MORALES, JR. v. ENRILE AND THE CONSTITUTIONAL RIGHT TO BAIL

MANUEL R. DEL ROSARIO*

The constant apprehension of most followers of today's political scene centers on whether the courts still exist as effective guardians of constitutional liberties. The recent Supreme Court decision in the cases of *Morales, Jr. v. Ponce Enrile* and *Moncupa, Jr. v. Ponce Enrile*,[1] decided jointly, does nothing to dispel this fear.

Horacio R. Morales, Jr. and Antonio C. Moncupa, Jr. were arrested in the morning of April 21, 1982 without any warrant of arrest while they were riding together in a motor vehicle in Quezon City. Morales filed a *habeas corpus* petition with the Supreme Court on July 9, 1982. Likewise, Moncupa filed his petition for *habeas corpus* with the High Court on July 19, 1982. On July 20, 1982, after both *habeas corpus* petitions had been filed, petitioners, together with several other persons, were charged with rebellion before the Court of First Instance of Quezon City by the City Fiscal of Quezon City. Morales and Moncupa alleged in their respective petitions that they were arrested without any warrant of arrest, and that their constitutional rights, including the right to counsel, the right to remain silent, the right to a speedy and public trial, and the right to bail, were violated. The Supreme Court, with Justice Hermogenes Concepcion, Jr. as *ponente*, noted that although "Martial Law was terminated on January 17, 1981, by virtue of Proclamation No. 2045 of the President of the Philippines, the privilege of the writ of *habeas corpus* continues to be suspended in the two autonomous regions in Mindanao and in all other places with respect to certain offenses . . ."[2] The Supreme Court thereafter dismissed the petitions for lack of merit. More specifically, the Court ruled: (1) that "their arrest without a warrant . . . is clearly justified"[3] and (2) that "because the privilege of the writ of *habeas corpus* remains suspended 'with respect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance of or on occasion thereof, or incident thereto, or in connection therewith, the natural consequence is that the right to bail for the commission of any one of

* *Member*, Editorial Board, Philippine Law Journal

1 G.R. Nos. 61016 and 61107 respectively, April 26, 1983, 121 SCRA 538 (1983).

2 *Id.* at 563-564.

3 *Id.* at 560.

the said offenses is also suspended."[4] This article inquires into the validity of the statement that the suspension of the privilege of the writ of *habeas corpus* has as a "natural consequence" the suspension of the right to bail for offenses with reference to which the privilege is suspended. Further, the present status of constitutional freedoms in the light of the *Morales* decision will be discussed

GARCIA-PADILLA v. PONCE ENRILE AND THE ISSUE OF BAIL

No understanding of the *Morales* ruling would be complete without reference to the case of *Garcia-Padilla v. Ponce Enrile*[5] decided on April 20, 1983, just six days before *Morales*. The case of *Garcia-Padilla* was similarly a petition for the issuance of the writ of *habeas corpus*. Sought produced under the writ were Dr. Parong and thirteen other persons who were arrested by Philippine Constabulary/Integrated National Police teams in June and July of 1982. In an opinion penned by Justice Pacifico de Castro, the High Court dismissed the petition ruling that "the issuance [of a Presidential Commitment Order (PCO)] is the exclusive prerogative of the President under the Constitution, [and] may not be declared void by the courts, under the doctrine of 'political question'."[6] The decision defined the function of the PCO as that of validating "on constitutional ground, the detention of a person for any of the offenses covered by Proclamation No. 2045 which continues in force the suspension of the privilege of the writ of *habeas corpus*, if the arrest has been made initially without warrant. Its legal effect is to render the writ unavailing as a means of judicially inquiring into the legality of the detention in view of the suspension of the privilege of the writ."[7] The *Garcia-Padilla* decision held that: the PCOs issued by the President are legal and valid and may not be declared void by the courts, and the continued detention of offenders held under a PCO is valid and legal, their release being dependent on the President. On the question of bail, Justice de Castro said "the suspension of the privilege of the writ of *habeas corpus* must, indeed, carry with it the suspension of the right to bail, if the government's campaign to suppress the rebellion is to be enhanced and rendered effective."[8] Seven Justices voted in *Garcia-Padilla* to deny the right of bail to persons accused of offenses to which the privilege of the writ of *habeas corpus* remained suspended by virtue of Proclamation No. 2045. Aside from the *ponente*, Justice de Castro, these were Justices Juvenal Guerrero, Efren Plana, Venicio Escolin, Conrado Vasquez, Lorenzo Relova and Hugo Gutierrez, Jr.[9] On the other

