RECONSTRUCTION AND REUNION IN CONSTITUTIONAL LAW: THE SUPREME COURT'S DECISIONS IN 1986 AND THE FIRST HALF OF 1987

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The title of this article is taken, with apology, from Charles Fairman's volume called "Reconstruction and Reunion: 1864-1888."[1] I think it to be an apt title to describe what is going on in the field of Constitutional Law since the February 1986 Revolution. Of course this article does not cover all of that development but only the decisions of the Supreme Court in the last year and a half. For aside from such decisions, an account of the reconstruction and reunion, to be complete, must also include the recomposition of the Court itself and above all the adoption of the new Constitution on February 2, 1987.

It is convenient to divide the subject of this lecture into three parts: "Judicial Review and the Case and Controversy Requirement," "The Structure and Powers of the Government," and "The Guarantee of Individual Rights." In discussing the cases decided under the previous Constitution, I shall also try to indicate to what extent they may have been modified or overruled by the new charter.

I. JUDICIAL REVIEW AND THE CASE AND CONTROVERSY REQUIREMENT

A. The Basis of the Power, or If You May, of the Duty

What Courts Have the Power. — Possibly because of the frequency with which resort to the Supreme Court is made by parties raising constitutional questions, the impression has been fostered among some of the lower court judges that judicial review, especially of legislation, can be obtained only in the Supreme Court. This of course is not true. In at least two cases[2] decided before, the Supreme Court pointed out that the Constitution[3] vests appellate jurisdiction in the Supreme Court to review the decisions of lower courts in cases involving the constitutional validity not only of acts of the President but also of treaties, laws, ordinances, or regulations, which implies

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1 C. FAIRMAN, HISTORY OF THE SUPREME COURT OF THE UNITED STATES: RECONSTRUCTION AND REUNION 1864-1888 (1971).

2 Espiritu v. Fugoso, 81 Phil. 637 (1948); J. M. Tuason & Co. v. Court of Appeals, 113 Phil. 673 (1961).

3 1935 CONST., art. VIII, sec. 2(1), now 1987 CONST., art. VIII, sec. 5, par. 2(a).

that original jurisdiction to decide these cases is given to lower courts. Indeed, the Philippines follows the American type of constitutional law which grants to all courts constituting the judicial system the power of review.

This ruling was recently reiterated in *Ynot v. Intermediate Appellate Court*,[4] in which the trial court sustained the confiscation of carabaos found to have been transported from one province to another and declined to rule on the validity of Executive Order No. 626-A on the ground that it lacked the authority to do so. On appeal to the Intermediate Appellate Court the lower court's decision was affirmed. It fell on the Supreme Court to rule that Executive Order No. 626-A arbitrarily deprived the owner of his right to move the carabaos because while the ban[5] on the slaughter of work animals was valid, the prohibition against moving them from one province to another had no reasonable relation to such purpose.[6]

B. Limitations on the Power of Review

1. *The Ban on Advisory Opinions.* — As the power of judicial review is a necessary corollary of the duty of courts to decide cases and controversies, it follows that where there is no case or controversy the exercise of the power is not justifiable. This is the basis of the rule against advisory opinions. The rule serves two purposes: (a) to implement the principle of separation of powers by seeing to it that courts do not intrude into areas reserved to the other branches of the government and (b) to assure optimum conditions for adjudication. "Any attempt at abstraction," said Justice Laurel for the Court in *Angara v. Electoral Commission*,[7] "could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities."

But in *Lawyers' League for a Better Philippines v. President Aquino*[8] and *In re Petition for Declaratory Relief of Saturnino Bermudez*,[9] the Supreme Court chose to express its opinion on the question tendered despite the fact that there was no case or controversy.

In *Lawyers' League for a Better Philippines v. President Aquino*, the Supreme Court dismissed several petitions questioning the legitimacy of the

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[4] G.R. No. 74457, March 20, 1987, *citing* Espiritu v. Fugoso, *supra* note 2.

[5] Exec. Order No. 626 (1980) originally prohibited the slaughter of work animals only.

[6] United States v. Toribio, 15 Phil. 85 (1910).

[7] 63 Phil. 139, at 159 (1936). Compare Flast v. Cohen, 392 U.S. 83 (1968), *citing* United States v. Fruehauf, 365 U.S. 146, 157 (1961): "Such suits are not pressed before the Court with that clear concreteness provided when a question emerges precisely framed and necessary for decision from a clash of adversary arguments exploring every aspect of a multifaceted situation embracing conflicting and demanding interests."

[8] G.R. No. 7374, May 22, 1986. Related cases: People's Crusade for Supremacy of the Constitution v. Aquino, G.R. No. 73972, May 22, 1986, and Clifton U. Ganay v. Aquino, G.R. No. 73990, May 22, 1986.

[9] 145 SCRA 160 (1986).

Aquino government on the ground that it had been established in violation of the 1973 Constitution. The Court held that the petitioners lacked standing and that the legitimacy of the government was a political question for the people to decide. It said in a brief resolution: "[The people] have accepted the government of President Corazon C. Aquino which is in effective control of the entire country so that it is not merely a de facto government but is in fact and in law a de jure government."

Indeed, it has been said that under a written constitution, the people can do no act except make a new constitution or make a revolution.[10] Whether the change is due to a new constitution or to a revolution, the change does not admit of judicial review. The question is political. If a court decides at all *qua* court, it must necessarily affirm the existence and authority of the government under which it is exercising judicial power.[11] As Melville Weston put it long ago, "the men who were judges under the old regime and the men who are called to be judges under the new have each to decide as individuals what they are to do; and it may be that they choose at grave peril with the factional outcome still uncertain."[12]

By holding that the question was political and affirming its solidarity with the new government, the Court was merely following the lead of its earlier ruling in *Javellana v. Executive Secretary*,[13] *Occeña v. COMELEC*,[14] and *Mitra v. COMELEC*.[15] In those cases, the Court in effect held that the effectivity of the new Constitution and the changes made by it were political questions for the people to decide. Thus, the Court said in *Occeña*: "[P]etitioners have come to the wrong forum. We sit as a Court duty bound to uphold and apply that Constitution. . . . It is much too late in the day to deny the force and applicability of the 1973 Constitution."

Now, after a revolution, the Court found itself faced again with a political decision made by the people. From the point of view of the 1973 Constitution, the new government could indeed be considered "illegal." But from the point of view of the state as a distinct entity, not necessarily bound to employ a particular government to carry out its will, the new government was the direct act of the state itself. As Dean Sinco well said, it is only by a narrow definition that a government brought about by direct act of the people could be considered a de facto government. As the product of a successful direct state action, it is the lawful, de jure government.[16]

The ruling in *Lawyers' League*, upholding the legitimacy of the Aquino government, was reiterated five months later in a case seeking clarification

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10 V. SINCO, PHILIPPINE POLITICAL LAW 7 at 66 (11th Ed., 1962), *citing* Commonwealth v. Collins, 8 Watts (Pa.) 331, 349.
11 Luther v. Borden, 7 How. 1 (1849).
12 Weston, *Political Questions*, 38 HARV. L. REV. 296, 307 (1925).
13 50 SCRA 30 (1973).
14 104 SCRA 1 (1981).
15 104 SCRA 59 (1981).
16 V. SINCO, *supra* note 10, at 7.

of art. XVIII, section 5, which provides that "The six-year term of the incumbent President and Vice-President elected in the February 7, 1986 election is, for purposes of synchronization of elections, hereby extended to noon of June 30, 1992." The petitioner asked the Court "to declare. . . who among the present incumbent President Corazon Aquino and Vice President Salvador Laurel and the elected President Ferdinand E. Marcos and Vice President Arturo Tolentino [were] referred to" in the constitutional provision in question.

No more abstract case could have been presented to the Court. The petitioner was not complaining of any injury suffered as a result of the provision he was questioning. His case was not brought against any party. His allegation that there was ambiguity in the provision in question was, according to the Court, "manifestly gratuitous, it being a matter of public record and common public knowledge that the Constitutional Commission refers therein to incumbent President Corazon C. Aquino and Vice-President Salvador H. Laurel." The suit, in short, was nothing but a request for advisory opinion. Just the same, however, the Court answered "the question of construction and definiteness" raised to it by the petitioner.

I suppose that if the Court had simply dismissed the two suits for lack of an actual case or controversy, its action would have given rise to doubt and uncertainty, and such doubt and uncertainty the Court wanted to dispel. Hence, its ruling.

The Court did not feel a similar compulsion to speak in *Maambong v. COMELEC*,[17] which was likewise a petition for declaratory judgment on whether members of the 1986 Constitutional Commission could run for seats in Congress. Section 8 of Proclamation No. 9, promulgated on April 23, 1986, provided that "members of the Constitutional Commission shall not be eligible to run for office in the first local and first national elections held after the ratification of the new Constitution; or appointed to any office or position while the Commission is in session and during the period of one (1) year." The petitioners were members of the Constitutional Commission. They had signed certifications that they would not run for public office in the first election held under the Constitution. But apparently they had changed their minds and now they were interested, after all, in becoming candidates for the House of Representatives but the COMELEC had expressed "reluctance" in accepting their applications for certificates of candidacy, pending the promulgation of the election law. The Court held the suit to be a mere request for an advisory opinion, "based on mere apprehension that [petitioners] would be disqualified by respondent COMELEC, if and when they duly file their certificates of candidacy. There is here no 'concrete case admitting of an immediate and definite determination of the legal rights of the parties in an adversary

[17] G.R. No. 77464, March 5, 1987.

proceedings upon the facts alleged.' (Aetna Life Ins. Co. v. Haworth, 300 U.S. 227; PACU v. Secretary of Education, 97 Phil. 806)."

2. *When Mootness Does Not Call for Muteness.* — *Javier v. COMELEC*[18] presented a legal question: Whether under art. XII, C, section 3 of the 1973 Constitution a division of the COMELEC could decide a pre-proclamation controversy involving members of the Batasang Pambansa, or whether only the COMELEC en banc could do this. But the resolution of the question was overtaken by two events, any of which could moot the question. First, on February 11, 1986, the petitioner Evelio Javier was killed, as a result (it was generally believed) of the partisan rivalry that had led to the filing of the case. Javier was an opposition candidate for member of the Batasang Pambansa in the 1984 elections in Antique. Second, two weeks later, on February 26, the Revolution came, which resulted in the abolition of the Batasang Pambansa. But the petitioner had brought his case to the Supreme Court complaining of massive terrorism and other election irregularities and manifest partiality on the part of the COMELEC's Second Division, which had ordered the proclamation of his rival, Arturo Pacificador. Under these circumstances, the Supreme Court decided the case "to manifest in the clearest possible terms that [it] will not disregard and in effect condone a wrong *on the simplistic and tolerant pretext that the case had become moot and academic.*" It said:

> The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. The citizen comes to us in quest of law but we must also give him justice. The two are not always the same. There are times when we cannot grant the latter because the issue has been settled and decision is no longer possible according to the law. But there are also times when although the dispute has disappeared, as in this case, it nevertheless cries out to be resolved. Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint upon the future.

