

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN,
MAJOR GENERAL JOSEPHUS Q. RAMAS AND ELIZABETH DIMAANO,
RESPONDENTS.***G.R. No. 104768. July 21, 2003*

Ponente: CARPIO, J.

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Before this Court is a petition for review on certiorari seeking to set aside the Resolutions of the Sandiganbayan (First Division)[1] dated 18 November 1991 and 25 March 1992 in Civil Case No. 0037. The first Resolution dismissed petitioner's Amended Complaint and ordered the return of the confiscated items to respondent Elizabeth Dimaano, while the second Resolution denied petitioner's Motion for Reconsideration. Petitioner prays for the grant of the reliefs sought in its Amended Complaint, or in the alternative, for the remand of this case to the Sandiganbayan (First Division) for further proceedings allowing petitioner to complete the presentation of its evidence.

Antecedent Facts

Immediately upon her assumption to office following the successful EDSA Revolution, then President Corazon C. Aquino issued Executive Order No. 1 ("EO No. 1") creating the Presidential Commission on Good Government ("PCGG"). EO No. 1 primarily tasked the PCGG to recover all ill-gotten wealth of former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates. EO No. 1 vested the PCGG with the power "(a) to conduct investigation as may be necessary in order to accomplish and carry out the purposes of this order" and the power "(h) to promulgate such rules and regulations as may be necessary to carry out the purpose of this order." Accordingly, the PCGG, through its then Chairman Jovito R. Salonga, created an AFP Anti-Graft Board ("AFP Board") tasked to investigate reports of unexplained wealth and corrupt practices by AFP personnel, whether in the active service or retired.[2]

Based on its mandate, the AFP Board investigated various reports of alleged unexplained wealth of respondent Major General Josephus Q. Ramas ("Ramas"). On 27 July 1987, the AFP Board issued a Resolution on its findings and recommendation on the reported unexplained wealth of Ramas. The relevant part of the Resolution reads:

III. FINDINGS and EVALUATION:

Evidence in the record showed that respondent is the owner of a house and lot located at 15-Yakan St., La Vista, Quezon City. He is also the owner of a house and lot located in Cebu City. The lot has an area of 3,327 square meters.

The value of the property located in Quezon City may be estimated modestly at P700,000.00.

The equipment/items and communication facilities which were found in the premises of Elizabeth Dimaano

and were confiscated by elements of the PC Command of Batangas were all covered by invoice receipt in the name of CAPT. EFREN SALIDO, RSO Command Coy, MSC, PA. These items could not have been in the possession of Elizabeth Dimaano if not given for her use by respondent Commanding General of the Philippine Army.

Aside from the military equipment/items and communications equipment, the raiding team was also able to confiscate money in the amount of P2,870,000.00 and \$50,000 US Dollars in the house of Elizabeth Dimaano on 3 March 1986.

Affidavits of members of the Military Security Unit, Military Security Command, Philippine Army, stationed at Camp Eldridge, Los Baños, Laguna, disclosed that Elizabeth Dimaano is the mistress of respondent. That respondent usually goes and stays and sleeps in the alleged house of Elizabeth Dimaano in Barangay Tengga, Itaas, Batangas City and when he arrives, Elizabeth Dimaano embraces and kisses respondent. That on February 25, 1986, a person who rode in a car went to the residence of Elizabeth Dimaano with four (4) attache cases filled with money and owned by MGen Ramas.

Sworn statement in the record disclosed also that Elizabeth Dimaano had no visible means of income and is supported by respondent for she was formerly a mere secretary.

Taking in toto the evidence, Elizabeth Dimaano could not have used the military equipment/items seized in her house on March 3, 1986 without the consent of respondent, he being the Commanding General of the Philippine Army. It is also impossible for Elizabeth Dimaano to claim that she owns the P2,870,000.00 and \$50,000 US Dollars for she had no visible source of income.

This money was never declared in the Statement of Assets and Liabilities of respondent. There was an intention to cover the existence of these money because these are all ill-gotten and unexplained wealth. Were it not for the affidavits of the members of the Military Security Unit assigned at Camp Eldridge, Los Baños, Laguna, the existence and ownership of these money would have never been known.

The Statement of Assets and Liabilities of respondent were also submitted for scrutiny and analysis by the Board's consultant. Although the amount of P2,870,000.00 and \$50,000 US Dollars were not included, still it was disclosed that respondent has an unexplained wealth of P104,134. 60.

IV. CONCLUSION:

In view of the foregoing, the Board finds that a prima facie case exists against respondent for ill-gotten and unexplained wealth in the amount of P2,974,134.00 and \$50,000 US Dollars.

V. RECOMMENDATION:

Wherefore it is recommended that Maj. Gen. Josephus Q. Ramas (ret.) be prosecuted and tried for violation of RA 3019, as amended, otherwise known as "Anti-Graft and Corrupt Practices Act" and RA 1379, as amended, otherwise known as "The Act for the Forfeiture of Unlawfully Acquired Property." [3]

Thus, on 1 August 1987, the PCGG filed a petition for forfeiture under Republic Act No. 1379 ("RA No. 1379") [4] against Ramas.

Before Ramas could answer the petition, then Solicitor General Francisco I. Chavez filed an Amended Complaint naming the Republic of the Philippines ("petitioner"), represented by the PCGG, as plaintiff and Ramas as defendant. The Amended Complaint also impleaded Elizabeth Dimaano ("Dimaano") as co-defendant.

The Amended Complaint alleged that Ramas was the Commanding General of the Philippine Army until 1986. On the other hand, Dimaano was a confidential agent of the Military Security Unit, Philippine Army, assigned as a clerk-typist at the office of Ramas from 1 January 1978 to February 1979. The Amended Complaint further

alleged that Ramas "acquired funds, assets and properties manifestly out of proportion to his salary as an army officer and his other income from legitimately acquired property by taking undue advantage of his public office and/or using his power, authority and influence as such officer of the Armed Forces of the Philippines and as a subordinate and close associate of the deposed President Ferdinand Marcos." [5]

The Amended Complaint also alleged that the AFP Board, after a previous inquiry, found reasonable ground to believe that respondents have violated RA No. 1379. [6] The Amended Complaint prayed for, among others, the forfeiture of respondents' properties, funds and equipment in favor of the State.

Ramas filed an Answer with Special and/or Affirmative Defenses and Compulsory Counterclaim to the Amended Complaint. In his Answer, Ramas contended that his property consisted only of a residential house at La Vista Subdivision, Quezon City, valued at P700,000, which was not out of proportion to his salary and other legitimate income. He denied ownership of any mansion in Cebu City and the cash, communications equipment and other items confiscated from the house of Dimaano.

Dimaano filed her own Answer to the Amended Complaint. Admitting her employment as a clerk-typist in the office of Ramas from January-November 1978 only, Dimaano claimed ownership of the monies, communications equipment, jewelry and land titles taken from her house by the Philippine Constabulary raiding team.

After termination of the pre-trial, [7] the court set the case for trial on the merits on 9-11 November 1988.

On 9 November 1988, petitioner asked for a deferment of the hearing due to its lack of preparation for trial and the absence of witnesses and vital documents to support its case. The court reset the hearing to 17 and 18 April 1989.

On 13 April 1989, petitioner filed a motion for leave to amend the complaint in order "to charge the delinquent properties with being subject to forfeiture as having been unlawfully acquired by defendant Dimaano alone x x x." [8]

Nevertheless, in an order dated 17 April 1989, the Sandiganbayan proceeded with petitioner's presentation of evidence on the ground that the motion for leave to amend complaint did not state when petitioner would file the amended complaint. The Sandiganbayan further stated that the subject matter of the amended complaint was on its face vague and not related to the existing complaint. The Sandiganbayan also held that due to the time that the case had been pending in court, petitioner should proceed to present its evidence.

After presenting only three witnesses, petitioner asked for a postponement of the trial.

On 28 September 1989, during the continuation of the trial, petitioner manifested its inability to proceed to trial because of the absence of other witnesses or lack of further evidence to present. Instead, petitioner reiterated its motion to amend the complaint to conform to the evidence already presented or to change the averments to show that Dimaano alone unlawfully acquired the monies or properties subject of the forfeiture.

The Sandiganbayan noted that petitioner had already delayed the case for over a year mainly because of its many postponements. Moreover, petitioner would want the case to revert to its preliminary stage when in fact the case had long been ready for trial. The Sandiganbayan ordered petitioner to prepare for presentation of its additional evidence, if any.

During the trial on 23 March 1990, petitioner again admitted its inability to present further evidence. Giving petitioner one more chance to present further evidence or to amend the complaint to conform to its evidence, the Sandiganbayan reset the trial to 18 May 1990. The Sandiganbayan, however, hinted that the re-setting was without prejudice to any action that private respondents might take under the circumstances.

However, on 18 May 1990, petitioner again expressed its inability to proceed to trial because it had no further evidence to present. Again, in the interest of justice, the Sandiganbayan granted petitioner 60 days within which to file an appropriate pleading. The Sandiganbayan, however, warned petitioner that failure to act would constrain the court to take drastic action.

Private respondents then filed their motions to dismiss based on *Republic v. Migrino*.^[9] The Court held in *Migrino* that the PCGG does not have jurisdiction to investigate and prosecute military officers by reason of mere position held without a showing that they are "subordinates" of former President Marcos.

On 18 November 1991, the Sandiganbayan rendered a resolution, the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered dismissing the Amended Complaint, without pronouncement as to costs. The counterclaims are likewise dismissed for lack of merit, but the confiscated sum of money, communications equipment, jewelry and land titles are ordered returned to Elizabeth Dimaano.

The records of this case are hereby remanded and referred to the Hon. Ombudsman, who has primary jurisdiction over the forfeiture cases under R.A. No. 1379, for such appropriate action as the evidence warrants. This case is also referred to the Commissioner of the Bureau of Internal Revenue for a determination of any tax liability of respondent Elizabeth Dimaano in connection herewith.

SO ORDERED.

On 4 December 1991, petitioner filed its Motion for Reconsideration.

In answer to the Motion for Reconsideration, private respondents filed a Joint Comment/Opposition to which petitioner filed its Reply on 10 January 1992.

On 25 March 1992, the Sandiganbayan rendered a Resolution denying the Motion for Reconsideration.

Ruling of the Sandiganbayan

The Sandiganbayan dismissed the Amended Complaint on the following grounds:

(1.)

The actions taken by the PCGG are not in accordance with the rulings of the Supreme Court in *Cruz, Jr. v. Sandiganbayan*^[10] and *Republic v. Migrino*^[11] which involve the same issues.

(2.)

No previous inquiry similar to preliminary investigations in criminal cases was conducted against Ramas and Dimaano.

(3.) The evidence adduced against Ramas does not constitute a prima facie case against him.

(4.) There was an illegal search and seizure of the items confiscated.

The Issues

Petitioner raises the following issues:

- RESPONDENT COURT SERIOUSLY ERRED IN CONCLUDING THAT PETITIONER'S EVIDENCE CANNOT MAKE A CASE FOR FORFEITURE AND THAT THERE WAS NO SHOWING OF CONSPIRACY, COLLUSION OR RELATIONSHIP BY CONSANGUINITY OR AFFINITY BY AND BETWEEN RESPONDENT RAMAS AND RESPONDENT DIMAANO NOTWITHSTANDING THE FACT THAT SUCH CONCLUSIONS WERE CLEARLY UNFOUNDED AND PREMATURE, HAVING BEEN RENDERED PRIOR TO THE COMPLETION OF THE PRESENTATION OF THE EVIDENCE OF THE PETITIONER.

- RESPONDENT COURT SERIOUSLY ERRED IN HOLDING THAT THE ACTIONS TAKEN BY THE PETITIONER, INCLUDING THE FILING OF THE ORIGINAL COMPLAINT AND THE AMENDED COMPLAINT, SHOULD BE STRUCK OUT IN LINE WITH THE RULINGS OF THE SUPREME COURT IN CRUZ, JR. v. SANDIGANBAYAN, 194 SCRA 474 AND REPUBLIC v. MIGRINO, 189 SCRA 289, NOTWITHSTANDING THE FACT THAT:

- The cases of Cruz, Jr. v. Sandiganbayan, supra, and Republic v. Migrino, supra, are clearly not applicable to this case;

- Any procedural defect in the institution of the complaint in Civil Case No. 0037 was cured and/or waived by respondents with the filing of their respective answers with counterclaim; and

- The separate motions to dismiss were evidently improper considering that they were filed after commencement of the presentation of the evidence of the petitioner and even before the latter was allowed to formally offer its evidence and rest its case;

- RESPONDENT COURT SERIOUSLY ERRED IN HOLDING THAT THE ARTICLES AND THINGS SUCH AS SUMS OF MONEY, COMMUNICATIONS EQUIPMENT, JEWELRY AND LAND TITLES CONFISCATED FROM THE HOUSE OF RESPONDENT DIMAANO WERE ILLEGALLY SEIZED AND THEREFORE EXCLUDED AS EVIDENCE.[12]

The Court's Ruling

First Issue: PCGG's Jurisdiction to Investigate Private Respondents

This case involves a revisiting of an old issue already decided by this Court in Cruz, Jr. v. Sandiganbayan[13] and Republic v. Migrino.[14]

The primary issue for resolution is whether the PCGG has the jurisdiction to investigate and cause the filing of a forfeiture petition against Ramas and Dimaano for unexplained wealth under RA No. 1379.

We hold that PCGG has no such jurisdiction.

The PCGG created the AFP Board to investigate the unexplained wealth and corrupt practices of AFP personnel, whether in the active service or retired.[15] The PCGG tasked the AFP Board to make the necessary recommendations to appropriate government agencies on the action to be taken based on its findings.[16] The PCGG gave this task to the AFP Board pursuant to the PCGG's power under Section 3 of EO No. 1 "to conduct investigation as may be necessary in order to accomplish and to carry out the purposes of this order." EO No. 1 gave the PCGG specific responsibilities, to wit:

SEC. 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover and sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/ or using their powers, authority, influence, connections or relationship.

(b)

The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.

x x x.

The PCGG, through the AFP Board, can only investigate the unexplained wealth and corrupt practices of AFP personnel who fall under either of the two categories mentioned in Section 2 of EO No. 1. These are: (1) AFP personnel who have accumulated ill-gotten wealth during the administration of former President Marcos by being the latter's immediate family, relative, subordinate or close associate, taking undue advantage of their public office or using their powers, influence x x x;^[17] or (2) AFP personnel involved in other cases of graft and corruption provided the President assigns their cases to the PCGG.^[18]

Petitioner, however, does not claim that the President assigned Ramas' case to the PCGG. Therefore, Ramas' case should fall under the first category of AFP personnel before the PCGG could exercise its jurisdiction over him. Petitioner argues that Ramas was undoubtedly a subordinate of former President Marcos because of his position as the Commanding General of the Philippine Army. Petitioner claims that Ramas' position enabled him to receive orders directly from his commander-in-chief, undeniably making him a subordinate of former President Marcos.

We hold that Ramas was not a "subordinate" of former President Marcos in the sense contemplated under EO No. 1 and its amendments.

Mere position held by a military officer does not automatically make him a "subordinate" as this term is used in EO Nos. 1, 2, 14 and 14-A absent a showing that he enjoyed close association with former President Marcos. Migrino discussed this issue in this wise:

A close reading of EO No. 1 and related executive orders will readily show what is contemplated within the term 'subordinate.' The Whereas Clauses of EO No. 1 express the urgent need to recover the ill-gotten wealth amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad.

EO No. 2 freezes 'all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation.'

Applying the rule in statutory construction known as ejusdem generis that is- '[W]here general words follow an enumeration of persons or things by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned [Smith, Bell & Co, Ltd. vs. Register of Deeds of Davao, 96 Phil. 53, 58, citing Black on Interpretation of Laws, 2nd Ed., 203].'

[T]he term "subordinate" as used in EO Nos. 1 & 2 refers to one who enjoys a close association with former President Marcos and/or his wife, similar to the immediate family member, relative, and close associate in EO No. 1 and the close relative, business associate, dummy, agent, or nominee in EO No. 2.

x x x

It does not suffice, as in this case, that the respondent is or was a government official or employee during the administration of former President Marcos. There must be a prima facie showing that the respondent unlawfully accumulated wealth by virtue of his close association or relation with former Pres. Marcos and/or his wife. (Emphasis supplied)

Ramas' position alone as Commanding General of the Philippine Army with the rank of Major General^[19] does not suffice to make him a "subordinate" of former President Marcos for purposes of EO No. 1 and its amendments. The PCGG has to provide a prima facie showing that Ramas was a close associate of former President Marcos, in the same manner that business associates, dummies, agents or nominees of former President

Marcos were close to him. Such close association is manifested either by Ramas' complicity with former President Marcos in the accumulation of ill-gotten wealth by the deposed President or by former President Marcos' acquiescence in Ramas' own accumulation of ill-gotten wealth if any.

This, the PCGG failed to do.

Petitioner's attempt to differentiate the instant case from Migrino does not convince us. Petitioner argues that unlike in Migrino, the AFP Board Resolution in the instant case states that the AFP Board conducted the investigation pursuant to EO Nos. 1, 2, 14 and 14-A in relation to RA No. 1379. Petitioner asserts that there is a presumption that the PCGG was acting within its jurisdiction of investigating crony-related cases of graft and corruption and that Ramas was truly a subordinate of the former President. However, the same AFP Board Resolution belies this contention. Although the Resolution begins with such statement, it ends with the following recommendation:

V. RECOMMENDATION:

Wherefore it is recommended that Maj. Gen. Josephus Q. Ramas (ret.) be prosecuted and tried for violation of RA 3019, as amended, otherwise known as "Anti-Graft and Corrupt Practices Act" and RA 1379, as amended, otherwise known as "The Act for the Forfeiture of Unlawfully Acquired Property." [20]

Thus, although the PCGG sought to investigate and prosecute private respondents under EO Nos. 1, 2, 14 and 14-A, the result yielded a finding of violation of Republic Acts Nos. 3019 and 1379 without any relation to EO Nos. 1, 2, 14 and 14-A. This absence of relation to EO No. 1 and its amendments proves fatal to petitioner's case. EO No. 1 created the PCGG for a specific and limited purpose, and necessarily its powers must be construed to address such specific and limited purpose.

Moreover, the resolution of the AFP Board and even the Amended Complaint do not show that the properties Ramas allegedly owned were accumulated by him in his capacity as a "subordinate" of his commander-in-chief. Petitioner merely enumerated the properties Ramas allegedly owned and suggested that these properties were disproportionate to his salary and other legitimate income without showing that Ramas amassed them because of his close association with former President Marcos. Petitioner, in fact, admits that the AFP Board resolution does not contain a finding that Ramas accumulated his wealth because of his close association with former President Marcos, thus:

- While it is true that the resolution of the Anti-Graft Board of the New Armed Forces of the Philippines did not categorically find a prima facie evidence showing that respondent Ramas unlawfully accumulated wealth by virtue of his close association or relation with former President Marcos and/or his wife, it is submitted that such omission was not fatal. The resolution of the Anti-Graft Board should be read in the context of the law creating the same and the objective of the investigation which was, as stated in the above, pursuant to Republic Act Nos. 3019 and 1379 in relation to Executive Order Nos. 1, 2, 14 and 14-a; [21] (Emphasis supplied)

Such omission is fatal. Petitioner forgets that it is precisely a prima facie showing that the ill-gotten wealth was accumulated by a "subordinate" of former President Marcos that vests jurisdiction on PCGG. EO No. 1 [22] clearly premises the creation of the PCGG on the urgent need to recover all ill-gotten wealth amassed by former President Marcos, his immediate family, relatives, subordinates and close associates. Therefore, to say that such omission was not fatal is clearly contrary to the intent behind the creation of the PCGG.

In *Cruz, Jr. v. Sandiganbayan*, [23] the Court outlined the cases that fall under the jurisdiction of the PCGG pursuant to EO Nos. 1, 2, [24] 14, [25] 14-A: [26]

A careful reading of Sections 2(a) and 3 of Executive Order No. 1 in relation with Sections 1, 2 and 3 of

Executive Order No. 14, shows what the authority of the respondent PCGG to investigate and prosecute covers:

(a)

the investigation and prosecution of the civil action for the recovery of ill-gotten wealth under Republic Act No. 1379, accumulated by former President Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the take-over or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through his nominees, by taking undue advantage of their public office and/or using their powers, authority and influence, connections or relationships; and

(b)

the investigation and prosecution of such offenses committed in the acquisition of said ill-gotten wealth as contemplated under Section 2(a) of Executive Order No. 1.

However, other violations of the Anti-Graft and Corrupt Practices Act not otherwise falling under the foregoing categories, require a previous authority of the President for the respondent PCGG to investigate and prosecute in accordance with Section 2 (b) of Executive Order No. 1. Otherwise, jurisdiction over such cases is vested in the Ombudsman and other duly authorized investigating agencies such as the provincial and city prosecutors, their assistants, the Chief State Prosecutor and his assistants and the state prosecutors. (Emphasis supplied)

The proper government agencies, and not the PCGG, should investigate and prosecute forfeiture petitions not falling under EO No. 1 and its amendments. The preliminary investigation of unexplained wealth amassed on or before 25 February 1986 falls under the jurisdiction of the Ombudsman, while the authority to file the corresponding forfeiture petition rests with the Solicitor General.[27] The Ombudsman Act or Republic Act No. 6770 ("RA No. 6770") vests in the Ombudsman the power to conduct preliminary investigation and to file forfeiture proceedings involving unexplained wealth amassed after 25 February 1986.[28]

After the pronouncements of the Court in Cruz, the PCGG still pursued this case despite the absence of a prima facie finding that Ramas was a "subordinate" of former President Marcos. The petition for forfeiture filed with the Sandiganbayan should be dismissed for lack of authority by the PCGG to investigate respondents since there is no prima facie showing that EO No. 1 and its amendments apply to respondents. The AFP Board Resolution and even the Amended Complaint state that there are violations of RA Nos. 3019 and 1379. Thus, the PCGG should have recommended Ramas' case to the Ombudsman who has jurisdiction to conduct the preliminary investigation of ordinary unexplained wealth and graft cases. As stated in Migrino:

[But] in view of the patent lack of authority of the PCGG to investigate and cause the prosecution of private respondent for violation of Rep. Acts Nos. 3019 and 1379, the PCGG must also be enjoined from proceeding with the case, without prejudice to any action that may be taken by the proper prosecutory agency. The rule of law mandates that an agency of government be allowed to exercise only the powers granted to it.

Petitioner's argument that private respondents have waived any defect in the filing of the forfeiture petition by submitting their respective Answers with counterclaim deserves no merit as well.

Petitioner has no jurisdiction over private respondents. Thus, there is no jurisdiction to waive in the first place. The PCGG cannot exercise investigative or prosecutorial powers never granted to it. PCGG's powers are specific and limited. Unless given additional assignment by the President, PCGG's sole task is only to recover the ill-gotten wealth of the Marcoses, their relatives and cronies.[29] Without these elements, the PCGG cannot claim jurisdiction over a case.

Private respondents questioned the authority and jurisdiction of the PCGG to investigate and prosecute their cases by filing their Motion to Dismiss as soon as they learned of the pronouncement of the Court in *Migrino*. This case was decided on 30 August 1990, which explains why private respondents only filed their Motion to Dismiss on 8 October 1990. Nevertheless, we have held that the parties may raise lack of jurisdiction at any stage of the proceeding.[30] Thus, we hold that there was no waiver of jurisdiction in this case. Jurisdiction is vested by law and not by the parties to an action.[31]

Consequently, the petition should be dismissed for lack of jurisdiction by the PCGG to conduct the preliminary investigation. The Ombudsman may still conduct the proper preliminary investigation for violation of RA No. 1379, and if warranted, the Solicitor General may file the forfeiture petition with the Sandiganbayan.[32] The right of the State to forfeit unexplained wealth under RA No. 1379 is not subject to prescription, laches or estoppel.[33]

Second Issue: Propriety of Dismissal of Case

Before Completion of Presentation of Evidence

Petitioner also contends that the Sandiganbayan erred in dismissing the case before completion of the presentation of petitioner's evidence.

We disagree.

Based on the findings of the Sandiganbayan and the records of this case, we find that petitioner has only itself to blame for non-completion of the presentation of its evidence. First, this case has been pending for four years before the Sandiganbayan dismissed it. Petitioner filed its Amended Complaint on 11 August 1987, and only began to present its evidence on 17 April 1989. Petitioner had almost two years to prepare its evidence. However, despite this sufficient time, petitioner still delayed the presentation of the rest of its evidence by filing numerous motions for postponements and extensions. Even before the date set for the presentation of its evidence, petitioner filed, on 13 April 1989, a Motion for Leave to Amend the Complaint.[34] The motion sought "to charge the delinquent properties (which comprise most of petitioner's evidence) with being subject to forfeiture as having been unlawfully acquired by defendant Dimaano alone x x x."