---

[4] *Id.* at 564.
[5] 121 SCRA 472 (1983).
[6] *Id.* at 504.
[7] *Id.* at 490. A PCO is issued on the basis of Letter of Instructions Nos. 1125-A (1981) and 1211 (1981), quoted in full in *Morales*, 121 SCRA at 555-559,
[8] *Garcia-Padilla*, 121 SCRA at 494.
[9] *Id.* at 504.

hand, Chief Justice Enrique Fernando[10] and Justice Claudio Teehankee[11] were of the opinion that the right to bail remained available should the accused apply for it. Justices Felix Makasiar, Hermogenes Concepcion, Jr. and Ameurfina Melencio-Herrera did not vote on the issue of bail.[12] Justice Vicente Abad Santos reserved his right to rule on the question of bail while Justice Ramon Aquino was on leave and did not take part in the resolution of the case.[13] The vote in *Garcia-Padilla* was therefore 7-2, denying the detained persons' right to bail.

In Morales, Justice Concepcion, as *ponente,* and Justice Makasiar[14] joined the seven justices who had voted previously in *Garcia-Padilla* to deny the right to bail for those charged with offenses covered by Proclamation No. 2045. In favor of the right to bail were Chief Justice Fernando[15] and Justices Teehankee[16] and Abad Santos.[17] Justice Melencio-Herrera expressed the belief "that the proper procedure should be for petitioner to apply for bail in the Court below, and after his motion is granted or denied, the matter can therefore be elevated to appellate consideration."[18] She however, went on to add that "once prosecuted in Court, the position should not be taken that petitioner cannot be bailed, the right to bail being a fundamental right . . ."[19] Justice Aquino merely concurred in the result dismissing the petition, and was thus silent on the issue of bail.[20] In summary, the High Court ruled by a vote of 9-4 to deny the right to bail to persons arrested for crimes covered by Proclamation No. 2045, thereby reiterating the ruling in *Garcia-Padilla* on the issue of bail and finally settling the same issue raised in *Buscayno v. Military Commission* which elicited only 7 votes.[21]

THE CONSTITUTIONAL RIGHT TO BAIL

The Constitution lays down the right to bail in these words:

> "All persons except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required."[22]

Undeniably therefore, persons accused of crimes have recourse to this constitutional right to enable them to provisionally regain their freedom that they may better defend themselves before an impartial tribunal.

---

[10] *Id.* at 505 (separate concurring and dissenting opinion).
[11] *Id.* at 522 (separate dissenting opinion).
[12] *Id.* at 505.
[13] *Ibid.*
[14] *Morales,* 121 SCRA at 589 (separate opinion, dissenting in part).
[15] *Id.* at 570, (separate concurring and dissenting opinion).
[16] *Id.* at 578 (separate opinion).
[17] *Id.* at 591 (separate concurring and dissenting opinion).
[18] *Id.* at 599, 600 (separate opinion).
[19] *Id.* at 600.
[20] *Id.* at 570.
[21] G.R. No. 109 SCRA 273, 295 (the seven votes were from Justices Barredo, Aquino, Fernandez, Guerrero, de Castro, Abad Santos and Melencio-Herrera).
[22] CONST., art. IV, sec. 18.