On the merit, the Court ruled that the provision of art. XII, C, section 3 that "All election *cases* may be heard and decided by divisions except *contests* involving members of the Batasang Pambansa, which shall be heard and decided en banc" did not really make a distinction between pre-proclamation cases and election contests, but that as far as cases involving members of the Batasang Pambansa were concerned the Commission must always sit en banc in deciding them.[19] Hence, the proclamation of Pacificador ordered by the COMELEC's Second Division was declared void. As the case had become moot, however, the petition for certiorari could not be granted.

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[18] 144 SCRA 194 (1986).

[19] The 1987 Constitution now provides that all pre-proclamation controversies shall be heard and decided by the COMELEC in division but motions for reconsideration of decisions shall be decided by it en banc. Art. IX, C, sec. 3. On the other hand, all contests relating to the election, returns, and qualifications of members of Congress are exclusively cognizable by the Senate and the House Electoral Tribunals. Art. VI, sec. 17.

Unlike advisory opinions, moot cases usually have a concrete, fully developed record which assures that the decision of a court would be a judgment from experience rather than from speculation. However, since no specific relief can be granted as such cases may have ceased to be lively controversies, courts generally refrain from rendering judgment. Thus, in *Javier v. COMELEC,* the Supreme Court thought that if it could no longer do justice to the parties, it could at least provide guidance for the future.

In *Demetria v. Alba,*[20] the petitioners, suing as concerned citizens, members of the Batasang Pambansa, and taxpayers, brought an action for prohibition to enjoin then Minister of the Budget Alba from enforcing sec. 44 of PD 1177 which authorized the President of the Philippines "to transfer any fund, appropriated for the different departments, bureaus, offices and agencies of the Executive Department. . . . to any program, project or activity of any department, bureau or office," on the ground that it contravened art. VIII, sec. 16(5) of the 1973 Constitution.[21] The Solicitor General moved to dismiss the suit as moot on the ground that art. VIII, sec. 16(5) had been repealed by the Provisional Constitution. The Court denied the motion, quoting its decision in *Javier* that justice demanded that it speak out "not only for the vindication of an outraged right though gone but also for the guidance of and a restraint upon the the future." In addition the Court noted that the 1987 Constitution[22] adopted the constitutional provision in dispute so that the question was not actually moot. It held section 44 to be unconstitutional for allowing the President "to indiscriminately transfer funds" from one item to another within the Executive Department without regard to whether the funds to be transferred were actually savings in the items from which they were taken and whether or not the transfer was for the purpose of augmenting the item to which the transfer was to be made. The decree thus made possible the enactment of unfunded appropriations, resulting in uncontrolled executive expenditures, diffused accountability for budgeting performance and entrenched the "pork barrel" system as the ruling party could spend public funds on the basis solely of political and personal expediency.

The more serious question raised was whether the petitioners had standing. In *Pascual v. Secretary of Works*[23] it was held that "the expenditure of public funds by an officer of the state for the purpose of administering an unconstitutional act constitutes a misapplication of such funds which may be enjoined at the request of a taxpayer." Given the ruling in that

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[20] G.R. No. 71977, Feb. 27, 1987.

[21] This provision, which is reproduced in art. VI, sec. 25(5) of the new charter, stated: "No law shall be passed authorizing any transfer of appropriations; however, the President, Prime Minister, the Speaker, the Chief Justice of the Supreme Court, and the heads of the Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations."

[22] Art. VI, sec. 25(5).

[23] 110 Phil. 331 (1960).

case and the fact that the constitutional provision in question is one of the safeguards erected to prevent the misapplication of public money, it is easy to see that a violation of this provision gives a taxpayer standing to complain against the law. The prohibition against the transfer of funds appropriated from one item to another was intended to prevent the misappropriation and embezzlement of public funds. On this view of art. VIII, sec. 16(5), there can be no doubt that the taxpayers in this case alleged an injury in the form that under the Constitution is actionable. This I believe explains the Court's holding in *Demetria* that the taxpayers had standing to challenge the constitutional validity of section 44 of the Decree.

In *Moncupa v. Ponce Enrile*[24] the Court refused to consider the case moot and academic. That was a petition for a writ of habeas corpus. Petitioner was held on charges of illegal possession of firearms and subversive documents. He moved for bail in the lower court but his motion was denied. He then applied for habeas corpus in the Supreme Court, but before the case could be decided, he was temporarily released subject to certain restrictions, namely, he could not travel outside Metro Manila or change his residence, without permission from the military and he was prohibited from giving interviews to local and foreign mass media. These restrictions prevented the case from becoming moot. "It is not physical restraints alone which can be inquired into by means of the writ of habeas corpus," the Court ruled.

II. Structure and Powers of the Government

A. The Separation of Powers

1. *Amenability of Congress to Judicial Process.*— In *Romulo v. Yñiguez*[25] the Court reaffirmed the traditional rule that mandamus will not lie to compel the legislative department to act or do a particular thing.[26] It held itself to be without power to compel by mandamus the Batasang Pambansa to give due course to the complaint for impeachment which the petitioners had filed.[27] The Court likewise held that the dismissal of the complaint was a political question committed to the legislature by the Constitution and, therefore, beyond its power of review. In other words, the Court declared itself to be without jurisdiction over the party defendant (the Speaker of the Batasan) and over the subject matter. Nonetheless, the Supreme Court passed upon the petitioners' contention that under the 1973 Constitution,

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[24] 141 SCRA 233 (1986).

[25] 141 SCRA 263 (1986).

[26] Javellana v. Executive Secretary, 50 SCRA 30 (1973); Alejandrino v. Quezon, 46 Phil. 83 (1924); Abueva v. Wood, 45 Phil. 612 (1924).

[27] Earlier, in *De Castro v. Committee on Justice, Human Rights and Good Government*, G.R. No. L-71688, Aug. 17, 1985, the Court had dismissed a petition for certiorari seeking to annul the same resolution dismissing the complaint for impeachment.

since they constituted at least one-fifth of all the members of the BP, their complaint should have been given due course and the case against then President Marcos should have proceeded to trial. They challenged the validity of the rules of the BP, pursuant to which their complaint had been dismissed. This, according to the Court, "is certainly a justiciable question."

Indeed, the rules of impeachment in this case were no different from the rule prescribing the period for filing electoral protests against the members of the National Assembly under the 1935 Constitution,[28] or the rules of the Commission on Appointments of Congress,[29] the validity of which was considered by the Court in previous cases. However, in those cases, the validity of the rules of the legislature was put into question in appropriate proceedings. Here, by contrast, the Court had no jurisdiction over the party defendant in view of the principle of separation of powers. Suppose the Court reached the opposite result? Could it have granted relief to the petitioners?[30] Perhaps it was precisely because the Court had concluded that the rules were valid that it assumed jurisdiction over the question, to provide additional reason for dismissing the suit.

2. *Presidential Immunity.* — In dismissing the suit in *In re Saturnino Bermudez*,[31] the Court said:

> More importantly, the petition amounts in effect to a suit against the incumbent President of the Republic, President Corazon C. Aquino, and it is equally elementary that incumbent Presidents are immune from suits or from being brought to court during the period of their incumbency and tenure

Apparently, the Court did not cite the President's immunity from suit in dismissing the earlier case of *Lawyers' League for a Better Philippines v. President Aquino*[32] because the very question in that case was the legitimacy of the Aquino government. With that question settled in favor of the new President and Vice President, a later suit against them would raise a question of amenability of the President to suits.[33]

The President's immunity from suits does not of course bar judicial inquiry into his acts in proper cases. In such cases the suits are brought against department secretaries who, under the doctrine of qualified political agency, are considered his alter egos. Not all acts of the President, however, can be questioned in the courts. Such for example, is the grant of pardon, which is solely the prerogative of the President. Accordingly, it was held

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28 Angara v. Electoral Commission, 63 Phil. 139 (1936).
29 Pacete v. Secretary of the Commission on Appointments, 40 SCRA 58 (1971).
30 *Cf.* Powell v. McCormack, 395 U.S. 486 (1969).
31 G.R. No. 76180, Oct. 24, 1986.
32 *Supra* note 8.
33 For the rationale of the President's immunity from suits, see Forbes v. Chuoco Tiacc, 16 Phil. 534 (1910); Nixon v. Fitzgerald, 457 U.S. 731 (1982).

in *Colmenares v. Ponce Enrile*[34] that the grant of pardon to convicts rendered moot and academic a suit seeking to prohibit the Minister of Defense from releasing them on the ground that they were not political detainees.

B. Validity of Sequestration, Freeze and Takeover Orders

The Provisional Constitution, adopted in the aftermath of the February 1986 revolution, provided for the recovery of "ill-gotten properties amassed by the leaders and supporters of the previous regime" and authorized for this purpose the "sequestration and freezing of assets or accounts."[35] To implement this provision, the Presidential Commission on Good Government was created with power to sequester any building or office wherein ill-gotten wealth or property may be found and any record pertaining thereto "to prevent their destruction, concealment or disappearance," as well as to provisionally take over "business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos."[36]

In two early cases filed with it, the Supreme Court refused to restrain the enforcement, in one case, of a sequestration order and, in another, of a freeze order. In *Tourist Duty Free Shops, Inc. v. PCGG*,[37] the sequestration order prohibited the petitioner from making contracts, disbursing money except in the ordinary course of business, and withdrawing funds from the accounts of the corporation and transferred its management and operation to the Philippine Tourist Authority. The Court refused to enjoin the order after it had been shown that the company "belonged to the Marcoses, either alone or in partnership with the family of Gliceria Tantoco." However, the Court in effect disapproved the transfer of management to the PTA, holding that the appointment of fiscal agents to prevent the transfer or dissipation of property was sufficient.

In *Cruz v. PCGG*,[38] on the other hand, the Court refused to restrain a "freeze order" issued against the bank account of the petitioner as it "perceive[d] no undue injury to the petitioner" who was allowed to withdraw ₱30,000 a month.

It was not until May 27, 1987 that the Court had occasion to discuss the scope of the powers of the PCGG in *Bataan Shipyard & Engineering Co. v. PCGG*.[39] The Bataan Shipyard & Engineering Co., or BASECO, was one of the companies sequestered by the PCGG pursuant to its powers under Executive Order No. 1. BASECO brought a suit for certiorari and prohibition in the Supreme Court, questioning the validity of Executive

34 G.R. No. 74947, Aug. 19, 1986.
35 PROVISIONAL CONST., art. II, sec. 1(d).
36 Exec. Order No. 1, Feb. 28, 1986, secs. 2 and 3(b)(c).
37 G.R. No. 74302, June 23, 1986.
38 G.R. No. 74281, May 27, 1986.
39 G.R. No. 75885, May 27, 1987.

Order No. 1 and its amendments and several orders issued by the PCGG, under which BASECO was made to produce its corporate documents, its contract for security services terminated, and scrap iron belonging to it sold or disposed of, and its officers separated from its service.

The Supreme Court dismissed the petition by the vote of 10 to 4 of its members. The Court was unanimous in upholding the validity of Executive Order No. 1 and its amendments under which the sequestration orders were issued. The Justices divided on the validity of the takeover order by which the PCGG exercised acts of ownership.

