

**SANLAKAS, REPRESENTED BY REP. J.V. BAUTISTA, AND PARTIDO NG MANGGAGAWA, REPRESENTED BY REP. RENATO MAGTUBO PETITIONERS, VS. EXECUTIVE SECRETARY SECRETARY ANGELO REYES, GENERAL N...**

*G.R. No. 159085. February 03, 2004*

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**TINGA, J.:**

They came in the middle of the night. Armed with high-powered ammunitions and explosives, some three hundred junior officers and enlisted men of the Armed Forces of the Philippines (AFP) stormed into the Oakwood Premiere apartments in Makati City in the wee hours of July 27, 2003. Bewailing the corruption in the AFP, the soldiers demanded, among other things, the resignation of the President, the Secretary of Defense and the Chief of the Philippine National Police (PNP).[1]

In the wake of the Oakwood occupation, the President issued later in the day Proclamation No. 427 and General Order No. 4, both declaring “a state of rebellion” and calling out the Armed Forces to suppress the rebellion. Proclamation No. 427 reads in full:

PROCLAMATION NO. 427

DECLARING A STATE OF REBELLION

WHEREAS, certain elements of the Armed Forces of the Philippines, armed with high-powered firearms and explosives, acting upon the instigation and command and direction of known and unknown leaders, have seized a building in Makati City, put bombs in the area, publicly declared withdrawal of support for, and took arms against the duly constituted Government, and continue to rise publicly and show open hostility, for the purpose of removing allegiance to the Government certain bodies of the Armed Forces of the Philippines and the Philippine National Police, and depriving the President of the Republic of the Philippines, wholly or partially, of her powers and prerogatives which constitute the crime of rebellion punishable under Article 134 of the Revised Penal Code, as amended;

WHEREAS, these misguided elements of the Armed Forces of the Philippines are being supported, abetted and aided by known and unknown leaders, conspirators and plotters in the government service and outside the government;

WHEREAS, under Section 18, Article VII of the present Constitution, whenever it becomes necessary, the President, as the Commander-in-Chief of the Armed Forces of the Philippines, may call out such Armed Forces to suppress the rebellion;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, by virtue of the powers vested in me by law, hereby confirm the existence of an actual and on-going rebellion, compelling me to declare a state of rebellion.

In view of the foregoing, I am issuing General Order No. 4 in accordance with Section 18, Article VII of the Constitution, calling out the Armed Forces of the Philippines and the Philippine National Police to immediately carry out the necessary actions and measures to suppress and quell the rebellion with due regard

to constitutional rights.

General Order No. 4 is similarly worded:

GENERAL ORDER NO. 4

DIRECTING THE ARMED FORCES OF THE PHILIPPINES AND THE PHILIPPINE NATIONAL POLICE TO SUPPRESS REBELLION

WHEREAS, certain elements of the Armed Forces of the Philippines, armed with high-powered firearms and explosives, acting upon the instigation and command and direction of known and unknown leaders, have seized a building in Makati City, put bombs in the area, publicly declared withdrawal of support for, and took arms against the duly constituted Government, and continue to rise publicly and show open hostility, for the purpose of removing allegiance to the Government certain bodies of the Armed Forces of the Philippines and the Philippine National Police, and depriving the President of the Republic of the Philippines, wholly or partially, of her powers and prerogatives which constitute the crime of rebellion punishable under Article 134 et seq. of the Revised Penal Code, as amended;

WHEREAS, these misguided elements of the Armed Forces of the Philippines are being supported, abetted and aided by known and unknown leaders, conspirators and plotters in the government service and outside the government;

WHEREAS, under Section 18, Article VII of the present Constitution, whenever it becomes necessary, the President, as the Commander-in-Chief of all Armed Forces of the Philippines, may call out such Armed Forces to suppress the rebellion;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, by virtue of the powers vested in me by the Constitution as President of the Republic of the Philippines and Commander-in-Chief of all the armed forces of the Philippines and pursuant to Proclamation No. 427 dated July 27, 2003, do hereby call upon the Armed Forces of the Philippines and the Philippine National Police to suppress and quell the rebellion.

I hereby direct the Chief of the Armed Forces of the Philippines and the Chief of the Philippine National Police and the officers and men of the Armed Forces of the Philippines and the Philippine National Police to immediately carry out the necessary and appropriate actions and measures to suppress and quell the rebellion with due regard to constitutional rights.

By the evening of July 27, 2003, the Oakwood occupation had ended. After hours-long negotiations, the soldiers agreed to return to barracks. The President, however, did not immediately lift the declaration of a state of rebellion and did so only on August 1, 2003, through Proclamation No. 435:

DECLARING THAT THE STATE OF REBELLION HAS CEASED TO EXIST

WHEREAS, by virtue of Proclamation No. 427 dated July 27, 2003, a state of rebellion was declared;

WHEREAS, by virtue of General Order No. 4 dated July 27, 2003, which was issued on the basis of Proclamation No. 427 dated July 27, 2003, and pursuant to Article VII, Section 18 of the Constitution, the Armed Forces of the Philippines and the Philippine National Police were directed to suppress and quell the rebellion;

WHEREAS, the Armed Forces of the Philippines and the Philippine National Police have effectively suppressed and quelled the rebellion.

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, hereby declare that the state of rebellion has ceased to exist.

In the interim, several petitions were filed before this Court challenging the validity of Proclamation No. 427 and General Order No. 4.

In G.R. No. 159085 (Sanlakas and PM v. Executive Secretary, et al.),<sup>[2]</sup> party-list organizations Sanlakas and Partido ng Manggagawa (PM), contend that Section 18, Article VII of the Constitution does not require the declaration of a state of rebellion to call out the armed forces.<sup>[3]</sup> They further submit that, because of the cessation of the Oakwood occupation, there exists no sufficient factual basis for the proclamation by the President of a state of rebellion for an indefinite period.<sup>[4]</sup>

Petitioners in G.R. No. 159103 (SJS Officers/Members v. Hon. Executive Secretary, et al.) are officers/members of the Social Justice Society (SJS), “Filipino citizens, taxpayers, law professors and bar reviewers.”<sup>[5]</sup> Like Sanlakas and PM, they claim that Section 18, Article VII of the Constitution does not authorize the declaration of a state of rebellion.<sup>[6]</sup> They contend that the declaration is a “constitutional anomaly” that “confuses, confounds and misleads” because “[o]verzealous public officers, acting pursuant to such proclamation or general order, are liable to violate the constitutional right of private citizens.”<sup>[7]</sup> Petitioners also submit that the proclamation is a circumvention of the report requirement under the same Section 18, Article VII, commanding the President to submit a report to Congress within 48 hours from the proclamation of martial law.<sup>[8]</sup> Finally, they contend that the presidential issuances cannot be construed as an exercise of emergency powers as Congress has not delegated any such power to the President.<sup>[9]</sup>

In G.R. No. 159185 (Rep. Suplico et al. v. President Macapagal-Arroyo and Executive Secretary Romulo), petitioners brought suit as citizens and as Members of the House of Representatives whose rights, powers and functions were allegedly affected by the declaration of a state of rebellion.<sup>[10]</sup> Petitioners do not challenge the power of the President to call out the Armed Forces.<sup>[11]</sup> They argue, however, that the declaration of a state of rebellion is a “superfluity,” and is actually an exercise of emergency powers.<sup>[12]</sup> Such exercise, it is contended, amounts to a usurpation of the power of Congress granted by Section 23 (2), Article VI of the Constitution.<sup>[13]</sup>

In G.R. No. 159196 (Pimentel v. Romulo, et al.), petitioner Senator assails the subject presidential issuances as “an unwarranted, illegal and abusive exercise of a martial law power that has no basis under the Constitution.”<sup>[14]</sup> In the main, petitioner fears that the declaration of a state of rebellion “opens the door to the unconstitutional implementation of warrantless arrests” for the crime of rebellion.<sup>[15]</sup>

Required to comment, the Solicitor General argues that the petitions have been rendered moot by the lifting of the declaration.<sup>[16]</sup> In addition, the Solicitor General questions the standing of the petitioners to bring suit.<sup>[17]</sup>

The Court agrees with the Solicitor General that the issuance of Proclamation No. 435, declaring that the state of rebellion has ceased to exist, has rendered the case moot. As a rule, courts do not adjudicate moot cases, judicial power being limited to the determination of “actual controversies.”<sup>[18]</sup> Nevertheless, courts will decide a question, otherwise moot, if it is “capable of repetition yet evading review.”<sup>[19]</sup> The case at bar is one such case.

Once before, the President on May 1, 2001 declared a state of rebellion and called upon the AFP and the PNP to suppress the rebellion through Proclamation No. 38 and General Order No. 1. On that occasion, “an angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons’ assaulted and attempted to break into Malacañang.”<sup>[20]</sup> Petitions were filed before this Court assailing the validity of the President’s declaration. Five days after such declaration, however, the President lifted the same. The mootness of the petitions in *Lacson v. Perez* and accompanying cases<sup>[21]</sup> precluded this Court from addressing the constitutionality of the declaration.

To prevent similar questions from reemerging, we seize this opportunity to finally lay to rest the validity of the

declaration of a state of rebellion in the exercise of the President's calling out power, the mootness of the petitions notwithstanding.

