the procedures before military tribunals), are now 'part of the law of the land.' "[122]

[122] G.R. No. 37364, May 9, 1975, 63 SCRA 546, 573-574 (1975). The author in his concurring and dissenting opinion agreed with the majority as to the jurisdiction

The contention of petitioner was refuted in such opinion in this wise: "Petitioner nevertheless insists that he being a civilian, his trial by a military commission deprives him of his right to due process, since in his view the due process guaranteed by the Constitution to persons accused of 'ordinary' crimes means judicial process. This argument ignores the reality of the rebellion and the existence of martial law. It is, of course, essential that in a martial law situation, the martial law administrator must have ample and sufficient means to quell the rebellion and restore civil order. Prompt and effective trial and punishment of offenders have been considered as necessary in a state of martial law, as a mere power of detention may be wholly inadequate for the exigency. 'It need hardly be remarked that martial law lawfully declared,' observed Winthrop, 'creates an exception to the general rule of exclusive subjection to the civil jurisdiction, and renders offenses against the laws of war, as well as those of a civil character, triable, at the discretion of the commander, (as governed by a consideration for the public interests and the due administration of justice) by military tribunals.' Indeed, it has been said that in time of overpowering necessity, 'Public danger warrants the substitution of executive process for judicial process.' According to Schwartz, 'The immunity of civilians from military jurisdiction must, however, give way in areas governed by martial law. When it is absolutely imperative for public safety, legal processes can be superseded and military tribunals authorized to exercise the jurisdiction normally vested in courts.' "[123]

In a presidential decree,[124] President Marcos issued the rules governing the creation, composition, jurisdiction, procedure, and other matters relevant to military tribunals. It was therein provided that before any charge is prepared for trial, there should be a summary preliminary investigation, as a result of which formal charges signed by a commissioned officer designated by the Judge Advocate General may be filed. Among the rights granted an accused before a military tribunal are the right to be granted bail, to challenge for cause any member of such tribunal, to receive copy of the charges at least five days in advance of the date of the initial hearing, to be present at the arraignment when he enters a plea of guilty and at the pronouncement of the judgment of conviction, to be represented during the trial by a defense counsel appointed by the convening authority or counsel of his own choice or to conduct his own defense, to testify on his own behalf, present evidence in his defense, and to cross-examine any witness, to have the substance of the charges and specifications, the proceedings and any documentary evidence translated when he is unable to understand them, and to have

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of military tribunals over civilians only because of the ratifying clause in the Constitution. Justices Teehankee and Muñoz Palma dissented.

123 *Ibid.*, 574-575.

124 Presidential Decree No. 39 (1972).

a copy of the record of trial within a reasonable time after it is being held.

The Philippine Supreme Court in *Aquino Jr., v. Military Commission No. 2* characterized the above rights as embraced in the due process guarantee. As was pointed out in the opinion of Justice Antonio: "The guarantee of due process is not a guarantee of any particular form of tribunal in a criminal case. A military tribunal of competent jurisdiction, accusation in due form, notice and opportunity to defend and trial before an impartial tribunal, adequately meet the due process requirement. Due process of law does not necessarily mean a judicial proceeding in the regular courts. The guarantee of due process, viewed in its procedural aspect, requires no particular form of procedure. It implies due notice to the individual of the proceedings, an opportunity to defend himself and 'the problem of the propriety of the deprivations, under the circumstances presented, must be resolved in a manner consistent with essential fairness.' It means essentially a fair and impartial trial and reasonable opportunity for the preparation of defense. Here, the procedure before the Military Commission, as prescribed in Presidential Decree No. 39, assures observance of the fundamental requisites of procedural due process, due notice, an essentially fair and impartial trial and reasonable opportunity for the preparation of the defense."[125]

13. *Human rights and traditional civil liberties: physical freedom*

The concern shown by the Philippine Supreme Court that the ordinary courts pay due respect to the cluster of human rights that assure physical freedom is equally manifest during this period of martial law. The guarantee against unreasonable search and seizure was stressed in *Villanueva v. Querubin*[126] in these words: "This constitutional right refers to the immunity of one's person, whether citizen or alien, from interference by government, included in which is his residence, his papers, and other possessions. Since, moreover, it is invariably through a search and seizure that such an invasion of one's physical freedom manifests itself, it is made clear that he is not to be thus molested, unless its reasonableness could be shown. To be impressed with such a quality, it must be accomplished through a warrant, which should not be issued unless probable cause is shown, to be determined by a judge after examination under oath or affirmation of the complainant and the witnesses he may produce, with a particular description of the place to be searched, and the persons or things to be seized. It is deference to one's personality that lies at the core of this right but it could be also looked upon as a recognition of a constitutionally protected area, pri-

[125] G.R. No. 37364, May 9, 1975, 63 SCRA 546, 576-478 (1975).
[126] G.R. No. 26177, December 27, 1972, 48 SCRA 345 (1972).

marily one's home, but not necessarily thereto confined. What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances above noted, for in the traditional formulation, his house, however humble, is his castle. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life. In the same vein, Landynski in his authoritative work could fitly characterize this constitutional right as the embodiment of 'a spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards.' "[127] In a later case, *Castro v. Pabalan,*[128] the Philippine Supreme Court affirmed: "It need not be stressed anew that this Court is resolutely committed to the doctrine that this constitutonal provsion [against unreasonable search and seizure] is of a mandatory character and therefore must be strictly complied with."[129]

The Philippine Supreme Court has likewise seen to it that full respect be accorded the rights of a defendant in a criminal prosecution. There was this categorical affirmation in *People v. Montejo*[130] "Precisely, the constitutional rights granted an accused are intended to assure a full and unimpeded opportunity for him to meet what in the end could be a baseless accusation."[131] He must be informed of the nature and cause of accusation against him.[132] He is entitled to counsel,[133] and to a public[134] and speedy trial.[135] There is moreover, the express requirement newly found in the present Constitution that not only should the trial be speedy and public, but that it should be impartial.[136]

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127 *Ibid.*, 349-350. The author wrote the opinion.

128 G.R. No. 28642, April 30, 1976, 70 SCRA 477 (1976).

129 Asian Surety & Insurance Co. v. Herrera, G.R. No. 25232, December 20, 1973, 54 SCRA 312 (1973); Templo v. De la Cruz, G.R. No. 37393-94, October 23, 1974, 60 SCRA 295 (1974); Nasiad v. Court of Appeals, G.R. No. 29318, November 29, 1974, 61 SCRA 238 (1974). Roldan Jr. v. Arca, G.R. No. 25434, July 25, 1975, 65 SCRA 336 (1975); Lim v. Ponce de Leon, G.R. No. 22554, August 29, 1975, 66 SCRA 299 (1975); Lopez v. Commissioner of Customs, G.R. No. 27968, December 3, 1975, 68 SCRA 320 (1975); Viduya v. Berdiago, G.R. No. 29218, October 29, 1976, 73 SCRA 553 (1976).

130 G.R. No. 28699, April 29, 1975, 63 SCRA 488 (1975).

131 *Ibid.*, 491.

132 *Cf.* Matilde, Jr. v. Jabson, G.R. No. 38392, December 29, 1975 68 SCRA 456 (1975).

133 *Cf.* Ledesma v. Climaco, G.R. No. 23815, June 28, 1974, 52 SCRA 143 (1974).

134 *Cf.* Garcia v. Domingo, G.R. No. 30104, July 25, 1973, 52 SCRA 143 (1973).

135 *Cf.* Flores v. People, G.R. No. 25769, December 10, 1974, 61 SCRA 331 (1974) and Solis v. Agloro, G.R. No. 39254, June 20, 1975, 64 SCRA 370 (1975).

