

A REASSESSMENT OF THE PRESIDENCY IN THE LIGHT OF THE 1981 AMENDMENTS

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Power, no doubt, is always a
dangerous thing; and the temptation
to its abuse . . . the subtlest poison
to which a man may succumb.¹

— EMMANUEL LASKI —

I. THE GENESIS OF THE 1981 AMENDMENTS

Blessed be the amending hand.²

The amending process has to be availed of in order to subserve the
“needs” of the time.

The Interim Batasang Pambansa, pursuant to Amendment No. 2 of the Constitution in relation to Article XVI, section 1 (1) thereof,³ proposed several amendments to the eight-year old fundamental law. The amendments were grouped into three brackets, to wit: the first calls, in substance, for the establishment of a modified parliamentary system, amending for this purpose Articles VI, VIII and IX of the Constitution; the second group institutes, in substance, electoral reforms; and the last provides that a natural-born citizen of the Philippines who has lost his Philippine citizenship maybe a transferee of private land for use by him as his residence as the Batasang Pambansa shall provide. These amendments embodied in Batas Pambansa Blg. 122 were submitted to the Filipino electorate for their resolution on April 7, 1981 in a plebiscite required by Article XVI, Section 2 of the Constitution.⁴ The Filipino electorate stamped its imprimatur to the proposed amendments as manifested by an overwhelming turnout of affirmative votes.⁵ Consequently, on April 11, 1981, the President

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¹ LASKI, *THE AMERICAN PRESIDENCY: AN INTERPRETATION* 277 (1940).

² EDMUND PLOWDEN, *See Coke, Fourth Institute: Epilogue*, Compiled by McNAMARA, *RAGBAG OF LEGAL QUOTATIONS* 12 (1960).

³ Amendment No. 2 ratified in a plebiscite on Oct. 16-17 provides “The Interim Batasang Pambansa shall have the same powers . . . as the Regular National Assembly . . .” (except the treaty-making power). Article XVI, Sec. 1 (1) provides: “An amendment to, or revision of, this constitution maybe proposed by the National Assembly upon a vote of three-fourths of all its members . . .”

⁴ Article XVI, Sec. 2 provides: “Any amendment to, or revision of, this constitution shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not later than three months after the approval of such amendment or revision.”

⁵ With 19,250,019 of the voting population actually exercising their right to vote a total of 13,847,765 voted yes and 3,564,675 voted no to Question No. 1; 13,774,799 voted yes and 3,672,644 voted no to Question No. 2; and, 13,382,300 voted yes while 3,874,416 voted no to Question No. 3. Proclamation No. 2077, April 11, 1981.

of the Philippines issued Proclamation No. 2077 proclaiming the ratification, in the plebiscite of April 7, 1981, of the amendments to the Constitution and declaring them in full force and effect.

II. FRAMEWORK OF ANALYSIS

This paper aims to provide a discussion, examination and analysis of the first set of amendments ratified in the April 7 plebiscite, namely, the establishment of a modified parliamentary system (starring an ultra-powerful president) vis-a-vis its effect on the doctrine of separation of powers with its underlying postulate of co-equality among the three branches of government, the system of checks and balances and the doctrine of accountability.

Doctrine of Separation of Powers

As Mr. Justice Laurel, in the celebrated case of *Angara v. Electoral Commission*,⁶ puts it:

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction and is supreme within its own sphere.

The separation of powers doctrine is basically anchored on the idea that there are "three intrinsically distinct functions of government, the legislative, the executive, and the judicial exercised respectively by three separate departments of government with their own personnel, *constitutionally equal*, and mutually independent".⁷ (underscoring mine).

System of Checks and Balances

In the *Angara* case, Mr. Justice Laurel succinctly describes the purpose of the system of checks and balances enshrined in the Constitution:

But it does not follow from the fact that the three powers are to be separated and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.⁸

This constitutional device operates as a safeguard against arbitrary actions or abuses by one branch of the government at the expense of its co-ordinates.

Doctrine of Accountability

Accountability of public officers is enforced in various ways. Violations of criminal statutes are penalized through the judiciary via ordinary criminal

⁶ 63 Phil. 139, 156 (1936).

⁷ CORWIN, CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATIONS 9-10 (1964). Cited in FERNANDO, THE CONSTITUTION OF THE PHILIPPINES 150 (1977).

⁸ *Angara v. Electoral Commission*, *supra*, note 6.

prosecutions, while delinquencies or malfeasances of particular public officials are punished through the legislature via impeachment proceedings without prejudice of course to the enforcement of the appropriate criminal/civil liability.

a. Accountability under the law

As one noted professor of constitutional law maintains:

All public officials must remain accountable under the law, while in and out of office, for the law is but a mandate or command of the people, and if it is disobeyed or violated, the official concerned must be answerable.

When a person violates the law, he incurs criminal or civil liability, and can be prosecuted [in] court to answer for the wrong. If such person cannot be prosecuted in court although he has done wrong, then he is above the law.⁹

This principle of accountability under the law is but one of the foundations upon which a democratic state is built. All citizens, not excluding public officers from the highest to the lowest in the hierarchy, are under the law.

b. Accountability to the people via impeachment

Dean Sinco delineates the purpose of impeachment:

to protect the people from official delinquencies or malfeasances. Impeachment, therefore, is primarily intended for the protection of the state, not for the punishment of the offender. . . . The penalties attached to impeachment are merely incidental to the primary intention of protecting the people as a body politic.¹⁰

Thus, through impeachment, certain public officers like the President, the Members of the Supreme Court and the Members of the Constitutional Commissions, in order to exact fealty to the principle that a public office is a public trust, may be removed from office for specified causes closely related to their conduct as public officials.

It is the 1891 Amendments' continued subservience to or radical departure from the above-cited cherished principles that will ultimately unfold the former's true impact on the Philippine government set-up — a government which was for long regarded as the showcase of democracy in Asia.

Among the 3 sets of amendments, the first set which implanted a modified parliamentary system in the Philippine soil was the subject of intense debates and protracted and profound study among the various sectors of the Filipino population. This novelty was the source of anticipated fears on the part of the opposition but considered as a rallying point by the supporters of the administration.

⁹ P. V. Fernandez, *Position Paper on the Proposed Constitutional Amendments in the April 7, 1981 Plebiscite*, THE 1981 CONSTITUTIONAL AMENDMENTS 28-29 (1981).

¹⁰ Quoted in FERNANDEZ AND SISON, *PHILIPPINE POLITICAL LAW: CASES AND MATERIALS* 1520 (1975).

Notwithstanding on which side of the road one stands, he surely cannot detract from the shared belief that with the ratification of the 1981 Amendments, specifically Question No. 1 providing for the establishment of a modified parliamentary system, a hybrid type of government was born, a parliamentary system — Philippine style — with an ultra-powerful President at its helm.