Only petitioners Rep. Suplico et al. and Sen. Pimentel, as Members of Congress, have standing to challenge the subject issuances. In *Philippine Constitution Association v. Enriquez*, [22] this Court recognized that:

To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution.

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts.

Petitioner Members of Congress claim that the declaration of a state of rebellion by the President is tantamount to an exercise of Congress' emergency powers, thus impairing the lawmakers' legislative powers. Petitioners also maintain that the declaration is a subterfuge to avoid congressional scrutiny into the President's exercise of martial law powers.

Petitioners Sanlakas and PM, and SJS Officers/Members, have no legal standing or locus standi to bring suit. "Legal standing" or locus standi has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.... The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." [23]

Petitioners Sanlakas and PM assert that:

2. As a basic principle of the organizations and as an important plank in their programs, petitioners are committed to assert, defend, protect, uphold, and promote the rights, interests, and welfare of the people, especially the poor and marginalized classes and sectors of Philippine society. Petitioners are committed to defend and assert human rights, including political and civil rights, of the citizens.

3. Members of the petitioner organizations resort to mass actions and mobilizations in the exercise of their Constitutional rights to peaceably assemble and their freedom of speech and of expression under Section 4, Article III of the 1987 Constitution, as a vehicle to publicly ventilate their grievances and legitimate demands and to mobilize public opinion to support the same. [24] [Emphasis in the original.]

Petitioner party-list organizations claim no better right than the *Laban ng Demokratikong Pilipino*, whose standing this Court rejected in *Lacson v. Perez*:

... petitioner has not demonstrated any injury to itself which would justify the resort to the Court. Petitioner is a juridical person not subject to arrest. Thus, it cannot claim to be threatened by a warrantless arrest. Nor is it alleged that its leaders, members, and supporters are being threatened with warrantless arrest and detention for the crime of rebellion. Every action must be brought in the name of the party whose legal rights has been invaded or infringed, or whose legal right is under imminent threat of invasion or infringement.

At best, the instant petition may be considered as an action for declaratory relief, petitioner claiming that it['s] right to freedom of expression and freedom of assembly is affected by the declaration of a "state of rebellion" and that said proclamation is invalid for being contrary to the Constitution.

However, to consider the petition as one for declaratory relief affords little comfort to petitioner, this Court not having jurisdiction in the first instance over such a petition. Section 5 [1], Article VIII of the Constitution limits the original jurisdiction of the court to cases affecting ambassadors, other public ministers and consuls,

and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.[25]

Even assuming that petitioners are “people’s organizations,” this status would not vest them with the requisite personality to question the validity of the presidential issuances, as this Court made clear in *Kilosbayan v. Morato*: [26]

The Constitution provides that “the State shall respect the role of independent people’s organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means,” that their right to “effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged.” (Art. XIII, §§15-16)

These provisions have not changed the traditional rule that only real parties in interest or those with standing, as the case may be, may invoke the judicial power. The jurisdiction of this Court, even in cases involving constitutional questions, is limited by the “case and controversy” requirement of Art. VIII, §5. This requirement lies at the very heart of the judicial function. It is what differentiates decisionmaking in the courts from decisionmaking in the political departments of the government and bars the bringing of suits by just any party.[27]

That petitioner SJS officers/members are taxpayers and citizens does not necessarily endow them with standing. A taxpayer may bring suit where the act complained of directly involves the illegal disbursement of public funds derived from taxation.[28] No such illegal disbursement is alleged.

On the other hand, a citizen will be allowed to raise a constitutional question only when he can show that he has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.[29] Again, no such injury is alleged in this case.

Even granting these petitioners have standing on the ground that the issues they raise are of transcendental importance, the petitions must fail.

It is true that for the purpose of exercising the calling out power the Constitution does not require the President to make a declaration of a state of rebellion. Section 18, Article VII provides:

Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis for the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the

civil courts or legislative assemblies, nor authorize the conferment of the jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. [Emphasis supplied.]

The above provision grants the President, as Commander-in-Chief, a “sequence” of “graduated power[s].”[30] From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of habeas corpus, and the power to declare martial law. In the exercise of the latter two powers, the Constitution requires the concurrence of two conditions, namely, an actual invasion or rebellion, and that public safety requires the exercise of such power.[31] However, as we observed in *Integrated Bar of the Philippines v. Zamora*,[32] “[t]hese conditions are not required in the exercise of the calling out power. The only criterion is that ‘whenever it becomes necessary,’ the President may call the armed forces ‘to prevent or suppress lawless violence, invasion or rebellion.’”

Nevertheless, it is equally true that Section 18, Article VII does not expressly prohibit the President from declaring a state of rebellion. Note that the Constitution vests the President not only with Commander-in-Chief powers but, first and foremost, with Executive powers.

Section 1, Article VII of the 1987 Philippine Constitution states: “The executive power shall be vested in the President....” As if by exposition, Section 17 of the same Article provides: “He shall ensure that the laws be faithfully executed.” The provisions trace their history to the Constitution of the United States.

The specific provisions of the U.S. Constitution granting the U.S. President executive and commander-in-chief powers have remained in their original simple form since the Philadelphia Constitution of 1776, Article II of which states in part:

Section 1. 1. The Executive Power shall be vested in a President of the United States of America . . . .

. . . .

Section 2. 1. The President shall be Commander in Chief of the Army and Navy of the United States. . . .

. . . .

Section 3. ... he shall take care that the laws be faithfully executed.... [Article II – Executive Power]

Recalling in historical vignettes the use by the U.S. President of the above-quoted provisions, as juxtaposed against the corresponding action of the U.S. Supreme Court, is instructive. Clad with the prerogatives of the office and endowed with sovereign powers, which are drawn chiefly from the Executive Power and Commander-in-Chief provisions, as well as the presidential oath of office, the President serves as Chief of State or Chief of Government, Commander-in-Chief, Chief of Foreign Relations and Chief of Public Opinion.[33]

First to find definitive new piers for the authority of the Chief of State, as the protector of the people, was President Andrew Jackson. Coming to office by virtue of a political revolution, Jackson, as President not only kept faith with the people by driving the patricians from power. Old Hickory, as he was fondly called, was the first President to champion the indissolubility of the Union by defeating South Carolina’s nullification effort.[34]

The Federal Tariff Acts of 1828 and 1832 that Congress enacted did not pacify the hotspurs from South Carolina.

Its State Legislature ordered an election for a convention, whose members quickly passed an Ordinance of Nullification. The Ordinance declared the Tariff Acts unconstitutional, prohibited South Carolina citizens from obeying them after a certain date in 1833, and threatened secession if the Federal Government sought to oppose the tariff laws. The Legislature then implemented the Ordinance with bristling punitive laws aimed at any who sought to pay or collect customs duties.[35]

Jackson bided his time. His task of enforcement would not be easy. Technically, the President might send troops into a State only if the Governor called for help to suppress an insurrection, which would not occur in the instance. The President could also send troops to see to it that the laws enacted by Congress were faithfully executed. But these laws were aimed at individual citizens, and provided no enforcement machinery against violation by a State. Jackson prepared to ask Congress for a force bill.[36]

In a letter to a friend, the President gave the essence of his position. He wrote: “. . . when a faction in a State attempts to nullify a constitutional law of Congress, or to destroy the Union, the balance of the people composing this Union have a perfect right to coerce them to obedience.” Then in a Proclamation he issued on December 10, 1832, he called upon South Carolinians to realize that there could be no peaceable interference with the execution of the laws, and dared them, “disunion by armed force is treason. Are you ready to incur its guilt?” [37]

The Proclamation frightened nullifiers, non-nullifiers and tight-rope walkers. Soon, State Legislatures began to adopt resolutions of agreement, and the President announced that the national voice from Maine on the north to Louisiana on the south had declared nullification and accession “confined to contempt and infamy.”[38]

No other President entered office faced with problems so formidable, and enfeebled by personal and political handicaps so daunting, as Abraham Lincoln.