The Sandiganbayan, however, refused to defer the presentation of petitioner's evidence since petitioner did not state when it would file the amended complaint. On 18 April 1989, the Sandiganbayan set the continuation of the presentation of evidence on 28-29 September and 9-11 October 1989, giving petitioner ample time to prepare its evidence. Still, on 28 September 1989, petitioner manifested its inability to proceed with the presentation of its evidence. The Sandiganbayan issued an Order expressing its view on the matter, to wit:

The Court has gone through extended inquiry and a narration of the above events because this case has been ready for trial for over a year and much of the delay hereon has been due to the inability of the government to produce on scheduled dates for pre-trial and for trial documents and witnesses, allegedly upon the failure of the military to supply them for the preparation of the presentation of evidence thereon. Of equal interest is the fact that this Court has been held to task in public about its alleged failure to move cases such as this one beyond the preliminary stage, when, in view of the developments such as those of today, this Court is now faced with a situation where a case already in progress will revert back to the preliminary stage, despite a five-month pause where appropriate action could have been undertaken by the plaintiff Republic.[35]

On 9 October 1989, the PCGG manifested in court that it was conducting a preliminary investigation on the unexplained wealth of private respondents as mandated by RA No. 1379.[36] The PCGG prayed for an additional four months to conduct the preliminary investigation. The Sandiganbayan granted this request and scheduled the presentation of evidence on 26-29 March 1990. However, on the scheduled date, petitioner failed to inform the court of the result of the preliminary investigation the PCGG supposedly conducted. Again, the Sandiganbayan

gave petitioner until 18 May 1990 to continue with the presentation of its evidence and to inform the court of "what lies ahead insofar as the status of the case is concerned x x x." [37] Still on the date set, petitioner failed to present its evidence. Finally, on 11 July 1990, petitioner filed its Re-Amended Complaint. [38] The Sandiganbayan correctly observed that a case already pending for years would revert to its preliminary stage if the court were to accept the Re-Amended Complaint.

Based on these circumstances, obviously petitioner has only itself to blame for failure to complete the presentation of its evidence. The Sandiganbayan gave petitioner more than sufficient time to finish the presentation of its evidence. The Sandiganbayan overlooked petitioner's delays and yet petitioner ended the long-string of delays with the filing of a Re-Amended Complaint, which would only prolong even more the disposition of the case.

Moreover, the pronouncements of the Court in *Migrino* and *Cruz* prompted the Sandiganbayan to dismiss the case since the PCGG has no jurisdiction to investigate and prosecute the case against private respondents. This alone would have been sufficient legal basis for the Sandiganbayan to dismiss the forfeiture case against private respondents.

Thus, we hold that the Sandiganbayan did not err in dismissing the case before completion of the presentation of petitioner's evidence.

Third Issue: Legality of the Search and Seizure

Petitioner claims that the Sandiganbayan erred in declaring the properties confiscated from Dimaano's house as illegally seized and therefore inadmissible in evidence. This issue bears a significant effect on petitioner's case since these properties comprise most of petitioner's evidence against private respondents. Petitioner will not have much evidence to support its case against private respondents if these properties are inadmissible in evidence.

On 3 March 1986, the Constabulary raiding team served at Dimaano's residence a search warrant captioned "Illegal Possession of Firearms and Ammunition." Dimaano was not present during the raid but Dimaano's cousins witnessed the raid. The raiding team seized the items detailed in the seizure receipt together with other items not included in the search warrant. The raiding team seized these items: one baby armalite rifle with two magazines; 40 rounds of 5.56 ammunition; one pistol, caliber .45; communications equipment, cash consisting of P2,870,000 and US\$50,000, jewelry, and land titles.

Petitioner wants the Court to take judicial notice that the raiding team conducted the search and seizure "on March 3, 1986 or five days after the successful EDSA revolution." [39] Petitioner argues that a revolutionary government was operative at that time by virtue of Proclamation No. 1 announcing that President Aquino and Vice President Laurel were "taking power in the name and by the will of the Filipino people." [40] Petitioner asserts that the revolutionary government effectively withheld the operation of the 1973 Constitution which guaranteed private respondents' exclusionary right.

Moreover, petitioner argues that the exclusionary right arising from an illegal search applies only beginning 2 February 1987, the date of ratification of the 1987 Constitution. Petitioner contends that all rights under the Bill of Rights had already reverted to its embryonic stage at the time of the search. Therefore, the government may confiscate the monies and items taken from Dimaano and use the same in evidence against her since at the time of their seizure, private respondents did not enjoy any constitutional right.

Petitioner is partly right in its arguments.

The EDSA Revolution took place on 23-25 February 1986. As succinctly stated in President Aquino's Proclamation No. 3 dated 25 March 1986, the EDSA Revolution was "done in defiance of the provisions of the

1973 Constitution." [41] The resulting government was indisputably a revolutionary government bound by no constitution or legal limitations except treaty obligations that the revolutionary government, as the de jure government in the Philippines, assumed under international law.

The correct issues are: (1) whether the revolutionary government was bound by the Bill of Rights of the 1973 Constitution during the interregnum, that is, after the actual and effective take-over of power by the revolutionary government following the cessation of resistance by loyalist forces up to 24 March 1986 (immediately before the adoption of the Provisional Constitution); and (2) whether the protection accorded to individuals under the International Covenant on Civil and Political Rights ("Covenant") and the Universal Declaration of Human Rights ("Declaration") remained in effect during the interregnum.

We hold that the Bill of Rights under the 1973 Constitution was not operative during the interregnum. However, we rule that the protection accorded to individuals under the Covenant and the Declaration remained in effect during the interregnum.

During the interregnum, the directives and orders of the revolutionary government were the supreme law because no constitution limited the extent and scope of such directives and orders. With the abrogation of the 1973 Constitution by the successful revolution, there was no municipal law higher than the directives and orders of the revolutionary government. Thus, during the interregnum, a person could not invoke any exclusionary right under a Bill of Rights because there was neither a constitution nor a Bill of Rights during the interregnum. As the Court explained in Letter of Associate Justice Reynato S. Puno: [42]

A revolution has been defined as "the complete overthrow of the established government in any country or state by those who were previously subject to it" or as "a sudden, radical and fundamental change in the government or political system, usually effected with violence or at least some acts of violence." In Kelsen's book, *General Theory of Law and State*, it is defined as that which "occurs whenever the legal order of a community is nullified and replaced by a new order . . . a way not prescribed by the first order itself."

It was through the February 1986 revolution, a relatively peaceful one, and more popularly known as the "people power revolution" that the Filipino people tore themselves away from an existing regime. This revolution also saw the unprecedented rise to power of the Aquino government.

From the natural law point of view, the right of revolution has been defined as "an inherent right of a people to cast out their rulers, change their policy or effect radical reforms in their system of government or institutions by force or a general uprising when the legal and constitutional methods of making such change have proved inadequate or are so obstructed as to be unavailable." It has been said that "the locus of positive law-making power lies with the people of the state" and from there is derived "the right of the people to abolish, to reform and to alter any existing form of government without regard to the existing constitution."

x x x

It is widely known that Mrs. Aquino's rise to the presidency was not due to constitutional processes; in fact, it was achieved in violation of the provisions of the 1973 Constitution as a Batasang Pambansa resolution had earlier declared Mr. Marcos as the winner in the 1986 presidential election. Thus it can be said that the organization of Mrs. Aquino's Government which was met by little resistance and her control of the state evidenced by the appointment of the Cabinet and other key officers of the administration, the departure of the Marcos Cabinet officials, revamp of the Judiciary and the Military signaled the point where the legal system then in effect, had ceased to be obeyed by the Filipino. (Emphasis supplied)

To hold that the Bill of Rights under the 1973 Constitution remained operative during the interregnum would render void all sequestration orders issued by the Philippine Commission on Good Government ("PCGG") before the adoption of the Freedom Constitution. The sequestration orders, which direct the freezing and even the

take-over of private property by mere executive issuance without judicial action, would violate the due process and search and seizure clauses of the Bill of Rights.

During the interregnum, the government in power was concededly a revolutionary government bound by no constitution. No one could validly question the sequestration orders as violative of the Bill of Rights because there was no Bill of Rights during the interregnum. However, upon the adoption of the Freedom Constitution, the sequestered companies assailed the sequestration orders as contrary to the Bill of Rights of the Freedom Constitution.

In *Bataan Shipyard & Engineering Co. Inc. vs. Presidential Commission on Good Government*,^[43] petitioner Baseco, while conceding there was no Bill of Rights during the interregnum, questioned the continued validity of the sequestration orders upon adoption of the Freedom Constitution in view of the due process clause in its Bill of Rights. The Court ruled that the Freedom Constitution, and later the 1987 Constitution, expressly recognized the validity of sequestration orders, thus:

If any doubt should still persist in the face of the foregoing considerations as to the validity and propriety of sequestration, freeze and takeover orders, it should be dispelled by the fact that these particular remedies and the authority of the PCGG to issue them have received constitutional approbation and sanction. As already mentioned, the Provisional or "Freedom" Constitution recognizes the power and duty of the President to enact "measures to achieve the mandate of the people to . . . (r)ecover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts." And as also already adverted to, Section 26, Article XVIII of the 1987 Constitution treats of, and ratifies the "authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986."

The framers of both the Freedom Constitution and the 1987 Constitution were fully aware that the sequestration orders would clash with the Bill of Rights. Thus, the framers of both constitutions had to include specific language recognizing the validity of the sequestration orders. The following discourse by Commissioner Joaquin G. Bernas during the deliberations of the Constitutional Commission is instructive:

FR. BERNAS: Madam President, there is something schizophrenic about the arguments in defense of the present amendment.

For instance, I have carefully studied Minister Salonga's lecture in the Gregorio Araneta University Foundation, of which all of us have been given a copy. On the one hand, he argues that everything the Commission is doing is traditionally legal. This is repeated by Commissioner Romulo also. Minister Salonga spends a major portion of his lecture developing that argument. On the other hand, almost as an afterthought, he says that in the end what matters are the results and not the legal niceties, thus suggesting that the PCGG should be allowed to make some legal shortcuts, another word for niceties or exceptions.

Now, if everything the PCGG is doing is legal, why is it asking the CONCOM for special protection? The answer is clear. What they are doing will not stand the test of ordinary due process, hence they are asking for protection, for exceptions. Grandes malos, grandes remedios, fine, as the saying stands, but let us not say grandes malos, grande y malos remedios. That is not an allowable extrapolation. Hence, we should not give the exceptions asked for, and let me elaborate and give three reasons:

First, the whole point of the February Revolution and of the work of the CONCOM is to hasten constitutional normalization. Very much at the heart of the constitutional normalization is the full effectivity of the Bill of Rights. We cannot, in one breath, ask for constitutional normalization and at the same time ask for a temporary halt to the full functioning of what is at the heart of constitutionalism. That would be hypocritical; that would be a repetition of Marcosian protestation of due process and rule of law. The New Society word for that is "backsliding." It is tragic when we begin to backslide even before we get there.

Second, this is really a corollary of the first. Habits tend to become ingrained. The committee report asks for extraordinary exceptions from the Bill of Rights for six months after the convening of Congress, and Congress may even extend this longer.

Good deeds repeated ripen into virtue; bad deeds repeated become vice. What the committee report is asking for is that we should allow the new government to acquire the vice of disregarding the Bill of Rights.

Vices, once they become ingrained, become difficult to shed. The practitioners of the vice begin to think that they have a vested right to its practice, and they will fight tooth and nail to keep the franchise. That would be an unhealthy way of consolidating the gains of a democratic revolution.

Third, the argument that what matters are the results and not the legal niceties is an argument that is very disturbing. When it comes from a staunch Christian like Commissioner Salonga, a Minister, and repeated verbatim by another staunch Christian like Commissioner Tingson, it becomes doubly disturbing and even discomfiting. The argument makes the PCGG an auctioneer, placing the Bill of Rights on the auction block. If the price is right, the search and seizure clause will be sold. "Open your Swiss bank account to us and we will award you the search and seizure clause. You can keep it in your private safe."

Alternatively, the argument looks on the present government as hostage to the hoarders of hidden wealth. The hoarders will release the hidden wealth if the ransom price is paid and the ransom price is the Bill of Rights, specifically the due process in the search and seizure clauses. So, there is something positively revolting about either argument. The Bill of Rights is not for sale to the highest bidder nor can it be used to ransom captive dollars. This nation will survive and grow strong, only if it would become convinced of the values enshrined in the Constitution of a price that is beyond monetary estimation.

For these reasons, the honorable course for the Constitutional Commission is to delete all of Section 8 of the committee report and allow the new Constitution to take effect in full vigor. If Section 8 is deleted, the PCGG has two options. First, it can pursue the Salonga and the Romulo argument -- that what the PCGG has been doing has been completely within the pale of the law. If sustained, the PCGG can go on and should be able to go on, even without the support of Section 8. If not sustained, however, the PCGG has only one honorable option, it must bow to the majesty of the Bill of Rights.

The PCGG extrapolation of the law is defended by staunch Christians. Let me conclude with what another Christian replied when asked to toy around with the law. From his prison cell, Thomas More said, "I'll give the devil benefit of law for my nation's safety sake." I ask the Commission to give the devil benefit of law for our nation's sake. And we should delete Section 8.

Thank you, Madam President. (Emphasis supplied)

Despite the impassioned plea by Commissioner Bernas against the amendment excepting sequestration orders from the Bill of Rights, the Constitutional Commission still adopted the amendment as Section 26,[44] Article XVIII of the 1987 Constitution. The framers of the Constitution were fully aware that absent Section 26, sequestration orders would not stand the test of due process under the Bill of Rights.

Thus, to rule that the Bill of Rights of the 1973 Constitution remained in force during the interregnum, absent a constitutional provision excepting sequestration orders from such Bill of Rights, would clearly render all sequestration orders void during the interregnum. Nevertheless, even during the interregnum the Filipino people continued to enjoy, under the Covenant and the Declaration, almost the same rights found in the Bill of Rights of the 1973 Constitution.

The revolutionary government, after installing itself as the de jure government, assumed responsibility for the State's good faith compliance with the Covenant to which the Philippines is a signatory. Article 2(1) of the Covenant requires each signatory State "to respect and to ensure to all individuals within its territory and subject

to its jurisdiction the rights^[45] recognized in the present Covenant." Under Article 17(1) of the Covenant, the revolutionary government had the duty to insure that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."

The Declaration, to which the Philippines is also a signatory, provides in its Article 17(2) that "[n]o one shall be arbitrarily deprived of his property." Although the signatories to the Declaration did not intend it as a legally binding document, being only a declaration, the Court has interpreted the Declaration as part of the generally accepted principles of international law and binding on the State.^[46] Thus, the revolutionary government was also obligated under international law to observe the rights^[47] of individuals under the Declaration.

The revolutionary government did not repudiate the Covenant or the Declaration during the interregnum. Whether the revolutionary government could have repudiated all its obligations under the Covenant or the Declaration is another matter and is not the issue here. Suffice it to say that the Court considers the Declaration as part of customary international law, and that Filipinos as human beings are proper subjects of the rules of international law laid down in the Covenant. The fact is the revolutionary government did not repudiate the Covenant or the Declaration in the same way it repudiated the 1973 Constitution. As the *de jure* government, the revolutionary government could not escape responsibility for the State's good faith compliance with its treaty obligations under international law.

It was only upon the adoption of the Provisional Constitution on 25 March 1986 that the directives and orders of the revolutionary government became subject to a higher municipal law that, if contravened, rendered such directives and orders void. The Provisional Constitution adopted verbatim the Bill of Rights of the 1973 Constitution.^[48] The Provisional Constitution served as a self-limitation by the revolutionary government to avoid abuses of the absolute powers entrusted to it by the people.

During the interregnum when no constitution or Bill of Rights existed, directives and orders issued by government officers were valid so long as these officers did not exceed the authority granted them by the revolutionary government. The directives and orders should not have also violated the Covenant or the Declaration. In this case, the revolutionary government presumptively sanctioned the warrant since the revolutionary government did not repudiate it. The warrant, issued by a judge upon proper application, specified the items to be searched and seized. The warrant is thus valid with respect to the items specifically described in the warrant.

However, the Constabulary raiding team seized items not included in the warrant. As admitted by petitioner's witnesses, the raiding team confiscated items not included in the warrant, thus:

Direct Examination of Capt. Rodolfo Sebastian

AJ AMORES

Q.

According to the search warrant, you are supposed to seize only for weapons. What else, aside from the weapons, were seized from the house of Miss Elizabeth Dimaano?

A.

The communications equipment, money in Philippine currency and US dollars, some jewelries, land titles, sir.

Q.

Now, the search warrant speaks only of weapons to be seized from the house of Elizabeth Dimaano. Do you know the reason why your team also seized other properties not mentioned in said search warrant?

A.

During the conversation right after the conduct of said raid, I was informed that the reason why they also brought the other items not included in the search warrant was because the money and other jewelries were contained in attaché cases and cartons with markings "Sony Trinitron", and I think three (3) vaults or steel safes. Believing that the attaché cases and the steel safes were containing firearms, they forced open these containers only to find out that they contained money.

xxx

Q.

You said you found money instead of weapons, do you know the reason why your team seized this money instead of weapons?

A.

I think the overall team leader and the other two officers assisting him decided to bring along also the money because at that time it was already dark and they felt most secured if they will bring that because they might be suspected also of taking money out of those items, your Honor.[49]

Cross-examination

Atty. Banaag

Q.

Were you present when the search warrant in connection with this case was applied before the Municipal Trial Court of Batangas, Branch 1?

A. Yes, sir.

Q.

And the search warrant applied for by you was for the search and seizure of five (5) baby armalite rifles M-16 and five (5) boxes of ammunition?

A. Yes, sir.

xxx

AJ AMORES

Q.

Before you applied for a search warrant, did you conduct surveillance in the house of Miss Elizabeth Dimaano?

A. The Intelligence Operatives conducted surveillance together with the MSU elements, your Honor.

Q. And this party believed there were weapons deposited in the house of Miss Elizabeth Dimaano?

A. Yes, your Honor.

Q. And they so swore before the Municipal Trial Judge?

A. Yes, your Honor.

Q.

But they did not mention to you, the applicant for the search warrant, any other properties or contraband which could be found in the residence of Miss Elizabeth Dimaano?

A.

They just gave us still unconfirmed report about some hidden items, for instance, the communications equipment and money. However, I did not include that in the application for search warrant considering that we have not established concrete evidence about that. So when...

Q.

So that when you applied for search warrant, you had reason to believe that only weapons were in the house of Miss Elizabeth Dimaano?

A. Yes, your Honor.[50]

xxx

Q. You stated that a .45 caliber pistol was seized along with one armalite rifle M-16 and how many ammunition?

A. Forty, sir.

Q.

And this became the subject of your complaint with the issuing Court, with the fiscal's office who charged Elizabeth Dimaano for Illegal Possession of Firearms and Ammunition?

A. Yes, sir.

Q. Do you know what happened to that case?

A. I think it was dismissed, sir.

Q. In the fiscal's office?

A. Yes, sir.

Q.

Because the armalite rifle you seized, as well as the .45 caliber pistol had a Memorandum Receipt in the name of Felino Melegrito, is that not correct?

A. I think that was the reason, sir.

Q.

There were other articles seized which were not included in the search warrant, like for instance, jewelries. Why did you seize the jewelries?

A.

I think it was the decision of the overall team leader and his assistant to bring along also the jewelries and other items, sir. I do not really know where it was taken but they brought along also these articles. I do not really know their reason for bringing the same, but I just learned that these were taken because they might get lost if they will just leave this behind.

xxx

Q. How about the money seized by your raiding team, they were not also included in the search warrant?

A.

Yes sir, but I believe they were also taken considering that the money was discovered to be contained in attaché cases. These attaché cases were suspected to be containing pistols or other high powered firearms, but in the course of the search the contents turned out to be money. So the team leader also decided to take this considering that they believed that if they will just leave the money behind, it might get lost also.

Q.

That holds true also with respect to the other articles that were seized by your raiding team, like Transfer Certificates of Title of lands?

A.

Yes, sir. I think they were contained in one of the vaults that were opened.[51]

It is obvious from the testimony of Captain Sebastian that the warrant did not include the monies, communications equipment, jewelry and land titles that the raiding team confiscated. The search warrant did not particularly describe these items and the raiding team confiscated them on its own authority. The raiding team had no legal basis to seize these items without showing that these items could be the subject of warrantless search and seizure.[52] Clearly, the raiding team exceeded its authority when it seized these items.

The seizure of these items was therefore void, and unless these items are contraband per se,[53] and they are not, they must be returned to the person from whom the raiding seized them. However, we do not declare that such person is the lawful owner of these items, merely that the search and seizure warrant could not be used as basis to seize and withhold these items from the possessor. We thus hold that these items should be returned immediately to Dimaano.

WHEREFORE, the petition for certiorari is DISMISSED. The questioned Resolutions of the Sandiganbayan dated 18 November 1991 and 25 March 1992 in Civil Case No. 0037, remanding the records of this case to the Ombudsman for such appropriate action as the evidence may warrant, and referring this case to the Commissioner of the Bureau of Internal Revenue for a determination of any tax liability of respondent Elizabeth Dimaano, are AFFIRMED.

SO ORDERED.

Bellosillo, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr. and Azcuna, JJ., concur.

Davide, Jr., C.J., in the result. I concur with Mr. Justice Vitug in his concurring opinion.

Puno and Vitug, JJ., see separate opinion

Panganiban, J., in the result.

Quisumbing and Sandoval-Gutierrez, JJ., on official leave.

Ynares-Santiago, J., in the result. I concur in the separate opinion of J. Reynato Puno.

Tinga, J., separate opinion reserved.

[1] Composed of Justices Regino Hermosisima, Jr., Francis Garchitorena and Cipriano del Rosario.

[2] Republic v. Migrino, G.R. No. 89483, 30 August 1990, 189 SCRA 289.

[3] Records of the Sandiganbayan [hereinafter Records], pp. 53-55.

[4] "An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor."

[5] Records, p. 14.

[6] Ibid., p.16.

[7] Ibid., p. 166.

[8] Ibid., p. 286.

[9] Supra, note 2.

[10] G.R. No. 94595, 26 February 1991, 194 SCRA 474.

[11] Supra, note 2.

[12] Rollo, p. 21.

[13] Supra, note 10.

[14] Supra, note 2.

[15] Republic v. Migrino, supra, note 2.

[16] Supra, note 2.

[17] Republic v. Migrino, supra, note 2.

[18] Republic v. Sandiganbayan, G.R. No. 115906, 29 September 1994, 237 SCRA 242.

[19] Presidential Decree No. 1769 "Amending PD 360 dated December 30, 1973 adjusting the authorized grades in the command and staff structure of the AFP" dated 12 January 1981. The ranking is as follows:

Chief of Staff, AFP General (0-10)

Vice Chief of Staff, AFP Lt. General (0-9)

Commander of Major Services, AFP Maj. General (0-8)

xxx.

[20] Records, pp. 54-55.

[21] Rollo, p. 27.

[22] "WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives and close associates both here and abroad;

WHEREAS, there is an urgent need to recover all ill-gotten wealth;

xxx"

[23] Supra, note 10.

[24] "Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Marcos, Mrs. Imelda Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees" dated 12 March 1986.

[25] "Defining the Jurisdiction over Cases Involving the Ill-gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, and/or Business Associates, Dummies, Agents and Nominees" dated 7 May 1986.

[26] "Amending Executive Order No. 14" dated 18 August 1986.

[27] Republic v. Sandiganbayan, G.R. No. 90529, 16 August 1991, 200 SCRA 667.

[28] Section 15 (11), RA No. 6770.

[29] Republic v. Migrino, *supra*, note 2.

[30] Cudia v. CA, 348 Phil. 190 (1998).

[31] Monsanto v. Zerna, G.R. No. 142501, 7 December 2001, 371 SCRA 664; Republic v. Estipular, G.R. No. 136588, 20 July 2000, 336 SCRA 333.

[32] Republic v. Migrino, *supra*, note 2.

[33] Cojuangco, Jr. v. Presidential Commission on Good Gov't., G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226.

[34] Records, p. 285.

[35] Records, p. 347.

[36] *Ibid.*, p. 346.

[37] *Ibid.*, p. 395.

[38] *Ibid.*, p. 422.

[39] Rollo, p. 34.

[40] *Ibid.*

[41] Proclamation No. 3, "Provisional Constitution of the Republic of the Philippines," provides:

WHEREAS, the new government under President Corazon C. Aquino was installed through a direct exercise of the power of the Filipino people assisted by units of the New Armed Forces of the Philippines;

WHEREAS, the heroic action of the people was done in defiance of the provisions of the 1973 Constitution, as amended;

xxx. (Emphasis supplied)

See also Estrada v. Desierto, G.R. No. 146710-15 and G.R. No. 146738, 3 April 2001, 356 SCRA 108; Mun. of San Juan, Metro Manila v. Court of Appeals, 345 Phil. 220 (1997).

[42] A.M. No. 90-11-2697-CA, 29 June 1992, 210 SCRA 589.

[43] No. L-75885, 27 May 1987, 150 SCRA 181.