The opinion of the Court, written by Justice Narvasa, sustained the validity of the Executive Orders on the basis of the Provisional Constitution of 1986 which directed the government to take steps to recover "ill-gotten properties of the former President and those close to him" and on the general police power of the state. "There can be no debate about the validity and eminent propriety of the Government's plan," the Court said, although it quickly added that there must be "judicial proceedings so that the recovery of ill-gotten properties may be validly and properly adjudged and consummated." Pending such proceedings and in order to prevent the concealment, disappearance, destruction, dissipation or loss of assets and properties, the Court pointed out, the PCGG is empowered to issue sequestration or freeze orders or to provisionally take over a business. It emphasized that these are merely provisional remedies. The Court noted that the new Constitution requires the filing of judicial actions within six months of its ratification on February 2, 1987, in the case of sequestration and "freeze orders" issued before that date, and within six months from the issuance of such orders, in the case of those issued after February 2, 1987, otherwise the order is deemed automatically lifted. In addition, the Court said, there must be in all cases "a prima facie factual foundation" for the issuance of such orders, with "adequate and fair opportunity [given to the party against whom it is issued] to contest it and endeavor to cause its negation and nullification."

Applying these principles, the majority then proceeded to determine the ownership of BASECO. The majority found that although twenty were listed as stockholders of the company as of April 23, 1986, three corporations held 95.82% of the 218,819 outstanding shares of stocks and that when the former President suddenly left Malacañang Palace at the height of the revolution, he also left behind certificates of stocks corresponding to those held by the controlling stockholders, endorsed in blank, together with deeds of assignments. From these findings, the Court concluded that there was prima facie basis for holding that BASECO was owned by President Marcos. It explained:

> In the light of the affirmative showing by the Government that, *prima facie* at least, the stockholders and directors of BASECO as of April, 1986 were mere "dummies", nominates or *alter egos* of President Marcos; at any rate, that they are no longer owners of any shares of stock in the corporation, the conclusion cannot be avoided that said stockholders and directors have no basis and no standing whatever to cause the filing and prosecution of the instant proceeding; and to grant relief to BASECO, as prayed for in the petition, would in effect be to restore the assets, properties and business sequestered and taken over by the PCGG to persons who are "dummies," nominees or *alter egos* of the former president.

The Chief Justice and Justice Padilla wrote separate concurring opinions. The Chief Justice's opinion summarized the points of agreement and disagreement among the members. Justice Padilla, on the other hand, said that while ordinarily the PCGG should have no authority to change BASECO's board of directors, however, in this case he was "entirely satisfied that President Marcos owned the company" and that he "could not have acquired [its] ownership out of his lawfully-gotten wealth," thus justifying the action of the PCGG.

Justice Gutierrez, joined by Justices Bidin and Cortes, dissented from this part of the majority opinion. He argued that a finding that BASECO was owned by President Marcos should be made only after trial. He said:

> . . . After this decision, there is nothing more for a trial court to ascertain. Certainly, no lower court would dare to arrive at findings contrary to this Court's conclusions, no matter how insistent we may be in labelling such conclusions as *"prima facie."* To me, this is the basic flaw in PCGG procedures that the Court is, today, unwittingly legitimating. Even before the institution of a court case, the PCGG concludes that sequestered property is ill-gotten wealth and proceeds to exercise acts of ownership over said property. It treats sequestered property as its own even before the oppositor-owners have been divested of their titles.
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> And yet, the records show that the PCGG appears to concentrate more on the means rather than the ends, in running the BASECO, taking over the board of directors and management, getting rid of security guards, disposing of scrap, entering into new contracts and otherwise behaving as if it were already the owner. At this late date and with all the evidence PCGG claims to have, no court case has been filed.
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> The election of the members of a board of directors is distinctly and unqualifiedly an act of ownership. When stockholders of a corporation elect or remove members of a board of directors, they exercise their right of ownership in the company they own. By no stretch of the imagination can the revamp of a board of directors be considered as a mere act of conserving assets or preventing the dissipation of sequestered assets. The broad powers of a sequestrator are more than enough to protect sequestered assets. There is no need and no legal basis to reach out further and exercise ultimate acts of ownership.

Justice Melencio-Herrera, joined by Justice Feliciano, concurred in a separate opinion but said:

> It would be more in keeping with legal norms if forfeiture proceedings provided for under Republic Act No. 1379 be filed in Court and the PCGG seek judicial appointment as a receiver or administrator, in which case, it would be empowered to vote sequestered shares under its custody (Section 55, Corporation Code). Thereby, the assets in litigation are brought within the Court's jurisdiction and the presence of an impartial Judge, as a requisite of due process, is assured. For, even in its historical context, sequestration is a judicial matter that is best handled by the courts.

Justice Cruz also dissented along more or less the same line that, without a court order, the PCGG was without power to exercise acts of ownership. He said, "Voting the shares is an act of ownership."

As stated before, the disagreement on the Court centered on the power of the PCGG to exercise acts of ownership. While the majority agreed that sequestration, freeze and takeover orders are merely provisional and conservatory measures and that the PCGG could only exercise acts of administration as distinguished from acts of onwership, in the particular case of BASECO, the majority said, the evidence justified the replacement of the directors of the corporation because the evidence showed prima facie that they were "tools of President Marcos." On the other hand, the dissenting Justices questioned the majority finding that BASECO was owned by President Marcos on the basis solely of evidence submitted by the PCGG. To them this question must be resolved in a proper trial. Meantime, the PCGG must limit itself to acts of mere administration and refrain from exercising acts of ownership, such as voting the shares of stock it has sequestered.

C. Congress

Validity of Impeachment Rules. — Attempts to flush out President Marcos' alleged hidden wealth were actually began as early as 1985, before he was overthrown. In the Batasang Pambansa, members of the then opposition, representing the requisite one-fifth for initiating impeachment proceedings, filed on August 13, 1985 a resolution and a verified complaint against him. In accordance with the rules of the Batasan, the resolution and the complaint were referred to the Committee on Justice, Human Rights and Good Government. However, the committee found the complaint not sufficient in form and substance to warrant further consideration and accordingly dismissed it. It then submitted a report which the Batasan noted and sent to the archives. MP Mitra moved for the recall of the resolution and the complaint, but his motion was disapproved.

In *Romulo v. Yñiguez*,[40] petitioners, who were members of the opposition party, brought a suit for prohibition, questioning the constitutionality of the rules which required preliminary approval of a complaint for impeach-

[40] 141 SCRA 263 (1986).

ment before it could be reported to the Batasan for trial. They asked the Court for a writ of preliminary mandatory injunction against the Committee on Justice, Human Rights and Good Government to recall from the archives the resolution and complaint for impeachment so that the BP could conduct the trial.

As earlier noted, the Court dismissed the suit. But it proceeded to discuss the validity of the rules on impeachment. The rules of the BP required that if one-fifth of the members gave due course to a complaint for impeachment, the Committee on Justice, Human Rights and Good Government should determine whether the complaint was sufficient in form and substance.[41] If it found it was, the BP would furnish the respondent with a copy so that he could file his answer. Otherwise, the committee should dismiss the complaint. If the complaint was found sufficient and an answer was filed, the rules required that the committee determine whether sufficient grounds existed. If it found such grounds, the committee then required the parties to file affidavits and counter-affidavits to determine whether there was probable cause for impeachment. A resolution containing the articles of impeachment would be filed only if the committee had found probable cause. Even then, the articles of impeachment must be approved by a majority of all the members of the Batasan before a trial could be held.

The Supreme Court held that the rules did not violate art. XIII, sec. 3 of the 1973 Constitution because they referred to the *disposition* of complaints for impeachment. They were not part of the *initiation phase* of the impeachment proceedings but of the "trial phase." Nor was the constitutional provision requiring the concurrence of at least two-thirds of all members of the BP for conviction violated by the rules authorizing the dismissal of a complaint by a majority vote of the Batasan, since with such number it was obvious that the two-thirds vote could not be obtained. The Court said art. XIII, sec. 3 merely provided how a judgment of conviction could be sustained but was silent as to how a complaint for impeachment could be dismissed.

Justices Melencio-Herrera, Plana, Escolin, Gutierrez, De la Fuente, Cuevas and Alampay concurred, while Justices Teehankee and Abad Santos reserved their votes.

It seems to me that when the 1973 Constitution provided that a complaint for impeachment could be initiated by the vote of one-fifth of all the members of the Batasang Pambansa, the intention was that the case should proceed to trial and should not be defeated or frustrated even though the majority should vote to dismiss it. Any rule providing for dismissal after one-fifth of the members had voted to give due process to the petition would be contrary to the 1973 Constitution and therefore would be void.

[41] Batasan Rules on Impeachment, approved Aug. 16, 1984.

Nor does it seem tenable to me to say that because a majority had voted to dismiss the complaint, that it would be useless to proceed to trial because it was certain that the 2/3 vote needed to convict a respondent would not be attained. That also would short circuit the whole process of impeachment which contemplated a trial, as long as one-fifth of all the members voted to give due course to a petition.

The present rules[42] on impeachment now assure that as long as one-third of the members of the House of Representatives votes to initiate impeachment proceedings, the case will proceed to trial in the Senate. While a complaint for impeachment will still be referred to a committee of the House, the committee cannot abort a trial by the Senate so long as one-third of the House votes to give due course to the complaint. Conversely, even if the Committee recommends the initiation of impeachment proceedings, one-third of the House can overrule its resolution. On the other hand, a complaint for impeachment, if filed by at least one-third of all the members of the House, serves as articles of impeachment and as basis for the Senate to try the case.

The difference between the present Constitution and the last one is that now the entire House retains control of the power to initiate impeachment proceedings and thus to determine whether the case should proceed to trial, instead of vesting this power in a committee, as under the rules adopted under the 1973 Constitution.

D. The President

Military Powers. — The creation of military tribunals with jurisdiction to try civilians was upheld by the Supreme Court[43] on the basis of the 1973 Constitution which declared all orders and decrees issued by President Marcos under martial law to be "valid, legal, binding and effective even after the lifting of martial law."[44] That declaration could not survive the overthrow of the 1973 charter and the adoption of the 1987 document which expressly provides that "A state of martial law does not . . . supplant the functioning of civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. . . ."[45]

In *Olaguer v. Military Commission No. 34*[46] the Court overruled its previous decisions and held:

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[42] 1987 CONST., art. XI, sec. 3.

[43] Aquino v. Military Commission No. 2, 63 SCRA 546 (1975); Gumaua v. Espino, 96 SCRA 402 (1980); Buscayno v. Enrile, 102 SCRA 7 (1981); Sison v. Enrile, 102 SCRA 33 (1981); Luneta v. Special Military Commission No. 1, 102 SCRA 56 (1981); Ocampo v. Military Commission No. 25, 109 SCRA 22 (1981); and Buscayno v. Military Commission Nos. 1, 2, 6 and 25, 109 SCRA 273 (1981).

[44] 1973 CONST., art. XVII, sec. 3(2).

[45] 1987 CONST., art. VII, sec. 18.

[46] G.R. Nos. 54558 & 69882, May 22, 1987.