136 *Cf.* People v. Bacong, G.R. No. 36161 December 19, 1973, 54 SCRA 288 (1973).

Likewise, the provision against self-incrimination has been vitalized by the Supreme Court in two recent decisions, *People v. Jimenez*[137] and *People v. Buscato*.[138] There is this relevant excerpt from the opinion of Justice Antonio in the latter case: "The constitutional inquiry is not whether the conduct of the police officers in obtaining the confession was shocking, but whether the confession was free and voluntary; that is, it must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, nor by the exertion of improper influence. It has been recognized that 'coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of an unconstitutional inquisition.' As stated by Justice Fernando in *People v. Bagasala,* any form of coercion whether physical, mental or emotional renders a confession inadmissible. 'What is essential for its validity is that it proceeds from the free will of the person confessing.' In other words, the person must not have been compelled to incriminate himself."[139]

As to the constitutional guarantee against the risk of being twice put in jeopardy, there is this relevant excerpt from *Bustamante v. Maceren*:[140] "For the undisputed facts speak for themselves. They do proclaim that petitioner has in his favor the protection afforded by the jeopardy clause. He was arraigned on a valid information before a competent court, and he pleaded guilty. What was more, the judgment was rendered. On the very same day, he was committed to jail and actually started serving sentence. There was no valid justification then for the order of Judge Coquia setting aside a decision already in the process of execution. That amounted to a defiance of a constitutional command. What the fundamental law states cannot be any clearer. No person, so it intones, 'shall be twice put in jeopardy of punishment for the same offense.' Petitioner, as made clear in this suit for certiorari, was made precisely to suffer such clear a fate. What the Constitution condemns came to pass. This mandate as made clear in the recent decision of *Republic v. Agoncillo* is 'a rule of finality. A single prosecution for any offense is all the law allows. It protects an accused from harassment, enables him to treat what had transpired as a closed chapter in his life, either to exult in his freedom or to be resigned to whatever penalty is imposed, and is a bar to unnecessary litigation, in itself time consuming and expense-producing for the state as well.' What is more, as it is equally beyond dispute that petitioner has served the full one-year period imposed in such valid judgment, he is entitled to be released as prayed for. Legally, as categorically announced

137 G.R. No. 40677, May 31, 1976, 71 SCRA 186 (1976).
138 G.R. No. 40639, November 23, 1976, 74 SCRA 30 (1976).
139 *Ibid.*
140 G.R. No. 35101, November 24, 1972, 48 SCRA 155 (1972).

in the leading case of *Gregorio v. Director of Prisons, habeas corpus* would lie."[141]

The Philippine Supreme Court, in *Magtoto v. Manguera,*[142] passed upon the question of whether or not the new provision in the Constitution declaring inadmissible confessions obtained during custodial interrogations without the persons detained being informed that he could remain silent and that he was entitled to counsel applied to a written admission of guilt obtained prior to the effectivity of the present Constitution on January 17, 1973 but offered in evidence after such date. The answer, as set forth in the opinion of Justice Fernandez, follows: "We hold that this specific portion of this constitutional mandate has and should be given a prospective and not a retrospective effect. Consequently a confession obtained from a person under investigation for the commission of an offense, who has not been informed of his right (to silence and) to counsel, is inadmissible in evidence if the same had been obtained after the effectivity of the New Constitution on January 17, 1973. Conversely, such confession is *admissible* in evidence against the accused, if the same had been obtained before the effectivity of the New Constitution, even if presented after January 17, 1973, and even if he had not been informed of his right to counsel, since no law gave the accused the right to be so informed before that date."[143]

In December of 1972, three months after the declaration of martial law, the Philippine Supreme Court, in *People v. Ferrer,*[144] with the then Justice, later Chief Justice, Castro, now deceased, writing the opinion, sustained the validity of the Anti-Subversion Act of the Philippines, which outlawed the Communist Party.[145] It rejected the contention that such legislation was violative of the bill of attainder clause. Thus: "When the Act is viewed in its actual operation, it will be seen that it does not specify the Communist Party of the Philippines or the members thereof for the purpose of punishment. What it does is simply to declare the Party to be an organized conspiracy for the overthrow of the Government for the purpose of the prohibition, stated in section 4, against membership in the outlawed organization. The term 'Communist Party of the Philippines' is used solely for definitional purposes. In fact the Act applies not only to the Communist Party of the Philippines but also to 'any other organization having the same purpose and their successors.' Its focus is not on individuals but on conduct.*** This statute specifies the Commu-

[141] *Ibid.,* 162. Cf. People v. Donsa, G.R. No. 24162, January 31, 1973, 49 SCRA 281 (1973).

[142] G.R. Nos. 37201-02, March 3, 1975, 63 SCRA 4 (1975).

[143] *Ibid.,* 12. There were dissents filed by then Chief Justice Castro, Justice Teehankee, and the author.

[144] G.R. Nos. 32613-14, December 27, 1972, 48 SCRA 382 (1972).

[145] Republic Act No. 1700 (1957).

nist Party, and imposes disability and penalties on its members. Membership in the Party, without more, *ipso facto* disqualifies a person from becoming an officer or a member of the governing body of any labor organization.*** Indeed, were the Anti-Subversion Act a bill of attainder, it would be totally unnecessary to charge Communists in court, as the law alone without more would suffice to secure their punishment. But the undeniable fact is that their guilt still has to be judicially established. The Government has yet to prove at the trial that the accused joined the Party knowingly, willfully and by overt acts, and that they joined the Party, knowing its subversive character and with specific intent to further its basic objective, i.e., to overthrow the existing Government by force, deceit, and other illegal means and place the country under the control and domination of a foreign power. As to the claim that under the statute organizational guilt is nonetheless imputed despite the requirement of proof of knowing membership in the Party, suffice it to say that that is precisely the nature of conspiracy, which has been referred to as a 'dragnet device' whereby all who participate in the criminal covenant are liable. The contention would be correct if the statute were construed as punishing mere membership devoid of any specific intent to further the unlawful goals of the Party. But the statute specifically requires that membership must be *knowing* or active, with specific intent to further the illegal objectives of the Party. That is what section 4 means when it requires that membership, to be unlawful, must be 'overt acts.' The ingredient of specific intent to pursue the unlawful goals of the Party must be shown by 'overt acts.' This constitutes an element of 'membership' distinct from the ingredient of guilty knowledge. The former requires proof of direct participation in the organization's unlawful activities, while the latter requires proof of mere adherence to the organization's illegal objectives."[146]

14. *Human rights and traditional civil liberties: intellectual freedom*

Intellectual freedom occupies a place inferior to none in the scheme of human values. A man must be free to think as he pleases, whether in the secular or religious sphere, to give expression to his beliefs by oral discourse or through the media and to associate with others of like persuasion or different views whether on transient occasions or in a continuing relationship. Embraced in such a concept then are freedom of religion, freedom of speech and of the press, freedom of peaceable assembly and petition, and freedom of association. It is worth noting that unlike in the United States freedom of association in the Philippines is not merely implied but explicitly provided for in the Philippine Constitution.[147]

[146] People v. Ferrer, 48 SCRA 382, 398-401. The author of this paper filed a dissent.

[147] *Cf.* Art. IV, sec. 7 of the Philippine Constitution. The 1935 Charter contained an identical provision, found in its Art. III, sec. 1, par. (6).