III. FACTORS IN JUSTIFICATION OF AN ULTRA-POWERFUL PRESIDENCY

A. *Current demands of the time: in the Philippine setting*

During the stage of its conception and subsequent foetal development, amidst the vehement dissent of noted oppositionists campaigning for its abortion, the oft-repeated *fons et origo* of its birth is the current need for a powerful presidency. As one Minister explained, "the basic objective of Resolution No. 104, proposing the amendments to the Constitution, is to establish a strong presidency".¹¹ He contended that the amendments would improve government efficiency by citing the political experience of Egypt and France to illustrate his point.¹² Another loyal servant of the incumbent administration had this to say: "efficiency is wanting in a purely presidential system because the legislature is not obliged to carry out the program of the Executive, it being an entirely separate entity under the Presidential system — that is why the programs of the President are seldom implemented immediately".¹³ No less than the Chief Architect of the New Society and the incumbent President of the Fourth Republic shares the same belief. In his writings, President Marcos has asserted that a strong and stable government makes for an effective government — one that can respond speedily to crises and meet the many internal and external pressures bearing upon the State.¹⁴

If only as an answer to the need for more governmental efficiency and thus, ameliorate the poverty-stricken Filipino majority, and for no other, perhaps, there is really a need for a powerful presidency. As the incumbent President has time and again emphasized: "the pressures of poverty and all its social and political consequences have been building up for decades. Our society was chronically in crisis and instability was its primary condition".¹⁵ Even today, barely three months after the ratification of the amendments, Prime Minister-designate Cesar Virata notes that economic problems pose serious repercussions — people who have been hit by falling prices of products such as coconuts may become easy prey of the Communists.¹⁶

¹¹ Transcript of the Batasang Pambansa sitting as a Constituent Assembly, February 24, 1981, p. 3. (Hereinafter referred to as BP-CA Transcript)

¹² *Id.*, at 5.

¹³ BP-CA Transcript, February 25, 1981, p. 46.

¹⁴ F. R. P. Romero, *The Dynamics of the Relationship Between the Legislative and the Executive Under the Proposed Constitutional Amendments*, THE 1981 CONSTITUTIONAL AMENDMENTS 13 (1981).

¹⁵ MARCOS, AN INTRODUCTION TO THE POLITICS OF TRANSITION 68 (1978).

¹⁶ Bulletin Today, July 23, 1981, p. 8, col. 3.

On this score alone, surely a regimented appreciation of these economic realities will readily lead to a clamor for a powerful headman to efficiently direct governmental programs to remedy the situation.

B. Current trend of the time: in the international arena

The incumbent President notes: "Governments in at least 15 Third World countries (in Asia, Africa and Latin America) are characterized by the dominance of the Executive in the governmental political structure. It is the President or the Prime Minister who assumes undisputed leadership and he alone seems to represent the will of the people".¹⁷

He furthermore underscores the fact that neighboring ASEAN countries like Thailand, Malaysia and Singapore have strong Executive exercising vast powers which enable said countries to easily respond to crisis situations.¹⁸ Similar observation is made with respect to the more developed countries like Japan, Australia, and New Zealand.¹⁹

Furthermore he observes that: "While the supremacy of the executive in the government of the Third World countries has been viewed from the Western perspective as anti-democratic and indicative of authoritarian trends, yet even in the developing countries in the West there are instances where the Executive is more dominant than the legislature".²⁰ He cites the French Fifth Republic as a concrete example. It has a strong Executive which emerged as a result of De Gaulle's observation that the constitutional impotence of the President during the Fourth Republic was partly responsible for the continuance of "ephemeral governments" that bargained away much of France's independence in treaties and alliances.²¹

Verily, any attempt to substantiate the statement that the Executives of both the United States and Great Britain are themselves strong executives will be mere surplusage.

C. Historical Antecedents: the groundwork of an ultra-powerful presidency

A powerful ruler is not entirely novel to the Filipinos. As Dean Cortes correctly observes: "The Philippine presidency bears the imprint of the country's historic past."²² For indeed, the Philippine political experience is replete with cases of political kingpins invested with infinite powers. It may be recalled that during the pre-Spanish era, the barangay was headed by a powerful *datu* wielding a combination of executive, legislative, judicial and military powers.²³ The conquest of the Philippines by the spice-loving Spaniards did not alter the situation. A one-man executive, representing

¹⁷ MARCOS, *op cit. supra*, note 15 at 67.

¹⁸ *Id.*, at 63.

¹⁹ *Id.*, at 62.

²⁰ *Id.*, at 57.

²¹ *Id.*, at 58, citing BEER & ULAM, *PATTERN OF GOVERNMENT* 308-309 (1965).

²² CORTES, *THE PHILIPPINE PRESIDENCY* 3 (1966).

²³ CONSTANTINO, *THE PHILIPPINES: A PAST REVISITED* 33 (1978).

the Spanish Crown, was installed to lead the government. The Governor-General became the supreme czar in the country being the Chief Executive, Chief of Administration, and Commander-in-Chief of all military and naval forces.²⁴ On 12 June 1898, upon the proclamation of independence from the Spanish sovereignty, a local hero this time assumed dictatorial powers and paved the way towards the establishment of the First Philippine Republic.²⁵ During the American and Japanese regimes, the same scenario prevailed. Under the Americans, the Military Governor, as head of government, exercised executive, legislative and judicial powers.²⁶ Similarly, during the three-year span of effective Japanese control, a military government under the commander-in-chief of the Imperial Japanese Forces exercised extensive powers. Of course, later a wartime constitution intended for the duration of the war was adopted providing for a predominant President with extensive powers. As Jose Laurel, who later became the President of the Japanese-sponsored government opined: "there must be a man with adequate powers to face any given situation and meet the problems of the nation — specially in an emergency."²⁷

The above historical realities boldly underscore a predominant spectacle in the Philippine political odyssey which can never be lost sight of, that is, a powerful headman carrying the brunt of the government invested with immense powers.

Verily, while the governmental set-up is being shaped by the current demands of the present, and the clear visions of the future, the enduring imprints of the past are too deeply rooted to be wantonly discarded.

IV. THE PRESIDENCY UNDER THE 1935 CONSTITUTION: A STRONG EXECUTIVE

During the early part of the deliberations of the 1934 Constitutional Convention, the constituent body influenced by the Filipino idea of leadership residing in one man with broad powers exercised in a highly personal manner, easily reached a consensus on the need for a strong President.²⁸ As it had been observed: "Unlike the original thirteen states, the colonial past of the Philippines had not produced a distrust for the Executive."²⁹ This is attributable to a trait which, as George Malcolm observed, is "[a] trait of the Filipinos generally recognized [] that they yield their truest loyalty when there is at the head of affairs one man in supreme power."³⁰

²⁴ GAGELONIA, *FILIPINO NATION — HISTORY AND GOVERNMENT* 74 (1977).

²⁵ *Id.*, at 153.

²⁶ *Id.*, at 193.

²⁷ CORTES, *op. cit. supra*, note 22 at 14.

²⁸ ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 399 (1936), cited in CORTES, *op. cit. supra*, note 22 at 66.

²⁹ CORTES, *op. cit. supra*, note 22 at 66.