Lincoln believed the President’s power broad and that of Congress explicit and restricted, and sought some source of executive power not failed by misuse or wrecked by sabotage. He seized upon the President’s designation by the Constitution as Commander-in-Chief, coupled it to the executive power provision — and joined them as “the war power” which authorized him to do many things beyond the competence of Congress.[39]

Lincoln embraced the Jackson concept of the President’s independent power and duty under his oath directly to represent and protect the people. In his Message of July 4, 1861, Lincoln declared that “the Executive found the duty of employing the war power in defense of the government forced upon him. He could not but perform the duty or surrender the existence of the Government . . . .” This concept began as a transition device, to be validated by Congress when it assembled. In less than two-years, it grew into an independent power under which he felt authorized to suspend the privilege of the writ of habeas corpus, issue the Emancipation Proclamation, and restore reoccupied States.[40]

Lincoln’s Proclamation of April 15, 1861, called for 75,000 troops. Their first service, according to the proclamation, would be to recapture forts, places and property, taking care “to avoid any devastation, any destruction of or interference with property, or any disturbance of peaceful citizens.”[41]

Early in 1863, the U.S. Supreme Court approved President Lincoln’s report to use the war powers without the benefit of Congress. The decision was handed in the celebrated Prize Cases[42] which involved suits attacking the President’s right to legally institute a blockade. Although his Proclamation was subsequently validated by Congress, the claimants contended that under international law, a blockade could be instituted only as a measure of war under the sovereign power of the State. Since under the Constitution only Congress is exclusively empowered to declare war, it is only that body that could impose a blockade and all prizes seized before the legislative declaration were illegal. By a 5 to 4 vote, the Supreme Court upheld Lincoln’s right to act as he

had.[43]

In the course of time, the U.S. President's power to call out armed forces and suspend the privilege of the writ of habeas corpus without prior legislative approval, in case of invasion, insurrection, or rebellion came to be recognized and accepted. The United States introduced the expanded presidential powers in the Philippines through the Philippine Bill of 1902.[44] The use of the power was put to judicial test and this Court held that the case raised a political question and said that it is beyond its province to inquire into the exercise of the power.[45] Later, the grant of the power was incorporated in the 1935 Constitution.[46]

Elected in 1884, Grover Cleveland took his ascent to the presidency to mean that it made him the trustee of all the people. Guided by the maxim that "Public office is a public trust," which he practiced during his incumbency, Cleveland sent federal troops to Illinois to quell striking railway workers who defied a court injunction. The injunction banned all picketing and distribution of handbills. For leading the strikes and violating the injunction, Debs, who was the union president, was convicted of contempt of court. Brought to the Supreme Court, the principal issue was by what authority of the Constitution or statute had the President to send troops without the request of the Governor of the State.[47]

In *In Re: Eugene Debs, et al*,[48] the Supreme Court upheld the contempt conviction. It ruled that it is not the government's province to mix in merely individual present controversies. Still, so it went on, "whenever wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the Nation and concerning which the Nation owes the duty to all citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary interest in the controversy is not sufficient to exclude it from the Courts, or prevent it from taking measures therein to fully discharge those constitutional duties." [49] Thus, Cleveland's course had the Court's attest.

Taking off from President Cleveland, President Theodore Roosevelt launched what political scientists dub the "stewardship theory." Calling himself "the steward of the people," he felt that the executive power "was limited only by the specific restrictions and prohibitions appearing in the Constitution, or impleaded by Congress under its constitutional powers." [50]

The most far-reaching extension of presidential power "T.R." ever undertook to employ was his plan to occupy and operate Pennsylvania's coal mines under his authority as Commander-in-Chief. In the issue, he found means other than force to end the 1902 hard-coal strike, but he had made detailed plans to use his power as Commander-in-Chief to wrest the mines from the stubborn operators, so that coal production would begin again.[51]

Eventually, the power of the State to intervene in and even take over the operation of vital utilities in the public interest was accepted. In the Philippines, this led to the incorporation of Section 6,[52] Article XIII of the 1935 Constitution, which was later carried over with modifications in Section 7,[53] Article XIV of the 1973 Constitution, and thereafter in Section 18,[54] Article XII of the 1987 Constitution.

The lesson to be learned from the U.S. constitutional history is that the Commander-in-Chief powers are broad enough as it is and become more so when taken together with the provision on executive power and the presidential oath of office. Thus, the plenitude of the powers of the presidency equips the occupant with the means to address exigencies or threats which undermine the very existence of government or the integrity of the State.

In *The Philippine Presidency A Study of Executive Power*, the late Mme. Justice Irene R. Cortes, proposed that the Philippine President was vested with residual power and that this is even greater than that of the U.S. President. She attributed this distinction to the "unitary and highly centralized" nature of the Philippine

government. She noted that, “There is no counterpart of the several states of the American union which have reserved powers under the United States constitution.” Elaborating on the constitutional basis for her argument, she wrote:

.... The [1935] Philippine [C]onstitution establishes the three departments of the government in this manner: “The legislative power shall be vested in a Congress of the Philippines which shall consist of a Senate and a House of Representatives.” “The executive power shall be vested in a President of the Philippines.” The judicial powers shall be vested in one Supreme Court and in such inferior courts as may be provided by law.” These provisions not only establish a separation of powers by actual division but also confer plenary legislative, executive, and judicial powers. For as the Supreme Court of the Philippines pointed out in *Ocampo v. Cabangis*, “a grant of legislative power means a grant of all the legislative power; and a grant of the judicial power means a grant of all the judicial power which may be exercised under the government.” If this is true of the legislative power which is exercised by two chambers with a combined membership [at that time] of more than 120 and of the judicial power which is vested in a hierarchy of courts, it can equally if not more appropriately apply to the executive power which is vested in one official — the president. He personifies the executive branch. There is a unity in the executive branch absent from the two other branches of government. The president is not the chief of many executives. He is the executive. His direction of the executive branch can be more immediate and direct than the United States president because he is given by express provision of the constitution control over all executive departments, bureaus and offices.[55]

The esteemed Justice conducted her study against the backdrop of the 1935 Constitution, the framers of which, early on, arrived at a general opinion in favor of a strong Executive in the Philippines.”[56] Since then, reeling from the aftermath of martial law, our most recent Charter has restricted the President’s powers as Commander-in-Chief. The same, however, cannot be said of the President’s powers as Chief Executive.

In her ponencia in *Marcos v. Manglapus*, Justice Cortes put her thesis into jurisprudence. There, the Court, by a slim 8-7 margin, upheld the President’s power to forbid the return of her exiled predecessor. The rationale for the majority’s ruling rested on the President’s

... unstated residual powers which are implied from the grant of executive power and which are necessary for her to comply with her duties under the Constitution. The powers of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. This is so, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President as a reaction to the abuses under the regime of Mr. Marcos, for the result was a limitation of specific powers of the President, particularly those relating to the commander-in-chief clause, but not a diminution of the general grant of executive power.[57] [Underscoring supplied. Italics in the original.]

Thus, the President’s authority to declare a state of rebellion springs in the main from her powers as chief executive and, at the same time, draws strength from her Commander-in-Chief powers. Indeed, as the Solicitor General accurately points out, statutory authority for such a declaration may be found in Section 4, Chapter 2 (Ordinance Power), Book III (Office of the President) of the Revised Administrative Code of 1987, which states:

SEC. 4. Proclamations. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order. [Emphasis supplied.]

The foregoing discussion notwithstanding, in calling out the armed forces, a declaration of a state of rebellion is an utter superfluity.[58] At most, it only gives notice to the nation that such a state exists and that the armed forces may be called to prevent or suppress it.[59] Perhaps the declaration may wreak emotional effects upon the

perceived enemies of the State, even on the entire nation. But this Court's mandate is to probe only into the legal consequences of the declaration. This Court finds that such a declaration is devoid of any legal significance. For all legal intents, the declaration is deemed not written.

Should there be any "confusion" generated by the issuance of Proclamation No. 427 and General Order No. 4, we clarify that, as the dissenters in *Lacson* correctly pointed out, the mere declaration of a state of rebellion cannot diminish or violate constitutionally protected rights.[60] Indeed, if a state of martial law does not suspend the operation of the Constitution or automatically suspend the privilege of the writ of habeas corpus,[61] then it is with more reason that a simple declaration of a state of rebellion could not bring about these conditions.[62] At any rate, the presidential issuances themselves call for the suppression of the rebellion "with due regard to constitutional rights."

For the same reasons, apprehensions that the military and police authorities may resort to warrantless arrests are likewise unfounded. In *Lacson vs. Perez*, *supra*, majority of the Court held that "[i]n quelling or suppressing the rebellion, the authorities may only resort to warrantless arrests of persons suspected of rebellion, as provided under Section 5, Rule 113 of the Rules of Court,[63] if the circumstances so warrant. The warrantless arrest feared by petitioners is, thus, not based on the declaration of a 'state of rebellion.'"[64] In other words, a person may be subjected to a warrantless arrest for the crime of rebellion whether or not the President has declared a state of rebellion, so long as the requisites for a valid warrantless arrest are present.

It is not disputed that the President has full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power. While the Court may examine whether the power was exercised within constitutional limits or in a manner constituting grave abuse of discretion, none of the petitioners here have, by way of proof, supported their assertion that the President acted without factual basis.[65]

The argument that the declaration of a state of rebellion amounts to a declaration of martial law and, therefore, is a circumvention of the report requirement, is a leap of logic. There is no indication that military tribunals have replaced civil courts in the "theater of war" or that military authorities have taken over the functions of civil government. There is no allegation of curtailment of civil or political rights. There is no indication that the President has exercised judicial and legislative powers. In short, there is no illustration that the President has attempted to exercise or has exercised martial law powers.

Nor by any stretch of the imagination can the declaration constitute an indirect exercise of emergency powers, which exercise depends upon a grant of Congress pursuant to Section 23 (2), Article VI of the Constitution:

Sec. 23. (1) ....

(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

The petitions do not cite a specific instance where the President has attempted to or has exercised powers beyond her powers as Chief Executive or as Commander-in-Chief. The President, in declaring a state of rebellion and in calling out the armed forces, was merely exercising a wedding of her Chief Executive and Commander-in-Chief powers. These are purely executive powers, vested on the President by Sections 1 and 18, Article VII, as opposed to the delegated legislative powers contemplated by Section 23 (2), Article VI.

WHEREFORE, the petitions are hereby DISMISSED.

**SO ORDERED.**

Carpio, Corona, and Carpio-Morales, JJ., concur.