"The most important aspect of a free atmosphere," according to Laski, "is undoubtedly freedom of the mind."[148] He continued: "What the citizen quite rightly expects from the state is to have his experience counted in the making of policy, and to have it counted as he, and he only, expresses its import."[149] He could rightly conclude: "if he is driven, in this realm, to silence and inactivity, he becomes a dumb and inarticulate creature whose personality is neglected in the making of policy. Without freedom of the mind and of association a man has no means of self-protection in our social order. He may speak wrongly or foolishly; he may associate with others for purposes that are abhorrent to the majority of men. Yet a denial of his right to do these things is a denial of his happiness. Thereby he becomes an instrument of other people's ends, not himself an end."[150] Similarly for Cox, freedom of inquiry and of thought is of the essence of human dignity and its suppression "an affront to the human personality."[151] It is no wonder that as previously stated the Covenant on Civil and Political Rights does not allow any derogation for freedom of thought, conscience and religion.[152] That is so as to belief. When given expression through speech or press or assembly, it is permissible under the Constitution of the Philippines to set limits in accordance with the clear and present danger principle.[153] There is to be no restraint on the discussion of matters of public interest, whether through censorship or subsequent liability, unless "there be a clear and present danger of a substantive evil that [the State] has a right to prevent."[154]

The commitment during martial law to the freedom of conscience and religion has been quite evident. It cannot be otherwise as the Philippines, a predominantly Catholic country, has a tradition of according full respect to such constitutional guarantee. The Filipinos of such faith have not confined themselves to attending church services. Their interest in public affairs has been quite marked. They have not left the authorities in doubt as to their attitude towards and response to the conditions of the times. Their clergy has never been more militant. There were occasions when men of the cloth had clearly gone over the line separating church and state. When their opposition to the continuance of martial law manifested itself in anti-societal acts penalized by law, they could not justifiably lay claims to any immunity premised on liberty of conscience. At present, there are criminal charges pending against some of them. The

148 LASKI, LIBERTY IN THE MODERN STATE 73 (1949).
149 *Ibid.*
150 *Ibid.*
151 COX, THE ROLE OF THE SUPREME COURT IN AMERICAN GOVERNMENT 37 (1976).
152 Art. 4 of the Covenant.
153 *Cf.* Gonzales v. Commission on Elections. G.R. No. 27833, April 18, 1969, 27 SCRA 835 (1969). Where political matters are concerned, Justice Barredo is for absolutely free speech and press. Former Chief Justice Castro, now deceased, followed the balancing of interests test as a standard of limitation. Justice Teehankee is of the same persuasion.
154 Gonzales v. Commission on Elections, *ibid.* 856-857.

other Filipino Christians, members of Protestant denomination, are equally left unmolested, unless again proceeded against for the perpetration of acts defined as crimes.

It is even more understandable, considering the rebel movement in Mindanao and Sulu, why the government has been engaged in the most serious efforts at conciliation. The clash of arms had taken its toll in lives lost and property destroyed. The sooner it is peacefully resolved, the better for all concerned. In the past, there had been no deliberate policy to antagonize the Muslim Filipinos. At present, the approach is much more positive. There is shown a greater understanding of their ways and their culture. The authorities are bent on removing every trace of discrimination that at times and without forethought could in the past have characterized their dealings with them.

It is likewise the Philippine experience that martial law, while calling for some remedial measures to assure the return of normalcy has not unnecessarily encroached upon the sphere of intellectual liberty. With reference to press freedom, this observation must be qualified. Even so, what is notable is that in May of 1973, a Media Advisory Council was created.[155] Then in November of 1974, it was abolished with the explicit recognition of the principle that mass media may operate "without government intervention of supervision in policy determination and news dissemination activities."[156] All indications point to the utmost respect being accorded the freedom of the mass media, compatible with the gravity of the situation in certain places in the Philippines. It is the consensus that to the extent of greater responsibility displayed in press reporting and press comments, there has been an improvement as far as the tone of critical appraisal is concerned. The press has not limited itself to the language of approbation. Where corrective measures are needed, it has not hesitated to urge that they be taken.

It is likewise a fact that the right of the foreign press to report on what was happening in the Philippines was not curtailed. There is relevance to a recent ruling of the Commissioner of Immigration, Edmundo M. Reyes, dismissing the charges against one Bernard Wideman, a journalist writing for the *Washington Post* whose petition for extension was opposed on the ground of his being an undesirable alien having interfered in labor problems in the Philippines and having participated in anti-government activities. A careful analysis, according to the Commissioner of

155 *Cf.* Presidential Decree No. 191 (1973). It is headed by the President of the the National Press Club as chairman with a recognized civic leader appointed by the President as co-chairman, and a representative each from the Manila Overseas Press Club, print, radio, and television groups.

156 *Cf.* Presidential Decree No. 576 (1974). It was therein provided that both the Print Media and Broadcast Media may organize its own regulatory council responsible for formulating systems of self-regulation and internal discipline within its own ranks.

Immigration, "of the articles submitted as evidence by the oppositors fails to demonstrate to us any clear intention on the part of the writer to malign the integrity, reputation and good name of the persons concerned. We also verified to be correct, petitioner's allegation that he had written stories that reflect and comment favorably on the Philippines. On balance, it would appear therefore that in writing the disputed articles, the petitioner was merely writing as he, whatever his personal biases may be, saw the facts, and that he was merely giving expression to an ideal, revered in journalistic circles, which is to report and write the news without fear or favor; and that he was correctly invoking a national policy of the Philippine government laid down by the President of the Republic and repeated on a number of occasions by the Secretary of Public Information and the Secretary of National Defense, among others, that press freedom is guaranted by the crisis government. Such a policy grants the petitioner a privilege which the Commission has no intention of denying him. Nor should we deny the petitioner his privilege to be present in public gatherings, including those that may be described as anti-government in character, provided such presence does not disturb the peace, does not add to the nature of the activity prescribed by law or alter the nature of the activity prescribed by law or alter the nature of his pursuit of his profession as a news correspondent."[157] In the case of Arnold Zeitlin, the Bureau Chief of the Associated Press in Manila who was denied entry in the Philippines, the Commissioner of Immigration explained, in a letter to President Marcos, why that was the conclusion reached. Thus: "1. From reports we have checked and verified with the findings of various agencies of the government and the military, as well as the testimony of concerned private citizens, the commission found conclusive evidence that over the past two-and-a-half years, Mr. Zeitlin has had extensive contact with various elements in the country who secretly or openly work for the violent overthrow of the Philippine government, that he has lent the privileges of his office as a conduit for distorted reports on conditions and evidence in the country designed to incite international action against the government, and that he has used his wire service reports via the Associated Press to mount the campaign against the government and the Filipino people. The same reports likewise give very strong grounds to believe that Mr. Zeitlin is working for a foreign organizaton or organizations other than the legitimate media organization he works for, and this has led to agitate against the government far beyond the mission of a journalist to report the news factually to his readers. Details of this information on the subject are provided in a separate brief, which is the consolidation of the findings of the Department of National Defense, the National Intelligence and Security Agency, the National Bureau of Investigation, and the commission's own fact-finding team. 2. During his trips to and from abroad, Mr. Zeitlin has been in con-

[157] Decision of the Commissioner of Immigration, 5-6, June 21, 1977.

tact with various elements in the United States that openly work for the overthrow of the Philippine government, and there is documented information that he has supplied these articles with distorted and false "exposes" on conditions in the country and likewise brought to the country inflammatory literature emanating from these groups."[158] It is quite evident, therefore, that martial law has not impaired the press freedom of foreign correspondents.