[44] Section 26, Article XVIII of the 1987 Constitution provides:

Sec. 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the

Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

[45] Among the rights of individuals recognized in the Covenant are: (1) No one shall be arbitrarily deprived of his life [Article 6(1)]; (2) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. [Article 7]; (3) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release [Article 9(1 & 3)]; (4) Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of the charges against him [Article 9(2)]; (5) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. No one shall be arbitrarily deprived of the right to enter his own country [Article 12(1, 2 & 3)]; (6) Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law [Article 14(2)]; (7) Everyone shall have the right of freedom of thought, conscience and religion [Article 18(1)]; (8) Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression [Article 19(1 & 2)]; (9) The right of peaceful assembly shall be recognized [Article 21]; (10) Everyone shall have the right of freedom of association with others [Article 22(1)]; (11) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law [Article 26].

[46] *Andreu v. Commissioner of Immigration*, 90 Phil. 347 (1951); *Chirskoff v. Commissioner of Immigration*, 90 Phil. 256 (1951); *Borovsky v. Commissioner of Immigration*, 90 Phil. 107 (1951); *Mejoff v. Director of Prisons*, 90 Phil. 70 (1951).

[47] Among the rights enshrined in the Declaration are: (1) Everyone has the right to own property alone or in association with others [Article 17(1)]; (2) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives [Article 21(1)]; (3) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment [Article 23(1)].

[48] Section 1, Article I of the Provisional Constitution provides: "The provisions of xxx ARTICLE IV (Bill of Rights) xxx of the 1973 Constitution, as amended, remain in force and effect and are hereby adopted in toto as part of this provisional Constitution." (Emphasis supplied)

[49] TSN, 18 April 1989, pp. 115-117.

[50] *Ibid.*, pp. 136-138.

[51] *Ibid.*, pp. 144-146.

[52] Five generally accepted exceptions to the rule against warrantless search and seizure have been judicially formulated as follows: (1) search incidental to a lawful arrest, (2) search of moving vehicles, (3) seizure of evidence in plain view, (4) customs searches, and (5) waiver by the accused themselves of their right against

unreasonable search and seizure. (People v. Que Ming Kha, G.R. No. 133265, 31 May 2002; Caballes v. Court of Appeals, G.R. No. 136292, 15 January 2002; People v. Lacerna, G.R. No. 109250, 5 September 1997, 278 SCRA 561).

[53] People v. Lim, G.R. No. 141699, 7 August 2002; Del Rosario v. People, G.R. No. 142295, 31 May 2001, 358 SCRA 373.

SEPARATE OPINION

PUNO, J.:

While I concur in the result of the ponencia of Mr. Justice Carpio, the ruling on whether or not private respondent Dimaano could invoke her rights against unreasonable search and seizure and to the exclusion of evidence resulting therefrom compels this humble opinion. The ponencia states that "(t)he correct issue is whether the Bill of Rights was operative during the interregnum from February 26, 1986 (the day Corazon C. Aquino took her oath as President) to March 24, 1986 (immediately before the adoption of the Freedom Constitution)."[1] The majority holds that the Bill of Rights was not operative, thus private respondent Dimaano cannot invoke the right against unreasonable search and seizure and the exclusionary right as her house was searched and her properties were seized during the interregnum or on March 3, 1986. My disagreement is not with the ruling that the Bill of Rights was not operative at that time, but with the conclusion that the private respondent has lost and cannot invoke the right against unreasonable search and seizure and the exclusionary right. Using a different lens in viewing the problem at hand, I respectfully submit that the crucial issue for resolution is whether she can invoke these rights in the absence of a constitution under the extraordinary circumstances after the 1986 EDSA Revolution. The question boggles the intellect, and is interesting, to say the least, perhaps even to those not half-interested in the law. But the question of whether the Filipinos were bereft of fundamental rights during the one month interregnum is not as perplexing as the question of whether the world was without a God in the three days that God the Son descended into the dead before He rose to life. Nature abhors a vacuum and so does the law.

I. Prologue

The ponencia suggests that the Constitution, the Bill of Rights in particular, is the only source of rights, hence in its absence, private respondent Dimaano cannot invoke her rights against unreasonable search and seizure and to the exclusion of evidence obtained therefrom. Pushing the ponencia's line of reasoning to the extreme will result in the conclusion that during the one month interregnum, the people lost their constitutionally guaranteed rights to life, liberty and property and the revolutionary government was not bound by the strictures of due process of law. Even before appealing to history and philosophy, reason shouts otherwise.

The ponencia recognized the EDSA Revolution as a "successful revolution"[2] that installed the Aquino government. There is no right to revolt in the 1973 Constitution, in force prior to February 23-25, 1986. Nonetheless, it is widely accepted that under natural law, the right of revolution is an inherent right of the people. Thus, we justified the creation of a new legal order after the 1986 EDSA Revolution, viz:

"From the natural law point of view, the right of revolution has been defined as 'an inherent right of a people to cast out their rulers, change their policy or effect radical reforms in their system of government or institutions by force or a general uprising when the legal and constitutional methods of making such change have proved inadequate or are so obstructed as to be unavailable.' (H. Black, Handbook of American Constitutional Law II, 4[th] edition, 1927) It has been said that 'the locus of positive law-making power lies with the people of the state' and from there is derived 'the right of the people to abolish, to reform and to alter any existing form of government without regard to the existing constitution.' ('Political Rights as Political

Questions, The Paradox of *Luther v. Borden*', 100 Harvard Law Review 1125, 1133 [1987]]"[3]

It is my considered view that under this same natural law, private respondent Dimaano has a right against unreasonable search and seizure and to exclude evidence obtained as a consequence of such illegal act. To explain my thesis, I will first lay down the relevant law before applying it to the facts of the case at bar. Tracking down the elusive law that will govern the case at bar will take us to the labyrinths of philosophy and history. To be sure, the difficulty of the case at bar lies less in the application of the law, but more in finding the applicable law. I shall take up the challenge even if the route takes negotiating, but without trespassing, on political and religious thickets.

II. Natural Law and Natural Rights

As early as the Greek civilization, man has alluded to a higher, natural standard or law to which a state and its laws must conform. Sophocles unmistakably articulates this in his poignant literary piece, *Antigone*. In this mid-fifth century Athenian tragedy, a civil war divided two brothers, one died defending Thebes, and the other, Polyneices, died attacking it. The king forbade Polyneices' burial, commanding instead that his body be left to be devoured by beasts. But according to Greek religious ideas, only a burial -even a token one with a handful of earth- could give repose to his soul. Moved by piety, Polyneices' sister, Antigone, disobeyed the command of the king and buried the body. She was arrested. Brought before the king who asks her if she knew of his command and why she disobeyed, Antigone replies:

"... These laws were not ordained of Zeus,
And she who sits enthroned with gods below,
Justice, enacted not these human laws.
Nor did I deem that thou, a mortal man,
Couldst by a breath annul and override
The immutable unwritten laws of heaven.
They were not born today nor yesterday;
They die not; and none knoweth whence they sprang." [4]

Antigone was condemned to be buried alive for violating the order of the king. [5]

Aristotle also wrote in his *Nicomachean Ethics*: "Of political justice part is natural, part legal - natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it has been laid down is not indifferent, e.g. that a prisoner's ransom shall be mina, or that a goat and not two sheep shall be sacrificed, and again all the laws that are passed for particular cases, . . ." [6] Aristotle states that "(p)articular law is that which each community lays down and applies to its own members: this is partly written and partly unwritten. Universal law is the law of Nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other. It is this that Sophocles' *Antigone* clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature." [7]

Later, the Roman orator Cicero wrote of natural law in the first century B.C. in this wise:

"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and at all times,

and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment." [8]

This allusion to an eternal, higher, and universal natural law continues from classical antiquity to this day. The face of natural law, however, has changed throughout the classical, medieval, modern, and contemporary periods of history.

In the medieval times, shortly after 1139, Gratian published the *Decretum*, a collection and reconciliation of the canon laws in force, which distinguished between divine or natural law and human law. Similar to the writings of the earliest Church Fathers, he related this natural law to the Decalogue and to Christ's commandment of love of one's neighbor. "The law of nature is that which is contained in the Law and the Gospel, by which everyone is commanded to do unto others as he would wish to be done unto him, and is prohibited from doing unto others that which he would be unwilling to be done unto himself." [9] This natural law precedes in time and rank all things, such that statutes whether ecclesiastical or secular, if contrary to law, were to be held null and void. [10]

The following century saw a shift from a natural law concept that was revelation-centered to a concept related to man's reason and what was discoverable by it, under the influence of Aristotle's writings which were coming to be known in the West. William of Auxerre acknowledged the human capacity to recognize good and evil and God's will, and made reason the criterion of natural law. Natural law was thus *id quod naturalis ratio sine omni deliberatione aut sine magna dictat esse faciendum* or "that which natural reason, without much or even any need of reflection, tells us what we must do." [11] Similarly, Alexander of Hales saw human reason as the basis for recognizing natural law [12] and St. Bonaventure wrote that what natural reason commands is called the natural law. [13] By the thirteenth century, natural law was understood as the law of right reason, coinciding with the biblical law but not derived from it. [14]

Of all the medieval philosophers, the Italian St. Thomas Aquinas is indisputably regarded as the most important proponent of traditional natural law theory. He created a comprehensive and organized synthesis of the natural law theory which rests on both the classical (in particular, Aristotelian philosophy) and Christian foundation, i.e., on reason and revelation. [15] His version of the natural law theory rests on his vision of the universe as governed by a single, self-consistent and overarching system of law under the direction and authority of God as the supreme lawgiver and judge. [16] Aquinas defined law as "an ordinance of reason for the common good, made by him who has care of the community, and promulgated." [17] There are four kinds of laws in his natural law theory: eternal, natural, human, and divine.

First, eternal law. To Aquinas, a law is a dictate of practical reason (which provides practical directions on how one ought to act as opposed to "speculative reason" which provides propositional knowledge of the way things are) emanating from the ruler who governs a perfect community. [18] Presupposing that Divine Providence rules the universe, and Divine Providence governs by divine reason, then the rational guidance of things in God the Ruler of the universe has the nature of a law. And since the divine reason's conception of things is not subject to time but is eternal, this kind of law is called eternal law. [19] In other words, eternal law is that law which is a "dictate" of God's reason. It is the external aspect of God's perfect wisdom, or His wisdom applied to His creation. [20] Eternal law consists of those principles of action that God implanted in creation to enable each thing to perform its proper function in the overall order of the universe. The proper function of a thing determines what is good and bad for it: the good consists of performing its function while the bad consists of failing to perform it. [21]

Then, natural law. This consists of principles of eternal law which are specific to human beings as rational

creatures. Aquinas explains that law, as a rule and measure, can be in a person in two ways: in one way, it can be in him that rules and measures; and in another way, in that which is ruled and measured since a thing is ruled and measured in so far as it partakes of the rule or measure. Thus, since all things governed by Divine Providence are regulated and measured by the eternal law, then all things partake of or participate to a certain extent in the eternal law; they receive from it certain inclinations towards their proper actions and ends. Being rational, however, the participation of a human being in the Divine Providence, is most excellent because he participates in providence itself, providing for himself and others. He participates in eternal reason itself and through this, he possesses a natural inclination to right action and right end. This participation of the rational creature in the eternal law is called natural law. Hence, the psalmist says: "The light of Thy countenance, O Lord, is signed upon us, thus implying that the light of natural reason, by which we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation in the eternal law." [22] In a few words, the "natural law is a rule of reason, promulgated by God in man's nature, whereby man can discern how he should act." [23]

Through natural reason, we are able to distinguish between right and wrong; through free will, we are able to choose what is right. When we do so, we participate more fully in the eternal law rather than being merely led blindly to our proper end. We are able to choose that end and make our compliance with eternal law an act of self-direction. In this manner, the law becomes in us a rule and measure and no longer a rule and measure imposed from an external source. [24] The question that comes to the fore then is what is this end to which natural law directs rational creatures?

The first self-evident principle of natural law is that "good is to be pursued and done, and evil is to be avoided. All other precepts of the natural law are based upon this, so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precept of the natural law as something to be done or avoided." [25] Because good is to be sought and evil avoided, and good is that which is in accord with the nature of a given creature or the performance of a creature's proper function, then the important question to answer is what is human nature or the proper function of man. Those to which man has a natural inclination are naturally apprehended by reason as good and must thus be pursued, while their opposites are evil which must be avoided. [26] Aquinas identifies the basic inclinations of man as follows:

"1. To seek the good, including his highest good, which is eternal happiness with God. [27]

- To preserve himself in existence.

- To preserve the species - that is, to unite sexually.

- To live in community with other men.

- To use his intellect and will - that is, to know the truth and to make his own decision." [28]

As living creatures, we have an interest in self-preservation; as animals, in procreation; and as rational creatures, in living in society and exercising our intellectual and spiritual capacities in the pursuit of knowledge. [29] God put these inclinations in human nature to help man achieve his final end of eternal happiness. With an understanding of these inclinations in our human nature, we can determine by practical reason what is good for us and what is bad. [30] In this sense, natural law is an ordinance of reason. [31] Proceeding from these inclinations, we can apply the natural law by deduction, thus: good should be done; this action is good; this action should therefore be done. [32] Concretely, it is good for humans to live peaceably with one another in society, thus this dictates the prohibition of actions such as killing and stealing that harm society. [33]

From the precepts of natural law, human reason needs to proceed to the more particular determinations or

specialized regulations to declare what is required in particular cases considering society's specific circumstances. These particular determinations, arrived at by human reason, are called human laws (Aquinas' positive law). They are necessary to clarify the demands of natural law. Aquinas identifies two ways by which something may be derived from natural law: first, like in science, demonstrated conclusions are drawn from principles; and second, as in the arts, general forms are particularized as to details like the craftsman determining the general form of a house to a particular shape.[34] Thus, according to Aquinas, some things are derived from natural law by way of conclusion (such as "one must not kill" may be derived as a conclusion from the principle that "one should do harm to no man") while some are derived by way of determination (such as the law of nature has it that the evildoer should be punished, but that he be punished in this or that way is not directly by natural law but is a derived determination of it).[35] Aquinas says that both these modes of derivation are found in the human law. But those things derived as a conclusion are contained in human law not as emanating therefrom exclusively, but having some force also from the natural law. But those things which are derived in the second manner have no other force than that of human law.[36]

Finally, there is divine law which is given by God, i.e., the Old Testament and the New Testament. This is necessary to direct human life for four reasons. First, through law, man is directed to proper actions towards his proper end. This end, which is eternal happiness and salvation, is not proportionate to his natural human power, making it necessary for him to be directed not just by natural and human law but by divinely given law. Secondly, because of uncertainty in human judgment, different people form different judgments on human acts, resulting in different and even contrary laws. So that man may know for certain what he ought to do and avoid, it was necessary for man to be directed in his proper acts by a God-given law for it is certain that such law cannot err. Thirdly, human law can only judge the external actions of persons. However, perfection of virtue consists in man conducting himself right in both his external acts and in his interior motives. The divine law thus supervenes to see and judge both dimensions. Fourthly, because human law cannot punish or forbid all evils, since in aiming to do away with all evils it would do away with many good things and would hinder the advancement of the common good necessary for human development, divine law is needed.[37] For example, if human law forbade backbiting gossip, in order to enforce such a law, privacy and trust that is necessary between spouses and friends would be severely restricted. Because the price paid to enforce the law would outweigh the benefits, gossiping ought to be left to God to be judged and punished. Thus, with divine law, no evil would remain unforbidden and unpunished.[38]

Aquinas' traditional natural law theory has been advocated, recast and restated by other scholars up to the contemporary period.[39] But clearly, what has had a pervading and lasting impact on the Western philosophy of law and government, particularly on that of the United States of America which heavily influenced the Philippine system of government and constitution, is the modern natural law theory.

In the traditional natural law theory, among which was Aquinas', the emphasis was placed on moral duties of man -both rulers and subjects- rather than on rights of the individual citizen. Nevertheless, from this medieval theoretical background developed modern natural law theories associated with the gradual development in Europe of modern secular territorial state. These theories increasingly veered away from medieval theological trappings[40] and gave particular emphasis to the individual and his natural rights.[41]

One far-reaching school of thought on natural rights emerged with the political philosophy of the English man, John Locke. In the traditional natural law theory such as Aquinas', the monarchy was not altogether disfavored because as Aquinas says, "the rule of one man is more useful than the rule of the many" to achieve "the unity of peace." [42] Quite different from Aquinas, Locke emphasized that in any form of government, "ultimate sovereignty rested in the people and all legitimate government was based on the consent of the governed." [43] His

political theory was used to justify resistance to Charles II over the right of succession to the English throne and the Whig Revolution of 1688-89 by which James II was dethroned and replaced by William and Mary under terms which weakened the power of the crown and strengthened the power of the Parliament.[44]

Locke explained his political theory in his major work, *Second Treatise of Government*, originally published in 1690,[45] where he adopted the modern view that human beings enjoyed natural rights in the state of nature, before the formation of civil or political society. In this state of nature, it is self-evident that all persons are naturally in a "state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man." [46] Likewise, in the state of nature, it was self-evident that all persons were in a state of equality, "wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection . . ." [47] Locke quickly added, however, that though all persons are in a state of liberty, it is not a state of license for the "state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life health, liberty, or possessions. . ." [48] Locke also alludes to an "omnipotent, and infinitely wise maker" whose "workmanship they (mankind) are, made to last during his (the maker's) . . . pleasure." [49] In other words, through reason, with which human beings arrive at the law of nature prescribing certain moral conduct, each person can realize that he has a natural right and duty to ensure his own survival and well-being in the world and a related duty to respect the same right in others, and preserve mankind. [50] Through reason, human beings are capable of recognizing the need to treat others as free, independent and equal as all individuals are equally concerned with ensuring their own lives, liberties and properties. [51] In this state of nature, the execution of the law of nature is placed in the hands of every individual who has a right to punish transgressors of the law of nature to an extent that will hinder its violation. [52] It may be gathered from Locke's political theory that the rights to life, health, liberty and property are natural rights, hence each individual has a right to be free from violent death, from arbitrary restrictions of his person and from theft of his property. [53] In addition, every individual has a natural right to defend oneself from and punish those who violate the law of nature.

But although the state of nature is somewhat of an Eden before the fall, there are two harsh "inconveniences" in it, as Locke puts them, which adversely affect the exercise of natural rights. First, natural law being an unwritten code of moral conduct, it might sometimes be ignored if the personal interests of certain individuals are involved. Second, without any written laws, and without any established judges or magistrates, persons may be judges in their own cases and self-love might make them partial to their side. On the other hand, ill nature, passion and revenge might make them too harsh to the other side. Hence, "nothing but confusion and disorder will follow." [54] These circumstances make it necessary to establish and enter a civil society by mutual agreement among the people in the state of nature, i.e., based on a social contract founded on trust and consent. Locke writes:

"The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties (used in the broad sense, referring to life, liberty and property) and a greater security against any, that are not of it." [55]

This collective agreement then culminated in the establishment of a civil government.

Three important consequences of Locke's theory on the origin of civil government and its significance to the natural rights of individual subjects should be noted. First, since it was the precariousness of the individual's enjoyment of his natural and equal right to life, liberty, and property that justified the establishment of civil

government, then the "central, overriding purpose of civil government was to protect and preserve the individual's natural rights. For just as the formation by individuals of civil or political society had arisen from their desire to `unite for the mutual Preservation of their Lives, Liberties and Estates, which I (Locke) call by the general name, Property,'[56] so, too, did the same motive underlie - in the second stage of the social contract - their collective decision to institute civil government." [57] Locke thus maintains, again using the term "property" in the broad sense, that, "(t)he great and chief end, therefore, of men's uniting into common-wealths, and putting themselves under government, is the preservation of their property." [58] Secondly, the central purpose that has brought a civil government into existence, i.e., the protection of the individual's natural rights, sets firm limits on the political authority of the civil government. A government that violates the natural rights of its subjects has betrayed their trust, vested in it when it was first established, thereby undermining its own authority and losing its claim to the subjects' obedience. Third and finally, individual subjects have a right of last resort to collectively resist or rebel against and overthrow a government that has failed to discharge its duty of protecting the people's natural rights and has instead abused its powers by acting in an arbitrary or tyrannical manner. The overthrow of government, however, does not lead to dissolution of civil society which came into being before the establishment of civil government.[59]

Locke's ideas, along with other modern natural law and natural rights theories, have had a profound impact on American political and legal thought. American law professor Philip Hamburger observes that American natural law scholars generally agree "that natural law consisted of reasoning about humans in the state of nature (or absence of government)" and tend "to emphasize that they were reasoning from the equal freedom of humans and the need of humans to preserve themselves." [60] As individuals are equally free, they did not have the right to infringe the equal rights of others; even self-preservation typically required individuals to cooperate so as to avoid doing unto others what they would not have others do unto them.[61] With Locke's theory of natural law as foundation, these American scholars agree on the well-known analysis of how individuals preserved their liberty by forming government, i.e., that in order to address the insecurity and precariousness of one's life, liberty and property in the state of nature, individuals, in accordance with the principle of self-preservation, gave up a portion of their natural liberty to civil government to enable it "to preserve the residue." [62] "People must cede to [government] some of their natural rights, in order to vest it with powers." [63] That individuals "give up a part of their natural rights to secure the rest" in the modern natural law sense is said to be "an old hackneyed and well known principle" [64] thus:

"That Man, on entering into civil society, of necessity, sacrifices a part of his natural liberty, has been pretty universally taken for granted by writers on government. They seem, in general, not to have admitted a doubt of the truth of the proposition. One feels as though it was treading on forbidden ground, to attempt a refutation of what has been advanced by a Locke, a Bacari[a], and some other writers and statesmen." [65]

But, while Locke's theory showed the necessity of civil society and government, it was careful to assert and protect the individual's rights against government invasion, thus implying a theory of limited government that both restricted the role of the state to protect the individual's fundamental natural rights to life, liberty and property and prohibited the state, on moral grounds, from violating those rights.[66] The natural rights theory, which is the characteristic American interpretation of natural law, serves as the foundation of the well-entrenched concept of limited government in the United States. It provides the theoretical basis of the formulation of limits on political authority vis-à-vis the superior right of the individual which the government should preserve.[67]

Locke's ideas undoubtedly influenced Thomas Jefferson, the eminent statesman and "philosopher of the (American) revolution and of the first constitutional order which free men were permitted to establish." [68] Jefferson espoused Locke's theory that man is free in the state of nature. But while Locke limited the authority of the state with the doctrine of natural rights, Jefferson's originality was in his use of this doctrine as basis for a

fundamental law or constitution established by the people.[69] To obviate the danger that the government would limit natural liberty more than necessary to afford protection to the governed, thereby becoming a threat to the very natural liberty it was designed to protect, people had to stipulate in their constitution which natural rights they sacrificed and which not, as it was important for them to retain those portions of their natural liberty that were inalienable, that facilitated the preservation of freedom, or that simply did not need to be sacrificed.[70] Two ideas are therefore fundamental in the constitution: one is the regulation of the form of government and the other, the securing of the liberties of the people.[71] Thus, the American Constitution may be understood as comprising three elements. First, it creates the structure and authority of a republican form of government; second, it provides a division of powers among the different parts of the national government and the checks and balances of these powers; and third, it inhibits government's power vis-à-vis the rights of individuals, rights existent and potential, patent and latent. These three parts have one prime objective: to uphold the liberty of the people.[72]

But while the constitution guarantees and protects the fundamental rights of the people, it should be stressed that it does not create them. As held by many of the American Revolution patriots, "liberties do not result from charters; charters rather are in the nature of declarations of pre-existing rights." [73] John Adams, one of the patriots, claimed that natural rights are founded "in the frame of human nature, rooted in the constitution of the intellect and moral world." [74] Thus, it is said of natural rights vis-à-vis the constitution:

" . . . (t)hey exist before constitutions and independently of them. Constitutions enumerate such rights and provide against their deprivation or infringement, but do not create them. It is supposed that all power, all rights, and all authority are vested in the people before they form or adopt a constitution. By such an instrument, they create a government, and define and limit the powers which the constitution is to secure and the government respect. But they do not thereby invest the citizens of the commonwealth with any natural rights that they did not before possess." [75] (emphasis supplied)

A constitution is described as follows:

"A Constitution is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; it grants no rights to the people, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the rights and powers which they possessed before the Constitution was made, it is but the framework of the political government, and necessarily based upon the preexisting condition of laws, rights, habits and modes of thought. There is nothing primitive in it; it is all derived from a known source. It presupposes an organized society, law, order, propriety, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard against the encroachments of tyranny." [76] (emphasis supplied)

That Locke's modern natural law and rights theory was influential to those who framed and ratified the United States constitution and served as its theoretical foundation is undeniable.[77] In a letter in which George Washington formally submitted the Constitution to Congress in September 1787, he spoke of the difficulties of drafting the document in words borrowed from the standard eighteenth-century natural rights analysis:

"Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved" [78] (emphasis supplied)

Natural law is thus to be understood not as a residual source of constitutional rights but instead, as the reasoning that implied the necessity to sacrifice natural liberty to government in a written constitution. Natural law and natural rights were concepts that explained and justified written constitutions.[79]

With the establishment of civil government and a constitution, there arises a conceptual distinction between natural rights and civil rights, difficult though to define their scope and delineation. It has been proposed that natural rights are those rights that "appertain to man in right of his existence."^[80] These were fundamental rights endowed by God upon human beings, "all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others."^[81] On the other hand, civil rights are those that "appertain to man in right of his being a member of society."^[82] These rights, however, are derived from the natural rights of individuals since:

"Man did not enter into society to become worse off than he was before, nor to have fewer rights than he had before, but to have those rights better secured. His natural rights are the foundation of all his rights."^[83]

Civil rights, in this sense, were those natural rights - particularly rights to security and protection - which by themselves, individuals could not safeguard, rather requiring the collective support of civil society and government. Thus, it is said:

"Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent."^[84]

The distinction between natural and civil rights is "between that class of natural rights which man retains after entering into society, and those which he throws into the common stock as a member of society."^[85] The natural rights retained by the individuals after entering civil society were "all the intellectual rights, or rights of the mind,"^[86] i.e., the rights to freedom of thought, to freedom of religious belief and to freedom of expression in its various forms. The individual could exercise these rights without government assistance, but government has the role of protecting these natural rights from interference by others and of desisting from itself infringing such rights. Government should also enable individuals to exercise more effectively the natural rights they had exchanged for civil rights -like the rights to security and protection - when they entered into civil society.^[87]

American natural law scholars in the 1780s and early 1790s occasionally specified which rights were natural and which were not. On the Lockean assumption that the state of nature was a condition in which all humans were equally free from subjugation to one another and had no common superior, American scholars tended to agree that natural liberty was the freedom of individuals in the state of nature.^[88] Natural rights were understood to be simply a portion of this undifferentiated natural liberty and were often broadly categorized as the rights to life, liberty, and property; or life, liberty and the pursuit of happiness. More specifically, they identified as natural rights the free exercise of religion, freedom of conscience,^[89] freedom of speech and press, right to self-defense, right to bear arms, right to assemble and right to one's reputation.^[90] In contrast, certain other rights, such as habeas corpus and jury rights, do not exist in the state of nature, but exist only under the laws of civil government or the constitution because they are essential for restraining government.^[91] They are called civil rights not only in the sense that they are protected by constitutions or other laws, but also in the sense that they are acquired rights which can only exist under civil government.^[92]

In his Constitutional Law, Black states that natural rights may be used to describe those rights which belong to man by virtue of his nature and depend upon his personality. "His existence as an individual human being, clothed with certain attributes, invested with certain capacities, adapted to certain kind of life, and possessing a certain moral and physical nature, entitles him, without the aid of law, to such rights as are necessary to enable him to continue his existence, develop his faculties, pursue and achieve his destiny."^[93] An example of a natural right is the right to life. In an organized society, natural rights must be protected by law, "and although they owe to the law neither their existence nor their sacredness, yet they are effective only when recognized and sanctioned by law."^[94] Civil rights include natural rights as they are taken into the sphere of law. However, there are civil rights which are not natural rights such as the right of trial by jury. This right is not founded in the nature of man,

nor does it depend on personality, but it falls under the definition of civil rights which are the rights secured by the constitution to all its citizens or inhabitants not connected with the organization or administration of government which belong to the domain of political rights. "Natural rights are the same all the world over, though they may not be given the fullest recognition under all governments. Civil rights which are not natural rights will vary in different states or countries." [95]

From the foregoing definitions and distinctions, we can gather that the inclusions in and exclusions from the scope of natural rights and civil rights are not well-defined. This is understandable because these definitions are derived from the nature of man which, in its profundity, depth, and fluidity, cannot simply and completely be grasped and categorized. Thus, phrases such as "rights appertain(ing) to man in right of his existence", or "rights which are a portion of man's undifferentiated natural liberty, broadly categorized as the rights to life, liberty, and property; or life, liberty and the pursuit of happiness", or "rights that belong to man by virtue of his nature and depend upon his personality" serve as guideposts in identifying a natural right. Nevertheless, although the definitions of natural right and civil right are not uniform and exact, we can derive from the foregoing definitions that natural rights exist prior to constitutions, and may be contained in and guaranteed by them. Once these natural rights enter the constitutional or statutory sphere, they likewise acquire the character of civil rights in the broad sense (as opposed to civil rights distinguished from political rights), without being stripped of their nature as natural rights. There are, however, civil rights which are not natural rights but are merely created and protected by the constitution or other law such as the right to a jury trial.

Long after Locke conceived of his ideas of natural rights, civil society, and civil government, his concept of natural rights continued to flourish in the modern and contemporary period. About a hundred years after the Treatise of Government, Locke's natural law and rights theory was restated by the eighteenth-century political thinker and activist, Thomas Paine. He wrote his classic text, *The Rights of Man*, Part 1 where he argued that the central purpose of all governments was to protect the natural and imprescriptible rights of man. Citing the 1789 French Declaration of the Rights of Man and of Citizens, Paine identified these rights as the right to liberty, property, security and resistance of oppression. All other civil and political rights - such as to limits on government, to freedom to choose a government, to freedom of speech, and to fair taxation - were derived from those fundamental natural rights. [96]

Paine inspired and actively assisted the American Revolution and defended the French Revolution. His views were echoed by the authors of the American and the French declarations that accompanied these democratic revolutions. [97] The American Declaration of Independence of July 4, 1776, the revolutionary manifesto of the thirteen newly-independent states of America that were formerly colonies of Britain, reads:

"We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness. That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form as to them shall seem most likely to effect their Safety and Happiness." [98] (emphasis supplied)

His phrase "rights of man" was used in the 1789 French Declaration of the Rights of Man and of Citizens, proclaimed by the French Constituent Assembly in August 1789, viz:

"The representatives of the French people, constituted in a National Assembly, considering that ignorance, oblivion or contempt of the Rights of Man are the only causes of public misfortunes and of the corruption of governments, have resolved to lay down in a solemn Declaration, the natural, inalienable and sacred Rights of

Man, in order that this Declaration, being always before all the members of the Social Body, should constantly remind them of their Rights and their Duties. . ."[99] (emphasis supplied)

Thereafter, the phrase "rights of man" gradually replaced "natural rights" in the latter period of the eighteenth century, thus removing the theological assumptions of medieval natural law theories. After the American and French Revolutions, the doctrine of the rights of man became embodied not only in succinct declarations of rights, but also in new constitutions which emphasized the need to uphold the natural rights of the individual citizen against other individuals and particularly against the state itself.[100]

Considerable criticism was, however, hurled against natural law and natural rights theories, especially by the logical positivist thinkers, as these theories were not empirically verifiable. Nevertheless, the concept of natural rights or rights of man regained force and influence in the 1940s because of the growing awareness of the wide scale violation of such rights perpetrated by the Nazi dictatorship in Germany. The British leader Winston Churchill and the American leader Franklin Roosevelt stated in the preface of their Atlantic Charter in 1942 that "complete victory over their enemies is essential to decent life, liberty, independence and religious freedom, and to preserve human rights and justice, in their own land as well as in other lands." (emphasis supplied) This time, natural right was recast in the idea of "human rights" which belong to every human being by virtue of his or her humanity. The idea superseded the traditional concept of rights based on notions of God-given natural law and of social contract. Instead, the refurbished idea of "human rights" was based on the assumption that each individual person was entitled to an equal degree of respect as a human being.[101]

With this historical backdrop, the United Nations Organization published in 1948 its Universal Declaration of Human Rights (UDHR) as a systematic attempt to secure universal recognition of a whole gamut of human rights. The Declaration affirmed the importance of civil and political rights such as the rights to life, liberty, property; equality before the law; privacy; a fair trial; freedom of speech and assembly, of movement, of religion, of participation in government directly or indirectly; the right to political asylum, and the absolute right not to be tortured. Aside from these, but more controversially, it affirmed the importance of social and economic rights.[102] The UDHR is not a treaty and its provisions are not binding law, but it is a compromise of conflicting ideological, philosophical, political, economic, social and juridical ideas which resulted from the collective effort of 58 states on matters generally considered desirable and imperative. It may be viewed as a "blending (of) the deepest convictions and ideals of different civilizations into one universal expression of faith in the rights of man." [103]

On December 16, 1966, the United Nations General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the Civil and Political Rights providing for the mechanism of checking state compliance to the international human rights instruments such as through a reportorial requirement among governments. These treaties entered into force on March 23, 1976[104] and are binding as international law upon governments subscribing to them. Although admittedly, there will be differences in interpreting particular statements of rights and freedoms in these United Nations instruments "in the light of varied cultures and historical traditions, the basis of the covenants is a common agreement on the fundamental objective of the dignity and worth of the human person. Such agreement is implied in adherence to the (United Nations) Charter and corresponds to the universal urge for freedom and dignity which strives for expression, despite varying degrees of culture and civilization and despite the countervailing forces of repression and authoritarianism." [105]

Human rights and fundamental freedoms were affirmed by the United Nations Organization in the different instruments embodying these rights not just as a solemn protest against the Nazi-fascist method of government, but also as a recognition that the "security of individual rights, like the security of national rights, was a necessary

requisite to a peaceful and stable world order." [106] Moskowitz wrote:

"The legitimate concern of the world community with human rights and fundamental freedoms stems in large part from the close relation they bear to the peace and stability of the world. World War II and its antecedents, as well as contemporary events, clearly demonstrate the peril inherent in the doctrine which accepts the state as the sole arbiter in questions pertaining to the rights and freedoms of the citizen. The absolute power exercised by a government over its citizens is not only a source of disorder in the international community; it can no longer be accepted as the only guaranty of orderly social existence at home. But orderly social existence is ultimately a matter which rests in the hands of the citizen. Unless the citizen can assert his human rights and fundamental freedoms against his own government under the protection of the international community, he remains at the mercy of the superior power." [107]

Similar to natural rights and civil rights, human rights as the refurbished idea of natural right in the 1940s, eludes definition. The usual definition that it is the right which inheres in persons from the fact of their humanity seemingly begs the question. Without doubt, there are certain rights and freedoms so fundamental as to be inherent and natural such as the integrity of the person and equality of persons before the law which should be guaranteed by all constitutions of all civilized countries and effectively protected by their laws. [108] It is nearly universally agreed that some of those rights are religious toleration, a general right to dissent, and freedom from arbitrary punishment. [109] It is not necessarily the case, however, that what the law guarantees as a human right in one country should also be guaranteed by law in all other countries. Some human rights might be considered fundamental in some countries, but not in others. For example, trial by jury which we have earlier cited as an example of a civil right which is not a natural right, is a basic human right in the United States protected by its constitution, but not so in Philippine jurisdiction. [110] Similar to natural rights, the definition of human rights is derived from human nature, thus understandably not exact. The definition that it is a "right which inheres in persons from the fact of their humanity", however, can serve as a guideline to identify human rights. It seems though that the concept of human rights is broadest as it encompasses a human person's natural rights (e.g., religious freedom) and civil rights created by law (e.g. right to trial by jury).

In sum, natural law and natural rights are not relic theories for academic discussion, but have had considerable application and influence. Natural law and natural rights theories have played an important role in the Declaration of Independence, the Abolition (anti-slavery) movement, and parts of the modern Civil Rights movement. [111] In charging Nazi and Japanese leaders with "crimes against humanity" at the end of the Second World War, Allied tribunals in 1945 invoked the traditional concept of natural law to override the defense that those charged had only been obeying the laws of the regimes they served. [112] Likewise, natural law, albeit called by another name such as "substantive due process" which is grounded on reason and fairness, has served as legal standard for international law, centuries of development in the English common law, and certain aspects of American constitutional law. [113] In controversies involving the Bill of Rights, the natural law standards of "reasonableness" and "fairness" or "justified on balance" are used. Questions such as these are common: "Does this form of government involvement with religion endanger religious liberty in a way that seems unfair to some group? Does permitting this restriction on speech open the door to government abuse of political opponents? Does this police investigative practice interfere with citizens' legitimate interests in privacy and security?" [114] Undeniably, natural law and natural rights theories have carved their niche in the legal and political arena.

III. Natural Law and Natural Rights in Philippine Cases and the Constitution

A. Traces of Natural Law and Natural Rights Theory in Supreme Court Cases

Although the natural law and natural rights foundation is not articulated, some Philippine cases have made

reference to natural law and rights without raising controversy. For example, in *People v. Asas*,^[115] the Court admonished courts to consider cautiously an admission or confession of guilt especially when it is alleged to have been obtained by intimidation and force. The Court said: "(w)ithal, aversion of man against forced self-affliction is a matter of Natural Law."^[116] In *People v. Agbot*,^[117] we did not uphold lack of instruction as an excuse for killing because we recognized the "offense of taking one's life being forbidden by natural law and therefore within instinctive knowledge and feeling of every human being not deprived of reason."^[118] In *Mobil Oil Philippines, Inc. v. Diocares, et al.*,^[119] Chief Justice Fernando acknowledged the influence of natural law in stressing that the element of a promise is the basis of contracts. In *Manila Memorial Park Cemetery, Inc. v. Court of Appeals, et al.*,^[120] the Court invoked the doctrine of estoppel which we have repeatedly pronounced is predicated on, and has its origin in equity, which broadly defined, is justice according to natural law. In *Yu Con v. Ipil, et al.*,^[121] we recognized the application of natural law in maritime commerce.

The Court has also identified in several cases certain natural rights such as the right to liberty,^[122] the right of expatriation,^[123] the right of parents over their children which provides basis for a parent's visitatorial rights over his illegitimate children,^[124] and the right to the fruits of one's industry.^[125]

In *Simon, Jr. et al. v. Commission on Human Rights*,^[126] the Court defined human rights, civil rights, and political rights. In doing so, we considered the United Nations instruments to which the Philippines is a signatory, namely the UDHR which we have ruled in several cases as binding upon the Philippines,^[127] the ICCPR and the ICESCR. Still, we observed that "human rights" is so generic a term that at best, its definition is inconclusive. But the term "human rights" is closely identified to the "universally accepted traits and attributes of an individual, along with what is generally considered to be his inherent and inalienable rights, encompassing almost all aspects of life,"^[128] i.e., the individual's social, economic, cultural, political and civil relations.^[129] On the other hand, we defined civil rights as referring to:

"... those (rights) that belong to every citizen of the state or country, or, in a wider sense, to all inhabitants, and are not connected with the organization or administration of government. They include the rights to property, marriage, equal protection of the laws, freedom of contract, etc. Or, as otherwise defined, civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its general sense, to rights capable of being enforced or redressed in a civil action."^[130]

Guarantees against involuntary servitude, religious persecution, unreasonable searches and seizures, and imprisonment for debt are also identified as civil rights.^[131] The Court's definition of civil rights was made in light of their distinction from political rights which refer to the right to participate, directly or indirectly, in the establishment or administration of government, the right of suffrage, the right to hold public office, the right of petition and, in general, the rights appurtenant to citizenship vis-a-vis the management of government.^[132]

To distill whether or not the Court's reference to natural law and natural rights finds basis in a natural law tradition that has influenced Philippine law and government, we turn to Philippine constitutional law history.

B. History of the Philippine Constitution and the Bill of Rights

During the Spanish colonization of the Philippines, Filipinos ardently fought for their fundamental rights. The Propaganda Movement spearheaded by our national hero Jose Rizal, Marcelo H. del Pilar, and Graciano Lopez-Jaena demanded assimilation of the Philippines by Spain, and the extension to Filipinos of rights enjoyed by Spaniards under the Spanish Constitution such as the inviolability of person and property, specifically freedom from arbitrary action by officialdom particularly by the Guardia Civil and from arbitrary detention and banishment of citizens. They clamored for their right to liberty of conscience, freedom of speech and the press, freedom of association, freedom of worship, freedom to choose a profession, the right to petition the government

for redress of grievances, and the right to an opportunity for education. They raised the roof for an end to the abuses of religious corporations.[133]

With the Propaganda Movement having apparently failed to bring about effective reforms, Andres Bonifacio founded in 1892 the secret society of the Katipunan to serve as the military arm of the secessionist movement whose principal aim was to create an independent Filipino nation by armed revolution.[134] While preparing for separation from Spain, representatives of the movement engaged in various constitutional projects that would reflect the longings and aspirations of the Filipino people. On May 31, 1897, a republican government was established in Biak-na-Bato, followed on November 1, 1897 by the unanimous adoption of the Provisional Constitution of the Republic of the Philippines, popularly known as the Constitution of Biak-na-Bato, by the revolution's representatives. The document was an almost exact copy of the Cuban Constitution of Jimaguayu,[135] except for four articles which its authors Felix Ferrer and Isabelo Artacho added. These four articles formed the constitution's Bill of Rights and protected, among others, religious liberty, the right of association, freedom of the press, freedom from imprisonment except by virtue of an order issued by a competent court, and freedom from deprivation of property or domicile except by virtue of judgment passed by a competent court of authority.[136]

The Biak-na-Bato Constitution was projected to have a life-span of two years, after which a final constitution would be drafted. Two months after it was adopted, however, the Pact of Biak-na-Bato was signed whereby the Filipino military leaders agreed to cease fighting against the Spaniards and guaranteed peace for at least three years, in exchange for monetary indemnity for the Filipino men in arms and for promised reforms. Likewise, General Emilio Aguinaldo, who by then had become the military leader after Bonifacio's death, agreed to leave the Philippines with other Filipino leaders. They left for Hongkong in December 1897.

A few months later, the Spanish-American war broke out in April 1898. Upon encouragement of American officials, Aguinaldo came back to the Philippines and set up a temporary dictatorial government with himself as dictator. In June 1898, the dictatorship was terminated and Aguinaldo became the President of the Revolutionary Government.[137] By this time, the relations between the American troops and the Filipino forces had become precarious as it became more evident that the Americans planned to stay. In September 1898, the Revolutionary Congress was inaugurated whose primary goal was to formulate and promulgate a Constitution. The fruit of their efforts was the Malolos Constitution which, as admitted by Felipe Calderon who drafted it, was based on the constitutions of South American Republics[138] while the Bill of Rights was substantially a copy of the Spanish Constitution.[139] The Bill of Rights included among others, freedom of religion, freedom from arbitrary arrests and imprisonment, security of the domicile and of papers and effects against arbitrary searches and seizures, inviolability of correspondence, due process in criminal prosecutions, freedom of expression, freedom of association, and right of peaceful petition for the redress of grievances. Its Article 28 stated that "(t)he enumeration of the rights granted in this title does not imply the prohibition of any others not expressly stated." [140] This suggests that natural law was the source of these rights.[141] The Malolos Constitution was short-lived. It went into effect in January 1899, about two months before the ratification of the Treaty of Paris transferring sovereignty over the Islands to the United States. Within a month after the constitution's promulgation, war with the United States began and the Republic survived for only about ten months. On March 23, 1901, American forces captured Aguinaldo and a week later, he took his oath of allegiance to the United States.[142]

In the early months of the war against the United States, American President McKinley sent the First Philippine Commission headed by Jacob Gould Schurman to assess the Philippine situation. On February 2, 1900, in its report to the President, the Commission stated that the Filipino people wanted above all a "guarantee of those

fundamental human rights which Americans hold to be the natural and inalienable birthright of the individual but which under Spanish domination in the Philippines had been shamefully invaded and ruthlessly trampled upon." [143] (emphasis supplied) In response to this, President McKinley, in his Instruction of April 7, 1900 to the Second Philippine Commission, provided an authorization and guide for the establishment of a civil government in the Philippines and stated that "(u)pon every division and branch of the government of the Philippines . . . must be imposed these inviolable rules . . ." These "inviolable rules" were almost literal reproductions of the First to Ninth and the Thirteenth Amendment of the United States Constitution, with the addition of the prohibition of bills of attainder and ex post facto laws in Article 1, Section 9 of said Constitution. The "inviolable rules" or Bill of Rights provided, among others, that no person shall be deprived of life, liberty, or property without due process of law; that no person shall be twice put in jeopardy for the same offense or be compelled to be a witness against himself; that the right to be secure against unreasonable searches and seizures shall not be violated; that no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for redress of grievances. Scholars have characterized the Instruction as the "Magna Charta of the Philippines" and as a "worthy rival of the Laws of the Indies." [144]

The "inviolable rules" of the Instruction were re-enacted almost exactly in the Philippine Bill of 1902, [145] an act which temporarily provided for the administration of the affairs of the civil government in the Philippine Islands, [146] and in the Philippine Autonomy Act of 1916, [147] otherwise known as the Jones Law, which was an act to declare the purpose of the people of the United States as to the future of the Philippine Islands and to provide an autonomous government for it. [148] These three organic acts - the Instruction, the Philippine Bill of 1902, and the Jones Law - extended the guarantees of the American Bill of Rights to the Philippines. In *Kepner v. United States*, [149] Justice Day prescribed the methodology for applying these "inviolable rules" to the Philippines, viz: "(t)hese principles were not taken from the Spanish law; they were carefully collated from our own Constitution, and embody almost verbatim the safeguards of that instrument for the protection of life and liberty." [150] Thus, the "inviolable rules" should be applied in the sense "which has been placed upon them in construing the instrument from which they were taken." [151] (emphasis supplied)

Thereafter, the Philippine Independence Law, popularly known as the Tydings-McDuffie Law of 1934, was enacted. It guaranteed independence to the Philippines and authorized the drafting of a Philippine Constitution. The law provided that the government should be republican in form and the Constitution to be drafted should contain a Bill of Rights. [152] Thus, the Constitutional Convention of 1934 was convened. In drafting the Constitution, the Convention preferred to be generally conservative on the belief that to be stable and permanent, the Constitution must be anchored on the experience of the people, "providing for institutions which were the natural outgrowths of the national life." [153] As the people already had a political organization buttressed by national traditions, the Constitution was to sanctify these institutions tested by time and the Filipino people's experience and to confirm the practical and substantial rights of the people. Thus, the institutions and philosophy adopted in the Constitution drew substantially from the organic acts which had governed the Filipinos for more than thirty years, more particularly the Jones Law of 1916. In the absence of Philippine precedents, the Convention considered precedents of American origin that might be suitable to our substantially American political system and to the Filipino psychology and traditions. [154] Thus, in the words of Claro M. Recto, President of the Constitutional Convention, the 1935 Constitution was "frankly an imitation of the American charter." [155]

Aside from the heavy American influence, the Constitution also bore traces of the Malolos Constitution, the German Constitution, the Constitution of the Republic of Spain, the Mexican Constitution, and the Constitutions of several South American countries, and the English unwritten constitution. Though the Tydings-McDuffie law mandated a republican constitution and the inclusion of a Bill of Rights, with or without such mandate, the

Constitution would have nevertheless been republican because the Filipinos were satisfied with their experience of a republican government; a Bill of Rights would have nonetheless been also included because the people had been accustomed to the role of a Bill of Rights in the past organic acts.[156]

The Bill of Rights in the 1935 Constitution was reproduced largely from the report of the Convention's committee on bill of rights. The report was mostly a copy of the Bill of Rights in the Jones Law, which in turn was borrowed from the American constitution. Other provisions in the report drew from the Malolos Constitution and the constitutions of the Republic of Spain, Italy and Japan. There was a conscious effort to retain the phraseology of the well-known provisions of the Jones Law because of the jurisprudence that had built around them. The Convention insistently avoided including provisions in the Bill of Rights not tested in the Filipino experience.[157] Thus, upon submission of its draft bill of rights to the President of the Convention, the committee on bill of rights stated:

"Adoption and adaptation have been the relatively facile work of your committee in the formulation of a bill or declaration of rights to be incorporated in the Constitution of the Philippine Islands. No attempt has been made to incorporate new or radical changes. . .

The enumeration of individual rights in the present organic law (Acts of Congress of July 1, 1902, August 29, 1916) is considered ample, comprehensive and precise enough to safeguard the rights and immunities of Filipino citizens against abuses or encroachments of the Government, its powers or agents. . .