³⁰ *Ibid.*

The article on the Executive under the 1935 Constitution opens: "The executive power shall be vested in a President of the Philippines." As had been aptly observed: "The president of the Philippines is the repository of all the executive power of the government.³¹ He and no other is the 'executive of the Philippine Government'.³² As pointed out by Justice Laurel in *Villena v. Secretary of Interior*:

with reference to the executive department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight and that is, the establishment of a single, not plural, Executive.³³

As the Philippine presidency was patterned almost entirely after the American model (the Philippine Constitution merely reproduced the opening clause of the American Federal Constitution on the presidency which provides: "The executive power shall be vested in a President of the United States of America")³⁴ the powers given to his United States counterpart are powers given to the Philippine President. These powers, which are in themselves immense, led a noted commentator on the United States Constitution to label the office of the United States President as the most powerful elective position in the world³⁵ and prompted an equally noted historian to refer to it without exaggeration as an Imperial Presidency.³⁶ Thus, like his American counterpart, the Filipino Chief Executive exercises the following powers: He "takes care that the laws are faithfully executed". He possesses the general appointing power with the consent of the Commission on Appointments.³⁷ He is the commander-in-chief of all armed forces of the Philippines.³⁸ He is the authoritative exponent of the country's foreign policy. Being the Chief Diplomat, Article VII, Section 10(7) confers on him the power, with the concurrence of 2/3 of all members of the Senate, to make treaties. He is a vital source of legislative suggestion. He "shall from time to time give to the Congress of the Philippines information of the state of the nation and recommend for its consideration such measures as he shall judge necessary and expedient."³⁹ Philippine experience, in fact, shows that the President even goes further than mere drafting and recommending measures. President Quezon maintained an office in the National Assembly to follow the progress of recommended measures⁴⁰ and President

³¹ SINCO, *PHILIPPINE POLITICAL LAW* 22 (1962).

³² CORTES, *op. cit. supra*, note 22 at 74 citing *Villena v. Secretary of Interior*, 67 Phil. 451, 464 (1939).

³³ *Villena v. Sec. of Interior*, 67 Phil. 451, 464 (1939) cited in FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES* 252 (1977).

³⁴ U.S. CONST., art. II, sec. 1 (1).

³⁵ FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES* 252 (1977) citing 2 SCHWARTZ, *THE POWERS OF GOVERNMENT* 2 (1963).

³⁶ *Id.*, citing SCHLESINGER, *THE IMPERIAL PRESIDENCY* 99 (1973).

³⁷ CONST. (1935), art. VII, sec. 10, par. 3, 4 and 7; art. VIII, sec. 5 and art. X, sec. 1.

³⁸ CONST. (1935), art. VII, sec. 10, par. 2.

³⁹ CONST. (1935), art. VII, sec. 10, par. 5.

⁴⁰ CORTES, *op. cit. supra*, note 22 at 207, citing ROMANI, *THE PHILIPPINE PRESIDENCY* 129 (1956).

Macapagal even went to the extent of lobbying for the enactment of pet measures.⁴¹ This recommendatory power which in practice is exercised beyond its limits, coupled with the Presidential budgetary and veto powers, make the presidency a potent instrumental factor in legislation.

Not yet fully convinced of the strength of the Philippine president with the conferment of the powers invested in Schlesinger's Imperial Presidency, the Convention proceeded to clothe the Filipino President with still greater powers.

While the U.S. President is merely the commander-in-chief of the army and navy, of the U.S. Militia, and of the several states when called into action by the United States; the Filipino President as commander-in-chief, "whenever it becomes necessary may call out such armed forces to prevent or suppress lawless violence, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law".⁴² While the United States President "may require the opinion, in writing of the principal officer in each of the Executive Departments, upon any subject relating to the duties of their respective offices",⁴³ the Philippine President "shall have control of all the executive departments, bureaus or offices, and executive and general supervision over all local governments as may be provided by law".⁴⁴ Unlike the United States President, he has the power "to veto any particular item or items of an appropriation bill", and, "to veto any separate item or items in a revenue or tariff bill. . .".⁴⁵ He "also submits "within fifteen days of the opening of each regular session of the Congress a budget of receipts and expenditures, which shall be the basis of the general appropriation bill. . .".⁴⁶ It must also be noted that "in times of war or national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy".⁴⁷

The lodging of such a wide-array of powers in one man was not an accidental product of mere miscalculation or sheer oversight. They sprang from the conscious desire of the experienced doctrinaires comprising the 1934 Constitutional Convention to give birth to a strong president, one who, at all times, is capable of acting with complete, all embracing and swiftly moving authority. This was categorically intimated by Claro M. Recto, the President of the Convention in his valedictory address:

⁴¹ *Id.*, "On June 16, 1963, President Macapagal was reported to have been following up personally 2 major administrative bills on the public works and the land reform measures". 59 O.G. No. 25, CXCVII (1963).

⁴² CONST. (1935), art. VII, sec. 10, par. 2.

⁴³ U.S. CONST., art. II, sec. 2.

⁴⁴ CONST. (1935), art. VII, sec. 10, par. 1.

⁴⁵ CONST. (1935), art. VI, sec. 20, pars. 2 and 3.

⁴⁶ CONST. (1935), art. VI, sec. 19, par. 1.

⁴⁷ CONST. (1935), art. VI, sec. 26.

During the debate on the Executive power it was the almost unanimous opinion that we had invested the executive with rather extra-ordinary prerogatives. . . . Learning our lessons from the truth of history and determined to spare our people from the evils of dictatorship and anarchy, we have thought it prudent to establish an executive power which subject to the fiscalization of the assembly and of public opinion will not only know how to govern but will actually govern with a firm and steady hand. . . . Executive (who will) give his people orderly and progressive government without need of usurping . . . powers. . . .⁴⁸

V. THE PRESIDENCY UNDER THE 1973 CONSTITUTION: A NOMINAL EXECUTIVE

"...[T]here is no further judicial obstacle to the New Constitution being considered in force and effect." With this oft-quoted, now by-word, dispositive portion of the Philippine Supreme Court's decision in *Javellana v. Executive Secretary*,⁴⁹ judicial sanction was stamped on the validity of the presidential decree⁵⁰ submitting the Constitution to the people for its ratification as well as Proclamation No. 1102 announcing the ratification of the said Constitution.

The most innovative feature of the 1973 Constitution is the institution of a parliamentary form of government — with the Executive power, heretofore vested in the President, lodged in the Prime Minister with the assistance of the Cabinet. It has been categorically asserted by a well-known constitutionalist:⁵¹

nevertheless, the fact is that an unparalleled constellation of powers had been formally vested in the Prime Minister in the 1973 Constitution, much of which had earlier been lodged in the President and the Cabinet. And the seeming paradox is that we have turned to parliamentarism, only to give the executive power to the Prime Minister . . . who in reality becomes the government. . . . This will have the merit of ensuring government stability, but it has also created for much centralization in one man.

With the Prime Minister in the governmental limelight as the real executive, the President had been relegated to the background to sit on an innocuous throne as the symbolic head of state. A noted constitutional law author compares the Philippine President under the 1973 Constitution to the Presidency which Clinton Rossiter branded as:

he remains today, as he has always been, the ceremonial head of the government . . . and he must take part with real or apparent enthusiasm in the range of activities that would keep him running and posing from sunrise to bedtime. . . . Some of these activities are solemn or priestly in nature; others, though no fault of his own, are flirtatious with vulgarity. The long catalogue of public duties that the Queen discharges in England

⁴⁸ Quoted in MACAPAGAL, A NEW CONSTITUTION FOR THE PHILIPPINES 200-201 (1970).