In *Victoriano v. Elizalde Rope Workers Union*,[159] the Philippine Supreme Court sustained a provision that members of religious sects forbidding affiliation of their devotees with labor unions are exempt from a closed-shop provision in a collective bargaining agreement. The basis of such ruling is the high respect accorded freedom of conscience and religion. As was explained in the opinion of Justice Zaldivar: "What then was the purpose sought to be achieved by Republic Act No. 3350? Its purpose was to insure freedom of belief and religion, and to promote the general welfare by preventing discrimination against those members of religious sects which prohibit their members from joining labor unions, confirming thereby their natural, statutory and constitutional right to work, the fruits of which work are usually the only means whereby they can maintain their own life and the life of their dependents. It cannot be gainsaid that said purpose is legitimate."[160] The matter was discussed further in this vein: "It may not be amiss to point out here that the free exercise of religious profession or belief is superior to contract rights. In case of conflict, the latter must, therefore, yield to the former. The Supreme Court of the United States has also declared on several occasions that the rights in the First Amendment, which include freedom of religion, enjoy a preferred position in the constitutional system. Religious freedom, although not unlimited, is a fundamental personal right and liberty, and has a preferred position in the hierarchy of values. Contractual rights, therefore, must yield to freedom of religion. It is only where unavoidably necessary to prevent an immediate and grave danger to the security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent to avoid the danger."[161]

There was a concurrence where the importance of liberty of conscience was given added emphasis: "Religious freedom is identified with the liberty every individual possesses to worship or not a Supreme Being, and if a devotee of any sect, to act in accordance with its creed. Thus is constitutionally safeguarded, according to Justice Laurel that 'profession of faith to an active power that binds and elevates man to his Creator....' The choice of what a man wishes to believe in is his and his alone. That

158 Letter of Immigration Commissioner Edmundo M. Reyes to President Ferdinand E. Marcos, dated November 6, 1976, 2-3.
159 G.R. No. 25246, September 12, 1974, 59 SCRA 54 (1974).
160 *Ibid.*, 71.
161 *Ibid.*, 72.

is a domain left untouched, where intrusion is not allowed, a citadel to which the law is denied entry, whatever be his thoughts or hopes. In that sphere, what he wills reigns supreme. The doctrine to which he pays fealty may for some be unsupported by evidence devoid of rational foundation. No matter. There is no requirement as to its conformity to what has found acceptance. It suffices that for him such a concept holds undisputed sway. That is a recognition of man's freedom. That for him is one of the ways of self-realization. It would be to disregard the dignity that attaches to every human being to deprive him of such an attitude. The 'fixed star on our constitutional constellation,' to borrow the felicitous phrase of Justice Jackson, is that no official, not excluding the highest, has it in his power to prescribe what shall be orthodox in matter."[162] The separate opinion pursued the matter further: "There is, moreover, this ringing affirmation by Chief Justice Hughes of the primacy of religious freedom in the forum of conscience even as against the command of the State itself: 'Much has been said of the paramount duty to the state, a duty to be recognized, it is urged, even though it conflicts with convictions of duty to God. Undoubtedly, that duty to the state exists within the domain of power, for government may enforce obedience to laws regardless of scruples. When one's belief collides with the power of the state, the latter is supreme within its sphere and submission or punishment follows. But, in the forum of conscience, duty to a moral power higher than the state has always been maintained. The reservation of that supreme obligation, as a matter of principle, would unquestionably be made by many of our conscientious and law-abiding citizens. The essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.' The American Chief Justice spoke in dissent, it is true, but with him in agreement were three of the foremost jurists who ever sat in that Tribunal, Justices Holmes, Brandeis, and Stone."[163]

With reference to freedom of expression on secular matters, mention must be made that one of the arguments advanced to nullify the Anti-Subversion Act[164] was that it was violative of freedom of speech and freedom of association. The now-deceased Chief Justice then Justice, Castro in his opinion in *People v. Ferrer*[165] rejected such a contention in this wise: "As already pointed out, the Act is aimed against conspiracies to overthrow the Government by force, violence or other illegal means. Whatever interest in freedom of speech and freedom of association is infringed by the prohibition against knowing membership in the Communist Party of the Philippines, is so indirect and so insubstantial as to be clearly and heavily outweighed by the overriding considerations of national security and the preservation of democratic institutions in this country."[166]

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162 *Ibid.*, 85.
163 *Ibid.*, 87. The author penned the concurring opinion.
164 Republic Act No. 1700 (1957).
165 G.R. Nos. 32613-14, December 27, 1972, 48 SCRA 382 (1972).
166 *Ibid.*, 412. The author dissented.

A Philippine Supreme Court decision during this period of martial law, *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills*,[167] is in keeping with the country's tradition of respect for fundamental freedoms. Justice Makasiar, speaking for the Court, emphasized: "In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be 'protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person'."[168] More specifically, he stressed the importance of intellectual liberty thus: "The freedoms of expression and of assembly as well as the right to petition are included among the immunities reserved by the sovereign people, in the rhetorical aphorism of Justice Holmes, to protect the ideas that we abhor or hate more than the ideas we cherish; or as Socrates insinuated, not only to protect the minority who want to talk, but also to benefit the majority who refuse to listen. And as Justice Douglas cogently stresses it, the liberties of all, and the liberties of one are not safe unless the liberties of all are protected."[169] He affirmed in the most categorical language the primacy of human rights: "Property and property rights can be lost thru prescription; but human rights are imprescriptible. If human rights are extinguished by the passage of time, then the Bill of Rights is a useless attempt to limit the power of government and ceases to be an efficacious shield against the tyranny of officials, of majorities, of the influential and powerful, and of oligarchs — political, economic or otherwise. In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority 'gives these liberties the sanctity and the sanction not permitting dubious intrusions.' "[170]

In another decision, *Elizalde v. Gutierrez*,[171] promulgated in April of 1977, reliance on press freedom proved decisive. The Philippine Supreme Court nullified a libel proceeding held in a distant province against the newspaper publishers and the editor when the alleged offending news item was nothing more than an accurate account of what was said in a court proceeding deemed offensive to the honor of the complainant. According to the opinion: "To be more specific, no culpability could be imputed to petitioners for the alleged offending publication without doing violence to the concept of privileged communication implicit in freedom of the press. As was so well put by Justice Malcolm in *Bustos*: 'Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion. The inevitable and incontestable

[167] G.R. No. 31195, June 5, 1973, 51 SCRA 189 (1973).
[168] *Ibid.*, 200.
[169] *Ibid.*, 201.
[170] *Ibid.*, 202.
[171] G.R. No. 33615, April 22, 1977, 76 SCRA 448 (1977).

result has been the development and adoption of the doctrine of privilege.' "[172] It is worthy of mention that *United States v. Bustos*,[173] which imposed the rigid requirement on the judiciary to test libel actions in terms of its effect on press freedom, was decided by the Philippine Supreme Court as far back as March 8, 1918. A doctrine analogous in character was not announced by the United States Supreme Court until 1964 in *New York Times Co. v. Sullivan*.[174] That was thirty-six years later.

15. *Human rights of a social and economic character*

It is in the field of social and economic rights that the most notable advances took place during this emergency period. The 1935 Constitution, as was mentioned previously, provided for them. Even then, there was a realization of their importance in vitalizing a regime of liberty not just as immunity from governmental restraint but as the assumption by the State of an obligation to assure a life of dignity for all, especially the poor and the needy. The expanded social justice and protection to labor provisions of the present Constitution emphasize more than ever the affirmation of the national goal for what in the felicitous language of the First Lady Imelda Romualdez Marcos is a "compassionate society."[175]

It is worth noting that even under the 1935 Charter, the Supreme Court of the Philippines could categorically state: "The welfare state concept is not alien to the philosophy of our Constitution."[176] In a 1970 decision, such a view was again given expression in terms of the rejection of the *laissez-faire* theory. Thus: "What is more, to erase any doubts, the Constitutional Convention saw to it that the concept of *laissez-faire* was rejected. It entrusted to our government the responsibility of coping with social and economic problems with the commensurate power of control over economic affairs.. Thereby it could live up to its commitment to promote the general welfare through state action. No constitutional objection to regulatory measures adversely affecting property rights, especially so when public safety is the aim, is likely to be heeded, unless, of course, on the clearest and most satisfactory proof of invasion of rights guaranteed by the Constitution. On such a showing, there may be a declaration of

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[172] The opinion was written by the author.