Davide, Jr., C.J., in the result.

Puno, J., in the result.

Vitug, J., see separate opinion.

Panganiban, J., see separate opinion.

Quisumbing, J., joins J. Panganiban's Opinion.

Ynares-Santiago, J., see separate opinion.

Sandoval-Gutierrez, J., please see dissenting opinion.

Austria-Martinez, J., concur in the result.

Callejo, Sr., J., concurs in the separate opinion of J. Panganiban.

Azcuna, J., on official leave.

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[1] Rollo, G.R. No. 159085, p. 7; Rollo, G.R. No. 159103, pp. 4-5; Rollo, G.R. No. 159185, pp. 4-5; Rollo, G.R. No. 159186, p. 9.

[2] The Court in a Resolution dated August 5, 2003 (Rollo, G.R. No. 159086, p. 18) previously dismissed the Sanlakas petition for failure to attach certified true copies of Proclamation No. 427 and General Order No. 4, and for failure to explain why service of the petition on respondents was not made personally. Petitioners subsequently filed a motion for leave to admit the petition with compliance for reconsideration, attaching therewith a certified copy of the impugned Proclamation and General Order. The Court, in a Resolution dated August 12, 2003 (Id., at 73) granted petitioners' motion for leave and reinstated the petition.

[3] Id., at 10-12.

[4] Id., at 13-14.

[5] Rollo, G.R. No. 159103, p. 4.

[6] Id., at 6.

[7] Id., at 8.

[8] Id., at 7.

[9] Ibid.

[10] Rollo, G.R. No. 159185, p. 5.

[11] Id., at 10.

[12] Ibid.

[13] Ibid.

[14] Rollo, G.R. No. 159196, p. 7.

- [15] *Id.*, at 17.
- [16] Rollo, G.R. No. 159085, p. 45; Rollo, G.R. No. 159103, p. 23; Rollo, G.R. No. 159185, p. 22; Rollo, G.R. No. 159186, p. 41.
- [17] Rollo, G.R. No. 159085, pp. 44-45; Rollo, G.R. No. 159103, pp. 22-23; Rollo, G.R. No. 159185, pp. 21-22; Rollo, G.R. No. 159186, pp. 40-41.
- [18] CONST., art. VIII, sec. 1; *Dumlao v. COMELEC*, G.R. No. L-52245, January 22, 1980, 95 SCRA 392.
- [19] *Alunan III v. Mirasol*, G.R. No. 108399, July 31, 1997, 276 SCRA 501.
- [20] *Lacson v. Perez*, G.R. No. 147780, May 10, 2001, 357 SCRA 757, 762.
- [21] *Supra*.
- [22] G.R. No. 113105, August 19, 1994, 235 SCRA 506.
- [23] *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81.
- [24] Rollo, G.R. No. 159085, p. 6.
- [25] *Lacson v. Perez*, *supra*, at 766.
- [26] G.R. No. 118910, November 19, 1995, 250 SCRA 130.
- [27] *Id.*, at 139.
- [28] *Bayan (Bagong Alyansang Makabayan) v. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449.
- [29] G.R. No. 132922, April 21, 1998, *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*, 289 SCRA 337.
- [30] II Record of the Constitutional Commission 409.
- [31] *Integrated Bar of the Philippines v. Zamora*, *supra* at 110.
- [32] *Ibid*.
- [33] In the Philippines, the President is called the Chief Executive.
- [34] Milton, *The Use of Presidential Power, 1789-1943*, pp. 73, 86-90.
- [35] *Id.*, at 91.
- [36] *Id.*, at 92.
- [37] *Ibid*.
- [38] Milton, at 91-92.
- [39] *Id.*, at 109.
- [40] *Ibid*.
- [41] *Ibid*.
- [42] 2 Black 635, 17 L. 459 (1863).
- [43] Milton, at 110.

[44] A paragraph of section 5 of the act of the U.S. Congress of July 1, 1902, otherwise known as the Philippine Bill of 1902, provides: “That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor-General with the approval of the Philippine Commission, whenever during such period the necessity for such suspension shall exist.”

[45] *Barcelon v. Baker*, 5 Phil. 87, 103 (1905).

[46] Sec. 10, Art. VII, 1935 Const.

[47] Milton, 168-170; Peter Irons, *A PEOPLE’S HISTORY OF THE SUPREME COURT*, Published by the Penguin Group: New York, N.Y. , 1999, pp. 245-247.

**[48] 158 U.S. 1092 (1894).**

[49] *Id.*, at 1103.

[50] Milton, at 110. In *An Autobiography*, Roosevelt wrote:

The most important factor in getting the right spirit in my Administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people, was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all, executive officer in high position was a steward of the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws. Under this interpretation of the executive power, I did and caused to be done many things not previously done by the President and the heads of the Departments. I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the public welfare, I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition. I did not care a rap for the mere form and show of power; I cared immensely for the use that could be made of the substance. [*An Autobiography*, 389 (1913) New York.]

William Howard Taft took the opposite view. He opined that “the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise. Such specific grant must be either in the Constitution or in an act of Congress passed in pursuance thereof. There is no undefined residuum of power which he can exercise because it seems to be in the public interest.”<sup>50</sup> (*Our Chief Magistrate and His Powers*, 139-142 (1916) New York.) Later, however, Taft, as Chief Justice, would change his view. See *Myers v. United States*, 272 US 52, 71 L Ed 160, 47 SC 21 (1926), holding that “The words of § 2, following the general grant of executive power under § 1 were either an enumeration of specific functions of the Executive, not all inclusive, or were limitations upon the general grant of the executive power, and as such, being limitations, should not be enlarged beyond the words used.”

[51] Milton, at 179.

[52] The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

[53] In times of national emergency when the public interest so requires, the State may temporarily take over and

direct the operation of any privately owned public utility or business affected with public interest.

[54] In times of national emergency when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

[55] Cortes, THE PHILIPPINE PRESIDENCY, A STUDY OF EXECUTIVE POWER, pp. 68-69.

[56] I Arugeo, THE FRAMING OF THE CONSTITUTIONAL CONVENTION 397 (1949) Manila.

[57] Marcos v. Manglapus, G.R. No. 88211, October 27, 1989, 178 SCRA 760, 763-764.

[58] See Lacson v. Perez, supra, Kapunan, J., dissenting, at 773, 776.

[59] Ibid.

[60] Ibid.

[61] Const., art. VII, sec. 18.

[62] Lacson v. Perez, supra, Sandoval-Gutierrez dissenting, at 792-793.

[63] SEC. 5. Arrests without warrant; when lawful. — A police officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, or is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it;

....

[64] Lacson v. Perez, supra, at 763.

[65] IBP v. Zamora, supra.

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## SEPARATE OPINION

**VITUG, J.:**

I am in complete agreement, eloquently expressed in the ponencia, that a “declaration of a state of rebellion is an utter superfluity,” which, at most, merely gives notice “that such a state exists and that the armed forces may be called to prevent or suppress it.” I also agree that the declaration of a state of rebellion does not diminish constitutionally protected rights.

I find it necessary to emphasize, however, that while this Court considers the proclamation of the state of rebellion as being essentially devoid of any legal significance, it is not, however, to be understood as countenancing the commission of acts ostensibly in pursuance thereof but which may, in themselves, be violative of fundamental rights. Indeed, the warrantless arrests and searches, to which my colleague Mme. Justice Ynares-Santiago made reference in her dissenting opinion, may not necessarily find justification in the bare proclamation.

I vote for the dismissal of the petitions.

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## SEPARATE OPINION

### PANGANIBAN, J.:

Petitioners challenge the constitutionality of the “state of rebellion” declared by the President through Proclamation No. 427 and General Order No. 4 in the wake of the so-called “Oakwood Incident.” The questioned issuances, however, were subsequently lifted by her on August 1, 2003, when she issued Proclamation No. 435. Hence, as of today, there is no more extant proclamation or order that can be declared valid or void.

For this reason, I believe that the Petitions should be dismissed on the ground of mootness.

The judicial power to declare a law or an executive order unconstitutional, according to Justice Jose P. Laurel, is “limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.”[1] Following this long-held principle, the Court has thus always been guided by these fourfold requisites in deciding constitutional law issues: 1) there must be an actual case or controversy involving a conflict of rights susceptible of judicial determination; 2) the constitutional question must be raised by a proper party; 3) the constitutional question must be raised at the earliest opportunity; and 4) adjudication of the constitutional question must be indispensable to the resolution of the case.[2]

Unquestionably, the first and the forth requirements are absent in the present case.

#### Absence of Case and Controversy

The first requirement, the existence of a live case or controversy, means that an existing litigation is ripe for resolution and susceptible of judicial determination; as opposed to one that is conjectural or anticipatory,[3] hypothetical or feigned.[4] A justiciable controversy involves a definite and concrete dispute touching on the legal relations of parties having adverse legal interests.[5] Hence, it admits of specific relief through a decree that is conclusive in character, in contrast to an opinion which only advises what the law would be upon a hypothetical state of facts.[6]

As a rule, courts have no authority to pass upon issues through advisory opinions or friendly suits between parties without real adverse interests.[7] Neither do courts sit to adjudicate academic questions — no matter how intellectually challenging[8] — because without a justiciable controversy, an adjudication would be of no practical use or value.[9]

While the Petitions herein have previously embodied a live case or controversy, they now have been rendered extinct by the lifting of the questioned issuances. Thus, nothing is gained by breathing life into a dead issue.