⁴⁹ G.R. No. 36142, March 31, 1973, 50 SCRA 30 (1973).

⁵⁰ Pres. Decree No. 73 (1972).

⁵¹ ESPIRITU, PARLIAMENTARY GOVERNMENT 73 (1976).

....is the President's responsibility in this country and the catalogue is even longer because he is not a king, or even an agent of one, and is therefore expected to go through some rather undignified paces by a people who think of him as a combination of a scoutmaster, Delphic oracle, hero of the silver screen and father of the multitudes.⁵²

Chief Justice Fernando finds in the crown of the United Kingdom an appropriate analogy for the Presidency. In England, the reigning Queen remains a symbol of national unity, a focal point of national loyalty, transcending partisan rivalry and strengthening social cohesion.⁵³ For indeed the Philippine President was divested of all his powers and left with only ceremonial duties and functions. It is not with a tinge of ridicule when one delegate of the 1971 Constitutional Convention candidly remarked: "it is in the nature of a symbol. . . . to have no powers".⁵⁴ Under his reduced powers, the President shall address the National Assembly at the opening of its regular session.⁵⁵ This function is definitely not the same as the power of the President under the 1935 Constitution to give the State of the Nation Address and to recommend measures for consideration, a power now lodged in the Prime Minister. The President under the 1973 Constitution is certainly not in a position to speak with authority about the State of the Nation, because he is not the Executive.⁵⁶ Moreover, the President proclaims the election of the Prime Minister, and at the latter's advice dissolves the National Assembly and calls for a general election as provided in the Constitution.⁵⁷ He also accepts the resignation of the Cabinet and attests to the appointment or cessation from office of the members of the Cabinet and other officers as the law may provide.⁵⁸ Of course, he has the right to appoint all officers and employees in his innocuous office in accordance with the Civil Service Law.⁵⁹

A distinguished constitutionalist and law professor⁶⁰ soothes the power-divested President: "perhaps the influence of an elder statesman adviser will be there if he is a good President. He may be able to smoothen relations between the Prime Minister and the Members of the National Assembly, if a brash Prime Minister were ruling". But no amount of solace can soothe the pain, to a once fierce tiger, caused by the loss of his razor-fine tusk. The fact stands that under the 1973 Constitution, it is the Prime Minister, instead of the President, who wields executive power.

⁵² BERNAS, THE 1973 PHILIPPINE CONSTITUTION: A REVIEWER-PRIMER 92-93 (1981).

⁵³ FERNANDO, *op. cit. supra*, note 35 at 252, citing DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW 99 (1971).

⁵⁴ ESPERITU, *op. cit. supra*, note 51 at 81.

⁵⁵ CONST. (1973), art. VII, sec. 6, par. 1.

⁵⁶ ESPERITU, *op. cit. supra*, note 51 at 81.

⁵⁷ CONST. (1973), art. VII, sec. 6, pars. 2 & 3.

⁵⁸ CONST. (1973), art. VII, sec. 6, pars. 4 & 5.

⁵⁹ CONST. (1973), art. VII, sec. 6, par. 6.

⁶⁰ ESPERITU, *op. cit. supra*, note 51 at 81.

VI. THE PRESIDENCY UNDER THE TRANSITORY PROVISIONS OF THE CONSTITUTION AND THE 1976 AMENDMENTS: A POWERFUL EXECUTIVE

Article XVII, Section 3 (2) of the 1973 Constitution on the Transitory Provisions provides:

All proclamations, orders, decrees, and acts promulgated, issued or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding and effective even after the lifting of Martial Law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly.

This provision affords a constitutional sanction to all proclamations, orders, decrees and acts of the incumbent President during the emergency government under Martial Law which was precipitated by the dual need to save the Republic and to reform the society. Perforce, all presidential issuances which only find their bases on his Martial Law powers and thus coterminous with the temporary period of emergency *were institutionalized and acquired constitutional foundation*. It may be recalled that during the Martial Law period, the incumbent President assumed all the powers of government, which assumptions were judicially upheld. In *Aquino v. Comelec*,⁶¹ his authority to legislate was recognized. In disposing of the issue as to the validity of the President's exercise of legislative power, the Court, through Mr. Justice Makasiar, said:

We affirm the proposition that as Commander-in-Chief and enforcer or administrator of Martial Law, the incumbent President of the Philippines can 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 rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a worldwide recession, inflation, or economic crisis which presently threatens all nations including highly developed countries.

In *Aquino v. Military Commission No. 2*,⁶² the incumbent President's exercise of judicial powers was recognized. In this case, the Supreme Court allowed the jurisdiction of military tribunals, which are executive creations to try civilians even as the civil courts are exercising their proper functions. The Court, through Mr. Justice Antonio, said:

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.... Public danger warrants the substitution of executive process for judicial process. According to Schwartz, "the immunity of civilians from military

⁶¹ G.R. No. 40004, January 31, 1975, 62 SCRA 275, 298 (1975).

⁶² G.R. No. 37364, May 9, 1975, 63 SCRA 546, 574-75 (1975).

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.

In *Sanidad v. Comelec*,⁶³ the Supreme Court upheld the authority of the incumbent President to propose amendments to the Constitution, a power which was heretofore entrusted and exercised by collegiate representative bodies. The Court said:

Would it then be within the bounds of the Constitution and of the law for the President to assume the constituent power of the Interim Assembly vis-a-vis his assumption of the body's legislative functions? The answer is yes. If the President has been legitimately discharging the legislative functions of the Interim Assembly, there is no reason why he cannot validly discharge the function of that Assembly to propose amendments to the Constitution, which is but an adjunct, although peculiar, to its gross legislative power.

It should be pointed out that the non-convening of the interim National Assembly provided for in the 1973 Constitution paved the way towards the incumbent President's exercise of powers legitimately belonging to this interim body. The Constitution vests in the incumbent President the discretion as to when he shall convene the interim Assembly after determining whether the conditions warrant the same.⁶⁴ It may be recalled that the incumbent President decided to defer the initial convocation of the interim Assembly, which decision was supported by the sovereign people at the referendum in January, 1973 when the people voted to postpone the convening of the interim National Assembly until after at least seven years from the approval of the new Constitution.

It is worthy to note that the legality of the acts of the President which were challenged but upheld in the cases cited *supra* is already rendered impregnable by no less than a provision of the fundamental law itself. They are all valid, legal and binding even after the lifting of Martial Law subject only to subsequent repeal, alteration or modification by proclamations, decrees, orders, instructions and acts of the incumbent President himself or by the *regular* National Assembly. The Constitution speaks of the *regular* not the *interim*. Thus, the interim National Assembly itself, whose existence was deferred until after at least 7 years from 1973 is powerless to supersede the incumbent President's issuances.

It had been correctly observed that "while the authority for its declaration (of Martial Law) stems from the 1935 Constitution, its continuation was insured by the adoption of the New Constitution in 1973. The essential features of Martial Law as it developed: the exercise of extraordinary powers by the incumbent President; his indefinite tenure; the relegation

⁶³ G.R. No. 44640, October 12, 1976, 73 SCRA 333, 368 (1976).