Modifications or changes in phraseology have been avoided, wherever possible. This is because the principles must remain couched in a language expressive of their historical background, nature, extent and limitations, as construed and expounded by the great statesmen and jurists that have vitalized them."[158] (emphasis supplied)

The 1935 Constitution was approved by the Convention on February 8, 1935 and signed on February 19, 1935. On March 23, 1935, United States President Roosevelt affixed his signature on the Constitution. By an overwhelming majority, the Filipino voters ratified it on May 14, 1935.[159]

Then dawned the decade of the 60s. There grew a clamor to revise the 1935 charter for it to be more responsive to the problems of the country, specifically in the socio-economic arena and to the sources of threats to the security of the Republic identified by then President Marcos. In 1970, delegates to the Constitution Convention were elected, and they convened on June 1, 1971. In their deliberations, "the spirit of moderation prevailed, and the . . . Constitution was hardly notable for its novelty, much less a radical departure from our constitutional tradition." [160] Our rights in the 1935 Constitution were reaffirmed and the government to which we have been accustomed was instituted, albeit taking on a parliamentary rather than presidential form.[161]

The Bill of Rights in the 1973 Constitution had minimal difference from its counterpart in the 1935 Constitution. Previously, there were 21 paragraphs in one section, now there were twenty-three. The two rights added were the recognition of the people's right to access to official records and documents and the right to speedy disposition of cases. To the right against unreasonable searches and seizures, a second paragraph was added that evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.[162]

The 1973 Constitution went into effect on January 17, 1973 and remained the fundamental law until President Corazon Aquino rose to power in defiance of the 1973 charter and upon the "direct exercise of the power of the Filipino people"[163] in the EDSA Revolution of February 23-25, 1986. On February 25, 1986, she issued Proclamation No. 1 recognizing that "sovereignty resides in the people and all government authority emanates from them" and that she and Vice President Salvador Laurel were "taking power in the name and by the will of the Filipino people." [164] The old legal order, constitution and enactments alike, was overthrown by the new

administration.[165] A month thenceforth, President Aquino issued Proclamation No. 3, "Declaring National Policy to Implement the Reforms Mandated by the People, Protecting their Basic Rights, Adopting a Provisional Constitution, and Providing for an Orderly Transition to Government under a New Constitution." The Provisional Constitution, otherwise known as the "Freedom Constitution" adopted certain provisions of the 1973 Constitution, including the Bill of Rights which was adopted in toto, and provided for the adoption of a new constitution within 60 days from the date of Proclamation No. 3.[166]

Pursuant to the Freedom Constitution, the 1986 Constitutional Commission drafted the 1987 Constitution which was ratified and became effective on February 2, 1987.[167] As in the 1935 and 1973 Constitutions, it retained a republican system of government, but emphasized and created more channels for the exercise of the sovereignty of the people through recall, initiative, referendum and plebiscite.[168] Because of the wide-scale violation of human rights during the dictatorship, the 1987 Constitution contains a Bill of Rights which more jealously safeguards the people's "fundamental liberties in the essence of a constitutional democracy", in the words of ConCom delegate Fr. Joaquin Bernas, S.J.[169] It declares in its state policies that "(t)he state values the dignity of every human person and guarantees full respect for human rights." [170] In addition, it has a separate Article on Social Justice and Human Rights, under which, the Commission on Human Rights was created.[171]

Considering the American model and origin of the Philippine constitution, it is not surprising that Filipino jurists and legal scholars define and explain the nature of the Philippine constitution in similar terms that American constitutional law scholars explain their constitution. Chief Justice Fernando, citing Laski, wrote about the basic purpose of a civil society and government, viz:

"The basic purpose of a State, namely to assure the happiness and welfare of its citizens is kept foremost in mind. To paraphrase Laski, it is not an end in itself but only a means to an end, the individuals composing it in their separate and identifiable capacities having rights which must be respected. It is their happiness then, and not its interest, that is the criterion by which its behavior is to be judged; and it is their welfare, and not the force at its command, that sets the limits to the authority it is entitled to exercise." [172] (emphasis supplied)

Citing Hamilton, he also defines a constitution along the lines of the natural law theory as "a law for the government, safeguarding (not creating) individual rights, set down in writing." [173] (emphasis supplied) This view is accepted by Tañada and Fernando who wrote that the constitution "is a written instrument organizing the government, distributing its powers and safeguarding the rights of the people." [174] Chief Justice Fernando also quoted Schwartz that "a constitution is seen as an organic instrument, under which governmental powers are both conferred and circumscribed. Such stress upon both grant and limitation of authority is fundamental in American theory. `The office and purpose of the constitution is to shape and fix the limits of governmental activity.'" [175] Malcolm and Laurel define it according to Justice Miller's definition in his opus on the American Constitution [176] published in 1893 as "the written instrument by which the fundamental powers of government are established, limited and defined, and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic." [177] The constitution exists to assure that in the government's discharge of its functions, the "dignity that is the birthright of every human being is duly safeguarded." [178]

Clearly then, at the core of constitutionalism is a strong concern for individual rights [179] as in the modern period natural law theories. Justice Laurel as delegate to the 1934 Constitutional Convention declared in a major address before the Convention:

"There is no constitution, worthy of the name, without a bill or declaration of rights. (It is) the palladium of the people's liberties and immunities, so that their persons, homes, their peace, their livelihood, their happiness and their freedom may be safe and secure from an ambitious ruler, an envious neighbor, or a grasping state." [180]

As Chairman of the Committee on the Declaration of Rights, he stated:

"The history of the world is the history of man and his arduous struggle for liberty. . . . It is the history of those brave and able souls who, in the ages that are past, have labored, fought and bled that the government of the lash - that symbol of slavery and despotism - might endure no more. It is the history of those great self-sacrificing men who lived and suffered in an age of cruelty, pain and desolation, so that every man might stand, under the protection of great rights and privileges, the equal of every other man." [181]

Being substantially a copy of the American Bill of Rights, the history of our Bill of Rights dates back to the roots of the American Bill of Rights. The latter is a charter of the individual's liberties and a limitation upon the power of the state [182] which traces its roots to the English Magna Carta of 1215, a first in English history for a written instrument to be secured from a sovereign ruler by the bulk of the politically articulate community that intended to lay down binding rules of law that the ruler himself may not violate. "In Magna Carta is to be found the germ of the root principle that there are fundamental individual rights that the State -sovereign though it is - may not infringe." [183] (emphasis supplied)

In *Sales v. Sandiganbayan, et al.*, [184] quoting *Allado v. Diokno*, [185] this Court ruled that the Bill of Rights guarantees the preservation of our natural rights, viz:

"The purpose of the Bill of Rights is to protect the people against arbitrary and discriminatory use of political power. This bundle of rights guarantees the preservation of our natural rights which include personal liberty and security against invasion by the government or any of its branches or instrumentalities." [186] (emphasis supplied)

We need, however, to fine tune this pronouncement of the Court, considering that certain rights in our Bill of Rights, for example habeas corpus, have been identified not as a natural right, but a civil right created by law. Likewise, the right against unreasonable searches and seizures has been identified in *Simon* as a civil right, without expounding however what civil right meant therein - whether a natural right existing before the constitution and protected by it, thus acquiring the status of a civil right; or a right created merely by law and non-existent in the absence of law. To understand the nature of the right against unreasonable search and seizure and the corollary right to exclusion of evidence obtained therefrom, we turn a heedful eye on the history, concept and purpose of these guarantees.

IV. History of the Guarantee against Unreasonable Search and Seizure and the Right to Exclusion of Illegally Seized Evidence in the United States and in the Philippines

The origin of the guarantee against unreasonable search and seizure in the Philippine constitutions can be traced back to hundreds of years ago in a land distant from the Philippines. Needless to say, the right is well-entrenched in history.

The power to search in England was first used as an instrument to oppress objectionable publications. [187] Not too long after the printing press was developed, seditious and libelous publications became a concern of the Crown, and a broad search and seizure power developed to suppress these publications. [188] General warrants were regularly issued that gave all kinds of people the power to enter and seize at their discretion under the authority of the Crown to enforce publication licensing statutes. [189] In 1634, the ultimate ignominy in the use of general warrants came when the early "great illuminary of the common law," [190] and most influential of the Crown's opponents, [191] Sir Edward Coke, while on his death bed, was subjected to a ransacking search and the manuscripts of his *Institutes* were seized and carried away as seditious and libelous publications. [192]

The power to issue general warrants and seize publications grew. They were also used to search for and seize smuggled goods.[193] The developing common law tried to impose limits on the broad power to search to no avail. In his History of the Pleas of Crown, Chief Justice Hale stated unequivocally that general warrants were void and that warrants must be used on "probable cause" and with particularity.[194] Member of Parliament, William Pitt, made his memorable and oft-quoted speech against the unrestrained power to search:

"The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement." [195]

Nevertheless, legislation authorizing general warrants continued to be passed.[196]

In the 16th century, writs of assistance, called as such because they commanded all officers of the Crown to participate in their execution,[197] were also common. These writs authorized searches and seizures for enforcement of import duty laws.[198] The "same powers and authorities" and the "like assistance" that officials had in England were given to American customs officers when parliament extended the customs laws to the colonies. The abuse in the writs of assistance was not only that they were general, but they were not returnable and once issued, lasted six months past the life of the sovereign.[199]

These writs caused profound resentment in the colonies.[200] They were predominantly used in Massachusetts, the largest port in the colonies[201] and the seat of the American revolution. When the writs expired six months after the death of George II in October 1760,[202] sixty-three Boston merchants who were opposed to the writs retained James Otis, Jr. to petition the Superior Court for a hearing on the question of whether new writs should be issued.[203] Otis used the opportunity to denounce England's whole policy to the colonies and on general warrants.[204] He pronounced the writs of assistance as "the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book" since they placed "the liberty of every man in the hands of every petty officer." [205] Otis was a visionary and apparently made the first argument for judicial review and nullifying of a statute exceeding the legislature's power under the Constitution and "natural law." [206] This famous debate in February 1761 in Boston was "perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country. 'Then and there,' said John Adams, 'then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.'" [207] But the Superior Court nevertheless held that the writs could be issued.[208]

Once the customs officials had the writs, however, they had great difficulty enforcing the customs laws owing to rampant smuggling and mob resistance from the citizenry.[209] The revolution had begun. The Declaration of Independence followed. The use of general warrants and writs of assistance in enforcing customs and tax laws was one of the causes of the American Revolution.[210]

Back in England, shortly after the Boston debate, John Wilkes, a member of Parliament, anonymously published the North Briton, a series of pamphlets criticizing the policies of the British government.[211] In 1763, one pamphlet was very bold in denouncing the government. Thus, the Secretary of the State issued a general warrant to "search for the authors, printers, and publishers of [the] seditious and treasonable paper." [212] Pursuant to the warrant, Wilkes' house was searched and his papers were indiscriminately seized. He sued the perpetrators and obtained a judgment for damages. The warrant was pronounced illegal "as totally subversive of the liberty" and "person and property of every man in this kingdom." [213]

Seeing Wilkes' success, John Entick filed an action for trespass for the search and seizure of his papers under a warrant issued earlier than Wilkes'. This became the case of Entick v. Carrington,[214] considered a landmark of

the law of search and seizure and called a familiar "monument of English freedom".[215] Lord Camden, the judge, held that the general warrant for Entick's papers was invalid. Having described the power claimed by the Secretary of the State for issuing general search warrants, and the manner in which they were executed, Lord Camden spoke these immortalized words, viz:

"Such is the power and therefore one would naturally expect that the law to warrant it should be clear in proportion as the power is exorbitant. If it is law, it will be found in our books; if it is not to be found there, it is not law.

The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law are various. Distresses, executions, forfeitures, taxes, etc., are all of this description, wherein every man by common consent gives up that right for the sake of justice and the general good. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license but he is liable to an action though the damage be nothing; which is proved by every declaration in trespass where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show by way of justification that some positive law has justified or excused him. . . If no such excuse can be found or produced, the silence of the books is an authority against the defendant and the plaintiff must have judgment. . ."[216] (emphasis supplied)

The experience of the colonies on the writs of assistance which spurred the Boston debate and the Entick case which was a "monument of freedom" that every American statesman knew during the revolutionary and formative period of America, could be confidently asserted to have been "in the minds of those who framed the Fourth Amendment to the Constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures."[217]

The American experience with the writs of assistance and the Entick case were considered by the United States Supreme Court in the first major case to discuss the scope of the Fourth Amendment right against unreasonable search and seizure in the 1885 case of *Boyd v. United States*, supra, where the court ruled, viz:

"The principles laid down in this opinion (*Entick v. Carrington*, supra) affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions, on the part of the Government and its employees, of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense; it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment."[218] (emphasis supplied)

In another landmark case of 1914, *Weeks v. United States*,[219] the Court, citing *Adams v. New York*,[220] reiterated that the Fourth Amendment was intended to secure the citizen in person and property against the unlawful invasion of the sanctity of his home by officers of the law, acting under legislative or judicial sanction.

With this genesis of the right against unreasonable searches and seizures and the jurisprudence that had built around it, the Fourth Amendment guarantee was extended by the United States to the Filipinos in succinct terms in President McKinley's Instruction of April 7, 1900, viz:

". . . that the right to be secure against unreasonable searches and seizures shall not be violated."[221]

This provision in the Instruction was re-enacted in Section 5 of the Philippine Bill of 1902, this time with a provision on warrants, viz:

"That the right to be secure against unreasonable searches and seizures shall not be violated.

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That no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized." [222]

The above provisions were reproduced verbatim in the Jones Law of 1916.

Then came the 1935 Constitution which provides in Article IV, Section 1(3), viz:

"Section 1(3). The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

Initially, the Constitutional Convention's committee on bill of rights proposed an exact copy of the Fourth Amendment of the United States Constitution in their draft, viz:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." [223]

During the debates of the Convention, however, Delegate Vicente Francisco proposed to amend the provision by inserting the phrase "to be determined by the judge after examination under oath or affirmation of the complainant and the witness he may produce" in lieu of "supported by oath or affirmation." His proposal was based on Section 98 of General Order No. 58 or the Code of Criminal Procedure then in force in the Philippines which provided that: "(t)he judge or justice of the peace must, before issuing the warrant, examine on oath or affirmation the complainant and any witness he may produce and take their deposition in writing." [224] The amendment was accepted as it was a remedy against the evils pointed out in the debates, brought about by the issuance of warrants, many of which were in blank, upon mere affidavits on facts which were generally found afterwards to be false. [225]

When the Convention patterned the 1935 Constitution's guarantee against unreasonable searches and seizures after the Fourth Amendment, the Convention made specific reference to the Boyd case and traced the history of the guarantee against unreasonable search and seizure back to the issuance of general warrants and writs of assistance in England and the American colonies. [226] From the Boyd case, it may be derived that our own Constitutional guarantee against unreasonable searches and seizures, which is an almost exact copy of the Fourth Amendment, seeks to protect rights to security of person and property as well as privacy in one's home and possessions.

Almost 40 years after the ratification of the 1935 Constitution, the provision on the right against unreasonable searches and seizures was amended in Article IV, Section 3 of the 1973 Constitution, viz:

"Sec. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

Noticeably, there were three modifications of the 1935 counterpart, namely: (1) the clause was made applicable to

searches and seizures "of whatever nature and for any purpose"; (2) the provision on warrants was expressly made applicable to both "search warrant or warrant of arrest"; and (3) probable cause was made determinable not only by a judge, but also by "such other officer as may be authorized by law." [227] But the concept and purpose of the right remained substantially the same.

As a corollary to the above provision on searches and seizures, the exclusionary rule made its maiden appearance in Article IV, Section 4(2) of the Constitution, viz:

"Section 4 (1). The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety and order require otherwise.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

That evidence obtained in violation of the guarantee against unreasonable searches and seizures is inadmissible was an adoption of the Court's ruling in the 1967 case of *Stonehill v. Diokno*. [228]

Sections 3 and 4 of the 1973 Constitution were adopted in toto in Article I, Section 1 of the Freedom Constitution which took effect on March 25, 1986, viz:

"Section 1. The provision of . . . ARTICLE IV (Bill of Rights) . . . of the 1973 Constitution, as amended, remain in force and effect and are hereby adopted in toto as part of this Provisional Constitution." [229]

Thereafter, pursuant to the Freedom Constitution, the 1987 Constitution was drafted and ratified on February 2, 1987. Sections 2 and 3, Article III thereof provide:

"Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by a judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

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Section 3 (1). The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety and order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

The significant modification of Section 2 is that probable cause may be determined only by a judge and no longer by "such other responsible officer as may be authorized by law." This was a reversion to the counterpart provision in the 1935 Constitution.

Parenthetically, in the international arena, the UDHR provides a similar protection in Article 12, viz:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The ICCPR similarly protects this human right in Article 17, viz:

"1.

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

2.

Everyone has the right to protection of the law against such interference or attacks."

In the United States, jurisprudence on the Fourth Amendment continued to grow from the *Boyd* case. The United States Supreme Court has held that the focal concern of the Fourth Amendment is to protect the individual from arbitrary and oppressive official conduct.^[230] It also protects the privacies of life and the sanctity of the person from such interference.^[231] In later cases, there has been a shift in focus: it has been held that the principal purpose of the guarantee is the protection of privacy rather than property, "[f]or the Fourth Amendment protects people, not places."^[232] The tests that have more recently been formulated in interpreting the provision focus on privacy rather than intrusion of property such as the "constitutionally protected area" test in the 1961 case of *Silverman v. United States*^[233] and the "reasonable expectation of privacy" standard in *Katz v. United States*^[234] which held that the privacy of communication in a public telephone booth comes under the protection of the Fourth Amendment.

Despite the shift in focus of the Fourth Amendment in American jurisdiction, the essence of this right in Philippine jurisdiction has consistently been understood as respect for one's personality, property, home, and privacy. Chief Justice Fernando explains, viz:

"It is deference to one's personality that lies at the core of this right, but it could be also looked upon as a recognition of a constitutionally protected area, primarily one's home, but not necessarily excluding an office or a hotel room. (Cf. *Hoffa v. United States*, 385 US 293 [1966]) What is sought to be regarded is a man's prerogative to choose who is allowed entry in his residence, for him to retreat from the cares and pressures, even at times the oppressiveness of the outside world, where he can truly be himself with his family. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances noted, for in the traditional formulation, his house, however humble, is his castle. (Cf. *Cooley*: 'Near in importance to exemption from any arbitrary control of the person is that maxim of the common law which secures to the citizen immunity in his home against the prying eyes of the government, and protection in person, property, and papers against even the process of the law, except in specified cases. The maxim that 'every man's house is his castle,' is made part of our constitutional law in the clauses prohibiting unreasonable searches and seizures, and has always been looked upon as of high value to the citizen.' (1 *Constitutional Limitations*, pp. 610-611 [1927]) In the language of Justice Laurel, this provision is 'intended to bulwark individual security, home, and legitimate possessions' (*Rodriguez v. Vollamiel*, 65 Phil. 230, 239 [1937]. Laurel con.) Thus is protected 'his personal privacy and dignity against unwarranted intrusion by the State.' There is to be no invasion 'on the part of the government and its employees of the sanctity of a man's home and the privacies of life.' (*Boyd v. United States*, 116 US 616, 630 [1886])"^[235] (emphasis supplied)

As early as 1904, the Court has affirmed the sanctity and privacy of the home in *United States v. Arceo*,^[236] viz:

"The inviolability of the home is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.

The privacy of the home - the place of abode, the place where man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in rare cases - has always been regarded by civilized nations as one of the most sacred personal rights to whom men are entitled. Both the common and the civil law guaranteed to man the right to absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. . .

`A man's house is his castle,' has become a maxim among the civilized peoples of the earth. His protection therein has become a matter of constitutional protection in England, America, and Spain, as well as in other countries.

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So jealously did the people of England regard this right to enjoy, unmolested, the privacy of their houses, that they might even take the life of the unlawful intruder, if it be nighttime. This was also the sentiment of the Romans expressed by Tully: `Quid enim sanctius quid omni religione munitius, quam domus uniuscu jusque civium.' "[237] (emphasis supplied)

The Court reiterated this in the 1911 case of *United States v. De Los Reyes, et al.*, [238] to demonstrate the uncompromising regard placed upon the privacy of the home that cannot be violated by unreasonable searches and seizures, viz:

"In the case of *McClurg vs. Brenton* (123 Iowa, 368), the court, speaking of the right of an officer to enter a private house to search for the stolen goods, said:

`The right of the citizen to occupy and enjoy his home, however mean or humble, free from arbitrary invasion and search, has for centuries been protected with the most solicitous care by every court in the English-speaking world, from *Magna Charta* down to the present, and is embodied in every bill of rights defining the limits of governmental power in our own republic.

`The mere fact that a man is an officer, whether of high or low degree, gives him no more right than is possessed by the ordinary private citizen to break in upon the privacy of a home and subject its occupants to the indignity of a search for the evidence of crime, without a legal warrant procured for that purpose. No amount of incriminating evidence, whatever its source, will supply the place of such warrant. At the closed door of the home, be it palace or hovel, even blood-hounds must wait till the law, by authoritative process, bids it open. . .'" [239] (emphasis supplied)

It is not only respect for personality, privacy and property, but to the very dignity of the human being that lies at the heart of the provision.

There is also public interest involved in the guarantee against unreasonable search and seizure. The respect that government accords its people helps it elicit allegiance and loyalty of its citizens. Chief Justice Fernando writes about the right against unreasonable search and seizure as well as to privacy of communication in this wise:

"These rights, on their face, impart meaning and vitality to that liberty which in a constitutional regime is a man's birth-right. There is the recognition of the area of privacy normally beyond the power of government to intrude. Full and unimpaired respect to that extent is accorded his personality. He is free from the prying eyes of public officials. He is let alone, a prerogative even more valued when the agencies of publicity manifest less and less diffidence in impertinent and unwelcome inquiry into one's person, his home, wherever he may be minded to stay, his possessions, his communication. Moreover, in addition to the individual interest, there is a public interest that is likewise served by these constitutional safeguards. They make it easier for state authority to enlist the loyalty and allegiance of its citizens, with the unimpaired deference to one's dignity and standing as a human being, not only to his person as such but to things that may be considered necessary appurtenances to a decent existence. A government that thus recognizes such limits and is careful not to trespass on what is the domain subject to his sole control is likely to prove more stable and enduring." [240] (emphasis supplied)

In the 1967 case of *Stonehill, et al. v. Diokno*, [241] this Court affirmed the sanctity of the home and the privacy of communication and correspondence, viz:

"To uphold the validity of the warrants in question would be to wipe out completely one of the most fundamental rights guaranteed in our Constitution, for it would place the sanctity of the domicile and the

privacy of communication and correspondence at the mercy of the whims, caprice or passion of peace officers. This is precisely the evil sought to be remedied by the constitutional provision above quoted - to outlaw the so-called general warrants. It is not difficult to imagine what would happen, in times of keen political strife, when the party in power feels that the minority is likely to wrest it, even though by legal means." [242] (emphasis supplied)

Even after the 1961 *Silverman* and 1967 *Katz* cases in the United States, which emphasized protection of privacy rather than property as the principal purpose of the Fourth Amendment, this Court declared the avowed purposes of the guarantee in the 1981 case of *People v. CFI of Rizal, Branch IX, Quezon City*, [243] viz:

"The purpose of the constitutional guarantee against unreasonable searches and seizures is to prevent violations of private security in person and property and unlawful invasion of the security of the home by officers of the law acting under legislative or judicial sanction and to give remedy against such usurpation when attempted. (*Adams v. New York*, 192 U.S. 858; *Alvero v. Dizon*, 76 Phil. 637 [1946]). The right to privacy is an essential condition to the dignity and happiness and to the peace and security of every individual, whether it be of home or of persons and correspondence. (*Tañada and Carreon*, *Political Law of the Philippines*, Vol. 2, 139 [1962]). The constitutional inviolability of this great fundamental right against unreasonable searches and seizures must be deemed absolute as nothing is closer to a man's soul than the serenity of his privacy and the assurance of his personal security. Any interference allowable can only be for the best causes and reasons." [244] (emphasis supplied)

Even if it were conceded that privacy and not property is the focus of the guarantee as shown by the growing American jurisprudence, this Court has upheld the right to privacy and its central place in a limited government such as the Philippines', viz:

"The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: 'The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private sector - protection, in other words, of the dignity and integrity of the individual- has become increasingly important as modern society has developed. All the forces of technological age - industrialization, urbanization, and organization - operate to narrow the area of privacy and facilitate intrusion to it. In modern times, the capacity to maintain and support this enclave of private life marks the difference between a democratic and a totalitarian society.'" [245] (emphasis supplied)

The right to privacy discussed in Justice Douglas' dissent in the *Hayden* case is illuminating. We quote it at length, viz:

"Judge Learned Hand stated a part of the philosophy of the Fourth Amendment in *United States v. Poller*, 43 F2d 911, 914: '[I]t is only fair to observe that the real evil aimed at by the Fourth Amendment is the search itself, that invasion of a man's privacy which consists in rummaging about among his effects to secure evidence against him. If the search is permitted at all, perhaps it does not make so much difference what is taken away, since the officers will ordinarily not be interested in what does not incriminate, and there can be no sound policy in protecting what does.

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The constitutional philosophy is, I think, clear. The personal effects and possessions of the individual (all contraband and the like excepted) are sacrosanct from prying eyes, from the long arm of the law, from any rummaging by police. Privacy involves the choice of the individual to disclose or to reveal what he believes,

what he thinks, what he possesses. The article may be nondescript work of art, a manuscript of a book, a personal account book, a diary, invoices, personal clothing, jewelry, or whatnot. Those who wrote the Bill of Rights believed that every individual needs both to communicate with others and to keep his affairs to himself. That dual aspect of privacy means that the individual should have the freedom to select for himself the time and circumstances when he will share his secrets with others and decide the extent of the sharing (footnote omitted). This is his prerogative not the States'. The Framers, who were as knowledgeable as we, knew what police surveillance meant and how the practice of rummaging through one's personal effects could destroy freedom.

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I would . . . leave with the individual the choice of opening his private effects (apart from contraband and the like) to the police and keeping their contents as secret and their integrity inviolate. The existence of that choice is the very essence of the right of privacy." [246] (emphasis supplied)

Thus, in *Griswold v. Connecticut*, [247] the United States Supreme Court upheld the right to marital privacy and ruled that lawmakers could not make the use of contraceptives a crime and sanction the search of marital bedrooms, viz:

"Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

We deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions." [248] (emphasis supplied)

In relation to the right against unreasonable searches and seizures, private respondent Dimaano likewise claims a right to the exclusionary rule, i.e., that evidence obtained from an unreasonable search cannot be used in evidence against her. To determine whether this right is available to her, we again examine the history, concept, and purpose of this right in both the American and Philippine jurisdictions.