Moreover, without a justiciable controversy, the Petitions[10] have become pleas for declaratory relief, over which the Supreme Court has no original jurisdiction. Be it remembered that they were filed directly with this Court and thus invoked its original jurisdiction.[11]

On the theory that the “state of rebellion” issue is “capable of repetition yet evading review,” I respectfully submit that the question may indeed still be resolved even after the lifting of the Proclamation and Order, provided the party raising it in a proper case has been and/or continue to be prejudiced or damaged as a direct result of their issuance.

In the present case, petitioners have not shown that they have been or continue to be directly and pecuniarily prejudiced or damaged by the Proclamation and Order. Neither have they shown that this Court has original jurisdiction over petitions for declaratory relief. I would venture to say that, perhaps, if this controversy had

emanated from an appealed judgment from a lower tribunal, then this Court may still pass upon the issue on the theory that it is “capable of repetition yet evading review,” and the case would not be an original action for declaratory relief.

In short, the theory of “capable of repetition yet evading review” may be invoked only when this Court has jurisdiction over the subject matter. It cannot be used in the present controversy for declaratory relief, over which the Court has no original jurisdiction.

#### The Resolution of the Case on Other Grounds

The fourth requisite, which relates to the absolute necessity of deciding the constitutional issue, means that the Court has no other way of resolving the case except by tackling an unavoidable constitutional question. It is a well-settled doctrine that courts will not pass upon a constitutional question unless it is the *lis mota* of the case, or if the case can be disposed on some other grounds.[12]

With due respect, I submit that the mootness of the Petitions has swept aside the necessity of ruling on the validity of Proclamation No. 427 and General order No. 4. In the wake of its mootness, the constitutionality issue has ceased to be the *lis mota* of the case or to be an unavoidable question in the resolution thereof. Hence, the dismissal of the Petitions for mootness is justified.[13]

WHEREFORE, I vote to DISMISS the Petitions. On the constitutionality of a “state of rebellion,” I reserve my judgment at the proper time and in the proper case.

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[1] *Angara v. Electoral Commission*, 63 Phil. 139, 158, July 15, 1936.

[2] *Mirasol v. Court of Appeals*, 351 SCRA 44, 53-54, February 1, 2001; *Board of Optometry v. Colet*, 260 SCRA 88, 103, July 30, 1996; *Lalican v. Hon. Vergara*, 342 Phil. 485, 498, July 31, 1997; *Philippine Constitution Association v. Enriquez*, 235 SCRA 506, 518-519, August 19, 1994.

[3] *Tan v. People*, 352 Phil. 724, 735, May 19, 1998; *Board of Optometry v. Colet*; *id.*, p. 104.

[4] *Guingona Jr. v. Court of Appeals*, 354 Phil. 415, 426, July 10, 1998; *Meralco Workers Union v. Yatco*, 125 Phil. 590, 594, January 30, 1967.

[5] *Guingona Jr. v. Court of Appeals*, *supra*.

[6] *Ibid.*

[7] *Ibid.*

[8] *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 811, October 31, 1955.

[9] *Jaafar v. COMELEC*, 364 Phil. 322, 328, March 15, 1999; *Philippine National Bank v. Court of Appeals*, 353 Phil. 473, 479, June 26, 1998; *Gancho-on v. Secretary of Labor and Employment*, 337 Phil. 654, 658, April 14, 1997.

[10] The Petitions were originally filed before the Supreme Court.

[11] The original jurisdiction of the Supreme Court under Section 5 (1) of Article VIII of the Constitution is limited to “petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.” Declaratory relief is

not included.

[12] *Mirasol v. Court of Appeals*, supra; *Intia Jr. v. COA*, 366 Phil. 273, 292, April 30, 1999, citing *Sotto v. Commission on Elections*, 76 Phil. 516, 522, April 16, 1946; *Lalican v. Hon. Vergara*, supra; *Ty v. Trampe*, 321 Phil. 81, 103, December 1, 1995; *Macasiano v. National Housing Authority*, 224 SCRA 236, 242, July 1, 1993.

[13] *Republic v. Hon. Judge Villarama Jr.*, 344 Phil. 288, 301, September 5, 1997; *Lachica v. Hon. Yap*, 134 Phil. 164, 168, September 25, 1968; *Meralco Workers Union v. Yatco*, supra.

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## SEPARATE OPINION

### YNARES-SANTIAGO, J.:

The fundamental issue in the petitions is the legality of Proclamation No. 427 issued by the President on July 27, 2003 declaring a “state of rebellion”.

The majority affirmed the declaration is legal because the President was only exercising a wedding of the “Chief Executive” and “Commander-in-Chief” powers. U.S. jurisprudence and commentators are cited discussing the awesome powers exercised by the U.S. President during moments of crisis<sup>[1]</sup> and that these powers are also available to the Philippine President.<sup>[2]</sup> Although the limits cannot be precisely defined, the majority concluded that there are enough “residual powers” to serve as the basis to support the Presidential declaration of a “state of rebellion”.<sup>[3]</sup> The majority, however, emphasized that the declaration cannot diminish or violate constitutionally protected rights.<sup>[4]</sup> They affirmed the legality of warrantless arrests of persons who participated in the rebellion, if circumstances so warrant<sup>[5]</sup> with this clarification: “[i]n other words, a person may be subjected to a warrantless arrests for the crime of rebellion whether or not the President has declared a state of rebellion, so long as the requisites for a valid warrantless arrest are present.”<sup>[6]</sup>

If the requisites for a warrantless arrests must still be present for an arrest to be made, then the declaration is a superfluity. I therefore shudder when a blanket affirmation is given to the President to issue declarations of a “state of rebellion” which in fact may not be the truth or which may be in affect even after the rebellion has ended.

Proclamation No. 427 was issued at 1:00 p.m. on July 27, 2003, at the height of the occupation of the Oakwood Premier Apartments in Ayala Center, Makati City, by 323 junior officers and enlisted men (Oakwood Incident),<sup>[7]</sup> which began in the early morning of July 27, 2003.<sup>[8]</sup> Shortly after, the President issued General Order No. 4, ordering the Armed Forces of the Philippines and the Philippine National Police to use reasonable force, and pay due regard to constitutional rights, in putting down the rebellion.<sup>[9]</sup> The Oakwood incident ended peacefully that same evening when the militant soldiers surrendered after negotiations.

From July 27 to August 1, 2003, “search and recovery” operations were conducted. Throughout the Oakwood Incident, searches were conducted in the non-occupied areas,<sup>[10]</sup> and, with the recovery of evidence, staging points for the Oakwood Incident were found in Cavite, Makati and Mandaluyong.<sup>[11]</sup> After the soldiers left at around 11:00 in the evening of July 27, a search was conducted around the Oakwood premises.<sup>[12]</sup> These searches expanded in scope on the basis of recovered evidence.<sup>[13]</sup>

Ramon Cardenas, Assistant Executive Secretary in the previous administration, was arrested, presented to the media in handcuffs and brought for inquest proceedings before the Department of Justice (“DOJ”) in the morning of July 28.<sup>[14]</sup> He was initially detained at the Office of the Anti-Organized Crime Division of the Criminal Investigation and Detection Group (“CIDG”), and brought to the DOJ in the afternoon of July 28.<sup>[15]</sup> Cardenas

was later charged with the crime of rebellion,[16] but as of this writing has been allowed bail.

On July 31, 2003, 4 days after the militant group had surrendered peacefully, an official spokesperson from the DOJ declared that the President's "indefinite" imposition of the "state of rebellion" would make "warrantless arrests" a valid exercise of executive power.

The Court can take judicial notice that the police authorities were releasing to media "evidence found" purporting to link personalities in the political opposition, the most prominent of whom was Senator Gringo Honasan. Even Senator Loi Ejercito and Mayor JV Ejercito's names were being linked to the attempted uprising.

On August 1, 2003, the President issued Proclamation No. 435, declaring that the Armed Forces of the Philippines and the Philippine National Police had effectively suppressed and quelled the rebellion, and, accordingly, that the "state of rebellion" had ceased on that date.

The majority discussed only the abstract nature of the powers exercised by the Chief Executive, without considering if there was sufficient factual basis for the President's declaration of a "state of rebellion" and when it ended. In taking this position, the majority is returning, if not expanding, the doctrine enunciated in *Garcia-Padilla v. Enrile*,[17] which overturned the landmark doctrine in *Lansang v. Garcia*. [18] In *Lansang*, the Supreme Court upheld its authority to inquire into the factual bases for the suspension of the privilege of the writ of habeas corpus, and held that this inquiry raises a judicial rather than a political question. In *Garcia-Padilla*, on the other hand, the ponencia held that *Lansang* was no longer authoritative, and that the President's decision to suspend the privilege is final and conclusive upon the courts and all other persons.

These two cases were decided prior to the 1987 Constitution, which requires this Court not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.[19] This provision in the 1987 Constitution was precisely meant to check abuses of executive power. Martial Law was still fresh in the minds of the delegates in 1987!