⁶⁴ CONST. (1973), art. XVII, sec. 3, par. 1.

of the legislature; the neutralization of the judiciary and the curtailment of constitutional rights were *incorporated* and *institutionalized* under the Transitory Provisions".⁶⁵ (underscoring mine)

The institutionalization of the concentration of governmental powers in the hands of the incumbent President which was normally justified only by the existence of an emergency gained added impetus from the amendments to the Constitution ratified on October 16, 1976 and proclaimed in effect as of October 27, 1976 by Presidential Proclamation No. 1595. Amendment No. 3 provides:

The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the Interim Batasang Pambansa⁶⁶ is organized and is ready to discharge its functions and likewise he shall continue to exercise his powers under the 1935 Constitution and the powers vested in the President and the Prime Minister under this Constitution.

By virtue of this constitutional amendment, the incumbent President was invested with an amalgamation of powers heretofore belonging to two different executives under two entirely different systems of government.

While Amendment No. 5 which is an institutionalization of the incumbent president's power to legislate during the Martial Law period seems to state *a contrario* that powers of legislation by the incumbent President will terminate upon the lifting of Martial Law, yet in the light of a categorical provision which seemingly counteracts the foregoing Amendment and which being later in place would seem to prevail, it may not be totally unjustified to just disregard Amendment No. 5 altogether. Amendment No. 6 provides:

Whenever in the judgment of the President (Prime Minister) there exists a grave emergency or a threat or imminence thereof, or whenever the Interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions which shall form part of the law of the land.

Thus, even after the lifting of Martial Law, the incumbent President, if he sees it proper, based on his own judgment, could declare a state of grave emergency or threat or imminence thereof and exercise legislative power vis-a-vis the Interim Batasang Pambansa or the Regular National Assembly. Even granting that there is no grave emergency or a threat or imminence thereof, the incumbent President may still legislate when the Interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately in any matter for any reason that in his judgment requires

⁶⁵ Tan, *The Philippines After the Lifting of Martial Law: A Lingering Authoritarianism*, 55 PHIL. L. J. 423 (1980).

⁶⁶ Amendment No. 1 installed an Interim Batasang Pambansa in lieu of the Interim National Assembly. This new legislative body first convened on June 12, 1978.

immediate action. And as had been correctly pointed out: "[t]he sufficiency of the factual basis for his determination cannot be inquired into by the Judiciary; [t]he courts cannot substitute their judgment for his."⁶⁷ This then generates fear of possible abuses in the exercise of a power devoid of limitations. Amendment No. 6 being part and parcel of the Constitution, we can just dismiss the President's statement that upon the lifting of Martial Law his power of legislation is lost, the latter being the principal effect of the former, as at best an embodiment of policy which has no bearing in law.⁶⁸

VII. THE PRESIDENCY UNDER THE 1981 AMENDMENTS: AN ULTRA-POWERFUL EXECUTIVE

Article VII, Section 1 of the 1981 Revised Constitution of the Philippines provides: "The President shall be the Head of State and Chief Executive of the Republic of the Philippines." *By virtue of what simply appears as a mere constitutional re-investiture of the President back at the helm of government, a solid groundword of unparalleled innovations in the field of governance was firmly established.*

A Parliamentary System with an Impotent Parliament

While retaining the parliamentary set-up and its underlying principle of the fusion of executive and legislative, the 1981 amendments confer on the President, a mere figurehead in a genuine parliamentary system, all the executive powers legitimately belonging to the Prime Minister and the Cabinet. But unlike both the Prime Minister and the President who, under the original 1973 Constitution, are both chosen by the members of the National Assembly from among themselves, the President under the 1981 Amendments is directly elected by the people in a general election.⁶⁹ Being elected by the people at large, the President becomes accountable to nobody else but to the people themselves. This striking innovation, considered by the majority of Filipinos as a resounding victory, it being a restoration to the people of the delicate right of choosing their highest leader, is a constitutional debacle, plain and simple. This serves as a buffer zone which insulates the President from the restraining hands of the National Assembly. Indeed, it is a radical departure from the normal parliamentary arrangement wherein the National Assembly has control over the Prime Minister, who is a member thereof, exercisable through a vote of no confidence. Thus, while under the original 1973 Constitution the Parliament or the National Assembly can spell the ouster of an overbearing Prime Minister, by virtue of the 1981 amendments the

⁶⁷ Tolentino, *The Effects of the 1976 Amendments on the Legislative Process: The Batasang Pambansa in 1976* AMENDMENTS AND THE NEW CONSTITUTION 55, 62 (1978).

⁶⁸ Carag, *The Legal Implications of the Lifting of Martial Law in the Philippines*, 55 PHIL. L. J. 453 (1980).

⁶⁹ CONST., art. VII, sec. 3.

National Assembly became literally impotent in checking an imperious President.

Furthermore, unlike in a genuine parliamentary set-up, where the man invested with executive power is subject to the question hour, a feature of the parliamentary system considered as "one of the most powerful implements of democracy",⁷⁰ as it checks the manner the executive enforces and implements the law, under the 1981 amendments the President is beyond the reach of this vaunted parliamentary weapon. Lamentable as it is, nothing "could more weaken the control of the Parliament over the executive than the abolition or curtailment of the right of a member of Parliament to ask a question in the House..."⁷¹ The 1981 amendments instead subject the Prime Minister, and the members of the Cabinet to the question hour. The question hour, then, loses its efficacy considering that within its ambit are not those who wield actual Executive power but mere administrators running the daily routine of government.

Conversely, a Highly Potent President

On the other hand, the President can dissolve the Batasang Pambansa. Thus, Article VIII, section 13 (2) provides:

The Prime Minister may advise the President in writing to dissolve the Batasang Pambansa whenever the need arises for a popular vote of confidence on fundamental issues. . . . Whereupon the President may dissolve the Batasang Pambansa. . . .

With just the advice of the Prime Minister as the prerequisite, an officer who is elected by the Batasang Pambansa from among its members *upon the nomination of the President*, who is expected to *belong to the President's political party*, and *whose term of office depends on the President's discretion*,⁷² the President is virtually unchecked in spelling the legislature's exit.⁷³

A Scarecrow Remains

Of course, there remains the provision on impeachment.⁷⁴ But no amount of idealism can offer solace considering the inutile character of this constitutional device which more often than not succumbs to political

⁷⁰ FERNANDO, *op. cit. supra*, note 35 at 207 citing WILDING AND LANDY, AN ENCYCLOPEDIA OF PARLIAMENT 627 (1972).

⁷¹ *Id.*, citing also DE SMITH, *op. cit. supra*, note 53 at 295-297.

⁷² Article IX, Section 4 "The term of office of the Prime Minister . . . shall end on the date that the nomination of his successor is submitted by the President to the Batasang Pambansa."

⁷³ Subject only to the condition that "no dissolution of the Batasang Pambansa shall take place within 18 months immediately preceding a regular election of the Batasang Pambansa or during the pendency of impeachment proceedings against the President or when the powers of the President are exercised by the Executive Committee or the Speaker. The Batasang Pambansa shall not be dissolved oftener than once every 12 months."