The Revised Rules of Court define the concept of bail as "the security required and given for the release of a person who is in the custody of the law that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance."[23] The purpose of bail is to relieve an accused from imprisonment until his conviction and yet secure his appearance at the trial.[24] It is intended "to combine the administration of justice with the liberty and convenience of the person accused."[25] The concept of bail therefore seeks to prevent the punishment of accused persons who may later be found innocent and at the same time guarantee their appearance before a court requiring such. The *Morales* ruling on bail seems to overly stress the need for the appearance of the accused and thus the necessity of their continued detention, even at the cost of infringing on the constitutional presumption of innocence.

In the light of the doctrine announced by the High Court in *Morales,* we must reexamine the present situation and see whether the right of bail obtains within the ambit of criminal prosecution. Specifically, may persons charged with offenses with respect to which the privilege of the writ of *habeas corpus* remains suspended avail of the right of bail? In relation to the matter now before us, Chief Justice Ricardo Paras had this to say in a case of a similar nature before the Supreme Court in 1951, "if it be contended that the suspension of the privilege of the writ of *habeas corpus* includes the suspension of the distinct right to bail or to be provisionally at liberty, it would *a fortiori* imply the suspension of all his other rights (even the right to be tried by a court) that may win for him ultimate acquittal and, hence, absolute freedom."[26] In that case of *Nava v. Gatmaitan,* a majority of five Justices (one short of the then required majority of six affirmative votes to render the decision doctrinal) held "that the suspension of the privilege of the writ of *habeas corpus* does not affect petitioner's right to bail."[27] Four Justices maintained that the "suspension carried with it the suspension of the right to bail."[28]

REBELLION AS A BAILABLE FELONY

The old Penal Code of the Philippines took effect on July 14, 1887.[29] This code was a modified version of the Spanish Penal Code of 1870 made applicable to the Philippines by the Royal Decree of September 4, 1884.[30] Under the old Penal Code, rebellion was punished by a prison term of

---

[23] RULES OF COURT, Rule 114, sec. 1.
[24] Almeda v. Villaluz, 66 SCRA 38, 42 (1975).
[25] 8 C.J.S. 49.
[26] Nava v. Gatmaitan, 90 Phil. 172 at 179 (reported together with Hernandez v. Montesa and Angeles v. Abaya).
[27] *Id.* at 173, (The five Justices were Chief Justice Ricardo Paras, and Justices Cezar Bengzon, Pedro Tuason, Alex Reyes and Fernando Jugo).
[28] *Ibid.*, (The four Justices were Justices Felicisimo Feria, Guillermo Pablo, Sabino Padilla and Felix Angelo Bautista).
[29] AQUINO, THE REVISED PENAL CODE 1 (1976).
[30] *Ibid.*

reclusion temporal in its maximum period (17 years, 4 months and 1 day to 20 years) to death.[31] The Revised Penal Code (Act No. 3815) reduced the penalty to *prision mayor* (6 years and 1 day to 12 years). "The leniency in the case of rebellion is due to the political purpose which impels every rebellious act. Society views with some sympathy political offenses, like rebellion. Our history of three centuries of uninterrupted rebellions against sovereign Spain suffices to explain why the penalty against rebellion . . . was reduced."[32] Presidential Decree No. 942 however, amended Art. 135 of the Revised Penal Code and increased the penalty for anyone who promotes, maintains, or heads a rebellion or insurrection to *reclusion temporal* in its medium period (14 years, 8 months and 1 day to 17 years and 4 months) and a fine not to exceed ₱20,000.[33] Clearly rebellion by itself is not a capital offense and persons accused thereof are entitled to bail.[34]

Undeniably, however, under Proclamation No. 2045 the privilege of the writ of *habeas corpus* remains suspended for persons detained for rebellion.[25] The suspension of the privilege of the writ gives the President the power of preventive detention. He may "hold in preventive imprisonment pending investigation and trial those who plot against and commit acts that endanger the State's very existence."[36] This does not mean, however, that the government is shorn of its duty and responsibility of