> . . . Following the principle of separation of powers underlying the existing constitutional organization of the Government of the Philippines, the power and the duty of interpreting the laws (as when an individual should be considered to have violated the law) is primarily a function of the judiciary. (Koppel (Phil.), Inc. v. Yatco, 77 Phil. 496, 515 (1946)), It is not, and it cannot be the function of the Executive Department, through the military authorities. And as long as the civil courts in the land remain open and are regularly functioning, as they do so today and as they did during the period of martial law in the country, military tribunals cannot try and exercise jurisdiction over civilians for offenses committed by them and which are properly cognizable by the civil courts. (Ex parte Milligan, *supra.*) To have it otherwise would be a violation of the constitutional right to due process of the civilian concerned. . . .

Earlier, in *Animas v. Minister of National Defense,*[47] the Supreme Court, through Justice Gutierrez, declared a military tribunal to be without jurisdiction to try civilians for murder allegedly committed on November 10, 1971, long before the proclamation of martial law. The Court said:

> The jurisdiction given to military tribunals over common crimes and civilians accused at a time when all civil courts were fully operational and freely functioning constitutes one of the saddest chapters in the history of the Philippine judiciary.
>
> The downgrading of judicial prestige caused by the glorification of military tribunals, the instability and insecurity felt by many members of the judiciary due to various causes both real and imagined, and the many judicial problems spawned by extended authoritarian rule which effectively eroded judicial independence and self-respect will require plenty of time and determined efforts to cure.
>
> The immediate return to civil courts of all cases which properly belong to them is only a beginning.

E. The Judiciary

Statement of the Legal Basis of Resolutions. — In *Sayson v. Villareal*[48] it was held that the requirement in the 1973 Constitution that the decision of a court must state the facts and the law on which it is based did not apply to resolutions. Since a petition for review on certiorari of a decision of the Court of Appeals is not a matter of right but of sound judicial discretion, the denial of the petition need not be fully explained. The use of resolution has helped the Court cope with its crowed docket.

While retaining the requirement to state the facts and the law with respect to decisions, the Constitution provides that "No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor."[49] This require-

[47] 146 SCRA 406 (1986).
[48] Adm. Matter No. R315-MTJ, July 17, 1986.
[49] 1987 CONST., art. VIII, sec. 14.

ment to state "the legal basis" for the denial of petitions for review or reconsideration is less than the full statement of the facts and the law required for decisions on the merit. This should satisfy the demand of the practicing bar for more information beyond the customary "denied-for-lack of merit" reason stated in minute resolutions, and still enable the courts, especially the Supreme Court, to give more attention to the clarification and development of the law in its most profound national aspects.[50]

F. The Civil Service Commission

1. *Scope of the Civil Service.* — In *Metropolitan Waterworks and Sewerage System v. Hernandez,*[51] it was held that employment in government-owned or controlled corporations is governed by the Civil Service Law, rules and regulations and not by the Labor Code and any controversy arising from such employment is not cognizable by the National Labor Relations Commission but by the Civil Service Commission. The court rejected the contention that the civil service includes only regular but not contractual employees. Positions in the civil service are classified into career and non-career service. Contractual employees belong to the non-career service.

The ruling in this case follows that earlier laid down in *National Housing Corp. v. Juco*[52] that all government corporations, regardless of whether they were created by special charter or in accordance with the Corporation Code, are covered by Civil Service Laws. This ruling must now be deemed to have been overruled by the 1987 Constitution, art. IX, B, sec. 2(1) of which provides that "The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations *with original charters.*" The obvious intention is to exclude government corporations created under the Corporation Code.

Indeed, government entities may have to be organized under the Corporation Code for purely business reasons. In such a case, the government has to compete with the private sector, which clearly it cannot do because of constraints imposed by the Civil Service Law, rules and regulations. On the other hand, if a government entity is incorporated under a special law because it is organized for a public purpose, there is every reason to consider its employees civil service employees.

In any case, the broad statement that employees of all government-owned or controlled corporations, including those organized under the Corporation Code, are embraced in the Civil Service was unnecessary since

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[50] For the distinction between obligatory (appeal) and discretionary (certiorari) jurisdiction of the Supreme Court, see Mendoza, *An Agenda for the Courts in the 21st Century,* in A FILIPINO AGENDA 340 (F. Sionil Jose, ed., [1987]).

[51] 143 SCRA 602 (1986).

[52] 134 SCRA 172 (1985).

[53] 146 SCRA 137 (1986).

the MWSS, just like the NHA, was created by special law. But in *Quimpo v. Tanodbayan*,[53] the dictum with regard to government corporations formed under the Corporation Law served as bridge for holding that the employees of such corporations were subject to prosecution for violation of the Anti-Graft and Corrupt Practices Act by the Tanodbayan.

The employees in *Quimpo* were employees of the PETROPHIL, formerly the STANVAC, a private corporation, which the Philippine National Oil Corp. had acquired. In justifying the coverage of employees of PETROPHIL in the Anti-Graft and Corrupt Practices Act, Justice Melencio-Herrera, speaking for the Court, said that a different rule would result in "incongruity . . . as government-owned corporations could create subsidiaries which would be free from strict accountability and could escape the liabilities and responsibilities provided for by law."

My comments on the decisions in the *MWSS* and *NHA* cases apply to the ruling in *Quimpo v. Tanodbayan*. It remains to add that with specific reference to the powers of the Tanodbayan, the new Constitution expressly provides that the government corporations which are subject to his investigatory powers are those "with original charters."[54] I believe the *Quimpo* ruling has been *pro tanto* abrogated by the new Constitution.

2. *Power of the CSC over Appointments.* — In *Luego v. Civil Service Commission*,[55] the Court, through Justice Cruz, ruled that the Civil Service Commission has no authority to determine the kind or nature of appointments or to revoke them because it believes that the contestant is better qualified than the appointee. The Court pointed out that unlike the Commission on Appointments of Congress, the Civil Service Commission's function is not to confirm appointments but only to attest to the qualifications of the appointee.

G. The Commission on Elections

The Prosecution of Election Offenses. — In *Corpuz v. Tanodbayan*,[56] the Court, through Justice Cortes, ruled that the prosecution of election offenses is vested in the Commission on Elections and not in the Tanodbayan. This is now expressly provided in art. IX, C, sec. 2(b) of the 1987 Constitution. Petitioners were members of the Citizens Election Committee of Caba, La Union, in the January 30, 1980 elections. They were charged with electioneering and campaigning inside the voting centers during the elections. However, after investigation, the Regional Election Director recommended to the COMELEC the dismissal of the complaint. The complainant then withdrew his complaint, stating his intention to file it with the Tanodbayan which he in fact did. Thereafter, the COMELEC dismissed

54 1987 Const., art. XI, sec. 13(2).
55 143 SCRA 327 (1986).
56 G.R. No. 62075, April 15, 1987.

the case. Its legal office moved for the dismissal of the case with the Tanodbayan. As the latter denied the motion, the petitioners brought this suit for certiorari.

Reiterating the ruling in *De Jesus v. People*,[57] the Supreme Court held: "An examination of the provisions of the Constitution and the Election Code of 1978 reveals the clear intention to place in the COMELEC exclusive jurisdiction to investigate and prosecute election offenses committed by any person, whether private individual or public officer or employee, and in the latter instance, irrespective of whether the offense is committed in relation to his official duties or not. In other words, it is the nature of the offense and not the personality of the offender that matters. As long as the offense is an election offense, jurisdiction over the same rests exclusively with the COMELEC, in view of its all-embracing power over the conduct of elections. Inasmuch as the charge of electioneering filed against the petitioners had already been dismissed by the COMELEC for insufficiency of evidence, the petition is hereby granted and the complaint filed by private respondent being investigated anew by the Tanodbayan charging the petitioners with the same election offense, dismissed."

H. Local Governments

Plebiscite on New Province. — In *Tan v. COMELEC*[58] the court, in an opinion by Justice Alampay, ruled that under art. XI, sec. 3 of the 1973 Constitution, any plebiscite held to determine whether the people are in favor of the creation of a province, city, municipality or barrio must include the mother unit. The Court thus practically overruled its decision in *Paredes v. Executive Secretary*,[59] which held that, in determining the wishes of the people with regard to the creation of a barangay, only those who are inhabitants of the new unit need be included, because to include other voters might frustrate the wishes of those who are inclined to separate.

The province of Negros del Norte was created out of three cities and eight municipalities in the Island of Negros. The law, creating the new province, provided for the holding of a plebiscite "in the proposed new province which are the areas affected." The Court noted that Parliamentary Bill No. 3644 originally provided for the holding of a plebiscite "in the areas affected," which, the Court said, meant the "plurality of areas." However, for unexplained reason, this was changed to "in the proposed new province which are the areas affected." This legislative construction or interpretation, it was held, was self serving.

In explaining why the entire province should have been included, the Court stated:

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[57] 120 SCRA 760 (1983).
[58] 142 SCRA 727 (1986).
[59] 128 SCRA 6 (1984).

> . . . It becomes easy to realize that the consequent effects of the division of the parent province necessarily will affect all the people living in the separate areas of Negros Occidental and the proposed province of Negros del Norte. The economy of the parent province as well as that of the new province will be inevitably affected, either for better or for worse. Whatever be the case, either or both of these political groups will be affected and they are, therefore, the unit or units referred to in Section 3 of Article XI of the Constitution which must be included in the plebiscite contemplated therein.

BP Blg. 885, creating the new province of Negros del Norte, was therefore declared unconstitutional and the appointment of its officials was nullified.

On the other hand, in *Torralba v. Municipality of Sibagat*[60] the Court held that, although the Constitution[61] provided that the creation of a new political subdivision must conform to the criteria of the Local Government Code,[62] no such compliance could be insisted upon if, at the time of the creation of the political subdivision, the Local Government Code had not yet been enacted. BP Blg. 56, which created the Municipality of Sibagat in Agusan Province, took effect on February 1, 1980. On the other hand, the Local Government Code took effect only on February 10, 1983. It was enough that the creation of the new municipality had been approved by the people living in the areas affected.

III. GUARANTEES OF INDIVIDUAL RIGHTS

A. Requirements of Procedural Fairness

1. *Publication of Laws.* In *Tañada v. Tuvera*[63] the Supreme Court in 1985 unanimously ruled that presidential issuances of a public nature or those of general applicability should be published before they could take effect as a matter of due process. But the Court was divided on whether publication should be in the *Official Gazette*. Four Justices[64] held the view that publication in the *Official Gazette* was required because Commonwealth Act No. 638 provides that "there shall be published in the Official Gazette [1] all important legislative acts and resolutions of a public nature of the Congress of the Philippines; [2] all executive and administrative orders and proclamations, except such as have no general applicability." The word "shall," in their opinion, imposes on the government the duty to publish.

On the other hand, eight Justices[65] held that publication in the *Gazette* was not required. One of them, Justice Plana, argued that publication in

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60 147 SCRA 390 (1987).
61 1973 CONST., art. XI, sec. 3; 1987 CONST., art. X, sec. 10.
62 BP Blg. 337.
63 136 SCRA 27 (1985).
64 Justice Escolin, joined by Justices Teehankee, Melencio-Herrera and Relova.
65 Chief Justice Fernando, joined by Justices Makasiar, Abad Santos, Cuevas and Alampay, filed a concurring and dissenting opinion, while Justices Plana, Gutierrez and De la Fuente filed separate opinions.

the *Official Gazette* was not required, first, because art. 2 of the Civil Code states that if a statute provides for its own date of effectivity, it shall take effect on that date and, second, because Commonwealth Act No. 638 does not say that if laws are not published in the *Gazette* those laws cannot take effect. Indeed, it cannot so provide. Only a higher law, which is the Constitution, can make that requirement.