⁷⁴ CONST., art. XIII, sec. 2.

machinations. History provides us with concrete illustrations. There were only two occasions⁷⁵ in the past wherein this rather cumbersome process was availed of. In both instances it failed to oust the Executive concerned thereby dramatizing its inefficacious nature, a quality which prompted United States constitutionalists to brand it a "mere scarecrow or a rusted blunderbuss".⁷⁶

The President as the General Appointing Power

The President has the power to appoint the members of the Cabinet,⁷⁷ including the Prime Minister inasmuch as the Batasang Pambansa which elects the Prime Minister is merely expected to just formally affirm the President's nomination. It is noteworthy that while the Prime Minister is supposed to be the head of the Cabinet,⁷⁸ it is not the Prime Minister but the President who appoints the Cabinet ministers. Not only that, the President may remove said Ministers at his discretion.⁷⁹ Doubts may then follow as to who ultimately controls the Cabinet but considering that the Prime Minister is always one hundred percent a political ally of the President, the question becomes academic. The President also has control over the Ministries, while the Prime Minister is given mere supervisory powers.⁸⁰ This then, in line with the ruling in the celebrated case of *Mondano v. Silvosa*,⁸¹ means that the President has the power to alter, modify, nullify or set aside what the Ministries may have done in the performance of their duties or even to substitute his judgment for that of the Ministries'.

Giving him back that traditional presidential power of appointment, Article VII, Section 10, provides:

The President shall appoint the heads of bureaus and offices, the officers of the armed forces of the Philippines from the rank of brigadier general or commodore, and all other officers of the government whose appointments are not otherwise provided for, and those whom he may be authorized by law to appoint. . . .

The President also appoints the members of the Supreme Court and judges of inferior courts, as well as the Chairmen and Commissioners of the Constitutional Commissions.⁸²

The President's power of appointment unlike under the 1935 Constitution, is *final*, not being subject to the prerequisite consent of the now

⁷⁵ Against President Quirino on five counts in 1949; and against President Macapagal in 1963. Cited in CORTES, *op. cit. supra*, note 22 at 48.

⁷⁶ *Ibid.*, citing ROSSITER, *AMERICAN PRESIDENCY* 48-49 (1964).

⁷⁷ CONST., art. IX, sec. 1.

⁷⁸ *Ibid.*

⁷⁹ *Id.*, section 4.

⁸⁰ CONST., art. VII, sec. 2 and art. IX, sec. 10.

⁸¹ 97 Phil. 143.

⁸² CONST., art. X, sec. 4; art. XII, B, sec. 1 (1); art. XII, C, sec. 1 (2); and art. XII, D, sec. 1 (2).

extinct Commission on Appointments. It must be pointed out that while this power was lodged with the Prime Minister under the 1973 Constitution, possible abuses are checked by the power of the legislature to oust the Prime Minister through a vote of no confidence. This, as was pointed out, is not the case under the 1981 Amendments.

The President as Chief Legislator

Article VII, Section 13 vests in the President the power to formulate the guidelines of national policy. Albeit how unparliamentary it may appear for a President, who is not a member of the Batasang Pambansa, to spearhead the legislative process, with the 1981 amendments, the presidency is a power to reckon with in the art of legislation. Article IX, Section 2 requires the President's approval of the programs of government prepared by the Prime Minister and the Cabinet. Clearly then, the bills for the implementation of the programs of government which emanate from the Cabinet have to earn first the presidential nod before they are finally submitted to the Batasang Pambansa for consideration and approval. While it is not necessary for bills sponsored by any member of the Batasang Pambansa to have favorable recommendation of the Cabinet, yet considering that it is the Cabinet which determines the program of government to which laws must relate, any outside-sponsored measure may find difficulty in passing the legislative mill unless it is favorably indorsed by the Cabinet. Thus, through the cabinet's control over the legislative agenda, the President finds another convenient device for legislative control. While this arrangement was constitutionally sound under the 1973 governmental set-up wherein the Prime Minister while controlling the legislative agenda is subject to a countercheck by the legislature through the vote-of-no-confidence, under the 1981 amendments wherein the President is beyond legislative discipline, being independent thereof and accountable directly to the people, such arrangement loses the validity of its excuse for being.

The control of the legislative flow of business is further buttressed by the retention of the veto power. Thus, every bill passed by the Batasang Pambansa shall, before it becomes a law, be presented for approval to the President.⁸³ A presidential veto may only be over-ridden by a stringent 2/3 vote requirement of *all* members of the Batasang Pambansa, the majority of the members of which, as Philippine experience has shown, belongs to the President's political party.

The President's Perpetual Reeligibility

The President is elected by a direct vote of the people for a term of six years⁸⁴ *without limit to reelection*. Thus, one President may remain in perpetual power if he is charismatic enough to keep the people under a spell or just a plain smart-alec specializing in political tactics and maneuvers.

⁸³ CONST., art. VIII, sec. 20 (1).

⁸⁴ CONST., art. VII, sec. 3.

Under the original 1935 Constitution the President had a six-year term without reelection but 5 years later, through a constitutional amendment, his term was reduced to 4 years with just one re-election.⁸⁵ The objective was to raise the presidency above the level of partisan politics and thus, enable him to concentrate on matters pertaining to the common weal. Under the 1973 Constitution there is also no limitation as to the term of the Prime Minister, but unlike the President under the 1981 amendments, the former is removable by the Batasang Pambansa. It may be said that the 1981 Amendments' grant to the president of perpetual reeligibility, removes in him one source of human weakness, that is, forced subservience at times to procure reelection.⁸⁶ For at present it would not be impractical to "invest" large sums to insure one's election in anticipation of the huge returns offered by an unlimited term.

A Case of Power Without Check

Several other powers conferred on the Prime Minister under the original 1973 Constitution had been transferred to the President. He has again the commander-in-chief powers and the adjunct prerogatives to suspend the writ of *habeas corpus* and declare Martial Law.⁸⁷ He may, except in cases of impeachment, grant reprieves, commutations, and pardons, remit fines and forfeitures and with the concurrence of the Batasang Pambansa, grant amnesty.⁸⁸ He may contract and guarantee foreign and domestic loans on behalf of the Republic of the Philippines subject to legal limitations.⁸⁹

The foregoing transplantation of powers from the office of the Prime Minister to that of the President which in the facade appears to be merely in keeping with the Philippine political tradition of vesting in the President the powers of the Executive, houses internally a *constitutional coup d'état* which catapults the presidency to soaring heights far above the level of the legislature. *This blatantly demolishes the doctrine of separation of powers and its underlying concept of coequality among the 3 branches of government.* For while the Executive controls the legislative process through the Cabinet's control of its agenda and through his veto power, and is empowered to cause the legislature's dissolution, he himself, not being accountable to it, is beyond the restraining hands of the legislature. It may not be amiss to refresh our memory as to the purpose of the adoption of the doctrine of separation of powers. This doctrine poses as a sentry to guard against autocracy. In the landmark case of *Myers v. U.S.*,⁹⁰ the United States Supreme Court clarified the rationale behind the adoption of the doctrine:

⁸⁵ CONST. (1935), art. VII, sec. 5: "No person shall serve as President for more than eight consecutive years..."