[173] 37 Phil. 731 (1918).

[174] 376 US 254, (1964), 84 S. Ct. 710, 11 L. Ed. 2d. 686, 95 ALR 2d. 1412 (1964)

[175] ROMUALDEZ MARCOS, THE COMPASSIONATE SOCIETY, 1-8 (1973). The term was quoted with approval in the following cases: Philippine Air Lines, Inc. v. Philippine Airlines Employees Association, G.R. No. 24626, June 28, 1974, 57 SCRA 489 (1975); Almira f. B.F. Goodrich Philippines, G.R. No. 34974, July 25, 1974, 58 SCRA 120 (1974); Philippine Virginia Tobacco Administration v. Court of Industrial Relations, G.R. No. 32052, July 25, 1975, 65 SCRA 416 (1975); Goodrich Employees Association v. Flores, G.R. No. 30211, October 5, 1976, 73 SCRA 297 (1976)

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

nullity, not because the *laissez-faire* principle was disregarded but because the due process, equal protection, or non-impairment guarantees would call for vindication. To repeat, our Constitution which took effect in 1935 erased whatever doubts there might be on that score. Its philosophy is a repudiation of *laissez-faire*. One of the leading members of the Constitutional Convention, Manuel A. Roxas, later the first President of the Republic, made this clear when he disposed of the objection of Delegate Jose Reyes of Sorsogon, who noted the 'vast extensions in the sphere of government functions' and the 'almost unlimited power to interfere in the affairs of industry and agriculture as well as to compete with existing business' as 'reflections of the fascination exerted by [the then] current tendencies' in other jurisdictions. He spoke thus: 'My answer is that this this constitution has a definite and well defined philosophy, not only political but social and economic.... If in this Constitution the gentleman will find declarations of economic policy, they are there because they are necessary to safeguard the interests and welfare of the Filipino people because we believe that the days have come when in self-defense, a nation may provide in its constitution those safeguards, the patrimony, the freedom to grow, the freedom to develop national aspirations and national interests, not to be hampered by the artificial boundaries which a constitutional provision automatically imposes."[177]

It cannot be denied, however, that under the 1935 Constitution, the provisions on social justice[178] and protection to labor[179] were cast in terms of the utmost generality. The present Constitution, by way of lending emphasis to such fundamental principles, is much more categorical and specific. It has thus made even more manifest the commitment of our polity to its inescapable responsibility to assure the welfare of each and every Filipino in terms of a decent existence. That is to accord greater emphasis to the positive aspect of freedom. The welfare of the economically underprivileged, those living on the margins of adequacy, becomes even more a major concern of government. It has received top priority. It is easily understandable why. It could minimize the causes for unrest and dissatisfaction and thus quell the rebellion, the roots of which are traceable to the ever-increasing gap between the few rich and the many poor. It is reassuring to note that in his address before the annual meeting of the Board of Governors of the Asian Development Bank, President Marcos stressed anew such a policy: "In many of our countries, there is great urgency today for national development to affirm and give real

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

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

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

substance to our avowals in favor of human rights. Without any concrete effort to provide for basic needs, and the minimum of human welfare, our commitment to human rights would become a farce. But we cannot procure our development at the expense of the rights of those whom we are, in the first place, pledged to liberate."[180]

(1) *Social justice*

Now as to the social justice provision of the present Constitution: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."[181] Immediately thereafter comes this section: "The State shall establish, maintain, and ensure adequate social services in the field of education, health, housing, employment, welfare, and social security to guarantee the enjoyment by the people of a decent standard of living."[182] There is likewise the mandate for the State to "formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil and achieving the goals enunciated in this Constitution."[183] Under the 1935 Constitution, the first comprehensive definition of what social justice signifies was announced in *Calalang v. Williams*[184] in terms difficult to distinguish from the police power. That decision upheld the validity of the regulation of traffic on national roads, which would exclude at certain hours horse-drawn vehicles used mostly by the lower-income groups, as not violative of such a principle. According to Justice Laurel, who spoke for the Court: "Social justice is 'neither communism, nor despotism, nor atomism, nor anarchy,' but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the government of measures calculated to insure economic and social equilibrium in the interrelations of the members of the community, constitutionally through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex.*"[185]

Stress was rightfully laid on the utilization of the extensive authority that police power implies, enabling the government to attain and achieve

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180 MARCOS, HUMAN RIGHTS AND ECONOMIC DEVELOPMENT 10 (1977).
181 CONST., art. II, sec. 6.
182 CONST., art. II, sec. 7.
183 CONST., art. XIV, sec. 12.
184 70 Phil. 726 (1940).
185 *Ibid.*, 734-735.

the objectives of a welfare state. In *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions in Government Corporations,*[186] likewise decided under the 1935 Constitution, there was an affirmance of the continuing vitality of such a doctrine, the opinion being penned by the then Justice, later Chief Justice, Makalintal. Thus: "The growing complexities of modern society, however, have rendered the traditional classification of the functions of government quite unrealistic, not to say obsolete. The areas which used to be left to private enterprise and initiative and which the government was called upon to enter optionally, and only 'because it was better equipped to administer for the public welfare than is any private individual or group of individuals,' continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity if it is to meet the increasing social challenges of the times. Here as almost everywhere else the tendency is undoubtedly towards a greater socialization of economic forces. Here of course, this development was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principles concerning the promotion of social justice."[187]

There was, in addition, a concurring opinion wherein adherence to the Calalang doctrine was further emphasized. An excerpt follows: "The regime of liberty contemplated in the Constitution with social justice as a fundamental principle to reinforce the pledge in the preamble of promoting the general welfare reflects traditional concepts of a democratic policy infused with an awareness of the vital and pressing need for the government to assume a much more active and vigorous role in the conduct of public affairs. The framers of our fundamental law were as one in their strongly-held belief that thereby the grave and serious infirmity then confronting our body-politic, on the whole still with us now, of great inequality of wealth and mass poverty, with the great bulk of our people ill-clad ill-housed, ill-fed, could be remedied. Nothing less than communal effort massive in extent and earnestly engaged in, would suffice."[188]

What was thus stressed is that a fundamental principle as social justice, identified as it is with the broad scope of the police power, has an even more basic role to play in aiding those whose lives are spent in toil, with destitution an ever-present threat, to attain a certain degree of economic well-being. Precisely, through the social justice coupled with the protection to labor provisions, the government is enabled to pursue an active and militant policy to give reality and substance to the proclaimed aspiration of a better life and more decent living conditions for all. It was in that spirit that in 1969, in *Del Rosario v. De los Santos,* reference was made to what the social justice concept signifies in the realistic language of the late President Magsaysay: "He who has less in

[186] G.R. No. 21484, November 29, 1969, 30 SCRA 649 (1969).
[188] *Ibid.*, 682. The author wrote the concurring opinion.

life should have more in law." After tracing the course of decisions, which spoke uniformly to the effect that the tenancy legislation, now on the statute books, is not vitiated by constitutional infirmity, the *Del Rosario* opinion made clear why it is easily understandable "from the enactment of the Constitution with its avowed concern for those who have less in life, [that] the constitutionality of such legislation has been repeatedly upheld."[189] Social justice is a principle that calls for the continuing governmental "effort to assist the economically underprivileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves."[190]

Even under the 1935 Constitution then, the doctrine consistently adhered to was that social justice is rightly identified with governmental measures, whether exercised through police power, taxation, or eminent domain intended to redress the existing imbalance between the dominant economic groups and the vast majority of the economically underprivileged, whether in industry or in agriculture. They are compelled to look to the State for access to the opportunity to enjoy the good life, not necessarily because of sloth or laziness on their part but because of the difficulties attendant to earning a living. It is thus obvious why the judiciary viewed with the widest possible sympathy legislative or executive acts intended to accomplish such a worthy objective and to sustain them.