---

31 People v. Geronimo, 100 Phil. 90 at 97, 98.

32 *Ibid.*

33 Pres. Decree No. 942 (1976) sec. 1. It must likewise be observed that Pres. Decree No. 942 inserted Art. 142-A after Art. 142 of the Revised Penal Code reading. "Art. 142-A. Cases where other offenses are committed.—When by reason or on occasion of any of the crimes penalized in this chapter, acts which constitute offenses upon which greater penalties are imposed by law are committed, the penalty for the most serious offense in its maximum period shall be imposed upon the offender." This additional article settles the issue on whether there is a complex crime under Art. 48 of the Revised Penal Code, of rebellion and murder or any other felonies committed in furtherance or on occasion of the rebellion. It was held in the cases of *People v. Amado Hernandez* (99 Phil. 515) and *People v. Geronimo,* (100 Phil. 90), that rebellion absorbs any and all of the acts described in Art. 135 when committed as a means to or in furtherance of the subversive ends described in Art. 134. Since petitioners in *Morales* were charged only with "rebellion Art. 134, Revised Penal Code" 121 SCRA at 552, Art. 142-A does not come into play.

34 Pres. Decree No. 942 (1976) sec. 1.

35 Proclamation No. 2045 (1981) reads: "NOW, THEREFORE, I FERDINAND E. MARCOS, President/Prime Minister of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby revoke Proclamation No. 1081 (Proclaiming a State of Martial Law in the Philippines) and Proclamation No. 1104 (Declaring the Continuation of Martial Law) and proclaim the termination of the state of martial law throughout the Philippines; Provided, that the call to the Armed Forces of the Philippines to prevent or suppress lawless violence, insurrection, rebellion and subversion shall continue to be in force and effect; and Provided that in the two autonomous regions in Mindanao, upon request of the residents therein, the suspension of the privilege of the writ of *habeas corpus* shall continue; and in all other places the suspension of the privilege of the writ shall also continue with respect to persons at present detained as well as others who may hereafter be similiarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in furtherance of or on occasion thereof, or incident thereto, or in connection therewith..."

36 *Morales,* 121 SCRA at 565.

ultimately filing charges in the appropriate judicial tribunals against these persons after their arrest. The right of preventive detention being a special remedy for extraordinary circumstances, it can never be without conditions. The Constitution is the first and most powerful limitation to its exercise. Justice Holmes declared that "public danger warrants the substitution of executive process for judicial process."[37] But this extraordinary predicament can not be made to exist for a longer period than the emergency that made it necessary. Thus, indivilual rights may not be *arbitrarily* restricted in violation of the clear mandate of the Constitution, the existence of danger to public safety notwithstanding.

REASONS FOR THE RESTRICTION OF THE RIGHT TO BAIL

Three major reasons are put forward by those who support the stand that the suspension of the privilege of the writ of *habeas corpus* includes, for the duration of the suspension of the privilege, the suspension of the right to bail. First, it is argued that those arrested when granted bail would return to the mountains, rejoin their 'comrades' and continue the rebellion against the government. Second, as a matter of procedure, it is contended that the availability of bail would induce government officials to refrain from filing charges as early as possible. Finally, since the State has an inherent right of self-defense when its life is endangered, it may hold in preventive imprisonment, for as long as it deems best, those who plot against the State's existence. Let us examine these arguments.

Justice de Castro stated in *Garcia-Padilla* that those arrested when granted provisional liberty would "without the least doubt rejoin their comrades in the field."[38] The possibility of an accused jumping bail and returning to the field exists. But should the likelihood of this happening deter courts from granting the accused provisional freedom? These accused persons may still be acquitted, that is why "the humanity of our law always presumes an accused party innocent until he is proved to be guilty."[39] Are we then to argue that despite their possible acquittal we should prevent their release as they might continue to fight the State? Denial of the right to bail based on this ground prejudges the question of guilt as a clear presumption of guilt accompanies every arrest, capture or detention. Arresting officers would swear that all persons accused of felonies are given due process of law. But with the presumption of innocence in their favor all but eliminated, it appears that so little is "due". It is still valid to say that bail may be used to the advantage of both the accused and the State. Nowhere is it claimed that bail should be given unqualifiedly, without reasonable restrictions to ensure the appearance of the individual

---

[37] Moyer v. Peabody, 212 U.S. 78 at 86, quoted in *Garcia-Padilla*, 121 SCRA at 510.