⁸⁶ ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 394 (1949).

⁸⁷ CONST., art. VII, sec. 9.

⁸⁸ CONST., art. VII, sec. 11.

⁸⁹ CONST., art. VII, sec. 12.

⁹⁰ 272 U.S. 52, 177 (1926).

The doctrine of separation of powers was adopted by the Convention of 1787 not to provide efficiency but to preclude the exercise of arbitrary power. The purpose is not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among the 3 departments, *to save the people from autocracy*. (Underscoring mine)

Similarly, with the Batasang Pambansa's impotency to work out the President's ouster, the firmly embedded system of checks and balances was ransacked, thus, removing the lone Sword of Damocles which keeps the President under control. This is the net-result of the mechanical transplantation of the Prime Ministerial powers safely lodged and well-guarded by stringent checks and balances under Articles VIII and IX of the original 1973 Constitution into the office of the Presidency, under the 1981 amendments, an agency devoid of similar institutional restraints. In essence, the President while having the Prime Minister's powers is not restrained by the latter's limitations.

Collective Presidency

The 1981 amendments introduce yet another unprecedented concept in Philippine political history — a collegiate body called the Executive Committee designated by the President which is composed of the Prime Minister as Chairman and not more than 14 members, at least half of whom are members of the Batasang Pambansa.⁹¹ This body exercises the powers and discharges the duties of the President until a new President shall have been elected and qualified in any of the following situations:

1. When the President has not been chosen on the date fixed for the beginning of his term;
2. When the President-elect dies before the beginning of his term;
3. When the President-elect fails to qualify;
4. When the President is removed from office;
5. When the President dies during his term;
6. When the President resigns from office;
7. When the President suffers from permanent disability;⁹²

Thus, in any of the foregoing situations, the country will be placed under the leadership of a collective presidency. The Committee will then exercise the ultra-powerful prerogatives invested in the Philippine President including the powers to suspend the writ of *habeas corpus* and to declare Martial Law. This erases the apprehension against the concentration of powers in the hands of one man. But then the question on how to quench the thirst for power of 15 men and curb out possible abuses of not just a single personality becomes a new and urgent preoccupation.

⁹¹ CONST., art. VII, sec. 4.

⁹² CONST., art. VII, sec. 4 & 7.

Whenever the Executive Committee exercises the powers of the Presidency, the legislative control over the Executive is restored inasmuch as the Prime Minister, the Chairman of the Executive Committee, is removable through a no-confidence vote by the Batasang Pambansa. In this eventuality, the Speaker of the House, a legitimate member of the Batasang Pambansa will carry the brunt of governance by presiding over the Committee.⁹³ Similarly, in the absence of the whole Committee, the Speaker shall by himself act as President until the President shall have been elected and qualified.⁹⁴

Immunity from Suit

Article VII, Section 15 provides:

The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure. The immunities herein provided shall apply to the incumbent President referred to in Article XVII of the Constitution.

The immunity clause is justified by the need to afford a protective shield against harassing lawsuits which will subvert the Chief Executive's independence.⁹⁵ As Justice Moreland succinctly puts it:

it will produce only evil results as action upon matters of state will be delayed, the time and substance of the Chief Executive will be spent in wrangling litigation, disrespect upon his person will be generated and distrust in the government will soon follow.⁹⁶

Certainly, the immunity clause cannot be used to place any public officer above the law without running counter to the settled constitutional maxim of accountability. It may be contended that the 1981 amendments' immunity clause lies only for official acts in pursuance of law and certainly not for violations of law, but a noted law professor and constitutionalist dismisses it outright:

Under existing jurisprudence no official is accountable for acts in accordance with law, there is no liability for lawful acts. In fact, under present law there is no official liability for erroneous acts, so long as these were done in good faith. Hence, the immunity could only be intended to provide a shield for official acts in violation of law.⁹⁷ (Underscoring mine)

The scope of the immunity is very broad for it includes all official acts either done by the President or by others pursuant to his specific orders during his tenure. Clearly, then, the immunity extends to an indefinite number of individuals, be they public officials or private persons so long

⁹³ CONST., art. VII, sec. 4.

⁹⁴ CONST., art. VII, sec. 7.

⁹⁵ SINCO, *op. cit. supra*, note 31 at 422.

⁹⁶ *Forbes v. Chuoco Tiaco*, 16 Phil. 534 (1910).

⁹⁷ FERNANDEZ, *op. cit. supra*, note 9 at 35; see also *Moon v. Harrison*, 43 Phil. 27 (1922).

as they act in pursuance of the President's specific orders relating to official acts.

The immunity-mantle specifically covers the incumbent President. This forecloses the legal question about the possibility of bringing *bona fide* suits against acts which were violative of constitutional guarantees of life, liberty and property committed during the periods of Martial Law and transition government.

The above immunity in essence institutionalizes, instead of Equal Protection of Law, the Legalization of Abuse and Tyranny for it places the highest officials above the law.⁹⁸

With the immunity clause as part and parcel of the constitution, the settled principle of accountability loses its force. For while the Constitution speaks of accountability of public officers as one of its cornerstones, the immunity clause poses as an impregnable barrier and places the President and those acting in his behalf beyond judicial correction and chastisement.

The President thus, had not only gained ascendancy over the legislature; now, he soared to still greater heights, and this time at the expense of the Judiciary.

A Sober Thought

Without an interval of detached reflection, the inevitable conclusion is that with the incorporation of the 1981 amendments in our fundamental law, the doctrine of separation of powers and the coequality among the three branches of government, the system of checks and balances and the principle of accountability vis-a-vis the Presidency, passed away. They became a spent force, had lapsed into a state of suspended animation, if not totally blasted beyond recall. Verily, the Presidency under the Amendments is the rusting link in the democratic chain that safely secures the door of constitutionalism against the surreptitious creeping in of authoritarianism in all its beguiling and subtle forms.

Constitutional Authoritarianism: Its Crowning Glory

The 1981 amendments further confer on the President all the powers vested in the President of the Philippines under the 1935 Constitution, powers which are exercised under an entirely different governmental scheme. Similarly, he has the powers vested in the President by the laws of the land which are not provided for or conferred by the Constitution upon any official. The phrase "laws of the land" includes all proclamations, orders, decrees, instructions and acts promulgated, issued or done by the incumbent President including those made under the emergency government.⁹⁹ It includes all those in derogation of civil liberties such as Presidential Decree

⁹⁸ *Id.*, at 34.

⁹⁹ CONST. (1973), art. XVII, sec. 3 (2).

No. 1737 otherwise known as the Public Order Act of 1981 which confers on the President, among others:

1. Power of preventive detention — that is, depriving persons of their liberty for indefinite periods without filing charges;
2. Power to close down or suspend publications and other mass media;
3. Power to suppress organizations deemed subversive.¹⁰⁰

and the powers conferred by Presidential Decree 1498 otherwise known as the Security Code of 1978, such as:

1. To order the detention of persons for taking part in demonstrations, rallies, strikes and other mass actions;
2. To detain persons for membership in organizations deemed subversive;
3. To detain persons for subversive publications.¹⁰¹

Notably, the President is still empowered to legislate. As Amendment No. 6 still stands, being unaltered by the 1981 Amendments, the President, if his judgment deems it necessary, may pass legislative enactments in the presence of the Batasang Pambansa, *interim* or regular.