If such were the case in the 1935 Constitution, it is quite obvious that at present the objections against governmental action of a similar nature would be even less persuasive. As noted, social and economic rights have been expanded to cope with the ever-increasing need for the amelioration of the deplorable condition of the less fortunate in life. The invocation, therefore, of traditional property rights for the purpose of demonstrating invalidity is not likely to be attended with success. Social justice, in the language of the present Constitution, is intended "to ensure the dignity, welfare, and security of all the people."[191] The next sentence should erase any lurking doubt as to its scope: "Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."[192] The decisions rendered during this emergency period attest to the deference the Supreme Court accorded such fundamental principle.[193]

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189 G.R. No. 20586, March 21, 1969, 22 SCRA 1196 (1969). The author wrote the opinion.

190 Lopez Carrillo v. Allied Workers Assn., G.R. No. 23689, July 31, 1968, 24 SCRA 566 (1968). The opinion was penned by the author.

191 CONST., art. II, sec. 6, first sentence.

192 CONST., art. II, sec. 6.

193 *Cf.* Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc. G.R. No. 31195, June 5, 1973, 51 SCRA 189 (1973); Alfanta v. Noe, G.R. No. 32362, September 19, 1973, 53 SCRA 76 (1973); Paulo v. Court of Appeals, G.R. No. 33845, December 18, 1973, 54 SCRA 253 (1973); Philippine Air Lines, Inc. v. Philippine Air Lines Employes Association, G.R. No. 24626, June 28, 1974, 57 SCRA 489 (1974); Victoriano v. Elizalde Rope Workers Union, G.R. No.

Its vital role in the future of the Philippines was stressed by President Marcos on the occasion of the signing of the Philippine Development Plan for 1978 to 1982.[194] Thus: "We are involved today in a historic task, a task which demands of us to chart our vision of tomorrow and to define the path which we have to take towards our perspective of future development. It is therefore imperative that we share a clear and common understanding of the philosophy of development which we have pursued and are committed to pursue in the New Society. In the past, development was considered as simply the movement towards economic progress and growth, measured in terms of sustained increases in per capita income and Gross National Product (GNP). In the New Society, however, development does not only imply economic advance. It also means the improvement in the well-being of the broad masses of our people. It means getting down and reaching the poorest segments of our population: the urban and rural poor, the unemployed, the underemployed, the homeless dweller, the out-of-school youth, the landless worker, the *sacada,* and the fisherman. It is a human and social process, requiring political will, commitment as well as sacrifices. Considering the visible disparities in our society, development also means the sharing, or more appropriately, the democratization of social and economic opportunities, the substantiation of the true meaning of social justice. These disparities have impelled what I have referred to as the rebellion of the poor, whose interest now lie at the heart of government, since there is no force in our society today capable of protecting the poor other than government. Thus, Philippine development is aimed primarily at rectifying grave economic and social inequities that have accumulated in the course of our ascent to nationhood. It would certainly be sad, a very sad commentary on the nature of our society and of the political, economic and social leadership, if in the New Society we would only seek to maintain the status quo."[195] He stressed the matter further in these words: "At the heart of the Plans is the concern for social justice. The preparation of these social and economic development plans has been guided by one objective: 'No Filipino will be without sustenance.' We have therefore set our development plans toward a direct and purposeful attack against poverty: by focusing on the poorest of our society, by planning to meet their basic nutritional needs, by reducing if not entirely eliminating illi-

25246, September 12, 1974, 59 SCRA 54 (1974); Basa v. Federation Obrera, G.R. No. 27113, November 19, 1974, 61 SCRA 93 (1974); Cosmos Foundry Shop Workers Union v. Lo Pu, G.R. No. 40136, March 25, 1975, 62 SCRA 313 (1975); Maglasang v. Ople, G.R. No. 38813, April 29, 1975, 63 SCRA 508 (1975); Nation Multi-Service Labor Union v. Agcaoili, G.R. No. 39741, May 30, 1975, 64 SCRA 274 (1975); National Brewery and Allied Industries Labor Union of the Philippines v. San Miguel Brewery, G.R. No. 24545, June 30, 1976, 71 SCRA 547 (1976); Vasaar Industres Employees Union v. Estrella, G.R. No. 46652, March 31, 1978, 82 SCRA 280 (1978).

[194] Presidential Decree No. 1200 (1977).

[195] Philippine Development Plan, 2.

teracy, by expanding employment opportunities, by improving access to basic social services, by equalizing opportunities, by the equitable sharing of the fruits of development and by introducing the requisite institutional changes. We will pursue economic development for social justice. We will engage the initiative and resources of our people according all citizens a rightful share in benefits and obligations. As both the source and object of development, our people will be provided with adequate economic opportunities and social amenities to attain a dignified existence."[196]

(2) *Protection to labor*

The broad and general language in which the constitutional policy on social justice is couched was given added significance by the 1935 Constitution explicitly requiring that the State "shall afford protection to labor [in industry and agriculture] especially to working women and minors."[197] The new fundamental law is much more definite. Thus: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."[198] Provisions of this character, in the language of Justice Laurel, "evince and express the need of shifting emphasis to community interest with a view to the affirmative enhancement of human values."[199] This principle given categorical expression in both the 1935 Constitution and the present Charter is a mandate that must be lived up to. It is a command that must be fulfilled. It brooks no evasion, tolerates no circumvention. Attempts to defeat its purpose and frustrate its objectives are to be condemned. If it were otherwise, the Constitution becomes less than the paramount law that it should be.

The thought bears repeating that the state exists to promote the general welfare. It is judged, to paraphrase Laski, by the extent to which it contributes to the substance of man's happiness.[200] Necessarily, the whole citizenry is included. There is here a rejection of the elitist concept that only a favored few, the ruling class, should be the recipient of its beneficence. Rather, as was so stressed in the foregoing survey of the significance of social justice, those who are less fortunate in terms of economic well-being should be given preferential attention. If such be

196 *Ibid.*, 3-4.

197 Art. XIV, sec. 6, of the 1935 Constitution, reads as follows. "The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration."

198 CONST., art. II, sec. 9.

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

200 *Cf.* LASKI, GRAMMAR OF POLITIC 89 (1934, 3rd ed.).

not the case, then the polity marks itself as failing in its basic objective. They constitute by far the greater bulk of the population. Their neglect may well cause a tear in the fabric of unity that binds a people together. There should not be the least doubt as to the validity of any legislation with that end in view, as long as it is reasonable and not arbitrary. The foregoing assertions do not suffer from any constitutional unorthodoxy.

This specific mandate, to repeat, makes more definite the state policy as to the favored position of labor in the scheme of things. It dispels any doubt that in weighing its claims as against that of management, it is to be preferred. With such unequivocal command, it is difficult to see how the equal protection clause may be relied upon to invalidate social welfare legislation. The obligation to protect labor is incumbent on government. It calls for the enactment of the necessary legislation. What is more, the executive in its implementation and the judiciary in its interpretation, must equally be mindful of such constitutional injunction.