The majority ignored the fact that the "state of rebellion" declared by the President was in effect five days after the peaceful surrender of the militant group.

The President's proclamation cites Section 18, Article VII of the Constitution as the basis for the declaration of the "state of rebellion."

Section 18 authorizes the President, as Commander-in-Chief, to call out the Armed Forces, in order to suppress one of three conditions: (1) lawless violence, (2) rebellion or (3) invasion.[20] In the latter two cases, i.e., rebellion or invasion, the President may, when public safety requires, also (1) suspend the privilege of the writ of habeas corpus, or (2) place the Philippines or any part thereof under martial law.

The majority made it clear that exercise of the President's Commander-in-Chief powers does not require the declaration of a "state of rebellion" or a declaration of a "state of lawless violence" or a "state of invasion". When any of these conditions exist, the President may call out the armed forces to suppress the danger.

Thus, the declaration of a "state of rebellion" does not have any legal meaning or consequence. This declaration does not give the President any extra powers. It does not have any good purpose.

If the declaration is used to justify warrantless arrests even after the rebellion has ended, as in the case of *Cardenas*, such declaration or, at the least, the warrantless arrests, must be struck down.

Clearly defined in Article 134 of the Revised Penal Code is the crime of rebellion or insurrection, to wit:

ART. 134. Rebellion or insurrection — How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking up arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the legislature, wholly or partially, of any of their powers or prerogatives.

On the other hand, a coup d'etat is defined as follows:

ART. 134-A. Coup d'etat. — How committed. — The crime of coup d'etat is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against the duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications networks, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment, with or without civilian support or participation, for the purpose of seizing or diminishing state power.

Under these provisions, the crime of rebellion or insurrection is committed only by “rising publicly or taking up arms against the Government”. A coup d'etat, on the other hand, takes place only when there is a “swift attack accompanied by violence.” Once the act of “rising publicly and taking up arms against the Government” ceases, the commission of the crime of rebellion ceases. Similarly, when the “swift attack” ceases, the crime of coup d'etat is no longer being committed.

Rebellion has been held to be a continuing crime,[21] and the authorities may resort to warrantless arrests of persons suspected of rebellion, as provided under Section 5, Rule 113 of the Rules of Court.[22] However, this doctrine should be applied to its proper context – i.e., relating to subversive armed organizations, such as the New People's Army, the avowed purpose of which is the armed overthrow of the organized and established government. Only in such instance should rebellion be considered a continuing crime.

When the soldiers surrendered peacefully in the evening of July 27, the rebellion or the coup d'etat ended. The President, however, did not lift the declaration of the “state of rebellion” until 5 days later, on August 1, 2003.

After the peaceful surrender, no person suspected of having conspired with the soldiers or participated in the Oakwood incident could be arrested without a warrant of arrest. Section 5, Rule 113 of the Revised Rules of Court, which governs arrest without warrant, provides as follows:

SEC. 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

x x x x x x x x

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

Rule 113, Section 5, pars. (a) and (b) of the Rules of Court are exceptions to the due process clause in the Constitution. Section 5, par. (a) relates to a situation where a crime is committed or attempted in the presence of the arresting officer.

Section 5, par. (b), on the other hand, presents the requirement of “personal knowledge”, on the part of the arresting officer, of facts indicating that an offense had “just been committed”, and that the person to be arrested had committed that offense.

After the peaceful surrender of the soldiers on July 27, 2003, there was no crime that was being “attempted”, “being committed”, or “had just been committed.” There should, therefore, be no occasion to effect a valid warrantless arrest in connection with the Oakwood Incident.

The purpose of the declaration and its duration as far as the overeager authorities were concerned was only to give legal cover to effect warrantless arrests even if the “state of rebellion” or the instances stated in Rule 113, Section 5 of the Rules are absent or no longer exist.

Our history had shown the dangers when too much power is concentrated in the hands of one person. Unless specifically defined, it is risky to concede and acknowledge the “residual powers” to justify the validity of the presidential issuances. This can serve as a blank check for other issuances and open the door to abuses. The majority cite the exercise of strong executive powers by U.S. President Andrew Jackson. Was it not President Jackson who is said to have cynically defied the U.S. Supreme Court’s ruling (under Chief Justice Marshall) against the forcible removal of the American Indians from the tribal lands by saying: “The Chief Justice has issued his Decision, now let him try to enforce it?” Others quote Madison as having gone further with: “With what army will the Chief Justice enforce his Decision?”

WHEREFORE, I vote for Proclamation No. 427 and General Order No. 4, issued on July 27, 2003 by Respondent President Gloria Macapagal-Arroyo, to be declared NULL and VOID for having been issued with grave abuse of discretion amounting to lack of jurisdiction. All other orders issued and action taken based on those issuances, especially after the Oakwood incident ended in the evening of July 27, 2003, e.g., warrantless arrests, should also be declared null and void.

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[1] Majority Opinion, at pp. 14 et seq.

[2] *Id.*, at pp. 20 to 21.

[3] *Id.*, at p. 22.

[4] *Id.*, at p. 23.

[5] *Id.*, at pp. 23 to 24.

[6] *Id.*, at p. 24.

[7] Report of the Fact Finding Commission created by Adm. Ord. No. 78 dated 30 July 2003 (hereafter, Feliciano Report), at p. 1.

[8] Feliciano Report, at p. 1.

[9] *Id.*, at pp. 18-19.

[10] *Id.*, at p. 28.

[11] *Id.*

[12] *Id.*, at pp. 28 to 30.

[13] *Id.*

[14] *Id.*, at p. 31.

[15] *Id.*

[16] *Id.*

[17] 206 Phil. 392 (1983).

[18] 149 Phil. 547 (1971).

[19] Const., art. VIII, sec. 1.

[20] *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, 15 August 2000, 338 SCRA 81.

[21] See, e.g., *Lansang v. Garcia*, *supra*; *Umil v. Ramos*, G.R. No. 81567, 3 October 1991, 202 SCRA 251.

[22] *Lacson v. Perez*, G.R. No. 147780, 10 May 2001, 357 SCRA 757.

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## DISSENTING OPINION

### SANDOVAL-GUTIERREZ, J.:

“Courts will decide a question otherwise moot and academic if it is ‘capable of repetition, yet evading review.’”[1] On this premise, I stood apart from my colleagues in dismissing the petition in *Lacson vs. Perez*. [2] Their reason was that President Gloria Macapagal-Arroyo’s lifting of the declaration of a “state of rebellion” rendered moot and academic the issue of its constitutionality. Looking in retrospect, my fear then was the repetition of the act sought to be declared unconstitutional.

No more than three (3) years have passed, and here we are again haunted by the same issue.

## I

A brief restatement of the facts is imperative.

In the wee hours of July 27, 2003, three hundred twenty-three (323) junior officers and enlisted men of the Armed Forces of the Philippines (AFP) took over the Oakwood Premier Apartments, Ayala Center, Makati City. Introducing themselves as the “Magdalo Group,” they claimed that they went to Oakwood to air their grievances about graft and corruption in the military, the sale of arms and ammunitions to the “enemies” of the state, the bombings in Davao City allegedly ordered by Gen. Victor Corpus, then Chief of the Intelligence Service of the Armed Forces of the Philippines (ISAFP), the increased military assistance from the United States, and “micromanagement” in the AFP by Gen. Angelo Reyes, then Secretary of the Department of National Defense. [3] The military men demanded the resignation of the President, the Secretary of National Defense and the Chief of the Philippine National Police.

At about 9:00 A.M. of the same day, President Arroyo gave the Magdalo Group until 5:00 P.M. to give up their positions peacefully and return to the barracks. At around 1:00 P.M., she issued Proclamation No. 427 and General Order No. 4 declaring the existence of a “state of rebellion” and calling out the AFP to suppress the rebellion.

Shortly before the 5:00 P.M. deadline, President Arroyo announced an extension until 7:00 P.M. During the two-hour reprieve, negotiations between the Magdalo Group and various personalities took place. The rebels agreed to return to the barracks. They left the Oakwood premises at 11:00 P.M.

On July 28, 2003, Agents of the National Bureau of Investigation (NBI) searched the house owned by Ramon Cardenas at 2177 Paraiso St., Dasmariñas Village, Makati City. After the raid and the recovery of evidence claimed to link him to rebellion, Cardenas, accompanied by Atty. Rene Saguisag, went to the CIDG in Camp Crame. On the same day, Cardenas was brought to the Department of Justice for inquest proceeding. He was later charged with the crime of rebellion.

The Mandaluyong City Police likewise searched the townhouses belonging to Laarni Enriquez, allegedly used as staging areas by the Magdalo Group.

On August 1, 2003, President Arroyo lifted her declaration of a state of rebellion through Proclamation No. 435.

Meanwhile, on August 4, 2003, Secretary Jose Lina, Jr. of the Department of the Interior and Local Government, forwarded to the DOJ the affidavit-complaint for coup d'état of PC Chief Superintendent Eduardo Matillano against Senator Gregorio Honasan, Ernesto Macahiya, George Duldulao and several "John and Jane Does" numbering about 1,000.

On August 8, 2003, PNP Chief Inspector Jesus Fernandez of the Eastern Police District referred to the DOJ an investigation report recommending that Enriquez and a certain Romy Escalona be prosecuted for rebellion and insurrection.