In sum, the President now becomes a *constitutional powerhouse* invested with the powers of the President under the presidential system of the 1935 Constitution, the powers but not the limitations of the Prime Minister under the parliamentary set-up of the original 1973 Constitution, and the extraordinary powers of the Executive under the emergency and transitory governments which were then justified only by the existence of a state of emergency and/or a period of transition.

With the 1981 amendments, the long but gradual process of *constitutional coup d'état* reached its zenith. From September 21, 1972 marking the birth of the limitless and unrestrained powers of the Presidency justified by the emergency period, to the stage of the formulation and adoption of a New Constitution in response to the need for more governmental efficiency conferring the Executive power on the Prime Minister and the Cabinet, yet to another stage of transitory government wherein via the transitory provisions of the constitution the emergency powers of the Martial Law administration were institutionalized, and, ultimately to the final stage of the journey which witnessed the development of the heretofore emergency and transitory powers into a permanent arrangement stamped with the imprimatur of no less than the fundamental law of the land. Without our knowing it, the 1981 amendments have placed us, to borrow the words of Henry Clay, "in the midst of revolution hitherto bloodless, but rapidly leading towards a total change of the pure republican character of the government and to the concentration of powers in the hands of one man".¹⁰²

¹⁰⁰ Quoted in Fernandez, *op. cit. supra*, note 9 at 32-33.

¹⁰¹ *Ibid.*

¹⁰² Quoted by LASEI, *op. cit. supra*, note 1 at 14-15.

The long and tiring journey finally ended, we can now pause and recall a portion of the passage in the trial of Thomas Paine:

Arbitrary power has seldom or never been introduced into a country at once. It must be introduced by slow degrees and as it were step by step lest the people should see its approach. The barriers and fences of the people's liberty must be plucked up one by one and some plausible pretenses must be found for removing or hood-winking, one after another, those sentries who are posted by the constitution of a free country, for warning the people of their danger.¹⁰³

But with the 1981 amendments as a premise, one may logically argue that the extensive, nay infinite and unrestrained powers of the presidency cannot be considered arbitrary, they being founded on the provisions of the Constitution in line with Justice Sutherland's syllogism: "arbitrary power and the rule of the Constitution cannot both exist. They are antagonistic and incompatible forces; and one or the other must necessarily perish whenever they are brought into conflict".¹⁰⁴

But logic alone is a feeble chain with which to lock Pandora's box. It calls for more than mere syllogisms to contain stark realities, political or otherwise.

VIII. AN ULTRA-POWERFUL PRESIDENCY: A BLESSING OR A CURSE

All executive power — from the reign of ancient kings to the rule of modern dictator — has the outward appearance of efficiency.¹⁰⁵

According to the incumbent President: "The imperatives of a modern government constitute another pressure on the governments of the developing countries to consolidate and centralize the allocation of scarce resources for the provision of basic amenities. Today, modern governments have to provide facilities to promote the health, education and welfare of almost every citizen, unlike the States of the West during their formative years, when these amenities were unheard of".¹⁰⁶ The 1981 Amendments consolidate and centralize the exercise of the powers of government in the hands of the Executive to insure dispatch rather than delay in dealing with cases requiring expedient action. With the President as formulator of the guidelines of national policy, the efficient realization of which is assured through the Cabinet's control of the legislative flow of business, the Chief Executive can spearhead the country's thrust towards development. This precludes the recurrence of paralyzing deadlocks wherein the President who is not

¹⁰³ THOMAS ERSKINE, *arguendo*, Trial of Thomas Paine (1972) compiled in RAGBAG, *op. cit. supra*, note 2 at 221.

¹⁰⁴ Jones v. Securities and Exchange Commission, 298 US 1, 24 (1936) compiled in RAGBAG, *op. cit. supra*, note 2 at 221.

¹⁰⁵ Mr. Justice Douglas in his concurring opinion in Myers vs. U.S., 272 U.S. 52, 177, 629 (1926).

¹⁰⁶ MARCOS, *op. cit. supra*, note 15 at 68.

charged with the duty of presenting the programs of government often finds himself in a situation of a tug-of-war with Congress as to who would wield the policy-making authority. With a powerful president vested with "superpowers" the Government can readily respond to further crises and face the challenges that lie along the country's path.

Be that as it may, this is just one face of the coin.

The other side contains apprehensions about the possibilities of abuses of an ultra-powerful president. The 1981 Amendments being a mere institutionalization of the powers exercised by the Executive during the martial law government and the government in transition, a plethora of political and social eventualities ensue. With the President's constitutional ascendancy over the hitherto co-equal legislature and judiciary, with his control of the legislative while himself free from an elaborate system of checks and balances, and with his unaccountability to the legislature and to the judiciary for official acts done by him during his tenure, he is virtually unfettered in the exercise of his infinite powers.

The experience of our people with and under Martial Law has taught us the many ways in which the Government can control our lives: persons can be detained for indefinite periods of time and there is no legal remedy for obtaining freedom; workers can be forbidden to strike and thereby be deprived of their only weapon against exploitations and injustice; elections can be done away with, and there are no legal remedies for compelling them to be held; business enterprises may be taken over by the Government, or eliminated by Government regulations, and no legal remedies are available for redress; the press and other media maybe put under Government supervision and control, and no remedies can be invoked to restore their freedom; basic liberties, such as freedom of assembly, freedom of travel and freedom of association can be suspended or severely curtailed, and no legal redress obtains for such deprivation. Similarly, the Martial Law government has given us many examples of what a strong government can do: increase and multiply taxes and fees; borrow money and increase the National debt to over P100 Billion; continuously increase the prices of gasoline and other oil products, despite public opposition; set up Government monopolies of certain export products such as sugar, coconut oil, etc.; give to foreign companies large tracts of the public domain for their use and exploitation; eliminate tariff barriers that protect Filipino industries from the competition of foreign goods; hold wage levels, while cost of living increases; and, permit the foreign exchange earned with great hardship to be used for all kinds of luxuries.¹⁰⁷

These concrete observations supply enough solid ground upon which we can base our anxiety and worry about our own future and our destiny as a nation. As the opposition contends: with an ultra-powerful President, the interests of the nation can be compromised by just one man; one who will be unrestrained in further foreign borrowings which ultimately bargain away the country's political independence.

¹⁰⁷ FERNANDEZ, *op. cit. supra*, note 9 at 26 and 27.

The ultra-powerful presidency under the 1981 Amendments may serve as a blessing or a curse depending on one's perspective. To a democrat, it is certainly a curse being a deluge that washed away well-embedded and time-tested democratic principles and processes. To a practical-minded citizen who for years had suffered in the squalor of poverty, it *may* serve as a blessing. But . . .

Only Time Can Tell.

He who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast and passion perverts the minds of rulers even when they are the best of men.

— ARISTOTLE —