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

The State cannot just afford to be a neutral umpire in any struggle between labor and management. It means that considering the lesser weight of labor in the competition of the open market, the balance is to be tilted in its favor through laws faithful to such a command. What is more, they must be translated into actuality both by the executive and the adjudicative branches of the government. It is not only justified but imperative that remedial statutes be enacted. That is to reinforce the social justice principle which, as already noted, supplies a firm foundation. This command then, if faithfully adhered to, goes far in assuring the workers a better share in the fruits of their toil. It is thus easily understandable why with such an explicit mandate imposed on the government, the validity of statutes beneficial to labor has been invariably sustained.[201]

[201] The following decisions, all rendered during this period of emergency may be cited in addition to those referred to when the principle of social justice was discussed: Herald Delivery Carriers Union v. Herald Publications, Inc., G.R. No. 29966, February 28, 1974, 55 SCRA 715 (1974); Davao Free Workers Front v. Court

On May 1, 1974, President Marcos promulgated the Labor Code of the Philippines, effective November 1 of that year.[202] It manifests greater fealty to the expanded concept of protection to labor under the present Constitution. It is apparent from a reading of its provisions that great care was taken to assure that the welfare of the workingman is fostered, with due regard to the actual conditions present in Philippine society. If efficiently implemented, there is greater opportunity for his self-advancement. That is to pay more than lip tribute to the cause of human dignity.

The Philippine Supreme Court has interpreted its provisions in a liberal manner to attain the objectives of the Labor Code. Thus, in a recent case of *U.E. Automotive Employees v. Noriel*,[203] there was this reference to the right of association: "It is a notable feature of our Constitution that freedom of association is explicitly ordained; it is not merely derivative, peripheral or penumbral, as is the case in the United States. It can trace its origin to the Malolos Constitution. More specifically, where it concerns the expanded rights of labor under the present Charter, it is categorically made an obligation of the State to assure full enjoyment 'of workers to the rights of self-organization [and] collective bargaining.' It would be to show less than full respect to the above mandates of the fundamental law, considering that petitioner union obtained the requisite majority at a fair and honest election, if it would not be recognized as the sole bargaining agent."[204] In *Philippine Labor Alliance Council v. Bureau of Labor Relations*,[205] it was held that disaffiliation from a labor union is not "open to any legal objection. It is implicit in the freedom of association explicitly ordained by the Constitution. There is then the incontrovertible right of any individual to join an organization of his choice."[206] In another decision, *United Employees Union of Gelmart Industries v. Noriel*,[207] the importance of the certification election to collective bargaining which is at the cornerstone of labor-management relations was stressed: "The institution of collective bargaining is, to recall Cox, a prime manifestation of industrial democracy at work. The two parties to the relationship, labor and management make their own rules by coming to terms. That is to govern themselves in matters that really count. As labor, however, is composed of a number of individuals, it is

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of Industrial Relations, G.R. No. 29356, October 31, 1974, 60 SCRA 408 (1974); Radio Communications of the Philippines Inc. v. Philippine Communications Workers Federation, G.R. No. 37662, July 6, 1976, 72 SCRA 24 (1976); U.E. Automotive Employees v. Noriel, G.R. No. 44350, November 25, 1976, 74 SCRA 72 (1976); Biboso v. Victorias Milling Co., G.R. No. 44360, March 31, 1977, 76 SCRA 250 (1977); The Bradman Co., Inc. v. Court of Industrial Relations, G.R. No. 24134-35, July 21, 1977, 78 SCRA 10 (1977).

202 Presidential Decree No. 442 (1974).

203 G.R. No. 45057, February 28, 1977, 75 SCRA 72 (1977).

204 *Ibid.*, 75.

205 G.R. No. 41288, January 31, 1977, 75 SCRA 162 (1977).

206 *Ibid.*, 167.

207 G.R. No. 40810, October 3, 1975, 67 SCRA 267 (1975).

indispensable that they be represented by a labor organization of their choice. Thus may be discerned how crucial is a certification election. So our decisions from the earlest case of *PLDT Employees Union v. PLDT Co. Free Telephone Workers Union* to the latest, *Philippine Communications Electronics & Electricity Workers' Federation (PCFW) v. Court of Industrial Relations,* have made clear."[208]

Another feature of the present Constitution given force and effect during the period of martial law is security of tenure.[209] Thus, what before was a mere statutory right is now given a constitutional sanction. Social and economic rights were relied upon in a number of cases, the first of which is *Philippine Air Lines, Inc. v. Philippine Air Lines Employees Association.*[210] It was an appeal by certiorari from a resolution of the then existing Court of Industrial Relations, which ordered the reinstatement of a security guard admittedly guilty of a breach of trust and, therefore, properly subject to disciplinary action. It was however, the holding of the labor tribunal that dismissal was too severe a penalty, considering the length of his service with the company, seventeen years to be precise. In affirming such an order of reinstatement, the Supreme Court ruled: "The futility of this appeal becomes even more apparent, considering the express provision in the Constitution already noted, requiring the State to assure workers 'security of tenure.' It was not that specific in the 1935 Charter. The mandate was limited to the State affording 'protection to labor, especially to working women and minors,....' If, by virtue of the above, it would not be legally justifiable to reverse the order of reinstatement, it becomes even more readily apparent that such a conclusion is even more unwarranted now. To reach it would be to show lack of fealty to a constitutional command. This is not to say that dismissal for cause is now outlawed. No such thing is intimated in this opinion. It is merely to stress that where respondent Court of Industrial Relations, in the light of all the circumstances disclosed, particularly that it was a first offense after seventeen years of service, reached the conclusion, neither arbitrary nor oppressive, that dismissal was too severe a penalty, this Court should not view the matter differently. That is to conform to

[208] *Ibid.*, 273. Cf. Philippine Association of Free Labor Unions v. Bureau of Labor Relations, G.R. No. 42115, January 27, 1976, 69 SCRA 132 (1976); Federacion Obrera v. Noriel, *supra,* note 201; U.E. Automotive Employees & Workers Union Trade Unions of the Philippines & Allied Services v. Noriel, *supra,* note 201; Labor Alliance Council v. Bureau of Labor Relations, *supra,* note 205; Benguet Exploration Mines Union v. Noriel, G.R. No. 44110, March 29, 1977, 76 SCRA 107 (1977); Kapisanan v. Noriel, G.R. No. 45475, June 20, 1977, 77 SCRA 141 (1977).

[209] According to Art. III, Section 9 of the Constitution: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

[210] G.R. No. 24626, June 28, 1974, 57 SCRA 489 (1974). The author wrote the opinion.

the ideal of the New Society, the establishment of which was so felicitously referred to by the First Lady as, the compassionate society.' "[211]

The security of tenure provision was further vitalized by the ruling in *Almira v. B.F. Goodrich Philippines, Inc.*[212] to the effect that there would be an infringement of such a guarantee if dismissal could be imposed on a mere showing of employees having committed acts of violence during a strike, admittedly not serious in character. As was pointed out in the opinion: "To the possible objection that in this Philippine Air Lines case, there was an order of reinstatement, it suffices by way of an answer that while the facts could be distinguished, the basic principle, in accordance with a constitutional mandate, in the language of Justice Cardozo, speaks with a 'reverberating clang that drowns all weaker sounds.' "[213] Further: "It would imply at the very least that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner. The misery and pain attendant on the loss of jobs then could be avoided if there be acceptance of the view that under all the circumstances of this case, petitioners should not be deprived of their means of livelihood. Nor is this to condone what had been done by them. For all this while, since private respondent considered them separated from the service, they had not been paid. From the strictly juridical standpoint, it cannot be too strongly stressed, to follow Davis in his masterly work, Discretionary Justice, that where a decision may be made to rest on informed judgment rather than rigid rules, all the equities of the case must be accorded their due weight. Finally, labor law determinations, to quote from Bultmann, should not be only *secundum rationem* but also *secundum caritatem.*"[214]