The exclusionary rule has had an uneven history in both the United States and Philippine jurisdictions. In common law, the illegal seizure of evidence did not affect its admissibility because of the view that physical evidence was the same however it was obtained. As distinguished from a coerced confession, the illegal seizure did not impeach the authenticity or reliability of physical evidence. This view prevailed in American jurisdiction until the Supreme Court ruled in the 1914 *Weeks* case that evidence obtained in violation of the Fourth Amendment was inadmissible in federal court as it amounted to theft by agents of the government. This came to be known as the exclusionary rule and was believed to deter federal law enforcers from violating the Fourth Amendment. In 1949, the Fourth Amendment was incorporated into the Due Process Clause under the Fourteenth Amendment [249] and made applicable in the state system in *Wolf v. Colorado*, [250] but the Court rejected to incorporate the exclusionary rule. At the time *Wolf* was decided, 17 states followed the *Weeks* doctrine while 30 states did not. [251] The Court reasoned:

"We cannot brush aside the experience of States which deem the incidence of such conduct by the police too slight to call for a deterrent remedy not by way of disciplinary measures but by overriding the relevant rules of evidence. There are, moreover, reasons for excluding evidence unreasonably obtained by the federal police which are less compelling in the case of police under State or local authority. The public opinion of a community can far more effectively be exerted against oppressive conduct on the part of police directly responsible to the community itself than can local opinion, sporadically aroused, be brought to bear upon remote authority pervasively exerted throughout the country." [252]

This difference in treatment on the federal and state level of evidence obtained illegally resulted in the "silver platter" doctrine. State law enforcement agents would provide federal officers with illegally seized evidence, which was then admissible in federal court because, as with illegally seized evidence by private citizens, federal officers were not implicated in obtaining it. Thus, it was said that state law enforcers served up the evidence in federal cases in "silver platter." This pernicious practice was stopped with the United States Supreme Court's 1960 decision, *Elkins v. United States*.^[253] Twelve years after *Wolf*, the United States Supreme Court reversed *Wolf* and incorporated the exclusionary rule in the state system in *Mapp v. Ohio*^[254] because other means of controlling illegal police behavior had failed.^[255] We quote at length the *Mapp* ruling as it had a significant influence in the exclusionary rule in Philippine jurisdiction, viz:

" . . . Today we once again examine the *Wolf*'s constitutional documentation of the right of privacy free from unreasonable state intrusion, and after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. . .

Since the Fourth Amendment's right to privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as it is used against the Federal Government. Were it otherwise, then just as without the *Weeks* rule the assurance against unreasonable federal searches and seizures would be a 'form of words', valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to permit this Court's high regard as freedom 'implicit in the concept of ordered liberty.' At that time that the Court held in *Wolf* that the amendment was applicable to the States through the Due Process Clause, the cases of this court as we have seen, had steadfastly held that as to federal officers the Fourth Amendment included the exclusion of the evidence seized in violation of its provisions. Even *Wolf* 'stoutly adhered' to that proposition. The right to privacy, when conceded operatively enforceable against the States, was not susceptible of destruction by avulsion of the sanction upon which its protection and enjoyment had always been deemed dependent under the *Boyd*, *Weeks* and *Silverthorne* Cases. Therefore, in extending the substantive protections of due process to all constitutionally unreasonable searches - state or federal - it was logically and constitutionally necessary that the exclusion doctrine - an essential part of the right to privacy - be also insisted upon as an essential ingredient of the right newly recognized by the *Wolf* case. In short, the admission of the new constitutional right by *Wolf* could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment. Only last year the Court itself recognized that the purpose of the exclusionary rule 'is to deter - to compel respect for the constitutional guaranty in the only available way - by removing the incentive to disregard it.' (*Elkins v. United States*, 364 US at 217)

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The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. (Cf. *Marcus v. Search Warrant of Property*, 6 L ed 2d post, p. 1127) Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by its Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and to the courts, that judicial integrity so necessary in the true administration of justice."^[256] (emphasis supplied)

It is said that the exclusionary rule has three purposes. The major and most often invoked is the deterrence of unreasonable searches and seizures as stated in *Elkins v. United States*[257] and quoted in *Mapp*: "(t)he rule is calculated to prevent, not repair. Its purpose is to deter - to compel respect for constitutional guaranty in the only effective available way - by removing the incentive to disregard it." [258] Second is the "imperative of judicial integrity", i.e., that the courts do not become "accomplices in the willful disobedience of a Constitution they are sworn to uphold . . . by permitting unhindered governmental use of the fruits of such invasions. . . A ruling admitting evidence in a criminal trial . . . has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur." [259] Third is the more recent purpose pronounced by some members of the United States Supreme Court which is that "of assuring the people - all potential victims of unlawful government conduct - that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government." [260] The focus of concern here is not the police but the public. This third purpose is implicit in the *Mapp* declaration that "no man is to be convicted on unconstitutional evidence." [261]

In Philippine jurisdiction, the Court has likewise swung from one position to the other on the exclusionary rule. In the 1920 case of *Uy Khey Tin v. Villareal*, [262] the Court citing *Boyd*, ruled that "seizure or compulsory production of a man's private papers to be used against him" was tantamount to self-incrimination and was therefore "unreasonable search and seizure." This was a proscription against "fishing expeditions." The Court restrained the prosecution from using the books as evidence. Five years later or in 1925, we held in *People v. Carlos* [263] that although the *Boyd* and *Silverthorne Lumber Co. and Silverthorne v. United States* [264] cases are authorities for the doctrine that documents obtained by illegal searches were inadmissible in evidence in criminal cases, *Weeks* modified this doctrine by adding that the illegality of the search and seizure should have initially been directly litigated and established by a pre-trial motion for the return of the things seized. As this condition was not met, the illegality of the seizure was not deemed an obstacle to admissibility. The subject evidence was nevertheless excluded, however, for being hearsay. Thereafter, in 1932, the Court did not uphold the defense of self-incrimination when "fraudulent books, invoices and records" that had been seized were presented in evidence in *People v. Rubio*. [265] The Court gave three reasons: (1) the public has an interest in the proper regulation of the party's books; (2) the books belonged to a corporation of which the party was merely a manager; and (3) the warrants were not issued to fish for evidence but to seize "instruments used in the violation of [internal revenue] laws" and "to further prevent the perpetration of fraud." [266]

The exclusionary rule applied in *Uy Khey Tin* was reaffirmed seventeen years thence in the 1937 case of *Alvarez v. Court of First Instance* [267] decided under the 1935 Constitution. The Court ruled that the seizure of books and documents for the purpose of using them as evidence in a criminal case against the possessor thereof is unconstitutional because it makes the warrant unreasonable and the presentation of evidence offensive of the provision against self-incrimination. At the close of the Second World War, however, the Court, in *Alvero v. Dizon*, [268] again admitted in evidence documents seized by United States military officers without a search warrant in a prosecution by the Philippine Government for treason. The Court reasoned that this was in accord with the Laws and Customs of War and that the seizure was incidental to an arrest and thus legal. The issue of self-incrimination was not addressed at all and instead, the Court pronounced that even if the seizure had been illegal, the evidence would nevertheless be admissible following jurisprudence in the United States that evidence illegally obtained by state officers or private persons may be used by federal officers. [269]

Then came *Moncado v. People's Court* [270] in 1948. The Court made a categorical declaration that "it is established doctrine in the Philippines that the admissibility of evidence is not affected by the illegality of the means used for obtaining it." It condemned the "pernicious influence" of *Boyd* and totally rejected the doctrine in *Weeks* as "subversive of evidentiary rules in Philippine jurisdiction." The ponencia declared that the prosecution

of those guilty of violating the right against unreasonable searches and seizures was adequate protection for the people. Thus it became settled jurisprudence that illegally obtained evidence was admissible if found to be relevant to the case[271] until the 1967 landmark decision of *Stonehill v. Diokno*[272] which overturned the *Moncado* rule. The Court held in *Stonehill*, viz:

"... Upon mature deliberation, however, we are unanimously of the opinion that the position taken in the *Moncado* case must be abandoned. Said position was in line with the American common law rule, that the criminal should not be allowed to go free merely 'because the constable has blundered,' (*People v. Defore*, 140 NE 585) upon the theory that the constitutional prohibition against unreasonable searches and seizures is protected by means other than the exclusion of evidence unlawfully obtained (*Wolf v. Colorado*, 93 L.Ed. 1782), such as common-law action for damages against the searching officer, against the party who procured the issuance of the search warrant and against those assisting in the execution of an illegal search, their criminal punishment, resistance, without liability to an unlawful seizure, and such other legal remedies as may be provided by other laws.

However, most common law jurisdictions have already given up this approach and eventually adopted the exclusionary rule, realizing that this is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures." [273]

The Court then quoted the portion of the *Mapp* case which we have quoted at length above in affirming that the exclusionary rule is part and parcel of the right against unreasonable searches and seizures. The *Stonehill* ruling was incorporated in Article 4, Section 4(2) of the 1973 Constitution and carried over to Article 3, Section 3(2) of the 1987 Constitution.

V. Application of the Natural Law

Culled from History and Philosophy:

Are the Rights Against Unreasonable Search and Seizure
and to the Exclusion of Illegally Seized Evidence Natural Rights
which Private Respondent Dimaano Can Invoke?

In answering this question, Justice Goldberg's concurring opinion in the *Griswold* case serves as a helpful guidepost to determine whether a right is so fundamental that the people cannot be deprived of it without undermining the tenets of civil society and government, viz:

"In determining which rights are fundamental, judges are not left at large to decide cases in light of their personal and private notions. Rather, they must look to the 'traditions and [collective] conscience of our people' to determine whether a principle is 'so rooted [there] . . . as to be ranked as fundamental.' (*Snyder v. Com. of Massachusetts*, 291 U.S. 97, 105 (1934)). The inquiry is whether a right involved 'is of such character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.' . . . *Powell v. State of Alabama*, 287 U.S. 45, 67 (1932)" [274] (emphasis supplied)

In deciding a case, invoking natural law as solely a matter of the judge's personal preference, invites criticism that the decision is a performative contradiction and thus self-defeating. Critics would point out that while the decision invokes natural law that abhors arbitrariness, that same decision is tainted with what it abhors as it stands on the judge's subjective and arbitrary choice of a school of legal thought. Just as one judge will fight tooth and nail to defend the natural law philosophy, another judge will match his fervor in defending a contrary philosophy he espouses. However, invoking natural law because the history, tradition and moral fiber of a people indubitably show adherence to it is an altogether different story, for ultimately, in our political and legal tradition, the people are the source of all government authority, and the courts are their creation. While it may be argued that the choice of a school of legal thought is a matter of opinion, history is a fact against which one cannot argue - and it

would not be turning somersault with history to say that the American Declaration of Independence and the consequent adoption of a constitution stood on a modern natural law theory foundation as this is "universally taken for granted by writers on government." [275] It is also well-settled in Philippine history that the American system of government and constitution were adopted by our 1935 Constitutional Convention as a model of our own republican system of government and constitution. In the words of Claro M. Recto, President of the Convention, the 1935 Constitution is "frankly an imitation of the American Constitution." Undeniably therefore, modern natural law theory, specifically Locke's natural rights theory, was used by the Founding Fathers of the American constitutional democracy and later also used by the Filipinos. [276] Although the 1935 Constitution was revised in 1973, minimal modifications were introduced in the 1973 Constitution which was in force prior to the EDSA Revolution. Therefore, it could confidently be asserted that the spirit and letter of the 1935 Constitution, at least insofar as the system of government and the Bill of Rights were concerned, still prevailed at the time of the EDSA Revolution. Even the 1987 Constitution ratified less than a year from the EDSA Revolution retained the basic provisions of the 1935 and 1973 Constitutions on the system of government and the Bill of Rights, with the significant difference that it emphasized respect for and protection of human rights and stressed that sovereignty resided in the people and all government authority emanates from them.

Two facts are easily discernible from our constitutional history. First, the Filipinos are a freedom-loving race with high regard for their fundamental and natural rights. No amount of subjugation or suppression, by rulers with the same color as the Filipinos' skin or otherwise, could obliterate their longing and aspiration to enjoy these rights. Without the people's consent to submit their natural rights to the ruler, [277] these rights cannot forever be quelled, for like water seeking its own course and level, they will find their place in the life of the individual and of the nation; natural right, as part of nature, will take its own course. Thus, the Filipinos fought for and demanded these rights from the Spanish and American colonizers, and in fairly recent history, from an authoritarian ruler. They wrote these rights in stone in every constitution they crafted starting from the 1899 Malolos Constitution. Second, although Filipinos have given democracy its own Filipino face, it is undeniable that our political and legal institutions are American in origin. The Filipinos adopted the republican form of government that the Americans introduced and the Bill of Rights they extended to our islands, and were the keystones that kept the body politic intact. These institutions sat well with the Filipinos who had long yearned for participation in government and were jealous of their fundamental and natural rights. Undergirding these institutions was the modern natural law theory which stressed natural rights in free, independent and equal individuals who banded together to form government for the protection of their natural rights to life, liberty and property. The sole purpose of government is to promote, protect and preserve these rights. And when government not only defaults in its duty but itself violates the very rights it was established to protect, it forfeits its authority to demand obedience of the governed and could be replaced with one to which the people consent. The Filipino people exercised this highest of rights in the EDSA Revolution of February 1986.

I will not endeavor to identify every natural right that the Filipinos fought for in EDSA. The case at bar merely calls us to determine whether two particular rights - the rights against unreasonable search and seizure and to the exclusion of evidence obtained therefrom - have the force and effect of natural rights which private respondent Dimaano can invoke against the government.

I shall first deal with the right against unreasonable search and seizure. On February 25, 1986, the new president, Corazon Aquino, issued Proclamation No. 1 where she declared that she and the vice president were taking power in the name and by the will of the Filipino people and pledged "to do justice to the numerous victims of human rights violations." [278] It is implicit from this pledge that the new government recognized and respected human rights. Thus, at the time of the search on March 3, 1986, it may be asserted that the government had the duty, by its own pledge, to uphold human rights. This presidential issuance was what came closest to a positive law

guaranteeing human rights without enumerating them. Nevertheless, even in the absence of a positive law granting private respondent Dimaano the right against unreasonable search and seizure at the time her house was raided, I respectfully submit that she can invoke her natural right against unreasonable search and seizure.

The right against unreasonable search and seizure is a core right implicit in the natural right to life, liberty and property. Our well-settled jurisprudence that the right against unreasonable search and seizure protects the people's rights to security of person and property, to the sanctity of the home, and to privacy is a recognition of this proposition. The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property dates back even earlier than the modern philosophers and the American and French revolutions, but pervades the whole history of man. It touches every aspect of man's existence, thus it has been described, viz:

"The right to personal security emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual." [279]

The individual in the state of nature surrendered a portion of his undifferentiated liberty and agreed to the establishment of a government to guarantee his natural rights, including the right to security of person and property, which he could not guarantee by himself. Similarly, the natural right to liberty includes the right of a person to decide whether to express himself and communicate to the public or to keep his affairs to himself and enjoy his privacy. Justice Douglas reminds us of the indispensability of privacy in the *Hayden* case, thus: "Those who wrote the Bill of Rights believed that every individual needs both to communicate with others and to keep his affairs to himself." A natural right to liberty indubitably includes the freedom to determine when and how an individual will share the private part of his being and the extent of his sharing. And when he chooses to express himself, the natural right to liberty demands that he should be given the liberty to be truly himself with his family in his home, his haven of refuge where he can "retreat from the cares and pressures, even at times the oppressiveness of the outside world," to borrow the memorable words of Chief Justice Fernando. For truly, the drapes of a man's castle are but an extension of the drapes on his body that cover the essentials. In unreasonable searches and seizures, the prying eyes and the invasive hands of the government prevent the individual from enjoying his freedom to keep to himself and to act undisturbed within his zone of privacy. Finally, indispensable to the natural right to property is the right to one's possessions. Property is a product of one's toil and might be considered an expression and extension of oneself. It is what an individual deems necessary to the enjoyment of his life. With unreasonable searches and seizures, one's property stands in danger of being rummaged through and taken away. In sum, as pointed out in *De Los Reyes*, persons are subjected to indignity by an unreasonable search and seizure because at bottom, it is a violation of a person's natural right to life, liberty and property. It is this natural right which sets man apart from other beings, which gives him the dignity of a human being.

It is understandable why Filipinos demanded that every organic law in their history guarantee the protection of their natural right against unreasonable search and seizure and why the UDHR treated this right as a human right. It is a right inherent in the right to life, liberty and property; it is a right "appertain(ing) to man in right of his existence", a right that "belongs to man by virtue of his nature and depends upon his personality", and not merely a civil right created and protected by positive law. The right to protect oneself against unreasonable search and seizure, being a right indispensable to the right to life, liberty and property, may be derived as a conclusion from what Aquinas identifies as man's natural inclination to self-preservation and self-actualization. Man preserves himself by leading a secure life enjoying his liberty and actualizes himself as a rational and social being in choosing to freely express himself and associate with others as well as by keeping to and knowing himself. For

after all, a reflective grasp of what it means to be human and how one should go about performing the functions proper to his human nature can only be done by the rational person himself in the confines of his private space. Only he himself in his own quiet time can examine his life knowing that an unexamined life is not worth living.

Every organic law the Filipinos established (the Malolos, 1935, 1973, and 1987 Constitutions) and embraced (the Instruction, Philippine Bill of 1902, and Jones Law) in the last century included a provision guaranteeing the people's right against unreasonable search and seizure because the people ranked this right as fundamental and natural. Indeed, so fundamental and natural is this right that the demand for it spurred the American revolution against the English Crown. It resulted in the Declaration of Independence and the subsequent establishment of the American Constitution about 200 years ago in 1789. A revolution is staged only for the most fundamental of reasons - such as the violation of fundamental and natural rights - for prudence dictates that "governments long established should not be changed for light and transient reasons." [280]

Considering that the right against unreasonable search and seizure is a natural right, the government cannot claim that private respondent Dimaano is not entitled to the right for the reason alone that there was no constitution granting the right at the time the search was conducted. This right of the private respondent precedes the constitution, and does not depend on positive law. It is part of natural rights. A violation of this right along with other rights stirred Filipinos to revolutions. It is the restoration of the Filipinos' natural rights that justified the establishment of the Aquino government and the writing of the 1987 Constitution. I submit that even in the absence of a constitution, private respondent Dimaano had a fundamental and natural right against unreasonable search and seizure under natural law.

We now come to the right to the exclusion of evidence illegally seized. From Stonehill quoting Mapp, we can distill that the exclusionary rule in both the Philippine and American jurisdictions is a freedom "implicit in the concept of ordered liberty" for it is a necessary part of the guarantee against unreasonable searches and seizures, which in turn is "an essential part of the right to privacy" that the Constitution protects. If the exclusionary rule were not adopted, it would be to "grant the right (against unreasonable search and seizure) but in reality to withhold its privilege and enjoyment." Thus, the inevitable conclusion is that the exclusionary rule is likewise a natural right that private respondent Dimaano can invoke even in the absence of a constitution guaranteeing such right.

To be sure, the status of the exclusionary right as a natural right is admittedly not as indisputable as the right against unreasonable searches and seizures which is firmly supported by philosophy and deeply entrenched in history. On a lower tier, arguments have been raised on the constitutional status of the exclusionary right. Some assert, on the basis of *United States v. Calandra*, [281] that it is only a "judicially-created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." [282] Along the same line, others contend that the right against unreasonable search and seizure merely requires some effective remedy, and thus Congress may abolish or limit the exclusionary right if it could replace it with other remedies of a comparable or greater deterrent effect. But these contentions have merit only if it is conceded that the exclusionary rule is merely an optional remedy for the purpose of deterrence. [283]

Those who defend the constitutional status of the exclusionary right, however, assert that there is nothing in *Weeks* that says that it is a remedy [284] or a manner of deterring police officers. [285] In *Mapp*, while the court discredited other means of enforcing the Fourth Amendment cited in *Wolf*, the thrust of the opinion was broader. Justice Clarke opined that "no man is to be convicted on unconstitutional evidence" [286] and held that "the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments." [287]

Formulated in the Aquinian concept of human law, the debate is whether the exclusionary right is the first kind of human law which may be derived as a conclusion from the natural law precept that one should do no harm to another man, in the same way that conclusions are derived from scientific principles, in which case the exclusionary right has force from natural law and does not depend on positive law for its creation; or if it is the second kind of human law which is derived by way of determination of natural law, in the same way that a carpenter determines the shape of a house, such that it is merely a judicially or legislatively chosen remedy or deterrent, in which case the right only has force insofar as positive law creates and protects it.

In holding that the right against unreasonable search and seizure is a fundamental and natural right, we were aided by philosophy and history. In the case of the exclusionary right, philosophy can also come to the exclusionary right's aid, along the lines of Justice Clarke's proposition in the Mapp case that no man shall be convicted on unconstitutional evidence. Similarly, the government shall not be allowed to convict a man on evidence obtained in violation of a natural right (against unreasonable search and seizure) for the protection of which, government and the law were established. To rule otherwise would be to sanction the brazen violation of natural rights and allow law enforcers to act with more temerity than a thief in the night for they can disturb one's privacy, trespass one's abode, and steal one's property with impunity. This, in turn, would erode the people's trust in government.

Unlike in the right against unreasonable search and seizure, however, history cannot come to the aid of the exclusionary right. Compared to the right against unreasonable search and seizure, the exclusionary right is still in its infancy stage in Philippine jurisdiction, having been etched only in the 1973 Constitution after the 1967 Stonehill ruling which finally laid to rest the debate on whether illegally seized evidence should be excluded. In the United States, the exclusionary right's genesis dates back only to the 1885 Boyd case on the federal level, and to the 1961 Mapp case in the state level. The long period of non-recognition of the exclusionary right has not caused an upheaval, much less a revolution, in both the Philippine and American jurisdictions. Likewise, the UDHR, a response to violation of human rights in a particular period in world history, did not include the exclusionary right. It cannot confidently be asserted therefore that history can attest to its natural right status. Without the strength of history and with philosophy alone left as a leg to stand on, the exclusionary right's status as a fundamental and natural right stands on unstable ground. Thus, the conclusion that it can be invoked even in the absence of a constitution also rests on shifting sands.

Be that as it may, the exclusionary right is available to private respondent Dimaano as she invoked it when it was already guaranteed by the Freedom Constitution and the 1987 Constitution. The AFP Board issued its resolution on Ramas' unexplained wealth only on July 27, 1987. The PCGG's petition for forfeiture against Ramas was filed on August 1, 1987 and was later amended to name the Republic of the Philippines as plaintiff and to add private respondent Dimaano as co-defendant. Following the petitioner's stance upheld by the majority that the exclusionary right is a creation of the Constitution, then it could be invoked as a constitutional right on or after the Freedom Constitution took effect on March 25, 1986 and later, when the 1987 Constitution took effect on February 2, 1987.

VI. Epilogue

The Filipino people have fought revolutions, by the power of the pen, the strength of the sword and the might of prayer to claim and reclaim their fundamental rights. They set these rights in stone in every constitution they established. I cannot believe and so hold that the Filipinos during that one month from February 25 to March 24, 1986 were stripped naked of all their rights, including their natural rights as human beings. With the extraordinary circumstances before, during and after the EDSA Revolution, the Filipinos simply found themselves without a constitution, but certainly not without fundamental rights. In that brief one month, they retrieved their liberties and enjoyed them in their rawest essence, having just been freed from the claws of an authoritarian regime. They

walked through history with bare feet, unshod by a constitution, but with an armor of rights guaranteed by the philosophy and history of their constitutional tradition. Those natural rights inhere in man and need not be granted by a piece of paper.

To reiterate, the right against unreasonable search and seizure which private respondent Dimaano invokes is among the sacred rights fought for by the Filipinos in the 1986 EDSA Revolution. It will be a profanity to deny her the right after the fight had been won. It does not matter whether she believed in the righteousness of the EDSA Revolution or she contributed to its cause as an alleged ally of the dictator, for as a human being, she has a natural right to life, liberty and property which she can exercise regardless of existing or non-existing laws and irrespective of the will or lack of will of governments.

I wish to stress that I am not making the duty of the Court unbearably difficult by taking it to task every time a right is claimed before it to determine whether it is a natural right which the government cannot diminish or defeat by any kind of positive law or action. The Court need not always twice measure a law or action, first utilizing the constitution and second using natural law as a yardstick. However, the 1986 EDSA Revolution was extraordinary, one that borders the miraculous. It was the first revolution of its kind in Philippine history, and perhaps even in the history of this planet. Fittingly, this separate opinion is the first of its kind in this Court, where history and philosophy are invoked not as aids in the interpretation of a positive law, but to recognize a right not written in a papyrus but inheres in man as man. The unnaturalness of the 1986 EDSA revolution cannot dilute nor defeat the natural rights of man, rights that antedate constitutions, rights that have been the beacon lights of the law since the Greek civilization. Without respect for natural rights, man cannot rise to the full height of his humanity.

I concur in the result.

[1] Decision, p. 26.