As matters thus stood, the only requirement was that only laws of general applicability had to be published and publication need not be in the *Official Gazette.* In 1986, after its reorganization, the Court, through Justice Cruz, reconsidered its decision.[66] It held, *first,* that all laws, and not only those of general applicability, must be published as a matter of due process before they can take effect; *second,* that publication must be in the *Official Gazette* as the only one required by law and; *third,* that such publication must be made "forthwith, or at least as soon as possible."

Justice Fernan filed a separate opinion. Justice Feliciano also concurred in a separate opinion. He wrote:

> A statute which by its terms provides for its coming into effect immediately upon approval thereof, is properly interpreted as coming into effect immediately upon publication thereof in the Official Gazette as provided in Article 2 of the Civil Code. Such statute, in other words, should not be regarded as purporting literally to come into effect immediately upon its approval or enactment and without need of publication. For so to interpret such statute would be to collide with the constitutional obstacle posed by the due process clause. . . .
>
> At the same time, it is clear that the requirement of publication of a statute in the Official Gazette, as distinguished from any other medium such as a newspaper of general circulation, is embodied in a statutory norm and is not a constitutional command. A specification of the Official Gazette as the prescribed medium of publication may therefore be changed. Article 2 of the Civil Code could, without creating a constitutional problem, be amended by a subsequent statute providing, for instance, for publication either in the Official Gazette or in a newspaper of general circulation in the country. Until such an amendatory statute is in fact enacted, Article 2 of the Civil Code must be obeyed and publication effected in the Official Gazette and not in any other medium.

Obviously following this opinion, in view of the fact that the *Official Gazette* does not come out on time, the President issued Executive Order No. 200 on June 18, 1987, amending art. 2 of the Civil Code, by providing that "Laws shall take effect after fifteen days following the completion of their publication either in the *Official Gazette* or in a newspaper of general circulation in the Philippines, unless it is otherwise provided."

2. *Arrests, Searches and Seizures.* — In *People v. Burgos,*[67] the Court held (1) that an arrest without a court order can be made only if the

[66] Tañada v. Tuvera, 146 SCRA 446 (1986).
[67] 144 SCRA 1 (1986).

arresting officer has personal knowledge that the crime has been committed, is being committed, or is about to be committed, as required by Rule 113, sec. 5(a) of the 1985 Rules of Criminal Procedure, otherwise the arrest would be illegal, and (2) that any incidental search and seizure are likewise illegal. In this case, the appellant, a farmer in Tiguman, Davao del Sur, was arrested without a warrant on the basis of information given to the authorities that he was in illegal possession of a firearm. A .38 cal. revolver was found buried under his house, while subversive materials were found nearby. The arresting officer testified that the appellant had admitted ownership of the gun and the documents. The trial court found him guilty of "illegal possession of firearm in furtherance of subversion" and sentenced him to 20 years of *reclusion temporal,* as minimum, to *reclusion perpetua* as maximum.

On appeal the Supreme Court reversed the conviction on the ground that the search and seizure of appellant's premises were not an incident of a valid arrest and that the appellant's admission that he owned the gun and the seized documents was inadmissible as he had not been given the Miranda warnings. But the Court ordered the confiscation of the gun and the documents.

On the other hand, in *Nolasco v. Cruz Paño,*[68] the Supreme Court reconsidered its previous decision rendered in 1985, upholding the search and seizure of alleged subversive documents from the petitioner's residence as an incident of a valid arrest, even though the search and seizure took place more than 30 minutes after the arrest, and several blocks away from the place of arrest.[69] Justice Cuevas, while concurring in the result, dissented so far as the search and seizure were upheld on the ground that they were not made contemporaneously with the arrest. Justices Teehankee and Abad Santos also dissented.

In reconsidering its decision, the Court in 1986 took account of the change in the position of the government, now represented by a new Solicitor General. However, Chief Justice Teehankee explained in a separate opinion the basis of the reconsideration. He stated that the search and seizure could not be justified as an incident of an arrest because, otherwise, all that the military or the police would do would be to procure a warrant of arrest and, on that basis, also search the dwelling of the person arrested.

Indeed, under Rule 126, sec. 12 of the 1985 Rules of Criminal Procedure, a search as an incident to a lawful arrest extends only to the search for "dangerous weapons or anything which may be used as proof of the commission of an offense." This is in line with the ruling in *Chimel v. Cali-*

[68] 147 SCRA 509 (1987).
[69] 139 SCRA 152 (1985).

fornia.[70] There the U.S. Supreme Court held that it was reasonable "to search the person arrested in order to remove any weapon" and to "seize any evidence on the arrestee's person and the area 'within his immediate control' — construing that phrase to mean the area from which he might gain possession of a weapon or destructible evidence." The American Court added: "There is no comparable justification . . . for routinary searching rooms other than that in which an arrest occurs — or, for that matter, for searching through all the desk drawers or other clothes or concealed areas in that room." I believe this case states the correct rule.

3. *The Anti-Wiretapping Law.* — Section 1 of Republic Act No. 4200 makes it a crime for any person, "not being authorized by all the parties to any private conversation or spoken word, to tap any wire or cable or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described." In *Gaanan v. Intermediate Appellate Court,*[71] the Court reversed a conviction under this law based on the use of an extension telephone without the consent of the other party to the conversation. The appellant, a lawyer, had listened to a telephone conversation which his client had with another lawyer through the use of an extension telephone. The client and the lawyer were discussing the terms for the withdrawal of a case for direct assault which the lawyer had filed. The lawyer demanded ₱8,000.00. He was charged with robbery or extortion on the basis of petitioner's affidavit in which he stated that he had heard the lawyer demanding ₱8,000.00 as condition for the withdrawal of the complaint. The lawyer in turn filed a counter charge for violation of Republic Act No. 4200 against the petitioner.

In an opinion by Justice Gutierrez, the Court held that the use of an extension line to listen to a telephone conversation is not covered by the law. He explained:

> There is no question that the telephone conversation between complainant Atty. Pintor and accused Atty. Laconico was "private" in the sense that the words uttered were made between one person and another as distinguished from words between a speaker and the public. It is also undisputed that only one of the parties gave the petitioner the authority to listen to and overhear the caller's message with the use of an extension telephone line. Obviously, complainant Pintor, a member of the Philippine bar, would not have discussed the alleged demand for an ₱8,000.00 consideration in order to have his client withdraw a direct assault charge against Atty. Laconico filed with the Cebu City Fiscal's Office if he knew that another lawyer was also listening. We have to consider, however, that affirmance of the criminal conviction would, in effect, mean that a caller by merely using a telephone line can force the listener to secrecy

[70] 395 U.S. 752 (1969). Justice White, with Justice Black, dissented.
[71] 145 SCRA 112 (1986).

> no matter how obscene, criminal, or annoying the call may be. It would be the word of the caller against the listener's.
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> . . . .
>
> The law refers to a "tap" of a wire or cable or the use of a "device or arrangement" for the purpose of secretly overhearing, intercepting, or recording the communication. There must be either a physical interruption through a wire-tap or the *deliberate* installation of a device or arrangement in order to overhear, intercept, or record the spoken words.
>
> An extension telephone cannot be placed in the same category as a dictaphone, dictagraph or the other devices enumerated in Section 1 of RA No. 4200 as the use thereof cannot be considered as "tapping" the wire or cable of a telephone line. The telephone extension in this case was not installed for that purpose. It just happened to be there for ordinary office use.

4. *Rights of Persons Under Custodial Interrogration.* — In *Miranda v. Arizona,*[72] from which art. IV, sec. 20 of the 1973 Constitution was adopted, the U. S. Supreme Court held: "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently."

The decisions of the Supreme Court in 1986-1987 reveal two distinct approaches to the question of voluntariness of waivers of the right to silence and to counsel during custodial interrogation. One approach considers the totality of the circumstances under which the person under custody was apprised of his rights. Thus, in *People v. Nicandro,*[73] the Court reversed a conviction for selling marijuana cigarettes after finding that appellant's statement, given during custodial investigation, was involuntary. The opinion of the Court, written by Justice Plana, stressed the duty of police interrogators to give "meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle" to the person under investigation. "[The interrogator] is not only duty bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, *e.g.*, what the person under interrogation may or may not do, and in a language the subject fairly understands. . . . [W]here the right has not been adequately explained and there are serious doubts as to whether the person interrogated knew and understood his relevant constitutional rights when he answered the questions, it is idle to talk of waiver of rights." In this case, the Court said, "what specific rights [Pat. Joves] mentioned to appellant, he did not say. Neither did he state the manner in which the appellant was advised of her constitutional rights so as to make her understand them."

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[72] 384 U.S. 436 (1968).
[73] 141 SCRA 289 (1986).

The ruling in *Nicandro* was reiterated in *People v. Duhan*[74] in which the Court again reversed a conviction, also for selling marijuana leaves and cigarettes. The appellants were rounded up in a police "saturation drive" against dope pushers in Ermita, Manila. Their conviction rested on an entry in the Booking and Information Sheet of the police, stating: "Accused, after being informed of his constitutional right to remain silent and to counsel, readily admitted his guilt but refused to give any written statement." The Court held it was error to admit the Booking and Information Sheets in view of the denial of the appellants that they ever verbally made confessions.

On the other hand, in *People v. Poyos*[75] the Court ruled that the interrogator failed to give a meaningful warning to the appellant where the interrogator merely said that the appellant had a right "to hire a lawyer of your own choice" and then asked him whether he agreed "to continue this investigation even if for a moment you have no lawyer to help you." The Court said:

> It is doubtful, given the tenor of the question, whether there was a definite waiver by the suspect of his right to counsel. His answer was categorical enough, to be sure, but the question itself was not as it spoke of a waiver only "for the moment." As worded, the question suggested a tentativeness that belied the suspect's supposed permanent foregoing of his right to counsel, if indeed there was any waiver at all. Moreover, he was told that he could "hire a lawyer" but not that one could be provided for him for free."

Similarly, it was held in *People v. Lasac*,[76] that the warning given to the accused, that he had a right not to make any statement and to have counsel of his own choice, did not satisfy the requirements of art. IV, sec. 20 of the 1973 Constitution. The Court held that while he was informed of his right to remain silent, he was not told that anything he might say could and would be used against him and that if he was indigent counsel would be appointed for him. Furthemore, he was not made to understand that if at any time during the interrogation he wished the assistance of counsel, the interrogation would cease until an attorney was present. Accordingly, the Court reversed the appellant's conviction for parricide.

In *People v. Jara*,[77] the Court held that the presumption is against the waiver of rights and, therefore, the prosecution must prove "with strongly convincing evidence . . . that the accused willingly and voluntarily submitted his confession." It rejected the appellants' confession which, although showing that the Miranda warnings had been given, contained nothing but the curt answers "Opo" or "Yes, sir" of the appellants. Through Justice Gutierrez, the Court said:

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[74] 142 SCRA 100 (1986).
[75] 143 SCRA 543 (1986).
[76] G.R. No. 64508, March 19, 1987.
[77] 144 SCRA 516 (1986).