[38] *Garcia-Padilla*, 121 SCRA at 494.

[39] Herras Teehankee v. Rovira, 75 Phil. 634 at 641, citing COOLEY'S CONSTITUTIONAL LIMITATIONS.

concerned at the trial. The amount of the bail to be posted could be set at a relatively high level, provided it is not excessive. The accused could be required to report periodically to the court or to some other responsible peace officer to account for his movements. If he does jump bail the full force of the government machinery could be put in gear to recapture the accused. Further, since the 1973 Constitution expressly allows trial *in absentia*,[40] his jumping bail would be no bar to his possible conviction. It is the presence of this awesome power in the hands of the government that would aid in keeping track of persons out on bail to make sure they do not commit further offenses against the State, by reasonable surveillance methods not amounting to harrassment. "But the possible escape of the accused was considered a lesser evil than the imprisonment of persons who may be innocent, and are presumed innocent by law."[41]

The second argument put forward is that the availability of bail would discourage government officials from filing charges against accused persons if the latter can easily get out on bail. They will opt to delay the filing of charges as long as possible. However, this scheme has been substantially refuted by the case of *Herras Teehankee v. Rovira*,[42] ruling that since the Constitution says "All *persons* . . . shall . . . be bailable by sufficient sureties"[43] any person *even if not formally charged in court*, may exercise his right to bail. Furthermore, government officers who have failed to file charges in court against persons in their custody may be criminally liable for arbitrary detention[44] or unlawful arrest[45] without prejudice to the prosecution for other crimes for which they might be liable. "The suspension of the writ of *habeas corpus* does not legalize a wrongful arrest and imprisonment; it only deprives the party thus arrested of the means of procuring his liberty, but does not exempt the person making the illegal arrest from liability to damages, in a civil prosecution."[46] Even Justice Concepcion, Jr., who voted against the granting of bail in *Morales*, admitted that there was a difference between preventive and punitive detention. "Where the filing of charges in court or the trial of such charges already filed becomes protracted without any justifiable reason, the detention becomes punitive in character and the detainee regains his right to freedom."[47] How? The *ponente* does not go on to state. Would a petition for *habeas corpus* suffice? If a PCO or a PDA is issued, would there still be cognizable distinction between preventive and punitive detention? Justice de Castro discussed the situation in point in this wise, "to prosecute the offense through the judicial process forthwith instead of deterring it, would neither

---

[40] CONST. art. IV, sec. 19.
[41] Justice Tuason in *Nava v. Gatmaitan*, 90 Phil. at 208.
[42] 75 Phil. at 640-641.
[43] CONST. (1973), art. IV, sec. 18; CONST. (1935), art. III, sec. 16.
[44] REV. PEN. CODE, art. 124.
[45] REV. PEN. CODE, art. 269.
[46] Justice Bengzon in *Nava v. Gatmaitan*, 90 Phil. at 193 (quoting Griffin v. Wilcox, 21 Ind. 732 (1863)).
[47] *Morales*, 121 SCRA at 565.

be wise nor expedient if he were to deal effectively with the grave emergency at hand."[48] A more fundamental approach to this second contention would be to regard the availability of bail as a secondary remedy to regaining freedom for one who it is claimed had been arbitrarily arrested. Since applying for bail would in effect be legitimizing the detention, a pesron so arrested and accused should not seek bail but should contest the constitutionality of his arrest on grounds that his rights had been violated. The availability of bail would thus be a separate and alternative remedy. The possibility of the grant of bail therefore cannot be a reason why charges are not filed in court. There is a recurring feeling that cases are not prosecuted, and the time of preventive detention considerable, simply because the evidence in the hands of the government would not stand judicial inquiry.