[2] Id.

[3] Letter of Associate Justice Reynato S. Puno, 210 SCRA 589 (1992), p. 597.

[4] Kelly, J., A Short History of Western Legal Theory (1992), p. 20, citing Antigone, pp. 453-457.

[5] Rice, C., Fifty Questions on the Natural Law (1993), p. 31.

[6] Aristotle, Nicomachean Ethics, Book V in the Great Books of the Western World, vol. 9 (Robert Maynard Hutchins, editor in chief, 1952), p. 382.

[7] Aristotle, On Rhetoric, Book I, Chapter 13 in the Great Books of the Western World, vol. 9 (Robert Maynard Hutchins, editor in chief, 1952), p. 617.

[8] Bix, B., "Natural Law Theory," p. 224 in D. Patterson, A Companion to Philosophy of Law and Legal Theory (1996).

[9] Kelly, J., *supra*, p. 142, citing Decretum, D. I.

[10] Id., citing Decretum, D. 8. 2, 9 ad fin.

[11] Id., citing Aurea Doctons fo. 169.

[12] Id., citing Felix Fluckiger, Geschichte des Naturrechtes (1954), i. 426-8.

[13] Id.

[14] Kelly, J., *supra*, pp. 142-143.

[15] *Id.*, p. 143.

[16] Altman, A., *Arguing About Law* (2001), p. 51.

[17] Aquinas, T., *Summa Theologica* I, II, Q. 90, art. 1 in the *Great Books of the Western World*, vol. 20 (Robert Maynard Hutchins, editor in chief, 1952), p. 208.

[18] Freinberg, J. and J. Coleman, *Philosophy of Law* (6th ed. 2000), p. 19.

[19] Aquinas, T., *Summa Theologica* I, II, Q. 91, art. 1, p. 208.

[20] Kelly, J., *supra*, p. 143.

[21] Altman, A., *supra*, p. 52.

[22] Aquinas, T., *Summa Theologica* I, II, Q. 91, art. 2, p. 208.

[23] Rice, C., *supra*, p. 44.

[24] Freinberg, J. and J. Coleman, *supra*, p. 23.

[25] Aquinas, T., *Summa Theologica* I, II, Q. 94, art. 2, p. 222.

[26] *Id.*

[27] Rice, C., *supra*, p. 45, citing *Summa Theologica*, II, II, Q. 81, art. 6; see also *Summa Theologica*, II, II, Q. 85, art. 1.

[28] *Id.*, citing T. E. Davitt, S.J., "St. Thomas Aquinas and the Natural Law", *Origins of the Natural Law Tradition* (1954), pp. 26, 30-31; Rommen, *The Natural Law*, p. 49; *Summa Theologica*, I, II, Q. 94, art. 2.

[29] Freinberg, J. and J. Coleman, *supra*, p. 24.

[30] Rice, C., *supra*, pp. 45-46.

[31] Freinberg, J. and J. Coleman, *supra*, p. 24.

[32] Rice, C., *supra*, pp. 45-46.

[33] Altman, A., *supra*, p. 52.

[34] Aquinas, T., *Summa Theologica*, I, II, Q. 95, art. 2.

[35] Rice, C., *supra*, p. 24.

[36] Freinberg, J. and J. Coleman, *supra*, p. 26; Altman, A., *supra*, p. 52.

[37] Aquinas, T., *Summa Theologica* I, II, Q. 91, art. 4, p. 222.

[38] Freinberg, J. and J. Coleman, *supra*, p. 30, citing *Summa Theologica*, I, II, Q. 91, art. 4.

[39] An important restatement was made by John Finnis who wrote *Natural Law and Natural Rights* published in 1980. He reinterpreted Aquinas whom he says has been much misunderstood. He argues that the normative conclusions of natural law are not derived from observations of human or any other nature but are based on a reflective grasp of what is self-evidently good for human beings. "The basic forms of good grasped by practical understanding are what is good for human beings with the nature they have." The following are basic goods: life

(and health), knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness, and religion. (Bix, B., supra, pp. 228-229.) He claims that Aquinas considered that practical reasoning began "not by understanding this nature from the outside . . . by way of psychological, anthropological or metaphysical observations and judgments defining human nature, but by experiencing one's nature . . . from the inside, in the form of one's inclinations." (Freeman, M.D.A. Lloyd's Introduction to Jurisprudence [1996], p. 84, citing J. Finnis, Natural Law and Natural Rights [1980], p. 34.)

Lon Fuller also adopted a natural law analysis of law and wrote that there is a test that a law must pass before something could be properly called law. Unlike traditional natural law theories, however, the test he applies pertains to function rather than moral content. He identified eight requirements for a law to be called law, viz: "(1) laws should be general; (2) they should be promulgated, that citizens might know the standards to which they are being held; (3) retroactive rule-making and application should be minimized; (4) laws should be understandable; (5) they should not be contradictory; (6) laws should not require conduct beyond the abilities of those affected; (7) they should remain relatively constant through time; and (8) there should be a congruence between the laws as announced and their actual administration." He referred to his theory as "a procedural, as distinguished from a substantive natural law." (Bix, B., supra, pp. 231-232.)

Ronald Dworkin also occasionally refers to his approach as a natural law theory. Dworkin postulates that along with rules, legal systems also contain principles. Quite different from rules, principles do not act in an all-or-nothing way. Rather principles have "weight", favoring one result or another. There can be principles favoring contrary results on a single legal question. Examples of these principles are "one should not be able to profit from one's wrong" and "one is held to intend all the foreseeable consequences of one's actions." These legal principles are moral propositions that are grounded (exemplified, quoted or somehow supported by) on past official acts such as text of statutes, judicial decisions, or constitutions. Thus, in "landmark" judicial decisions where the outcome appears to be contrary to the relevant precedent, courts still hold that they were following the "real meaning" or "true spirit" of the law; or judges cite principles as the justification for modifying, creating exceptions in, or overturning legal rules. (Bix, B., supra, pp. 234-235.)

[40] Jones, T., Modern Political Thinkers and Ideas (2002), pp. 112-113.

[41] d'Entreves, A., Natural Law (2nd ed., 1970), pp. 52 and 57.

[42] Rice, C. supra, p. 68, citing Aquinas, De Regimine Principum (On the Governance of Rulers) (Gerald B. Phelan, transl., 1938), Book I, Chap. 2, 41.1. But Aquinas was also cautious of the opportunity for tyranny of a king, thus he proposed that this power must be tempered, perhaps similar to the modern day constitutional monarchy. (Rice, C. supra, pp. 68-69, citing Aquinas, De Regimine Principum (On the Governance of Rulers) (Gerald B. Phelan, transl., 1938), Book I, Chap. 6, 54.)

[43] Patterson, C., The Constitutional Principles of Thomas Jefferson (1953), p. 47.

[44] Macpherson, C. Editor's Introduction to J. Locke's Second Treatise of Government (1980), pp. xx-xxi.

[45] Locke, J., Second Treatise of Government (ed. C.B. Macpherson, 1980).

[46] Id., Ch. II, Sec. 4 (ed. C.B. Macpherson, 1980), p. 8.

[47] Id.

[48] Id., Ch. II, Sec. 6, p. 9.

[49] Id.

- [50] Jones, T., *supra*, p. 126.
- [51] *Id.*, pp. 126-127.
- [52] Locke, J., *supra*, Ch II, Sec. 7, p. 9.
- [53] Jones, T., *supra*, p. 127.
- [54] Locke, J., *supra*, Ch II, Sec. 13, p. 9; Jones, T., *supra*, p. 128.
- [55] *Id.*, Ch VIII, Sec. 95, p. 52.
- [56] Jones, T., *supra*, p. 128, citing J. Locke, *Second Treatise*, Ch. 9, sect. 123, p. 350.
- [57] *Id.*, p. 128.
- [58] Locke, J., *supra*, Ch IX, Sec. 124, p. 66.
- [59] Jones, T., *supra*, pp. 128-129.
- [60] Hamburger, P., "Natural Rights, Natural Law, and American Constitutions," *The Yale Law Journal*, vol. 102, no. 4, January 1993, p. 926.
- [61] *Id.*, p. 924.
- [62] *Id.*, pp. 930-931; see also *Calder v. Bull*, 1 L. Ed. 648 (1798).
- [63] *Id.*, footnote 70, citing J. Jay, *The Federalist* No. 2 (1961), p. 37.
- [64] *Id.*, footnote 70, citing Letter from William Pierce to St. George Tucker, *GA. ST. GAZ.*, Sept. 28, 1787, reprinted in *16 Documentary History of the Constitution* (1983), p. 443.
- [65] *Id.*, footnote 70, citing N. Chipman, *Sketches of the Principles of Government* (1793), p. 70.
- [66] Jones, T., *supra*, p. 114.
- [67] Haines, C., *The Revival of Natural Law Concepts* (1965), p. 58.
- [68] Patterson, C., *supra*, pp. 27 and 49; see also Scott-Craig, T., "John Locke and Natural Right", p. 42 in *Southern Methodist University Studies in Jurisprudence II: Natural Law and Natural Rights* (A. Harding, ed., 1965).
- [69] *Id.*, pp. 7-8.
- [70] Hamburger, P., *supra*, pp. 931-932.
- [71] Black, H., *Black's Constitutional Law* (2nd edition), p. 2.
- [72] Kurland, P. "The True Wisdom of the Bill of Rights", *The University of Chicago Law Review*, vol. 59, no. 1 (Winter 1992), pp. 7-8.
- [73] Haines, C., *supra*, p. 55.
- [74] *Id.*, p. 55, citing B.F. Wright, Jr., "American Interpretations of Natural Law", *American Political Science Review*, xx (Aug. 1926), 524 ff.
- [75] Black, H., *supra*, p. 8.
- [76] Watson, D., *The Constitution of the United States* (1910), vol. 1, pp. 108-109, citing *Cooley's Constitutional*

Limitations, pp. 68-69.

[77] Hamburger, P., *supra*, p. 955, citing N. Chipman, *Sketches of the Principles of Government* (1793), p. 16.

[78] *Id.*, p. 955, footnote 132, citing Letter from George Washington to the President of Congress, in 1 *Documentary History of the Constitution* (1983), p. 305.

[79] *Id.*, p. 956.

[80] Jones, T., *supra*, p. 142, citing T. Paine, *The Rights of Man* (1969), p. 90.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.*, p. 143, citing T. Paine, *The Rights of Man* (1969), p. 90.

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] Hamburger, P., *supra*, p. 918, citing J. Locke., *Two Treatises of Government* (1967), p. 322.

[89] *Id.*, p. 919, citing J. Madison, *A Memorial and Remonstrance* (ca June 20, 1785), in 8 *The Papers of James Madison* 298, 299.

[90] *Id.*, pp. 919-920, citing J. Witherspoon, *An Annotated Edition of Lectures on Moral Philosophy* (Lecture X) (Jack Scott ed.1982), pp. 122-128.

[91] *Id.*, pp. 920-921, citing J. Madison, *Speech in House of Representatives* (June 8, 1789), in *Creating the Bill of Rights* (1991), p. 81.

[92] *Id.*, pp. 921-922.

[93] Black, H., *supra*, pp. 443-444.

[94] *Id.*, p. 444.

[95] *Id.*, p. 445.

[96] Jones, T., *supra*, p. 114.

[97] *Id.*

[98] *Estrada v. Desierto, et al.*, 353 SCRA 452 (2001), *Concurring Opinion of Justice Mendoza*, p. 549.

[99] d'Entreves, A., *supra*, p. 51.

[100] Jones, T., *supra*, pp. 114-115.

[101] *Id.*, p. 119.

[102] *Id.*

[103] Drost, P., *Human Rights as Legal Rights* (1951), pp. 32-33.

- [104] Echegaray v. Secretary of Justice, et al., 297 SCRA 754 (1998).
- [105] Moskowitz, M., Human Rights and World Order (1958), pp. 80-83.
- [106] Id., p. 157.
- [107] Id., p. 164.
- [108] Gutierrez, Jr., H., "Human Rights - An Overview" in The New Constitution and Human Rights (Fifth Lecture Series on the Constitution of the Philippines) (1979), p. 3.
- [109] Strauss, D. "The Role of a Bill of Rights", The University of Chicago Law Review, vol. 59, no. 1 (Winter 1992), p. 554.
- [110] Gutierrez, Jr., H., supra, p. 3, citing Dorr v. United States, 195 US 138 (1904).
- [111] Bix, B., supra, p. 228.
- [112] Jones, T., supra, p. 119.
- [113] Bix, B., supra, p. 228.
- [114] Strauss, D., supra, p. 555.
- [115] 70 Phil. 578 (1940).
- [116] Id., p. 582.

[117] 106 SCRA 325 (1981).

- [118] People v. Agbot, supra, p. 333.
- [119] 140 Phil 171 (1969).

[120] 344 SCRA 769 (2000).

- [121] 41 Phil. 770 (1916).
- [122] People v. de los Santos, 200 SCRA 431 (1991).
- [123] Roa v. Insular Collector of Customs, 23 Phil. 315 (1917).
- [124] Silva v. Court of Appeals, et al., 275 SCRA 604 (1997).
- [125] Offshore Industries, Inc. v. NLRC, et al., 177 SCRA 50 (1989), citing Philippine Movie Pictures Workers' Association v. Premiere Productions, Inc., 92 Phil. 843 (1953).

[126] 229 SCRA 117 (1994).

- [127] Fernando, E., Perspective on Human Rights: The Philippines in a Period of Crisis and Transition (1979), pp. 1-2, citing Borovsky v. Commissioner of Immigration, et al., 90 Phil. 107 (1951); Mejoff v. Director of Prisons, 90 Phil. 70 (1951); Chirskoff v. Commissioner of Immigration, et al., 90 Phil. 256 (1951); Andreu v. Commissioner of Immigration, et al., 90 Phil. 347 (1951).
- [128] Simon, Jr., et al. v. Commission on Human Rights, supra, p. 127.
- [129] Id., pp. 126-127.

- [130] Id., pp. 132-133, citing Black's Law Dictionary (6[th] edition, 1934), p. 1324; Handbook on American Constitutional Law (4[th] ed., 1927), p. 524.
- [131] Id., pp. 132-133, citing Malcolm, The Constitutional Law of the Philippine Islands (2[nd] ed., 1926), pp. 431-457.
- [132] Id., p. 133, citing Black's Law Dictionary (6[th] edition, 1934), p. 1325; Handbook on American Constitutional Law (4[th] ed., 1927), p. 524.
- [133] Bernas, J., A Historical and Juridical Study of the Philippine Bill of Rights (1971), pp. 2-3, citing C. Majul, The Political and Constitutional Ideas of the Philippine Revolution (1957), pp. 2-3.
- [134] Id., p. 2, citing Majul, *supra*, p. 3.
- [135] Id., pp. 6-7, citing T. Agoncillo, Malolos: The Crisis of the Republic (1960), p. 19 and Majul, *supra*, p. 5, both authors citing de Veyra, The Constitution of Biak-na-Bato, 1 J. of the Phil Historical Soc. I (1941).
- [136] Id., p. 7, citing T. Agoncillo, *supra*, pp. 19-20.
- [137] Id., p. 8, citing Kalaw, The Constitutional Plan of the Philippine Revolution, I Phil. L. J., 204, 206 (1914).
- [138] Id., p. 11, citing Kalaw, The Memoirs of Felipe Calderon (pts. 1-2), 4 Phil. Rev. 426, at 473 (1919).
- [139] Id., citing Malcolm, Constitutional Law of the Philippine Islands 117 (2[nd] ed. 1926).
- [140] Id., pp. 11-12, citing Planes Constitucionales Para Filipinas (T. Kalaw ed. 1934), p. 37.
- [141] Id., p. 12, citing Majul, *supra*, p. 179.
- [142] Id., p. 13.
- [143] Id., citing 1 Report of the (Schurman) Philippine Commission (1900), pp. 84-5.
- [144] Id., pp. 13-14, citing G. Malcolm, Constitutional Law of the Philippine Islands (2[nd] ed. 1926), p. 223.
- [145] Id., p. 15.
- [146] Gonzalez-Decano, A., The Exclusionary Rule and its Rationale (1997), p. 8.
- [147] Bernas, J., *supra*, p. 15.
- [148] Gonzalez-Decano, A., *supra*, p. 8.
- [149] 11 Phil. 669 (1904).
- [150] Id., p. 692.
- [151] Id.
- [152] Bernas, J., *supra*, p. 17.
- [153] Aruego, J., The Framing of the Philippine Constitution, vol. 1 (1935), p. 93.
- [154] Id., pp. 93-94.
- [155] Fernando, E., Political Law (1953), p. 42.
- [156] Aruego, *supra*, pp. 94-95.

- [157] Id., pp. 93-95, 149-151.
- [158] Id., pp. 149-150.
- [159] Fernando, E., *supra*, p. 42.
- [160] Fernando, E., *The Constitution of the Philippines* (1974), pp. 3-7.
- [161] Id., pp. 6-7.
- [162] Fernando, *Perspective on Human Rights: The Philippines in a Period of Crisis and Transition* (1979), pp. 24-26.
- [163] Proclamation No. 3 (1986).
- [164] Proclamation No. 1 (1986).
- [165] Letter of Associate Justice Reynato S. Puno, *supra*.
- [166] Martin, R., *Law and Jurisprudence on the Freedom Constitution of the Philippines* (1986), pp. 1-5.
- [167] *De Leon v. Esguerra*, 153 SCRA 602 (1987).
- [168] Article X, Sec. 3 and Article XII, Sec. 4 of the 1987 Constitution.
- [169] *Records of the Constitutional Commission*, vol. I, p. 674.
- [170] Article II, Sec. 11 of the 1987 Constitution.
- [171] Article XIII of the 1987 Constitution; *Simon, Jr. v. Commission on Human Rights*, *supra*.
- [172] Fernando, E., *The Bill of Rights* (2nd ed. 1972), p. 3, citing Laski, *The State in Theory and Practice* (1935), pp. 35-36.
- [173] Fernando, E. *The Constitution of the Philippines* (1974), p. 20, citing Hamilton, *Constitutionalism in IV Encyclopedia of the Social Sciences* (1928), p. 255.
- [174] Id., p. 20.
- [175] Id., p. 21, citing 1 Schwartz, *Commentary on the Constitution of the United States, The Powers of Government* (1963), pp. 1-2.
- [176] Id., p. 21, citing *Lectures on the Constitution of the United States*, p. 64.
- [177] Id., citing Malcolm and Laurel, *Philippine Constitutional Law* (1936), p. 6.
- [178] Id., p. 33.
- [179] Fernando, E., *Government Powers and Human Rights* (1973), p. 5.
- [180] Fernando, E. *The Constitution of the Philippines* (1974), p. 34, citing III, S. Laurel, *Proceedings of the Philippine Constitutional Convention* (1966), p. 335.
- [181] Id., p. 34, citing III, S. Laurel, *Proceedings of the Philippine Constitutional Convention* (1966), p. 648.
- [182] Black, H., *Black's Constitutional Law* (2nd ed.), p. 8.
- [183] Schwartz, B., *The Great Rights of Mankind: A History of the American Bill of Rights* (1977), pp. 2-3.

[184] G.R. No. 143802, November 15, 2001.

[185] 232 SCRA 192 (1994).

[186] Sales v. Sandiganbayan, et al., supra, p. 15, citing Allado v. Diokno, 232 SCRA 192 (1994), pp. 209-210.

[187] Hall, Jr., J., Search and Seizure (1982), p. 13, citing Marcus v. Search Warrants of Property 367 US 717 (1961); Roaden v. Kentucky, 413 US 496 (1973); Lasson, The History and Development of the Fourth Amendment to the Constitution of the United States (1937), pp. 23-24.

[188] Id., p. 13, citing Ladynski, Search and Seizure and the Supreme Court (1966), pp. 20-22.

[189] Id., p. 14, citing Marcus v. Search Warrants, supra, pp. 724-727; Lasson, supra, pp. 24-29; Ladynski, supra, p. 23.

[190] Id., citing Ladynski, p. 23.

[191] Id., citing Lasson, pp. 31-32 and Ladynski, p. 23; footnote 19.

[192] Id.

[193] Id., p. 14, citing Ladynski, p. 24.

[194] Id., citing Lasson, pp. 33-34, Ladynski, p. 27.

[195] Id., p. 15, citing Ladynski, p. 25.

[196] Id., citing Lasson, p. 37.

[197] Id., p. 14, citing Ladynski, p. 22.

[198] Id., citing Lasson, pp. 30-31; Ladynski, p. 23.

[199] Id., p. 15, citing Lasson, p. 54 and Ladynski, p. 31.

[200] Id., citing Ladynski, p. 31.

[201] Id., p. 15, citing Lasson, p. 55 and Ladynski, p. 31.

[202] Id., p. 16, citing Lasson, pp. 55-57 and Ladynski, p. 33, and Adams, J., 2 Legal Papers of John Adams (1965), p. 112.

[203] Id., citing Lasson, pp. 57-58 and Ladynski, p. 33.

[204] Id., citing Lasson, p. 58 and Ladynski, p. 33.

[205] Boyd v. United States, 116 US 616, 625 (1885).

[206] Hall, Jr., J., supra, p. 16.

[207] Boyd v. United States, supra.

[208] Hall, Jr., J., supra, p. 16, citing Petition of Lechmere, Adams, pp. 108-147.

[209] Id., p. 16, citing Lasson, pp. 67-73 and Ladynski, p. 35.

[210] Id., p. 16.

[211] Id., pp. 16-17, citing Lasson, p. 43.

[212] Id., p. 17, citing Lasson, p. 43.

[213] Id., citing Lasson, p. 44.

[214] (1765) 19 Howell's St Tr 1029.

[215] Id., p. 18, citing Boyd v. United States, supra; p.19, citing numerous cases where the Supreme Court cited Entick v. Carrington, supra.

[216] Boyd v. United States, supra, p. 627.

[217] Id., pp. 626-627.

[218] Id., p. 630.

[219] 232 US 383 (1914).

[220] 192 US 585 (1903).

[221] Bernas, J., supra, p. 296. Although even as early as the Malolos Constitution of 1899, this right against unreasonable searches and seizures has been protected with the sanctity of the domicile as the primordial consideration. The provision was an almost exact reproduction of the Bill of Rights of the Spanish Constitution (Bernas, J., supra, p. 11, citing Malcolm, Constitutional Law of the Philippine Islands [2nd ed. 1926], p. 117), viz:

"ARTICLE 10

No person shall enter the domicil of a Filipino or foreigner residing in the Philippine Islands without his consent, except in urgent cases of fire, flood, earthquake or other similar danger, or of unlawful aggression proceeding from within, or in order to assist a person within calling for help.

Outside of these cases, the entrance into the domicil of a Filipino or foreigner residing in the Philippine Islands and the searching of his papers or effects, can only be decreed by a competent judge and executed in the daytime.

The searching of the papers and effects shall always be done in the presence of the interested party or of a member of his family, and, in their absence, of two witnesses residing in the same town (pueblo).

However, if an offender found in flagrante and pursued by the authorities or their agents should take refuge in his domicil these may enter the same, but only for the purpose of his apprehension.

If he should take refuge in the domicil of another, request should first be made of the latter."

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ARTICLE 13

All decrees of imprisonment, for the search of domicil, or for the detention of correspondence, whether written, telegraphic, or by telephone, shall be for cause.

If the decree should lack this requisite, or if the causes on which it may be founded are judicially declared unlawful or manifestly insufficient, the person who may have been imprisoned, or whose imprisonment may not have been confirmed within the term prescribed in Art. 9 or whose domicil may have been forcibly entered into, or whose correspondence may have been detained, shall have the right to demand the liabilities which ensue." (Bernas, J., supra, pp. 292-293.)

[222] Bernas, J., *supra*, pp. 297-298.

[223] Aruego, J., *supra*, pp. 159-160.

[224] Gonzalez-Decano, A., *supra*, p. 9, citing E. Navarro, *A Treatise on the Law of Criminal Procedure in the Philippines* (1952), pp. 395-396.

[225] Aruego, J., *supra*, p. 160.

[226] Laurel, J., *Proceedings of the Philippine Constitutional Commission* (1966), vol. III, p. 172; see also *Moncado v. People's Court*, 80 Phil. 1 (1948), *Dissenting Opinion of Justice Bengzon*.

[227] Gonzalez-Decano, A., *supra*, p. 11.

[228] 20 SCRA 383 (1967); Fernando, E., *The Constitution of the Philippines* (1974), pp. 658-659.

[229] It may be argued that the Freedom Constitution had retroactive effect insofar as it provides that certain articles of the 1973 Constitution, including the Bill of Rights, "remain in force and effect." Consequently, as these articles were in force after the abrogation of the 1973 Constitution on February 25, 1986 and before the adoption of the Freedom Constitution on March 25, 1986, private respondent Dimaano can invoke the constitutionally guaranteed right against unreasonable search and seizure and the exclusionary right. Nevertheless, this separate opinion addresses the question of whether or not she can invoke these rights even if the Freedom Constitution had no retroactive effect.

[230] Hall, Jr., J., *supra*, p. 9, citing *Silverman v. United States*, 365 US 505 (1961); *Schmerber V. California*, 384 US 757 (1966); *Camara v. Municipal Court of San Francisco*, 387 US 523 (1967). Other citations omitted.