> This stereotyped "advice" appearing in practically all extrajudicial confessions which are later repudiated has assumed the nature of a "legal form" or model. Police investigators either automatically type it together with "Opo" as the answer or ask the accused to sign it or even copy it in their handwriting. Its tired, punctilious, fixed, and artificially stately style does not create an impression of voluntariness or even understanding on the part of the accused. The showing of a spontaneous, free and unconstrained giving up of a right is missing.

Accordingly, it set aside the conviction of the appellants who had been found guilty of robbery with homicide as there was no other evidence against them.

But in *People v. Polo,*[78] even though the waiver was couched in similar fashion, and the answers of the appellant to the questions were simply "Opo" ("Yes, sir"), the Court, through Justice Paras, held that the appellant had been "fully apprised of his constitutional rights under custodial interrogation and the consequences of his waiver of said rights." The Court did not mention its decision in *Jara,* although Justice Padilla said in his concurring opinion that whether the waiver is voluntary or not should turn on the facts of each case, *i.e.*, whether the appellant was illiterate. However, there is nothing in the main opinion or in the concurring opinion to distinguish this case from the *Jara* case. Justice Gutierrez, who wrote the Court's opinion in *Jara,* merely said he concurred in the opinion of Justice Paras for the Court and the observations of Justice Padilla.

On the other hand, in *People v. Ochavido*[79] the Court found substantial compliance with the requirements of art. IV, sec. 20 of the 1973 Constitution. The appellants, who were inmates of the National Penitentiary, signed extrajudicial confessions admitting that they had stabbed to death another inmate on January 1, 1973 inside the penitentiary. The confessions were given after the appellants had been apprised of their rights by the prison guard, after which the confessions were ratified by them before the provincial fiscal. "There was . . . a substantial compliance with the Miranda provision of the fundamental law then in force," according to Justice Abad Santos who wrote for the Court.

In all these cases, the Court appraised the circumstances under which the waivers were made to determine whether they were voluntary. But on March 20, 1985, in *People v. Galit,*[80] the Court, drawing on what it had said by way of dictum in another case, *Morales v. Ponce Enrile,*[81] stated also by way of dictum: "No custodial investigation shall be conducted unless in the presence of counsel engaged by the person arrested, or by any person on his behalf, or appointed by the Court upon petition either

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78 147 SCRA 551(1987).
79 142 SCRA 193 (1986).
80 135 SCRA 465 (1985).
81 121 SCRA 538 (1983).

of the detainee himself or of anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of this procedure, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence."

Last year, in *People v. Sison*,[82] the government appealed from an order excluding a confession on the ground that the accused had not been assisted by counsel in waiving her right. The government argued that the statement in *Morales* was merely dictum. The Court rejected the government's plea. Instead, it ruled that *People v. Galit* had "put to rest all doubts regarding the ruling in *Morales v. Enrile* and *Moncupa v. Enrile* cases." Accordingly, it upheld the trial court's ruling, rejecting the extrajudicial confession of a member of the New People's Army charged with subversion, on the ground that the confession was given without the aid of counsel.

The Court thus adopted a flat rule of judicial administration: No extrajudicial confession given without the assistance of counsel is admissible even if the accused has been informed of his rights to silence and to counsel unless he was assisted by counsel at the beginning in waiving those rights. In *People v. Nabaluna*,[83] the Court gave the new rule a prospective effect only, that is, applying it merely to cases decided by trial courts after March 20, 1985. That the *Galit* rule is not retroactive is also the implication of Chief Justice Teehankee's separate opinion in *People v. Ochavido*[84] in which he said that although "the prevailing rule was that announced in *People v. Galit*, 134 SCRA 465 (1985) to the effect that waivers of the right to counsel by persons under custodial interrogation require the assistance of counsel, . . . this was not in issue in this case," apparently because the confession there had been made in 1978.[85]

In his concurring opinion in *People v. Polo*,[86] Justice Padilla said he did not regard the Galit rule to be an inflexible one. As he wrote:

> The rule that waiver of the right to counsel should be made with the assistance of counsel in order for the waiver to be valid should not be an inflexible rule. To the extent that the rule is founded on reason, compliance therewith should be judged in accordance with the facts of each case.
>
> When, for instance, the waiver of the right to counsel is made (without the assistance of counsel) *by an illiterate*, I see clearly why the waiver is not valid and the confession made under such condition is inadmissible against the declarant. When, however, the waiver of the right to counsel is made (without the assistance of counsel) by one who is not only literate

[82] 142 SCRA 219 (1986).
[83] 143 SCRA 446 (1986).
[84] *Supra* note 79.
[85] For a critique of the Galit rule, see Mendoza, *Law, Politics, and a Changing Court — The Fateful Years 1985-1986*, 61 PHIL. L.J. 1 (1986).
[86] *Supra* note 78.

> but schooled, competent, knowledgeable and even sophisticated, I fail to comprehend why the waiver in such instance is not valid and the confession inadmissible. I submit that the waiver of the right to counsel, made without the assistance of counsel, during custodial investigation should be tested as to its validity not by the presence or absence of assisting and advising counsel but whether the person waiving the right made such a decision as a conscious and deliberate act with full awareness of its implications and in the absence, of course, of force, intimidation and violence inflicted on the declarant.

The matter must now be deemed settled with the adoption of the 1987 Constitution. Art. III, sec. 12(1) provides:

> Any person under investigation for the commission of an offense shall have a right to be informed of his right to remain silent and to have competent and independent counsel preferrably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

The requirement that the waiver must be in writing is an additional requirement.

Finally, in *People v. Ribadajo*[87] the Court, in an opinion by Justice Melencio-Herrera, reiterated previous rulings[88] giving art. IV, sec. 20 of the 1973 Constitution only prospective application, so that, as the uncounselled confessions of the appellants had been given on November 20, 1971, they were held admissible even though they were presented in a trial held after the effectivity of the Constitution on January 17, 1973. Chief Justice Teehankee dissented from this part of the opinion, reiterating his position that "the plain mandate of the Constitution adopting the exclusionary rule as the only means of enforcing the injunction against confessions obtained in violation of art. IV, sec. 20 by removing the incentive on the part of the state and police to disregard such rights must be enforced."

How do we summarize the different rules announced in the cases? I believe they may be restated as follows:

First, with respect to confessions obtained before January 17, 1973, the rule that the suspect must be warned that he has a right to remain silent and to have the assistance of counsel does not apply. Such confessions, even though presented in evidence in a trial after the effectivity of the 1973 Constitution, are admissible, provided they are voluntary, using the traditional test of voluntariness.

Second, with respect to confessions obtained after January 17, 1973 but before March 20, 1985, when the decision in *People v. Galit*[89] was

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[87] 142 SCRA 637 (1986).

[88] Magtoto v. Manguera, 63 SCRA 4 (1975); People v. Page, 77 SCRA 348 (1977); People v. Garcia, 96 SCRA 497 (1980).

[89] *Supra* note 80.

handed down, the rule is that the voluntariness of a waiver of the right to silence and to counsel must be determined on a case-to-case basis, taking into account the circumstances under which the waiver was made.

Third, with regard to confessions obtained after March 20, 1985 but before February 2, 1987, when the present Constitution took effect, the rule is that a waiver of the right to remain silent and to the assistance of counsel, to be valid, must be made with the assistance of counsel.

Fourth, with regard to confessions given after February 2, 1987, the present Constitution requires that the waiver, to be valid, must be in writing and with the assistance of counsel.

5. *Rights of Accused Out on Bail.* — Does an accused, who is out on bail, have a right to travel abroad? In *Manotok v. Court of Appeals,*[90] the petitioner, who had four pending cases of estafa and had been released on bail, asked for permission to leave the country for business reasons. His request was denied by the trial court. He filed a petition for certiorari in the Court of Appeals, but his petition was likewise dismissed. He then appealed to the Supreme Court.

In an opinion written by Justice Fernan, the Supreme Court ruled that the condition imposed in Rule 114, sec. 7 upon the accused, to make himself available whenever the court requires his presence, constitutes a valid restriction on his right to travel. The Court said: "If the accused were allowed to leave the Philippines without sufficient reason, he may be placed beyond the reach of the courts." Moreover, it said, a court cannot allow the accused to leave the country without the consent of the surety because in accepting bail bonds or recognizance, the government impliedly warrants that it will not take any proceedings with the principal that increase the risk of the sureties or affect their remedies against him.

By mentioning the absence of "sufficient reason" for allowing travel abroad in this case, did the Court imply that for humanitarian reasons, as when the accused needs medical treatment in a foreign country, he may be granted permission to leave?

6. *An Impartial Tribunal.* — The petitioners in *Olaguer v. Military Commission No. 34*[91] were civilians who had been sentenced to death by a military commission for various offenses — conspiracy to assassinate President and Mrs. Marcos and other leaders of the Marcos administration, illegal possession of explosives, arson, and rebellion. The petitioners questioned the jurisdiction of the military commission to try them for offenses committed during martial law. The Supreme Court granted their petition for certiorari and prohibition and set aside their conviction. Justice Gancayco,

[90] 142 SCRA 149 (1986).
[91] G.R. Nos. 54558 & 69882, May 22, 1987.

who wrote the opinion of the Court, stated that "Due process of law demands that in all criminal prosecutions . . . the accused shall be entitled to, among others, trial. The trial contemplated . . . is a trial by judicial process." He cited Justice Teehankee's dissent in *Aquino v. Military Commission No. 2*[92] in which, quoting the decision in *Toth v. Quarles*,[93] he explained why the trial of civilians by military courts, when the civil courts are open and functioning, is contrary to due process, thus:

> . . . [T]he presiding officer of a court martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the possibility of influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law, despite strenuous efforts to eliminate the danger.

Actually, with the coming into force of the new Constitution which expressly prohibits the conferment of jurisdiction on military courts to try civilians so long as the civil courts are open and functioning, the military tribunal's verdict of guilt in *Olaguer* became untenable.[94]

In *Tañada v. Philippine Atomic Energy Commission*[95] the Supreme Court granted a petition for prohibition and restrained the PAEC from hearing an application for license for the operation of the Bataan nuclear power plant. The Court, through Justice Plana, found that in three publications, the PAEC had prejudged the safety of the nuclear power plant. Although at the time two of the publications were issued a majority of the PAEC commissioners had not yet been appointed, nonetheless they were then already holding responsible posts in the PAEC and, therefore, they could not escape responsibility for these publications.

Then Chief Justice Aquino dissented on the ground that the question was political. He stated: "The great public interest in the dispute does not justify the petitioners in using the Supreme Court to interfere with the hearings of the PAEC."

On the other hand, Justice Patajo, dissenting, pointed out that the pamphlets used as evidence of prejudgment, referred to the safety of nuclear power plants in general and not to the Bataan plant in particular.