In *Firestone Employees Association v. Firestone Tire and Rubber Co.*,[215] it was noted that the basic state policy as to labor under the present Constitution includes "security of tenure and full employment."[216] In another case, *Biboso v. Victorias Milling Co.*,[217] the ruling was that the security of tenure provision applies to probationary employees. As long as the period provided for in the contract of employment lasts, no circumvention of their rights is allowable. Upon its termination, however,

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211 *Ibid.*, 495-496.
212 G.R. No. 34974, July 25, 1975, 58 SCRA 120 (1975). The author penned the opinion.
213 *Ibid.*, 131.
214 *Ibid.*
215 G.R. No. 37952, December 10, 1974, 61 SCRA 339 (1974). The opinion came from the author.
216 *Ibid.*, 346,
217 G.R. No. 44360, March 31, 1977, 76 SCRA 250 (1977). The opinion was written by the author.

the failure to continue them in their employment would not be actionable, except on a showing that it was a form of reprisal for union activity.[218] Lastly, in *Montemayor v. Araneta University Foundation,*[219] the ruling was that an instructor or professor of a university was "entitled to that security of tenure guaranteed by the Constitution."[220]

(3) *Agrarian reform*

The present Constitution, as noted, explicitly requires that the State "formulate and implement an agrarian reform aimed at emancipating the tenant from the bondage of the soil and achieving the goals [therein] enunciated."[221] The Constitution is worded in the future tense; the State is to formulate and implement a vitally needed program. It was signed on November 30, 1972. A month and nine days earlier, to be exact, on October 21, 1972, the epochal Presidential Decree No. 27 was issued by President Marcos. As its title indicates, it provides for the emancipation of the tenant from the bondage of the soil...transferring to him the ownership of the land tilled. In one of the paragraphs that explains the need for such a decree, there is reference to reformation of society, starting "with the emancipation of the tiller of the soil from his bondage...."[222] It would seem, therefore, that much more than just a radical transformation in the property concept was intended. What was mandated by the Constitution was anticipated in Presidential Decree No. 27 which is the achievement of dignity as the birthright of every human being. That is to conform to the ideal found in the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."[223]

As early as 1974, the validity of such a decree was assumed in *De Chavez v. Zobel.*[224] Its constitutionality was categorically affirmed in *Gonzales v. Estrella,*[225] promulgated on July 2, 1979. An excerpt from the *De Chavez* opinion was cited with approval. Thus: "On this vital policy question, one of the utmost concern, the need for what for some is a radical solution in its pristine sense, one that goes at the root, was apparent. Presidential Decree No. 27 was thus conceived. It was issued in October of 1972. The very next month, the 1971 Constitutional Convention voiced its overwhelming approval. There is no doubt then, as set forth expressly therein, that the goal is emancipation. What is more, the decree is now part and parcel of the law of the land according to the

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218 *Ibid.*, 254-255.
219 G.R. No. 44251, May 31, 1977, 77 SCRA 321 (1977). This opinion likewise was that of the author.
220 *Ibid.*, 326.
221 CONST., art. XIV, sec. 12.
222 Presidential Decree No. 27, par. (3).
223 Art. 1, Universal Declaration of Human Rights. Th rest of the article continues: "They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."
224 G.R. No. 28609, January 17, 1974, 55 SCRA 26 (1974).
225 G.R. No. 25739, July 2, 1979.

revised Constitution itself. Ejectment, therefore, of petitioners is simply out of the question. That would be to see at naught an express mandate of the Constitution. Once it has spoken, our duty is clear; obedience is unavoidable. This is so not only because of the cardinal postulate of constitutionalism, the supremacy of the fundamental law. It is also because any other approach would run the risk of setting at naught this basic aspiration to do away with all remnants of a feudalistic order at war with the promise and the hope associated with an open society."[226] Thus a major step was taken to put an end to the evils of tenancy which had plagued the Philippines even during the Spanish regime. The decree has been implemented faithfully. The benefits accruing to a great number of Filipinos dependent on the farm for their livelihood have gone far in removing the causes of social unrest. Constitutionalism has been strengthened as a result.

By way of a conclusion

The First Lady of the Philippines, Mrs. Imelda Romualdez-Marcos, then Governor of Metro Manila, at present likewise the Minister of Human Settlements, in an address in October of 1976 to the International Monetary Fund-World Bank Joint Annual Meeting held in Manila, could speak of the progress achieved under the emergency government in these words: "The wonder is that so much has been done in so brief a time. Since September 1972, when President Marcos established the crisis government, peace and order have been restored in a country once avoided as one of the most unsafe in the world. We have liberated millions of Filipino farmers from the bondage of tenancy, in the most vigorous and extensive implementation of agrarian reform."[227] Further, she said: "A dynamic economy has replaced a stagnant order, and its rewards are distributed among the many, not hoarded by a few. Our foreign policy, once confined by fear and suspicion to a narrow alley of self-imposed isolation, now travels the broad expressways of friendship and constructive inter-action with the whole world, these in a new spirit of confidence and self-reliance. And finally, forced to work out our own salvation, the Filipino has rediscovered the well-springs of his strength and resiliency. As Filipinos we have found our true identity. And having broken our crisis of identity, we are no longer apologetic and afraid."[228]

The very idea of an emergency, however, signifies a transitory, certainly not a permanent, state of things. President Marcos accordingly has not been hesitant in giving utterance to his conviction that full implementation of the modified parliamentary system under the present Constitution should not be further delayed. As he emphasized in his inaugural

[226] 55 SCRA 26, 31 (1974). Both opinions were penned by the author.
[227] Imelda Romualdez Marcos, The Filipino Between Two Worlds, Philippine Daily Express, October 9, 1976, p. 10.
[228] *Ibid.*

address at the opening session on June 12, 1978 of the Interim *Batasang Pambansa*: "We look towards the day when the conditions of national life will permit the crisis leadership to lift martial law, and give way to the full operations of parliamentary government. In preparation for the ultimate termination of martial law, we have updated the National Security Code, which should enable us to ensure national security and stability, without constant recourse to extraordinary measures in the event of crisis. As an integral part of this preparatory process, and in recognition of the new vitality of the civilian courts, the military tribunals will now be phased out. No new cases will be assigned to its charge, and the work of the tribunals will cease upon disposal of the cases now within their area of responsibility."[229] He concluded: "We in this Assembly are the repository of a trust, which if we discharge with care and dedication, will give permanent meaning to the struggles we have waged all these many years, and strengthen our people's faith in the future of this nation. None of us can fail to be exalted by the trust that brought us to this Interim *Batasang Pambansa* — the first legislative body to convene since our proclamation of crisis government in 1972. And for me no honor could be greater than to preside over the historic mission of this Government, at a time of great opportunity and challenge."[230]

That historic mission, when accomplished, will signify an even greater commitment to the cause of human rights. That would be to live up to the Filipino tradition that a human being from the time he is born is entitled to the self-respect and dignity which is his birthright. The deep religious sense which is an innate trait of every Filipino, whether Christian or Muslim, would be grievously offended if such were not the case. That, it is safe to say, would be the case for any other citizen, not a member of any sect or not professing any creed. He would have it no other way. Fealty to the national character is thus best shown in the observance of and respect for human rights.

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[229] Inaugural Address of His Excellency, Ferdinand E. Marcos, at the Opening Session of the Interim *Batasang Pambansa*, June 12, 1978, 28.
[230] *Ibid.*, 29.