[231] *Id.*, citing *Warden, Maryland Penitentiary v. Hayden*, 387 US 294 (1967); *Berger v. New York*, 388 US 41 (1967); *Stone v. Powell*, 428 US 465 (1976). Other citations omitted.

[232] *Katz v. United States*, 389 US 347 (1967). Other citations omitted.

[233] 365 US 505 (1961).

[234] 389 US 347 (1967).

[235] Fernando, E., *The Bill of Rights* (1972), pp. 217-218.

[236] 3 Phil. 381 (1904).

[237] *United States v. Arceo*, *supra*, pp. 384-385.

[238] 20 Phil. 467 (1911).

[239] *United States v. De Los Reyes, et al.*, *supra*, p. 473.

[240] Fernando, E., *The Constitution of the Philippines* (1974), p. 652.

[241] 20 SCRA 383 (1967).

[242] *Stonehill v. Diokno*, *supra*, p. 392.

[243] 101 SCRA 86 (1980).

[244] *People v. CFI*, supra, pp. 100-101.

[245] *Valmonte v. Belmonte*, 170 SCRA 256 (1989), citing *Morfe v. Mutuc*, 22 SCRA 424 (1968), pp. 444-445.

[246] *Warden, Maryland Penitentiary v. Hayden*, 387 US 294 (1967), pp. 320-324.

[247] 381 US 479 (1965).

[248] *Griswold v. Connecticut*, 381 US 479 (1965), pp. 485-486.

[249] The Fourteenth Amendment provides in relevant part, viz:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[250] 338 US 25 (1949).

[251] *Ducat, C.*, *Constitutional Interpretation: Rights of the Individual*, vol. 2 (2000), pp. 641-642.

[252] *Wolf v. Colorado*, supra, pp. 31-32.

[253] 364 US 206 (1960).**[254] 367 US 643 (1961).**

[255] *Ducat, C.*, supra, pp. 641-642.

[256] *Mapp v. Ohio*, supra, pp. 654-660.

[257] 364 US 206 (1960).

[258] *Id.*, p. 217.

[259] *LaFave, W.* *Search and Seizure: A Treatise in the Fourth Amendment*, vol. 1 (2nd ed., 1987), pp. 16-17, citing *Terry v. Ohio*, 392 US 1 (1968).

[260] *Id.*, p. 17, citing *United States v. Calandra*, 414 US 338 (1974), dissent.

[261] *Id.*

[262] 42 Phil. 886 (1920).

[263] 47 Phil. 626 (1925).

[264] 251 US 385 (1919).

[265] 57 Phil. 384 (1932).

[266] *Bernas, J.*, *The 1987 Constitution of the Republic of the Philippines: A Commentary* (1996), pp. 194-195.

[267] 64 Phil. 33 (1937).

[268] 76 Phil. 637 (1946).

[269] Bernas, J., supra note 266, pp. 197-198.

[270] 80 Phil. 1 (1948), pp. 1, 3-4.

[271] Wong & Lee v. Collector of Internal Revenue, et al., 104 Phil. 469 (1958), citing *Moncado v. People's Court*, 8 Phil. 1 (1948); *Medina v. Collector of Internal Revenue*, 110 Phil. 912 (1961), citing Wong & Lee, supra; Bernas, J., supra note 266, pp. 198-199.

[272] 20 SCRA 383 (1967).

[273] *Stonehill v. Diokno*, supra, pp. 393-394.

[274] *Griswold v. Connecticut*, supra, p. 493.

[275] See Note 65, supra.

[276] Pascual, C., *Introduction to Legal Philosophy* (1989), pp. 22-23.

[277] See C. Patterson, supra, p. 52.

[278] Proclamation No. 1 (1986).

[279] Sandifer, D. and L. Scheman, *The Foundation of Freedom* (1966), pp. 44-45.

[280] *Estrada v. Desierto*, supra, p. 549, citing the Declaration of Independence. That the right against unreasonable searches and seizures is a natural human right may be inferred from the 1949 case of *Wolf v. Colorado*, where Justice Frankfurter said:

"The knock at the door, whether by day or night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and basic constitutional documents of the English-speaking peoples."

[281] 414 US 338 (1974).

[282] *Id.*, p. 348.

[283] LaFave, W., supra, p. 20.

[284] *Id.*, citing Kamisar, Does (Did) (Should) the Exclusionary Rule Rest on a "Principled Basis" Rather than an "Empirical Proposition"? 16 *Creighton L. Rev.* (1983) 565, p. 598.

[285] *Id.*, citing Allen, *The Judicial Quest for Penal Justice: The Warren Court and the Criminal Cases*, 1975 *U. Ill. L.F.* 518, 536, n. 90.

[286] *Mapp v. Ohio*, supra, p. 657.

[287] LaFave, supra, pp. 19-20.

SEPARATE OPINION

VITUG, J.:

The unprecedented 1986 People Power Revolution at EDSA remains to be such an enigma, still confounding political scientists on its origins and repercussions, to so many. Now, before the Court is yet another puzzle: Whether or not the Bill of Rights may be considered operative during the interregnum from 26 February 1986 (the day Corazon C. Aquino took her oath to the Presidency) to 24 March 1986 (immediately before the adoption of the Freedom Constitution). Indeed, there are differing views on the other related question of whether or not the 1973 Constitution has meanwhile been rendered, ipso facto, without force and effect by the "successful revolution."

The government under President Corazon C. Aquino was described as revolutionary for having been so installed through a "direct exercise of the power of the Filipino people" in disregard of the "provisions of the 1973 Constitution." [1] It was said to be revolutionary in the sense that it came into existence in defiance of existing legal processes, and President Aquino assumed the reigns of government through the extra-legal action taken by the people. [2]

A revolution is defined by Western political scholars as being a "rapid fundamental and violent domestic change in the dominant values and myths of a society in its political institutions, social structure, leadership, and government activity and policies." [3] A revolution results in a complete overthrow of established government and of the existing legal order. [4] Notable examples would be the French, Chinese, Mexican, Russian, and Cuban revolutions. Revolution, it is pointed out, is to be distinguished from rebellion, insurrection, revolt, coup, and war of independence. [5] A rebellion or insurrection may change policies, leadership, and the political institution, but not the social structure and prevailing values. A coup d'etat in itself changes leadership and perhaps policies but not necessarily more extensive and intensive than that. A war of independence is a struggle of one community against the rule by an alien community and does not have to involve changes in the social structure of either community. [6]

The 1986 People Power Revolution is a uniquely Philippine experience. Much of its effects may not be compared in good substance with those of the "great revolutions". While a revolution may be accomplished by peaceful means, [7] it is essential, however, that there be an accompanying basic transformation in political and social structures. The "revolution" at Edsa has not resulted in such radical change though it concededly could have. The offices of the executive branch have been retained, the judiciary has been allowed to function, the military, as well as the constitutional commissions and local governments, have remained intact. [8] It is observed by some analysts that there has only been a change of personalities in the government but not a change of structures [9] that can imply the consequent abrogation of the fundamental law. The efficacy of a legal order must be distinguished from the question of its existence [10] for it may be that the efficacy of a legal order comes to a low point which may, nevertheless, continue to be operative and functioning. [11]

The proclamations issued, as well as the Provisional Constitution enacted by the Aquino administration shortly after being installed, have revealed the new government's recognition of and its intention to preserve the provisions of the 1973 Constitution on individual rights. Proclamation No. 1, [12] dated 25 February 1986, has maintained that "sovereignty resides in the people and all government authority emanates from them." It has expressed that the government would be "dedicated to uphold justice, morality and decency in government, freedom and democracy." In lifting the suspension of the privilege of the writ of habeas corpus throughout the Philippines, for, among other reasons, the "Filipino people have established a new government bound to the ideals of genuine liberty and freedom for all," Proclamation No. 2 of March 1986, has declared:

"Now, therefore, I, Corazon C. Aquino, President of the Philippines, by virtue of the powers vested in me by the Constitution and the Filipino people, do hereby x x x lift the suspension of the privilege of the writ of

habeas corpus x x x."

What Constitution could the proclamation have been referring to? It could not have been the Provisional Constitution, adopted only later on 25 March 1986 under Proclamation No. 3 which, in fact, contains and attests to the new government's commitment to the "restoration of democracy" and "protection of basic rights," announcing that the "the provisions of Article I (National Territory), Article III (Citizenship), Article IV (Bill of Rights), Article V (Duties and Obligations of Citizens), and Article VI (Suffrage) of the 1973 Constitution, as amended, (shall) remain in force and effect," (emphasis supplied),^[13] superseding only the articles on "The Batasang Pambansa", "The Prime Minister and the Cabinet", "Amendments", and "Transitory Provisions."^[14] Verily, Proclamation No. 3 is an acknowledgment by the Aquino government of the continued existence, subject to its exclusions, of the 1973 Charter.

The new government has done wisely. The Philippines, a member of the community of nations and among the original members of the United Nations (UN) organized in 1941, has had the clear obligation to observe human rights and the duty to promote universal respect for and observance of all fundamental freedoms for all individuals without distinction as to race, sex, language or religion.^[15] In 1948, the United Nations General Assembly has adopted the Universal Declaration of Human Rights proclaiming that basic rights and freedoms are inherent and inalienable to every member of the human family. One of these rights is the right against arbitrary deprivation of one's property.^[16] Even when considered by other jurisdictions as being a mere statement of aspirations and not of law, the Philippines Supreme Court has, as early as 1951, acknowledged the binding force of the Universal Declaration in *Mejoff vs. Director of Prisons*, ^[17] *Borovsky vs. Commissioner of Immigration*, ^[18] *Chirskoff vs. Commissioner of Immigration*, ^[19] and *Andreu vs. Commissioner of Immigration*.^[20] In subsequent cases, ^[21] the Supreme Court has adverted to the enumeration in the Universal Declaration in upholding various fundamental rights and freedoms. The Court, in invoking the articles in the Universal Declaration has relied both on the Constitutional provision stating that the Philippines adopts the generally accepted principles of international law as being part of the law of the nation^[22] and, in no little degree, on the tenet that the acceptance of these generally recognized principles of international law are deemed part of the law of the land not only as a condition for, but as a consequence of, the country's admission in the society of nations.^[23] The Universal Declaration "constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become a part of customary international law."^[24] It "spells out in considerable detail the meaning of the phrase 'human rights and fundamental freedoms,' which Member States have agreed to observe. The Universal Declaration has joined the Charter x x x as part of the constitutional structure of the world community. The Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, indeed binding all states and not only members of the United Nations."^[25]

It might then be asked whether an individual is a proper subject of international law and whether he can invoke a provision of international law against his own nation state. International law, also often referred to as the law of nations, has in recent times been defined as that law which is applicable to states in their mutual relations and to individuals in their relations with states.^[26] The individual as the end of the community of nations is a member of the community, and a member has status and is not a mere object.^[27] It is no longer correct to state that the State could only be the medium between international law and its own nationals, for the law has often fractured this link as and when it fails in its purpose. Thus, in the areas of black and white slavery, human rights and protection of minorities, and a score of other concerns over individuals, international law has seen such individuals, being members of the international community, as capable of invoking rights and duties even against the nation State.^[28]

At bottom, the Bill of Rights (under the 1973 Constitution), during the interregnum from 26 February to 24 March

1986 remained in force and in effect not only because it was so recognized by the 1986 People Power but also because the new government was bound by International law to respect the Universal Declaration of Human Rights.

There would appear to be nothing irregular in the issuance of the warrant in question; it was its implementation that failed to accord with that warrant. The warrant issued by the Municipal Trial Court of Batangas, Branch 1, only listed the search and seizure of five (5) baby armalite rifles M-16 and five (5) boxes of ammunition. The raiding team, however, seized the following items: one (1) baby armalite rifle with two (2) magazines; forty (40) rounds of 5.56 ammunition; one (1) .45 caliber pistol; communications equipment; cash in the amount of P2,870,000.00 and US \$ 50,000.00; as well as jewelry and land titles. The Philippine Commission on Good Government (PCGG) filed a petition for forfeiture of all the items seized under Republic Act No. 1397, otherwise also known as an "Act for the Forfeiture of Unlawfully Acquired Property," against private respondents Elizabeth Dimaano and Josephus Q. Ramas. The Sandiganbayan issued a resolution on 18 November 1991 dismissing the complaint, directing the return of the illegally seized items, and ordering the remand of the case to the Ombudsman for appropriate action. The resolution should be affirmed.

WHEREFORE, I concur in the results.

[1] Proclamation No. 3, 25 March 1986.

[2] Bernas, *The Constitution of the Republic of the Philippines*, Vol. II, 1988, p. 15

[3] Huntington, *Political Order in Changing Societies*, 1968, p. 264.

[4] 46 CJS 1086; *Estrada vs. Desierto*, Vitug, Concurring Opinion, 353 SCRA 538, citing Milne, *Philosophy and Political Action*.

[5] Huntington, *supra*.

[6] *Id.*

[7] 46 CJS 1086

[8] See Proclamation No. 1, 25 February 1986.

[9] Maranan, *The Dilemma of Legitimacy: A Two-Phase Resolution*, 61 *Phil. L. J.*, 1986, p. 153.

[10] Fernandez, *Law and Polity: Towards a Systems Concept of Legal Validity*, 46 *Phil. L.J.*, 1971, p. 422.

[11] *Id.*

[12] Entitled "Proclaiming that President Corazon C. Aquino and Vice-President Salvador H. Laurel are Taking Powers of the Government in the name and by Will of the Filipino People"

[13] Section 1, Proclamation No. 3, 25 March 1986; Eight other articles - Article II (Declaration of Principles and State Policies), Article VII (The President), Article X (The Judiciary), Article XI (Local Government), Article XII (The Constitutional Commissions), Article XIII (Accountability of Public Officers), Article XIV (The National Economy and Patrimony of the Nation), Article XV (General Provisions) - were conditionally retained "insofar as they (were) not inconsistent with the provisions of the Proclamation." (Section 2, Proclamation No. 3, 25 March 1986.)

[14] Section 3, Proclamation No. 3, 25 March 1986.

[15] Article 1 (3), Charter of the United Nations.

[16] Article 17, Universal Declaration of Human Rights.

[17] 90 Phil 70

[18] 90 Phil 107

[19] 90 Phil 256

[20] 90 Phil 342

[21] *Aberca, et al. vs. Ver*, 160 SCRA 590; *Villar vs. TIP*, 135 SCRA 706; *Reyes vs. Bagatsing*, 210 Phil 457; *National Federation of Sugar Workers vs. Ethelworld*, 114 SCRA 354; *Salonga vs. Hermoso*, 97 SCRA 121; *PAFLU vs. Secretary of Labor*, 27 SCRA 41; *Boy Scouts of the Philippines vs. Arado*, 102 Phil 1080; *Municipal Governor of Caloocan vs. Chon Huat & Co.*, 96 Phil 80.

[22] Section 3, Article II, 1935 Constitution; Section 2, Article II, 1973 Constitution; Section 2 Article II, 1987 Constitution.

[23] *U.S. vs. Guinto*, 182 SCRA 644.

[24] Montreal Statement of the Assembly for Human Rights 2 (New York, 1968), as cited in Henkin, et al., *International Law Cases and Materials*, 2[nd] ed., 1987, p. 987.

[25] Sohn, *the New International Law: Protection of the Rights of Individuals Rather than States*, 32 *Am U.L. Rev.* 1, 1982, pp. 16-17.

[26] Jessup, *A Modern Law of Nations*, 1948, p. 17.

[27] O'Connell, *International law*, vol. 1, 2[nd] ed., 1970, p. 108.

[28] *Id.*

SEPARATE OPINION

TINGA, J.:

In a little less than a fortnight, I find myself privileged with my involvement in the final deliberation of quite a few significant public interest cases. Among them is the present case.

With the well-studied and exhaustive main opinion of Justice Antonio Carpio, the scholarly treatise that the separate opinion of Justice Reynato Puno is, and the equally incisive separate opinion of Justice Jose Vitug, any other opinion may appear unnecessary. But the questions posed are so challenging and the implications so far-reaching that I feel it is my duty to offer my modest views.

To begin with, there is unanimity as regards the nullity of the questioned seizure of items which are not listed in the search warrant. The disagreement relates to the juridical basis for voiding the confiscation. At the core of the controversy is the question of whether the Bill of Rights was in force and effect during the time gap between the establishment of the revolutionary government as a result of the People Power Revolution in February 1986, and the promulgation of the Provisional or Freedom Constitution by then President Corazon C. Aquino a month thereafter.

According to the majority, during the interregnum the Filipino people continued to enjoy, under the auspices of

the Universal Declaration of Human Rights ("Universal Declaration") and the International Covenant on Civil and Political Rights ("International Covenant"), practically the same rights under the Bill of Rights of the 1973 Constitution although the said Constitution itself was no longer operative then. Justice Puno posits that during that period, the right against unreasonable search and seizure still held sway, this time under the aegis of natural law. Justice Vitug is of the view that the Bill of Rights under the 1973 Constitution remained in force and effect mainly because the revolutionary government was bound to respect the Universal Declaration.

Interestingly, the case has necessitated a debate on jurisprudential thought.

Apparently, the majority adheres to the legal positivist theory championed by nineteenth century philosopher John Austin, who defined the essence of law as a distinct branch of morality or justice.[1] He and the English positivists believed that the essence of law is the simple idea of an order backed by threats.[2]

On the other side is Justice Puno's espousal of the natural law doctrine, which, despite its numerous forms and varied disguises, is still relevant in modern times as an important tool in political and legal thinking. Essentially, it has afforded a potent justification of the existing legal order and the social and economic system it embodies, for by regarding positive law as based on a higher law ordained by divine or natural reason, the actual legal system thus acquires stability or even sanctity it would not otherwise possess.[3]

While the two philosophies are poles apart in content, yet they are somehow cognate.[4] To illustrate, the Bill of Rights in the Constitution has its origins from natural law. Likewise a natural law document is the Universal Declaration.[5]

A professor of Jurisprudence notes the inexorable trend to codify fundamental rights:

The emphasis on individual liberty and freedom has been a distinctive feature of western political and legal philosophy since the seventeenth century, associated particularly with the doctrine of natural rights. In the twentieth century this doctrine has resulted in the widespread acceptance of the existence of fundamental rights built into the constitutional framework as a bill of rights, as well as receiving recognition internationally by means of Covenants of Human Rights agreed upon between states.

As such bill of rights--whether proffered as a statement of the inalienable and immutable rights of man vested in him by natural law, or as no more than a set of social and economic rights which the prevailing consensus and the climate of the times acknowledge to be necessary and fundamental in a just society--will inevitably take the form of a catalogue of those rights, which experience has taught modern western society to be crucial for the adequate protection of the individual and the integrity of his personality. We may therefore expect, in one form or another, the inclusion of a variety of freedoms, such as freedom of association, of religion, of free speech and of a free press.[6]

In the case at bar, in the ultimate analysis both jurisprudential doctrines have found application in the denouement of the case. The Bill of Rights in the Constitution, the Universal Declaration and the International Covenant, great documents of liberty and human rights all, are founded on natural law.

Going back to the specific question as to the juridical basis for the nullification of the questioned confiscation, I respectfully maintain that it is no less than the Freedom Constitution since it made the Bill of Rights in the 1973 Constitution operable from the incipency of the Aquino government.

In the well-publicised so-called "OIC cases,"[7] this Court issued an en banc resolution[8] dismissing the petitions and upholding the validity of the removal of the petitioners who were all elected and whose terms of office under the 1973 Constitution were to expire on June 30, 1986, on the basis of Article III, Section 2 of the Freedom Constitution, which reads:

SEC. 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such appointment is made within a period of one year from February 25, 1986.

This Court perforce extended retroactive effect to the above-quoted provision as the petitions except one[9] were filed before the adoption of the Freedom Constitution on March 25, 1986. That being the case, with greater reason should the Bill of Rights in the 1973 Constitution be accorded retroactive application pursuant to the Freedom Constitution.

But the more precise statement is that it was the unmistakable thrust of the Freedom Constitution to bestow uninterrupted operability to the Bill of Rights in the 1973 Constitution. For one thing, the title[10] itself of Proclamation No. 3 which ordained the Freedom Constitution, as well as one of the vital premises or whereas clauses[11] thereof, adverts to the "protection of the basic rights" of the people. For another, the Freedom Constitution in Article 1, Section 1 mandates that the Bill of Rights and other provisions of the Freedom Constitution specified therein "remain in force and effect and are hereby adopted in toto as part of this Provisional Constitution."

Of course, even if it is supposed that the Freedom Constitution had no retroactive effect or it did not extend the effectivity of the Bill of Rights in the 1973 Constitution, still there would be no void in the municipal or domestic law at the time as far as the observance of fundamental rights is concerned. The Bill of Rights in the 1973 Constitution would still be in force, independently of the Freedom Constitution, or at least the provisions thereof proscribing unreasonable search and seizure[12] and excluding evidence in violation of the proscription.[13]

Markedly departing from the typical, the revolutionary government installed by President Aquino was a benign government. It had chosen to observe prevailing constitutional restraints. An eloquent proof was the fact that through the defunct Philippine Constabulary, it applied for a search warrant and conducted the questioned search and seizure only after obtaining the warrant. Furthermore, President Aquino definitely pledged in her oath of office to uphold and defend the Constitution, which undoubtedly was the 1973 Constitution, including the Bill of Rights thereof.

True, the Aquino government reorganized the government, including the judiciary and the local officialdom. It did so to protect and stabilize the revolutionary government and not for the purpose of trampling upon the fundamental rights of the people.

While arguably the due process clause was not observed in the case of the sequestration orders issued by the Presidential Commission on Good Government, the fact remains that by and large, the Aquino Government elected and managed to uphold and honor the Bill of Rights.

In light of the foregoing, I concur in the result.

[1] John Austin, *The Province of Jurisprudence Determined* (New York: Humanities Press 1965); *Lectine VI* (New York: Humanities Press 1965 (1954 ed.)).

[2] H. L. Hart, *The Concept of Law* 16 (Oxford: Clarendon Press 1961).

[3] Cf. Hans Kelsen, *What is Justice?*, p. 137 et seq. (Univ. of California Press); also V. Gordon Childe, *What Happened in History?*, pp. 211-127; and Ross, *On Law and Justice* (1958), pp. 258-262.

[4] Although the positivist approach relegates natural law exclusively to the sphere of morals and religion and

segregates man-made law as a distinct phenomenon whose validity did not rest on divine or supernatural sanctions, it resembles the natural law philosophy in being primarily conceptual. Austin also interpreted both natural and positive law in terms of command: God's and the sovereigns, respectively. Likewise, some detect signs of the natural law doctrine in Jeremy Bentham's principle of utility. Lundstedt asserts that all schools of jurisprudence (except his own) adopt the natural law approach.

Professor Hart, the leader of contemporary positivism, has attempted to restate natural law from a semi-sociological point of view. He posits that there are certain substantive rules which are essential if human beings are to live continuously together in close proximity. (Lord Lloyd of Hampstead, *Introduction to Jurisprudence*, (4th ed), pp. 86, 90).

[5] Against the natural rights approach, Prof. Milne argues that human rights are simply what every human being owes to every other human being and as such represent universal moral obligations. These rights can be summarized as the right to life, to freedom from unprovoked violence and arbitrary coercion, to be dealt with honestly, to receive aid in distress and to be respected as a human person. He admits, however, that these are of only limited significance, as what they in fact amount to depends upon particular social and cultural contexts. What therefore a bill of rights should cover are not human rights simpliciter but rights regarded as of paramount importance in a particular society (A. J. M. Milne, "Should We Have a Bill of Rights?" (1977) 40 M.L.R. 389, cited in Lord of Hampstead, *supra*. at 99).

[6] Lord Lloyd of Hampstead, *supra* at 99.

[7] GR No. 73770, *Topacio, Jr. v. Pimentel*; GR No. 738111, *Velasco v. Pimentel*; GR No. 73823, *Governors of the Philippines v. Pimentel*; GR No. 73940, *the Municipal Mayor's League of the Philippines, et al. v. Pimentel*; and GR No. 73970, *Solis v. Pimentel, et al.*

[8] Resolution, Court En Banc dated April 10, 1986.

[9] G.R. No. 73970, *Solis v. Pimentel*.

[10] Declaring a National Policy to Implement The Reforms Mandated by the People, Protecting Their Basic Rights, Adopting a Provisional Constitution, and Providing For an Orderly Transition to a Government Under a New Constitution. (Emphasis supplied)

[11] WHEREAS, the direct mandate of the people as manifested by their extraordinary action demands the complete reorganization of the government, restoration of democracy, protection of basic rights, rebuilding of confidence in the entire governmental system, eradication of graft and corruption, restoration of peace and order, maintenance of the supremacy of civilian authority over the military, and the transition to a government under a New Constitution in the shortest time possible;

WHEREAS, during the period of transition to a New Constitution it must be guaranteed that the government will respect basic human rights and fundamental freedoms. (Emphasis supplied)

[12] Const., (1973), art. IV, sec. 2.

[13] Const., (1973), art. IV, sec. 4, par. 2.

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