Evidence or no evidence, it is argued that national security demands that those seeking to overthrow the government be incarcerated. This inherent right of the State to self-defense and self-preservation is perhaps the the most persuasive of the arguments advanced to support the denial of bail even to persons charged with non-capital offenses. *Morales* states "Just as an individual has a right to self-defense when his life is endangered, so does the State. The suspension of the privilege of the writ is to enable the State to hold in preventive imprisonment pending investigation and trial those persons who plot against it and commit acts that endanger the State's very existence. For this measure of self-defense to be effective, the right to bail must also be deemed suspended with respect to these offenses."[49] It may be argued, however, that even when a person invokes self-defense as a justifying circumstance, it is required that there be "reasonable necessity of the means employed to prevent or repel it."[50]

Suspension of the privilege of the writ of *habeas corpus* is already a proper and adequate measure of self-defense of the State. Once a rebel is apprehended and detained, the State is bound to afford him his constitutional rights, more particularly the right to counsel and the right to bail. Denying him these rights can in no way be considered a reasonable means of self-defense. In peace as in war certain rules have to be observed, and non-compliance therewith, no matter how noble the purpose, involves serious consequences.

President Ferdinand E. Marcos, writing as a senior law student in 1938, had this to say on the right of the state to exist:

> "Every state has the essential right of self-preservation- an absolute right, based upon the right of existence, and limited in the exercise by the rights of other states to exist. A state may take measures necessary to maintain

---

[48] *Garcia-Padilla,* 121 SCRA at 497.
[49] *Morales,* 121 SCRA at 565.
[50] REV. PEN. CODE, art. 11, par. 1.

> the conditions essential to its being, as in the protection of land and people... As each state is the judge of what endangers its own existence and what measures may be necessary for its preservation, the action to be taken under given conditions is determined by *policy*, rather than by principles of law, and such action is usually tempered by the fear of war or other measures of redress."[51]

Recent pieces of executive legislation, more specifically in relation to the crime of rebellion,[52] show that such measures are taken not only in response to given conditions but more precisely, as Mr. Marcos had foreseen, on the basis of policy. It is submitted that policy based on a denial of a right clearly granted and guaranteed by the Constitution does not provide a sufficient basis for proper State action.

It is admitted that the State's existence must be ensured. But this is to be done within Constitutional limits. The State exists for its citizens and impairing citizens' liberties unreasonably could in no way protect the State. Justice Teehankee in his dissenting opinion in *Garcia-Padilla* had occasion to quote Pope John Paul II, "Legitimate concern for the security of a nation, as demanded by the common good, could lead to the temptation of subjugating to the State the human being and his or her dignity and rights."[53] Protection of individual rights is the only sure way of ensuring societal existence. The myopic view of considering the State *per se* without sufficient regard for the people constituting it would lead nowhere but to protection of the abstract entity fully divorced from the people it is serving.

In exercising the State's right of self-defense, President Marcos asks the courts not to interfere with the interrogation of the arrested persons. But once charges are filed in court, the accused "is taken out of the fenced premises and (brought) into the Temple of Justice for trial and punishment."[54] Justice Tuason remarked in *Nava v. Gatmaitan,* "if and when formal complaint is presented, the court steps in and the executive steps out. The detention ceases to be an executive and becomes a judicial concern."[55] This is in keeping with the constitutional doctrine of the separation of powers, that it is the function of the judicial department alone to try cases and mete out punishments.

Bullets and arms alone will not quell a rebellion. History is replete with examples of armies of greater numbers and superior weapons losing out to smaller groups of men. Force must be utilized with an understanding of the causes of the insurrection. Surely rebellions are not undertaken out of whim or caprice. These individuals feel that their grievances—whether real or imaginary—are being ignored. There must be an assurance however

---

[51] Marcos, *The Constitutionality of the National Defense Act,* 18 PHIL. L.J. 88 (emphasis supplied).

[52] See Pres. Decree Nos. 1834 (1981) and 1835 (1981) among others.

[53] *Morales,* 121 SCRA at 532.

[54] Justice Bengzon in *Nava v. Gatmaitan,* 90 Phil. at 195.