7. *Trial in Absentia.* — In *People v. Salas*,[96] the Supreme Court applied the provision of art. IV, sec. 19 of the 1973 Constitution, which is repro-

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92 *Supra* note 43.
93 350 U.S. 5 (1955).
94 See Animas v. Ponce Enrile, *supra* note 47.
95 141 SCRA 307 (1986).
96 143 SCRA 163 (1986).

duced in art. III, sec. 14(2) of the present charter, in ordering the trial in absentia of an accused who had escaped. Bail was originally recommended in that case, but after a reinvestigation, an amended information was filed this time with no bail recommended. Nonetheless, during the trial in the Regional Trial Court, the accused, using the first information, succeeded in misleading the city court into believing that he had been granted bail and in obtaining his release on bail, as a result of whch he was able to escape. When apprised of the situation, the Regional Trial Court suspended the trial until the accused could be arrested. The prosecution went to the Supreme Court. In ordering trial in absentia, the Court, through Justice Cruz, ruled:

> . . . [T]he prisoner cannot by simply escaping thwart his continued prosecution and possibly eventual conviction provided only that (a) he has been arraigned; (b) he has been duly notified of the trial; and (c) his failure to appear is unjustified.
>
> The right to be present at one's trial may not be waived except only at that stage where the prosecution intends to present witnesses who will identify the accused. The defendant's escape will be considered a waiver of this right and the inability of the court to notify him of the subsequent hearings will not prevent it from continuing with his trial.
>
> Trial in absentia was not allowed in Borja v. Mendoza, 77 SCRA 422 because it was held notwithstanding that the accused had not been previously arraigned. His subsequent conviction was properly set aside. But in the instant case, since all the requisites are present, there is absolutely no reason why the respondent judge should refuse to try the accused, who had already been arraigned at the time he was released on the illegal bail bond. Abong should be prepared to bear the consequence of his escape, including forfeiture of the right to be notified of the subsequent proceedings and of the right to adduce evidence on his behalf and refute the evidence of the prosecution, not to mention a possible or even probable conviction.

8. *Imprisonment for Debt.* — BP Blg. 22 punishes any person "who makes or draws and issues any check on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of said check in full upon presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment." The penalty prescribed for the offense is imprisonment of not less than 30 days nor more than one year or a fine of not less than the amount of the check nor more than double said amount, but in no case to exceed ₱200,000.00, or both such fine and imprisonment in the discretion of the court.

The petitioners in *Lozano v. Martinez*,[97] who were accused of violation of BP Blg. 22 challenged its constitutionality. Their suits were based

[97] 146 SCRA 323 (1986).

principally on the contention that the law offends the constitutional provision [1973 Const., art. IV, sec. 13; 1987 Const., Art. III, sec. 20] forbidding imprisonment for debt and that it impairs freedom of contract.

Rejecting the petitioners' challenge, the Court, speaking through Justice Yap, held:

> . . . Mr. Justice Malcolm, speaking for the Supreme Court in Gunaway vs. Quillen, 42 Phil. 805, stated: "The 'debt' intended to be covered by the constitutional guaranty has a well-defined meaning. Organic provisions relieving from imprisonment for debt, were intended to prevent commitment of debtors to prison for liabilities arising from actions *ex contractu*. The inhibition was never meant to include damages arising in actions *ex delicto*, for the reason that damages recoverable therein do not arise from any contract entered into between the parties but are imposed upon the defendant for the wrong he has done and are considered as punishment, nor to fines and penalties imposed by the courts in criminal proceedings as punishments for crime."
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> . . . .
>
> The gravamen of the offense punished by BP Blg. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law punishes the act not as an offense against property, but as an offense against public order. . . .
>
> Recent statistics of the Central Bank show that one-third of the entire money supply of the country, roughly totalling P32.2 billion, consists of currency in circulation. These demand deposits in the banks constitute the funds against which, among other things, commercial papers like checks, are drawn. The magnitude of the amount involved amply justifies the legitimate concern of the state in preserving the integrity of the banking system. . . .
>
> We find no valid ground to sustain the contention that BP Blg. 22 impairs freedom of contract. The freedom of contract which is constitutionally protected is freedom to enter into "lawful" contracts. Contracts which contravene public policy are not lawful. Besides, we must bear in mind that commercial instrument which, in this modern day and age, has become a convenient substitute for money, cannot be categorized as mere contracts.

9. *Protection Against Double Jeopardy.* — The Bill of Rights provides:

> No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.[98]

The basic assumption in finding that the accused has been placed in double jeopardy of punishment either for the same offense or for the same act is that the court which first tried him had jurisdiction. Consequently, if because of violation of the state's right to due process the court is ousted

[98] 1973 CONST., art. IV, sec. 22; 1987 CONST., art. III, sec. 21.

of its jurisdiction, a second trial will not place the accused in double jeopardy.[99]

On this ground, the Supreme Court, in *Galman v. Sandiganbayan*,[100] set aside the decision of the Sandiganbayan, acquitting all the accused in the celebrated Aquino-Galman double murder case, after finding that the case had been "whitewashed" at the instance of former President Marcos.

The Supreme Court case was filed by the family of the supposed assassin in the murder case and by concerned citizens, who claimed that there had been a mistrial. The Supreme Court dismissed the case on November 28, 1985, and denied reconsideration of its action. But on March 20, 1986, the petitioners again moved for a reconsideration. This time the Court appointed a commission, composed of former Supreme Court Justice Conrado Vasquez and former Court of Appeals Justices Eduardo Caguioa and Milagros German, who, after hearing witnesses, recommended a new trial. Approving the commission's recommendation and ordering a new trial, the Court, through the Chief Justice, said:

> The Court finds the report duly substantiated by the evidence. The record shows suffocatingly that from beginning to end, the then President used, or more precisely, misused the overwhelming resources of the government and his authoritarian powers to corrupt and make a mockery of the judicial process in the Aquino-Galman murder cases. As graphically depicted in the Report and borne out by the happenings (res ipsa loquitur), the unholy scenario for acquittal of all 26 accused after the rigged trial as ordered at the Malacañang conference, would accomplish the two principal objectives of satisfaction of the public clamor for the suspected killers to be charged in court and of giving them through their acquittal the legal shield of double jeopardy.
>
> This criminal collusion as to the handling and treatment of the cases by the public respondents at the secret Malacañang conference . . . completely disqualified respondent Sandiganbayan and voided *ab initio* its verdict [acquitting all the 26 accused]. Double jeopardy cannot be invoked against this Court setting aside of the trial court's judgment of dismissal or acquittal, where the prosecution, which represents the sovereign people in criminal cases, is denied due process.

Justices Melencio-Herrera, Alampay, and Gutierrez, Jr., with whom Justice Feliciano concurred, filed separate concurring opinions.

Justice Gutierrez wrote:

> The fairly strong language used by the Court in its main opinion underscores the gravity with which it views the travesties of justice in this "trial of the century." At the same time, nothing expressed in our opinion should be interpreted as the Supreme Court's making a factual finding, one way or another, about the perpetrators of the Aquino or the Galman killing. Any statements about the circumstances of the assassination or about the military version of the killings are intended solely for one issue —

[99] People v. Bocar, 138 SCRA 166 (1985).
[100] 144 SCRA 43 (1986).

whether or not the Sandiganbayan acquittals should be set aside and a retrial ordered.

In *People v. Relova*,[101] on the other hand, the Court dealt with the second type of jeopardy which arises when the same act is punished by a law and an ordinance. The accused had been charged with violation of an ordinance of Batangas City, prohibiting the installation of electric wiring and devices in a building without permit from the city government, but the case was dismissed by the City Court on the ground that the offense had prescribed. Fourteen days later the City Fiscal charged the accused with theft under art. 309(1) of the Revised Penal Code. However, the Court of First Instance also dismissed the case on the ground that it placed the accused on double jeopardy. The prosecution appealed. The Court, in an opinion by Justice Feliciano, affirmed the dismissal. It said:

> The first sentence of art. IV, sec. 22 [now art. III, sec. 21] sets forth the general rule: the constitutional protection against double jeopardy is *not* available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although both the first and second offenses may be based upon the same act or set of acts. The second sentence embodies an exception to the general proposition: the protection against double jeopardy is available although the prior offense charged under an ordinance be different from the offense charged subsequently under a national statute such as the Revised Penal Code, *provided* that both offenses spring from the same act or set of acts. . . .
>
> Put a little differently, where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the *identity of offenses charged*: the protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offenses charged. In contrast, where one offense is charged under a municipal ordinance while the other is penalized by a statute, the critical inquiry is to the *identity of the acts* which the accused is said to have committed and which are alleged to have given rise to the two offenses: the protection against double jeopardy is available so long as the acts which constitute or have given rise to the first offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute.
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> The discussions during the 1934-1935 Constitutional Convention show that the second sentence was inserted precisely for the purpose of extending the constitutional protection against double jeopardy to a situation which would not otherwise be covered by the first sentence.
>
> The question of identity or lack of identity of offenses is addressed by examining the essential elements of the two offenses charged, as such elements are set out in the respective legislative definitions of the offenses involved. The question of identity of the acts which are claimed to have generated liability both under a municipal ordinance and a national statute must be addressed, in the first instance, by examining the location of such acts in time and space.

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[101] 148 SCRA 292 (1987).

B. The Protection of Substantive Rights

1. *The Taking of Property Under Eminent Domain.* — During the last regime, several decrees were issued uniformly providing for the determination of just compensation by reference to the value declared by the owner or the market value as determined by the assessor, whichever was lower. These were PD No. 76, PD No. 464, PD No. 794 and PD No. 1533. In previous decisions of the Supreme Court, the validity of these decrees was upheld on the basis of the Transitory Clause (Art. XVII, sec. 3(2)) of the 1973 Constitution declaring all Presidential issuances under martial law to be "part of the law of the land [to] remain valid, legal, binding and effective . . . unless modified, revoked or superseded by subsequent [ones] or unless expressly and explicitly modified or repealed by the regular National Assembly."[102]

In *Export Processing Zone v. Dulay*,[103] which involved the expropriation by the EPZA of a private land in Lapu-Lapu City, the Court, in an opinion by Justice Gutierrez, invalidated PD No. 1533 for being an invasion of the province of the judicial department and a denial of due process to private property owners. The Court said:

> The method of ascertaining just compensation under the aforecited decree constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under the Constitution is reserved to it for final determination.
>
> Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the decree, its task would be relegated to simply stating the lower value of the property as declared either by the owner or the assessor. . . .
>
> Just compensation means the value of the property at the time of the taking. It means a fair and full equivalent for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities, should be considered. In this particular case, the tax declarations presented by the petitioner as basis for just compensation were made by the Lapu-Lapu City assessor long before martial law, when land was not only much cheaper but when assessed values of properties were stated in figures constituting only a fraction of their true market value. The private respondent was not even the owner of the properties at the time it purchased the lots for development purposes. To peg the value of the lots on the basis of documents which are out of date and at prices below the acquisition cost of present owners would be arbitrary and confiscatory.

The following month, after its decision in this case, the Court, in *Manotok v. National Housing Authority*,[104] invalidated two other decrees (PD No. 1669 and PD No. 1670) which expropriated two estates in

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[102] *See, e.g.*, National Housing Authority v. Reyes, 123 SCRA 245 (1983); Heirs of Juancho Ardona v. Reyes, 125 SCRA 220 (1983).