## II

I regret that I cannot give my assent to the ponencia of Mr. Justice Dante O. Tinga even as I admire it for its lucidity and historical accuracy. The passage of time has not changed my Opinion in *Lacson vs. Perez* — that President Arroyo's declaration of a "state of rebellion" is unconstitutional.

I cannot subscribe to the majority's view that the declaration of a "state of rebellion" is justified under Article VII of the 1987 Constitution granting her "Executive" and "Commander-in-Chief" powers.

## III

Consistent with my previous stand, it is my view that nowhere in the Constitution can be found a provision which grants to the President the authority to declare a "state of rebellion," or exercise powers, which may be legally allowed only under a state of martial law. President Arroyo, in declaring a "state of rebellion," deviated from the following provisions of the Constitution:

"Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever if becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual bases of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.”[4]

The powers of the President when she assumed the existence of rebellion are laid down by the Constitution. She may (1) call the armed forces to prevent or suppress lawless violence, invasion or rebellion; (2) suspend the privilege of the writ of habeas corpus; or (3) place the Philippines or any part thereof under martial law. Now, why did President Arroyo declare a “state of rebellion” when she has no such power under the Constitution?

If President Arroyo’s only purpose was merely to exercise her “calling out power,” then she could have simply ordered the AFP to prevent or suppress what she perceived as an invasion or rebellion. Such course raises no constitutional objection, it being provided for by the above-quoted provisions. However, adopting an unorthodox measure unbounded and not canalized by the language of the Constitution is dangerous. It leaves the people at her mercy and that of the military, ignorant of their rights under the circumstances and wary of their settled expectations. One good illustration is precisely in the case of invasion or rebellion. Under such situation, the President has the power to suspend the privilege of the writ of habeas corpus or to declare martial law. Such power is not a plenary one, as shown by the numerous limitations imposed thereon by the Constitution, some of which are: (1) the public safety requires it; (2) it does not exceed sixty (60) days; (3) within forty-eight (48) hours, she shall submit a report, in writing or in person, to Congress; (4) The Congress, by a vote of at least a majority of all its members, may revoke such proclamation or suspension. All these limitations form part of the citizens’ settled expectations. If the President exceeds the set limitations, the citizens know that they may resort to this Court through appropriate proceeding to question the sufficiency of the factual bases of the proclamation of martial law or the suspension of the privilege of the writ. In turn, this Court shall promulgate its Decision within thirty days from the filing of the proper pleading. All the foregoing guarantees and limitations are absent in the declaration of a “state of rebellion.” It is not subject to clear legal restraints. How then can the citizens determine the propriety of the President’s acts committed pursuant to such declaration? How can excess of power be curtailed at its inception?

Indeed, I see no reason for the President to deviate from the concise and plain provisions of the Constitution. In a society which adheres to the rule of law, resort to extra-constitutional measures is unnecessary where the law has provided everything for any emergency or contingency. For even if it may be proven beneficial for a time, the precedent it sets is pernicious as the law may, in a little while, be disregarded again on the same pretext but for questionable purposes. Even in time of emergency, government action may vary in breath and intensity from more normal times, yet it need not be less constitutional.[5] Extraordinary conditions may call for extraordinary remedies. But it cannot justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power.[6]

I cannot simply close my eyes to the dangers that lurk behind the seemingly harmless declaration of a “state of rebellion.” Still fresh from my memory is the May 1, 2001 civil unrest. On such date, President Arroyo placed

Metro Manila under a “state of rebellion” because of the violent street clashes involving the loyalists of former President Joseph Estrada and the police authorities. Presidential Spokesperson Rigoberto Tiglao told reporters, “We are in a state of rebellion. This is not an ordinary demonstration.”[7] Immediately thereafter, there were threats of arrests against those suspected of instigating the march to Malacañang. At about 3:30 in the afternoon, Senator Juan Ponce Enrile was arrested in his house in Dasmariñas Village, Makati City by a group led by Gen. Reynaldo Berroya, Chief of the Philippine National Police Intelligence Group.[8] Thereafter, he and his men proceeded to hunt re-electionist Senator Gregorio Honasan, former PNP Chief, now Senator Panfilo Lacson, former Ambassador Ernesto Maceda, Brig. Gen. Jake Malajakan, Senior Superintendents Michael Ray Aquino and Cesar Mancao II, Ronald Lumbao and Cesar Tanega of the People’s Movement Against Poverty (PMAP).[9] Former Justice Secretary Hernando Perez said that he was “studying” the possibility of placing Senator Miriam Defensor-Santiago “under the Witness Protection Program.” Director Victor Batac, former Chief of the PNP Directorate for Police Community Relations, and Senior Superintendent Diosdado Valeroso, of the Philippine Center for Transnational Crime, surrendered to Gen. Berroya. Both denied having plotted the siege. On May 2, 2001, former Ambassador Ernesto Maceda was arrested.

On President Arroyo’s mere declaration of a “state of rebellion,” police authorities arrested without warrants the above-mentioned personalities. In effect, she placed the Philippines under martial law without a declaration to that effect and without observing the proper procedure. This is a very dangerous precedent. The Constitution provides that “the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizure 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 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.”[10] Obviously, violation of this constitutional provision cannot be justified by reason of the declaration of a “state of rebellion” for such declaration, as earlier mentioned, is unconstitutional.

Even under Section 5, Rule 113 of the Revised Rules on Criminal Procedure[11] the warrantless arrests effected by President Arroyo’s men are not justified. The above-mentioned personalities cannot be considered “to have committed, are actually committing, or are attempting to commit an offense” at the time they were arrested without warrants. None of them participated in the riot which took place in the vicinity of the Malacañang Palace. Some of them were in their respective houses performing innocent acts. The sure fact is — they were not in the presence of Gen. Berroya. Clearly, he did not see whether they had committed, were committing or were attempting to commit the crime of rebellion.[12] It bears mentioning that at the time some of the suspected instigators were arrested, a long interval of time already passed and hence, it cannot be legally said that they had just committed an offense. Neither can it be said that Gen. Berroya or any of his men had “personal knowledge of facts or circumstances that the persons to be arrested have committed a crime.” That would be far from reality.

The circumstances that arose from President Arroyo’s resort to the declaration of a “state of rebellion” to suppress what she perceived as the May 1, 2001 rebellion are the very evils that we should prevent from happening again. This can only be done if we strike such unusual measure as unconstitutional.

Significantly, while the Oakwood event ended peacefully on the night of July 27, 2003, President Arroyo’s declaration of a “state of rebellion” continued until the lifting thereof on August 1, 2003. This means that although the alleged rebellion had ceased, the President’s declaration continued to be in effect. As it turned out, several searches and seizures took place during the extended period.

Generally, the power of the President in times of war, invasion or rebellion and during other emergency situations should be exercised jointly with Congress. This is to insure the correctness and propriety of authorizing our armed

forces to quell such hostilities. Such collective judgment is to be effected by “heightened consultation” between the President and Congress. Thus, as can be gleaned from the provisions of the Constitution, when the President proclaims martial law or suspends the privilege of the writ, he shall “submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.” Not only that, Section 23, Article VI of the Constitution provides that: “The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war. In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy.” Clearly, the Constitution has not extended excessive authority in military, defense and emergency matters to the President. Though the President is designated as the Commander-in-Chief of all armed forces of the Philippines, the textual reed does not suffice to support limitless authority. Born by the nation’s past experiences, the concurrence of the Congress is required as a measure to ward-off totalitarian rule. By declaring a “state of rebellion,” President Arroyo effectively disregarded such concurrent power of Congress. At this point, let it be stressed that the accumulation of both the executive and legislative powers in the same hands constitutes the very definition of tyranny.

By sustaining the unusual course taken by President Arroyo, we are traversing a very dangerous path. We are opening the way to those who, in the end, would turn our democracy into a totalitarian rule. While it may not plunge us straightway into dictatorship, however, it is a step towards a wrong direction. History must not be allowed to repeat itself. Any act which gears towards possible dictatorship must be severed at its inception. As I have stated in my previous dissent, our nation had seen the rise of a dictator into power. As a matter of fact, the changes made by the 1986 Constitutional Commission in the martial law text of the Constitution were to a large extent a reaction against the direction which this Court took during the regime of President Marcos.[13] In ruling that the declaration of a “state of rebellion” is a prerogative of the President, then, I say, our country is tracing the same dangerous road of the past.

#### IV

The majority cited U.S. cases in support of their stand that the President’s proclamation of “state of rebellion” is in accordance with the Constitutional provisions granting her “powers as chief executive.” I find that *In re Debs*[14] and *Prize Cases*[15] illustrate an executive power much larger than is indicated by the rudimentary constitutional provisions. Clearly, these cases cannot support the majority’s conclusion that: “The lesson to be learned from the U.S. constitutional history is that the Commander-in-Chief powers are broad enough as it is and become more so when taken together with the provision on executive power and the presidential oath of office. Thus, the plenitude of the powers of the presidency equips the occupant with the means to address exigencies or threats which undermine the very existence of government or the integrity of the State.”