[55] Id. at 204.

on the part of the government that all those captured will be treated fairly. Justice Bengzon declared in *Nava v. Gatmaitan*,[56]

> one of the surest means to ease the uprising is a sincere demonstration of this government's adherence to the principles of the Constitution together with an impartial application thereof to all citizens whether dissidents or not... Give them the assurance that the judiciary ever mindful of its sacred mission, will not, thru faulty cogitation or misplaced devotion, uphold any doubtful claims of governmental powers in diminution of individual rights.

The adoption of jungle warfare attitudes in treating those captured would only fan the flames of discontent. Rebellions are often matters of personal disenchantment. Uprisings must not be treated as a passing fever but as a chronic social ailment. Insurgents may be employing illegal or gruesome methods, in the words of Justice de Castro "captives of the rebels or insurgents are not only not given the right to be released, but also denied trial of any kind."[57] Yet the government should not employ similar means just to ensure compatibility of fighting forces. It may perhaps be trite to say that two wrongs do not make a right, but government policies seem to overlook the fact that the State should act according to the rules of civilized armed conflict. For the government to fight according to rebel rules would be to admit defeat. For even if it is victorious in the end, it would likewise have succeeded in imbibing the populace with a propensity for lawless violence. Citizens cannot be expected to heed the law when the government does not wish to be bound by the same.

REASONS FOR BAIL

The Constitution is unambiguous on the matter of the right to bail. Bail is unavailable only when one is charged with a capital offense when the evidence of guilt is strong.. The Constitution states a limitation on its exercise and the presence of two conditions is noted, one as to the character of the offense and the other as to the probability of guilt. These conditions point to the general availability of the remedy. Rebellion being a non-capital offense it is unquestionably bailable.[58] In the oft-quoted words of *Ex Parte Milligan,* "The Constitution limited the suspension to only one great right, leaving the rest to remain forever inviolable."[59] The Constitution is the fundamental law for all times whatever may be the prevailing social conditions. It is immutable in that it is above partisan politics and present day opinions. The Constitution then is the first and most persuasive

---

[56] Id. at 194.

[57] *Garcia-Padilla,* 121 SCRA at 495.

[58] Notice must be taken of Pres. Decree No. 1834 (1981) that increased the penalty for rebellion to reclusion perpetua to death. This decree is not however applicable to petitioners herein having been published in the Official Gazette in 1983 after this case had been filed.

[59] 18 Law Ed. 297 (1866).

argument as to the availability of the right of bail when the privilege of the writ of *habeas corpus* is suspended.

Clearly, the framers of our Bill of Rights must have been aware of the remark of Justice Bengzon in *Nava v. Gatmaitan* that "the Constitution does not provide that all accused persons shall be bailable except in capital offenses when the evidence of guilt is strong *or when the President has suspended the privilege of the writ of habeas corpus.*"[60] The constitutional provision was left as it was, giving rise to the presumption that any further restriction on the right was not intended. It there is any ambiguity at all, then liberality in construction should be observed to favor the accused.

Special notice must be taken of the fact that rebellion is perhaps the most common charge incident to a witch hunt. It is a charge that together with subversion holds back well-meaning and upright citizens from fully expressing their views on a particular matter. This self-restraint, exercised continuously could mean political stability and public order but would mean institutional coercion for the forfeiture of basic rights.

Furthermore, alarm is expressed that the denial of the right to bail may be used as a means to stifle dissent and the free exchange of ideas. Power exercised arbitrarily cannot be contained within constitutional bounds. Arbitrariness if allowed in one instance sets a precedent for similar cases in the future. Justice de Castro writing in *Garcia-Padilla* pressed for noninterference with the decisions of the President saying that the people "can only *trust and pray* that, giving him their own loyalty with utmost patriotism, the President will not fail them."[61] We do not share Justice de Castro's unbridled optimism for it is only in the proper functioning of the constitutional regime of checks and balances that we can insure Presidential action free from constitutional infirmities. Justice de Castro's statement overly stresses the individualistic character of our government, yet our government works on the Rule of Law and not the Rule of Men. Government power and policy were never meant to be determined solely by election winners. The Rule of Law demands that at the risk of occasionally rigid and inefficient procedures, legal methods should be followed to avoid misplaced trust and confidence in an occupant of the Presidential office at any given time. Faith and trust that a President will not fail us may be proper and inevitable at a particular time but it would be dangerous to regard it as the proper reaction of citizens to all Presidential decisions.