[103] G.R. No. 59603, April 29, 1987.

[104] G.R. Nos. 55166 & 55167, May 21, 1987.

the City of Manila. The two decrees are notable for their substitution of the executive process in place of the judicial process. Thus, PD No. 1669 provided in pertinent parts:

> Section 1. The real properties known as the Tambunting Estate and covered by TCT Nos. 119059, 122450, 122450, 122452 and Lots Nos. 1-A, 1-C, 1-D, 1-E, 1-F and 1-H of (LRC) Psd-230517 (Previously covered by TCT. No. 119058) of the Register of Deeds of Manila with an area of 52,688.70 square meters, more or less are hereby declared expropriated. The National Housing Authority hereinafter referred to as the 'Authority' is designated administrator of the National Government with authority to immediately take possession, control, disposition, with the power of demolition of the expropriated properties and their improvements and shall evolve and implement a comprehensive development plan for the condemned properties.
>
> Section 6. Nothwithstanding any provision of law or decree to the contrary and for the purpose of expropriating this property pegged at the market value determined by the City Assessor pursuant to Presidential Decree No. 76, as amended, particularly by Presidential Decree No. 1533 which is in force and in effect at the time of the issuance of this decree, in assessing the market value, the City Assessor shall consider existing conditions in the area, notably that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost. Subject to the foregoing, the just compensation for the above property should not exceed a maximum of SEVENTEEN MILLION PESOS (₱17,000,000.00) which shall be payable to the owners within a period of five (5) years in five (5) equal installments.

Except that it related to another piece of land owned by the same family, PD No. 1670 is similar to PD No. 1669.

The petitioners challenged the constitutionality of the two decrees on the ground that the direct expropriation of their properties constituted a denial of due process and equal protection of the laws, and the Supreme Court sustained their challenge. Justice Gutierrez, who also wrote the Court's opinion in *EPZA v. Dulay*,[105] explained that while in its previous decisions the Court had "presumed the validity of the beautiful 'whereases' in the decrees governing expropriations and legitimated takings of private property which, in normal times would have been constitutionally suspect, . . . [s]ubsequent developments have shown that a disregard [of] basic liberties and the shortcut methods embodied in the decrees on expropriation do not achieve the desired results. It appears that constitutionally suspect methods or authoritarian procedures cannot be the basis for social justice." He noted that while the decrees were issued avowedly for a public purpose, "squatter colonies and blighted areas have multiplied" and that the decrees only favored a few squatters at the expense of the property owner. Justice Gutierrez said: "It is a foregone conclusion that the favored

[105] *Supra* note 103.

squatters allowed to buy these choice lots would lose no time . . . to either lease out or sell their lots to wealthy merchants even as they seek other places where they can set up new squatter colonies." Then returning to "established principles of justice and fairness which have been with us since the advent of constitutional government," the Court nullified the two decrees on the ground that they violated the petitioners' right to be heard and not to be singled out for particular application of the state's power of eminent domain. The Court said:

> . . . There is no mention of any market value declared by the owner. Section 6 of the two decrees pegs just compensation at the market value determined by the City Assessor. The City Assessor is warned by the decrees to "consider existing conditions in the area notably, that no improvement has been undertaken on the land and that the land is squatted upon by resident families which should considerably depress the expropriation cost."
>
> . . . .
>
> In the instant petitions, there is no showing whatsoever as to why the properties involved were singled out for expropriation through decrees or what necessity impelled the particular choices or selections. In expropriations through legislation, there are, at least, debates in Congress open to the public, scrutiny by individual members of the legislature, and very often, public hearings before the statute is enacted. Congressional records can be examined. In these petitions, the decrees show no reasons whatsoever for the choice of the properties as housing projects. . . .

Indeed, except that they did not condemn *people* but *property*, the two decrees amounted to a bill of attainder, a discredited device of Stuart Kings in securing the conviction of individuals. And so the Court did another job of reconstruction and reunion in the fabric of the law.

2. *Regulation of Property and Economic Activities.* — In *Ynot v. Intermediate Appellate Court*,[106] the Supreme Court, as already noted, invalidated Executive Order No. 626-A of former President Marcos, which prohibited the transportation of carabaos from one province to another, on the ground that the prohibition had no reasonable relation to the ban on the slaughter of carabaos as work animals. It also found the executive order to be arbitrary in another respect:

> In the instant case, the carabaos were arbitrarily confiscated by the police station commander, were returned to the petitioner only after he had filed a complaint for recovery and given a *supersedeas* bond of P12,000.00, which was ordered confiscated upon his failure to produce the carabaos when ordered by the trial court. The executive order defined the prohibition, convicted the petitioner and immediately imposed punishment, which was carried out forthright. The measure struck at once and pounced upon the petitioner without giving him a chance to be heard, thus denying him elementary fair play.

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106 *Supra* note 4.

In *Pernito Arrastre Services, Inc. v. Mendoza*[107] the Supreme Court reiterated its previous rulings,[108] sustaining the power of the Philippine Ports Authority to integrate stevedoring and arrastre services in the various ports of the country, through its one-port one-operator policy, against claims that this would allow monopolies and impair the obligation of contracts. The Constitution,[109] it was held, does not absolutely prohibit monopolies. By their very nature, public utilities have to have exclusive franchises, otherwise basic and essential services may be jeopardized by unrestricted competition. On the other hand, the Contract Clause[110] must yield to police power measures intended to promote the welfare of the community.

On the other hand, in *Director of Lands v. Intermediate Appellate Court*,[111] the Court again engaged in the overruling of decisions. In *Meralco v. Castro-Bartolome*[112] and *Republic v. Villanueva*,[113] the Court, over the dissent of Justice Teehankee, had ruled that a private corporation, which had acquired a parcel of land from individuals, could not apply for the confirmation of its title under sec. 48(b) of the Public Land Law, for the reason that such land did not cease to be part of the public agricultural lands by mere possession for thirty years, even though the possession by the private individual was continuous, exclusive and notorious, and under a bona fide claim of ownership. Only the issuance of a title to such private individual, it was held, would convert the land into a private land and since under the Constitution[114] a corporation cannot acquire lands of the public domain, it could not apply for confirmation of its title under sec. 48(b) of the Public Land Law.

In overruling these cases in *Director of Lands v. Intermediate Appellate Court*,[115] the Court relied on the provision of sec. 48(b) that those who have been in possession of public lands in the character described therein "shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title." The Court through Justice Narvasa stated:

> No proof being admissible to overcome a conclusive presumption, confirmation proceedings would, in truth be little more than a formality, at the most limited to ascertaining whether the possession claimed is of the required character and length of time; and registration thereunder would not confer title, but simply recognize, a title already vested. The proceedings would not originally convert the land from public to private land, but only confirm such a conversion already affected by operation of

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107 146 SCRA 430 (1986).
108 Philippine Ports Authority v. Mendoza, 138 SCRA 632 (1985); Anglo-Fil Trading v. Lazaro, 124 SCRA 494 (1983).
109 1973 CONST., art. XIV, sec. 2; 1987 CONST., art. XII, sec. 19.
110 1973 CONST., art. IV, sec. 11; 1987 CONST., art. III, sec. 10.
111 146 SCRA 509 (1986).
112 114 SCRA 799 (1982).
113 114 SCRA 875 (1982).
114 1973 CONST., art. XIV, sec. 11; 1987 CONST., art. XII, sec. 3.
115 *Supra* note 111.

> law from the moment the required period of possession became complete, . . . The correct rule is that alienable public land held by a possessor, personally or through his predecessors-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under the Public Land Act) is converted to private property by the mere lapse or completion of said period, *ipso jure*. The land subject of this appeal was already private property at the time it was acquired from the Infiels by Acme. Acme acquired a registrable title, there being at the time no prohibition against said corporation's holding or owning private land.

3. *Freedom of Expression.* — In *Newsweek, Inc. v. Intermediate Appellate Court,*[116] the petitioner, a news magazine, published in its February 23, 1981 issue an article entitled "An Island of Fear," in which it portrayed Negros Occidental as a place where landowners exploited and even killed their sugarcane planters. The magazine publisher was sued for libel. It sought the dismissal of the case on the ground that the complaint did not state a cause of action. But the trial court denied its motion. The appellate court sustained the order of the trial court. Hence, Newsweek, Inc. appealed. In reversing the appellate court, the Supreme Court, through Justice Feria, restated the rule on libel in light of the constitutional guarantee of speech:

> Where the defamation is alleged to have been directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be.
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> . . . .
>
> The disputed portion of the article, which refers to plaintiff Sola and which was claimed to be libelous never singled out plaintiff Sola as a sugar planter. The news report merely stated that the victim had been arrested by members of a special police unit brought into the area by Pablo Sola, the mayor of Kabankalan. Hence, the report, referring as it does to an official act performed by an elective public official, is within the realm of privilege and is protected by the constitutional guarantees of free speech and press.

4. *Sovereign Immunity from Suits.* — In a little known passage of his famous opinion in *Marbury v. Madison,*[117] Chief Justice Marshall said: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of the court. . . ."

We have seen instances where the acts of the Executive and the Legislature have been held subject to review in the courts at the instance of individuals, even though the President himself is held immune from suits. For the Bill of Rights is not only a shield of defense but of offense as well.

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[116] 142 SCRA 171 (1986).
[117] 1 Cranch 137, 2 L. Ed. 60 (1803).

But the right of the individual to sue does not include the right to proceed against the state, except as it may consent to be sued. In *Republic v. Feliciano,*[118] the Court held that an action for recovery of the possession and ownership of a land, brought against the Republic of the Philippines, is a suit against the state and, therefore, cannot succeed. It is no argument to say that the land is private since the character of the land still has to be established. The Court suggested that such claim be put forward in a petition for the confirmation of an imperfect title under sec. 48(b) of the Public Land Law, since such a proceeding is a proceeding *in rem,* or against the whole world, rather than against the state.

Fifty-four years ago, in 1933, in an address entitled "How Far Is A Judge Free in Rendering a Decision," Judge Learned Hand said:

> . . . [W]hile it is proper that people should find fault when their judges fail, it is only reasonable that they should recognize the difficulties. Perhaps it is also fair to ask that before the judges are blamed they shall be given the credit of having tried to do their best. Let them be severely brought to book, when they go wrong,' but by those who will take the trouble to understand.[119]

I trust that I have lived up to this standard and that my effort will be viewed in the spirit in which it was made — that of providing an academic response to the Supreme Court's decisions.[120]

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[118] 148 SCRA 424 (1987).

[119] L. HAND, THE SPIRIT OF LIBERTY 85 (I. Dilliard, ed. 1958).

[120] *Compare* Jaffe, *Impromptu Remarks,* 76 HARV. L. REV. 1111 (1963): "There will be and there should be popular response to the Supreme Court's decisions; not just the 'informed' criticism of law professors but the deep-felt, emotion-laden, unsophisticated reaction of the laity. This is because more than any court in the modern world the Supreme Court 'makes policy,' and is at the same time so little subject to formal democratic control. . . . [Yet] those who urge the Court on to political innovation are outraged when its decisions arouse, as they must, resentment and political attack."