There are reasons why I find the above conclusion of the majority inaccurate. From a survey of U.S. jurisprudence, the outstanding fact remains that every specific proposal to confer uncontrollable power upon the President is rejected.[16] In *re Debs*,[17] the U.S. Supreme Court Decision upheld the power of President Grover Cleveland to prevent the strike of railway workers on the ground that it threatened interference with interstate commerce and with the free flow of mail. The basic theory underlying this case — that the President has inherent power to act for the nation in cases of major public need — was eroded by the *Youngstown Sheet & Tube Co. vs. Sawyer*, also known as the *Steel Seizure Case*. [18] This case aroused great public interest, largely because of its important implications concerning the boundaries of presidential powers. The seven separate opinions consist of 128 pages in the Reports and contain a great deal of important data on the powers of the Chief Executive. The same case

demonstrates well that executive powers, even during an alleged emergency, may still be subject to judicial control. The decision constitutes a “dramatic vindication” of the American constitutional government.[19] Mr. Justice Andrew Jackson, concurring in the judgment and opinion of the Court, eloquently expounded on the “executive” and “commander-in-chief” powers, thus:

“The Solicitor general seeks the power of seizure in three clauses of the Executive Article, the first reading, ‘The executive Power shall be vested in a President of the United States of America.’ Lest I be thought to exaggerate, I quote the interpretation which his brief puts upon it: ‘In our view, this clause constitutes a grant of all the executive powers of which the Government is capable.’ If that be true, it is difficult to see why the forefathers bothered to add several specific items, including some trifling ones.

The example of such unlimited executive power that must have most impressed the forefathers was the prerogative exercised by George III, and the description of its evils in the Declaration of Independence leads me to doubt that they were creating their new Executive in his image. Continental European examples were no more appealing. And if we seek instruction from our own times, we can match it only from the executive powers in those governments were disparagingly describe as totalitarian. I cannot accept the view that this clause is a grant in bulk of all conceivable executive powers but regard it as an allocation to the presidential office of the generic powers thereafter stated.

The clause on which the Government next relies is that ‘The President shall be Commander in Chief of the Army and Navy of the United States...’ These cryptic words have given rise to some of the most persistent controversies in our constitutional history. Of course, they imply something more than an empty title. But just what authority goes with the name has plagued presidential advisers who would not waive or narrow it by non-assertion yet cannot say where it begins or ends.

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The third clause in which the Solicitor General finds seizure powers is that ‘he shall take care that the laws be faithfully executed...’ That authority must be matched against words of the Fifth Amendment that ‘No person shall be...deprived of life, liberty or property, without due process of law...’ One gives a governmental authority that reaches so far as there is law, the other gives a private right that authority shall go no farther. These signify about all there is of the principle that ours is a governmental of laws, not of men, and that we submit ourselves to rulers only if under rules.”

Further, Mr. Justice Jackson referred to the discussion of inherent executive powers as “loose and irresponsible use of adjectives.” His wrath could be seen as reserved for those who use the word “inherent” to mean “unlimited.”[20] Thus:

“The Solicitor General lastly grounds support of the seizure upon nebulous, inherent powers never expressly granted but said to have accrued to the office from the customs and claims of preceding administrations. The plea is for a resulting power to deal with a crisis or an emergency according to the necessities of the case, the unarticulated assumption being that necessity knows no law.

Loose and irresponsible use of adjectives colors all non-legal and much legal discussion of presidential powers. ‘Inherent’ powers, ‘implied’ powers, ‘incidental’ powers, ‘plenary’ powers, ‘war’ powers and ‘emergency’ powers are used, often interchangeably and without fixed or ascertainable meanings.

The vagueness and generality of the clauses that set forth presidential powers afford a plausible basis for pressures within and without an administration for presidential action beyond that supported by those whose responsibility it is to defend his actions in court. The claim of inherent and unrestricted presidential powers has long been a persuasive dialectical weapon in political controversy. While it is not surprising that counsel should grasp support from such unadjudicated claims of power, a judge cannot accept self-serving press statements of the attorney for one of the interested parties as authority in answering a constitutional question,

even if the advocate was himself. But prudence has counseled that actual reliance on such nebulous claims stop short of provoking a judicial test...”

In *re Debs* also received a serious blow in *United States vs. United States District Court*.<sup>[21]</sup> The Supreme Court Justices unanimously rejected the inherent executive authority to engage in warrantless electronic surveillance in domestic security cases. Thus, where a substantial personal interest in life, liberty or property is threatened by presidential action, *In re Debs* is regarded more as an anachronism than authority.

In *Prizes Cases*, by a vote of 5 to 4, the U.S. Supreme Court upheld President Abraham Lincoln’s authority to impose a blockade. Under the U.S. Constitution, only Congress, empowered to declare a war, could impose a blockade. It must be emphasized, however, that there is a distinction between the role of the U.S. President in domestic affairs and in foreign affairs. The patterns in the foreign and domestic realms are quite different. The federal regulation of domestic affairs has its constitutional origins in the people and the states, and its initiation is allocated primarily to Congress (not the Executive). The constitutional role for the executive in domestic matters is thus largely ancillary to that of Congress.<sup>[22]</sup> Thus, while it is recognized that executive power is predominant in foreign affairs, it is not so in the domestic sphere. This distinction should be considered in invoking U.S. jurisprudence.

Clearly, the trail of U.S. jurisprudence does not support the view that the “Executive and Commander-in-Chief clauses” of the Constitution grant the President such broad power as to give her the option of disregarding the other restrictive provisions of the Constitution. The purpose of the Constitution is not only to grant power, but to keep it from getting out of hand. The policy should be — where the Constitution has laid down specific procedures on how the President should deal with a crisis, it is imperative that he must follow those procedures in meeting the crisis. These procedures serve as limitations to what would otherwise be an unbounded exercise of power.

V

In fine, may I state that every presidential claim to a power must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system. The powers of the President are not as particularized as are those of Congress. Enumerated powers do not include undefined powers, as what the majority would want to point out. I state once more that there is no provision in our Constitution authorizing the President to declare “a state of rebellion.” Not even the constitutional powers vested upon her include such power.

WHEREFORE, I vote to GRANT the petitions. Proclamation No. 427 and General Order No. 4 are declared UNCONSTITUTIONAL.

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[1] *Salva vs. Makalintal*, G.R. No. 132603, September 18, 2000.

[2] G.R. No. 147780, May 10, 2001, 357 SCRA 757.

[3] The Report of the Fact-Finding Commission at 1.

[4] Section 18, Article VII of the 1987 Constitution.

[5] Smith/Cotter, *Powers of the President During Crises*, 1972 at 13.

[6] Freund, Sutherland, Howe, Brown, *Constitutional Law*, 4th Ed. 1977 at 656.

[7] *inq7.net*, May 2, 2001 at 1.

[8] inq7.net, May 1, 2001.

[9] Id. at 1.

[10] Article III, Section 2, 1987 Constitution.

[11] “Sec. 5. Arrest without warrant, when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it; x x x.”

[12] But of course, I cannot lose sight of the legal implication of President Macapagal-Arroyo’s declaration of a “state of rebellion.” Rebellion is a continuing offense and a suspected insurgent or rebel may be arrested anytime as he is considered to be committing the crime. Nevertheless, assuming *ex gratia argumenti* that the declaration of a state of rebellion is constitutional, it is imperative that the said declaration be reconsidered. In view of the changing times, the dissenting opinion of the noted jurist, Justice Isagani Cruz, in *Umil vs. Ramos*, 187 SCRA 311 (1990), quoted below must be given a second look.

“I dissent insofar as the ponencia affirms the ruling in *Garcia-Padilla vs. Enrile* that subversion is a continuing offense, to justify the arrest without warrant of any person at any time as long as the authorities say he has been placed under surveillance on suspicion of the offense. That is a dangerous doctrine. A person may be arrested when he is doing the most innocent acts, as when he is only washing his hands, or taking his supper, or even when he is sleeping, on the ground that he is committing the ‘continuing’ offense of subversion. Libertarians were appalled when that doctrine was imposed during the Marcos regime. I am alarmed that even now this new Court is willing to sustain it. I strongly urge my colleagues to discard it altogether as one of the disgraceful vestiges of the past dictatorship and uphold the rule guaranteeing the right of the people against unreasonable searches and seizures. We can do no less if we are really to reject the past oppression and commit ourselves to the true freedom. Even if it be argued that the military should be given every support in our fight against subversion, I maintain that that fight must be waged honorably, in accordance with the Bill of Rights. I do not believe that in fighting the enemy we must adopt the ways of the enemy, which are precisely what we are fighting against. I submit that our more important motivation should be what are we fighting for.”

[13] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines*, 1996 Edition at 789.

**[14] 158 U.S. 1092 (1894).**

[15] 2 Black 635, 17 L. 459 (1863).

[16] Freund, Sutherland, Howe, Brown, *Constitutional Law*, 4th Ed. 1977 at 656.

**[17] 158 U.S. 564 (1895).**

[18] *Youngstown Sheet & Tube Co. vs. Sawyer*, 343 U.S. 579, 587 (1952).

[19] Tresolini, *American Constitutional Law*, 1959 at 251.

[20] Tribe, *American Constitutional Law*, 1978 at 183.

**[21] 407 U.S. 297 (1972).**

[22] Tribe, *supra*.

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