CONCLUSIONS

It is a truism that difficult cases make bad law. But *Morales,* specifically on the question of bail while the privilege of the writ of *habeas*

[60] *Nava v. Gatmaitan,* 90 Phil. at 192 (emphasis supplied).
[61] *Garcia-Padilla,* 121 SCRA at 501 (emphasis supplied).

corpus is suspended, is a simple case that turned out bad law. The Constitution provides the first answer to our query. No further offenses provisions apply — without a constitutional amendment. Constitutional provisions should be construed strictly as regards governmental powers and liberally in favor of personal freedoms. This construction does not in any way suggest that government is impeded in working for a better society. There is need only that State action and Philippine development do not become an imposition on the exercise of human rights. The Constitutional right to bail, an integral element of the right to due process, when denied in an appropriate case leads to the destruction of the barriers designed to check the proliferation of constitutionally questionable actions.

The voting on the question of the right to bail and on the other issues presented in *Morales* shows a clear trend towards the erosion of constitutional freedoms. If rights enshrined in the Constitution can be set aside and ignored, what more of rights of a statutory character only? If objectionable government policies are undertaken with Supreme Court *imprimatur* no less, what are the limits of such policies? Who determines them? Phrases such as national security, public order and public safety have lost their well-settled meaning in today's contemporary setting. They are now used as modes of institutional oppression to enjoin diversity of opinion.

At present, judicial review of government acts indicates a move towards the alignment of judicial decisions with prevailing national policy. A remarkable form of judicial statesmanship is exercised, to the point of cursory perusal and ministerial approval of executive action. Lord Atkin had once observed, "I view with apprehension the attitude of judges who on a mere question of construction when face to face with claims involving the liberty of the subjects show themselves more executive-minded than the executive."[62] The metaphor of the judiciary as a well-oiled machinery for the administration of justice churning out decisions both fair and just has become obsolete. It is better perhaps to look at the whole judicial system as a gauntlet with justice administered minimally and at great cost in terms of time, expense and lost freedom.

Realistic remedies for the infringement of constitutional rights can never be the sole function of the courts because of their limited jurisdiction. Everyone must share in the burden of securing our liberties against undue diminution, for democracy was never meant to be self-executing. The Philippine press has to take a more active role in exposing and bringing to public knowledge violations of human rights, rather than confine stories about them to oblivion. Honest and independent minded men in government must not stand idly by while illegal state acts are performed. Judges in courts throughout the land must exercise their independent judgment

[62] Liversidge v. Anderson (1942) A. C. 206.

and follow the muse of justice rather than act like paid minions of those in power. Members of the Legislature must concern themselves with the paramount interests of their constituents and the country rather than just their anile political ambitions. Finally, as Claro M. Recto had declared in 1952, "We cannot leave to others the defense of our rights. We must do it ourselves."[63] It may seem ironic at first that in a country with elected representatives and officials, citizens should still play a role in government. But democracy will not survive in a state of apathy and sloth: rather, people will get the government they deserve. Elected officials, despite their well-phrased pleas to the contrary will act fundamentally on the basis of their own class interests. Filipinos must learn to fend for themselves else face the prospect of constitutional prostitution and democratic demise.

In conclusion however, notice must be taken of numerous accounts of alleged "salvaging" of prisoners—detainees summarily executed without judicial trial—likewise of a host of incidents involving felons shot "while trying to escape" after grappling for possession of their captor's gun. Such circumstances may lead one to aver that an inquiry into the availability of bail and other civil liberties is one lacking in immediate and practical significance. Yet such circumstances should not result in a feeling of helplessness and futility but rather should help us comprehend the significance of the problem and urge sincere efforts in finding lasting solutions.

---

[63] CONSTANTINO (ed.), RECTO READER 124 (1965).