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G.R. NO. 171396. May 03, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

All powers need some restraint; practical adjustments rather than rigid formula are necessary.[1] Superior strength - the use of force - cannot make wrongs into rights. In this regard, the courts should be vigilant in safeguarding the constitutional rights of the citizens, specifically their liberty.

Chief Justice Artemio V. Panganiban's philosophy of liberty is thus most relevant. He said: "In cases involving liberty, the scales of justice should weigh heavily against government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak." Laws and actions that restrict fundamental rights come to the courts "with a heavy presumption against their constitutional validity."[2]

These seven (7) consolidated petitions for certiorari and prohibition allege that in issuing Presidential Proclamation No. 1017 (PP 1017) and General Order No. 5 (G.O. No. 5), President Gloria Macapagal-Arroyo committed grave abuse of discretion. Petitioners contend that respondent officials of the Government, in their professed efforts to defend and preserve democratic institutions, are actually trampling upon the very freedom guaranteed and protected by the Constitution. Hence, such issuances are void for being unconstitutional.

Once again, the Court is faced with an age-old but persistently modern problem. How does the Constitution of a free people combine the degree of liberty, without which, law becomes tyranny, with the degree of law, without which, liberty becomes license?[3]

On February 24, 2006, as the nation celebrated the 20th Anniversary of the Edsa People Power I, President Arroyo issued PP 1017 declaring a state of national emergency, thus:

> NOW, THEREFORE, I, Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Commander-in-Chief of the Armed Forces of the Philippines, by virtue of the powers vested upon me by Section 18, Article 7 of the Philippine Constitution which states that: "The President. . . whenever it becomes necessary, . . . may call out (the) armed forces to prevent or suppress. . .rebellion. . .," and in my capacity as their Commander-in-Chief, do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction; and as provided in Section 17, Article 12 of the Constitution do hereby declare a State of National Emergency.

She cited the following facts as bases:

> WHEREAS, over these past months, elements in the political opposition have conspired with authoritarians of the extreme Left represented by the NDF-CPP-NPA and the extreme Right, represented by military adventurists - the historical enemies of the democratic Philippine State - who are now in a tactical alliance and engaged in a concerted and systematic conspiracy, over a broad front, to bring down the duly constituted Government elected in May 2004;
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> WHEREAS, these conspirators have repeatedly tried to bring down the President;
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> WHEREAS, the claims of these elements have been recklessly magnified by certain segments of the national media;
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> WHEREAS, this series of actions is hurting the Philippine State - by obstructing governance including hindering the growth of the economy and sabotaging the people's confidence in government and their faith in the future of this country;
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> WHEREAS, these actions are adversely affecting the economy;
>
> WHEREAS, these activities give totalitarian forces of both the extreme Left and extreme Right the opening to intensify their avowed aims to bring down the democratic Philippine State;
>
> WHEREAS, Article 2, Section 4 of the our Constitution makes the defense and preservation of the democratic institutions and the State the primary duty of Government;
>
> WHEREAS, the activities above-described, their consequences, ramifications and collateral effects constitute a clear and present danger to the safety and the integrity of the Philippine State and of the Filipino people;

On the same day, the President issued G. O. No. 5 implementing PP 1017, thus:

> WHEREAS, over these past months, elements in the political opposition have conspired with authoritarians of the extreme Left, represented by the NDF-CPP-NPA and the extreme Right, represented by military adventurists - the historical enemies of the democratic Philippine State - and who are now in a tactical alliance and engaged in a concerted and systematic conspiracy, over a broad front, to bring down the duly-constituted Government elected in May 2004;
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> WHEREAS, these conspirators have repeatedly tried to bring down our republican government;
>
> WHEREAS, the claims of these elements have been recklessly magnified by certain segments of the national media;
>
> WHEREAS, these series of actions is hurting the Philippine State by obstructing governance, including hindering the growth of the economy and sabotaging the people's confidence in the government and their faith in the future of this country;
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> WHEREAS, these actions are adversely affecting the economy;
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> WHEREAS, these activities give totalitarian forces; of both the extreme Left and extreme Right the opening to intensify their avowed aims to bring down the democratic Philippine State;
>
> WHEREAS, Article 2, Section 4 of our Constitution makes the defense and preservation of the democratic institutions and the State the primary duty of Government;
>
> WHEREAS, the activities above-described, their consequences, ramifications and collateral effects constitute a clear and present danger to the safety and the integrity of the Philippine State and of the Filipino people;
>
> WHEREAS, Proclamation 1017 date February 24, 2006 has been issued declaring a State of National Emergency;

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> NOW, THEREFORE, I GLORIA MACAPAGAL-ARROYO, by virtue of the powers vested in me under the Constitution as President of the Republic of the Philippines, and Commander-in-Chief of the Republic of the Philippines, and pursuant to Proclamation No. 1017 dated February 24, 2006, do hereby call upon the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), to prevent and suppress acts of terrorism and lawless violence in the country;
>
> I hereby direct the Chief of Staff of the AFP and the Chief of the PNP, as well as the officers and men of the AFP and PNP, to immediately carry out the necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence.

On March 3, 2006, exactly one week after the declaration of a state of national emergency and after all these petitions had been filed, the President lifted PP 1017. She issued Proclamation No. 1021 which reads:

> WHEREAS, pursuant to Section 18, Article VII and Section 17, Article XII of the Constitution, Proclamation No. 1017 dated February 24, 2006, was issued declaring a state of national emergency;
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> WHEREAS, by virtue of General Order No.5 and No.6 dated February 24, 2006, which were issued on the basis of Proclamation No. 1017, the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), were directed to maintain law and order throughout the Philippines, prevent and suppress all form of lawless violence as well as any act of rebellion and to undertake such action as may be necessary;
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> WHEREAS, the AFP and PNP have effectively prevented, suppressed and quelled the acts lawless violence and rebellion;
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> NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, hereby declare that the state of national emergency has ceased to exist.

In their presentation of the factual bases of PP 1017 and G.O. No. 5, respondents stated that the proximate cause behind the executive issuances was the conspiracy among some military officers, leftist insurgents of the New People's Army (NPA), and some members of the political opposition in a plot to unseat or assassinate President Arroyo.[4] They considered the aim to oust or assassinate the President and take-over the reigns of government as a clear and present danger.

During the oral arguments held on March 7, 2006, the Solicitor General specified the facts leading to the issuance of PP 1017 and G.O. No. 5. Significantly, there was no refutation from petitioners' counsels.

The Solicitor General argued that the intent of the Constitution is to give full discretionary powers to the President in determining the necessity of calling out the armed forces. He emphasized that none of the petitioners has shown that PP 1017 was without factual bases. While he explained that it is not respondents' task to state the facts behind the questioned Proclamation, however, they are presenting the same, narrated hereunder, for the elucidation of the issues.

On January 17, 2006, Captain Nathaniel Rabonza and First Lieutenants Sonny Sarmiento, Lawrence San Juan and Patricio Bumidang, members of the Magdalo Group indicted in the Oakwood mutiny, escaped their detention cell in Fort Bonifacio, Taguig City. In a public statement, they vowed to remain defiant and to elude arrest at all costs. They called upon the people to "show and proclaim our displeasure at the sham regime. Let us demonstrate our disgust, not only by going to the streets in protest, but also by wearing red bands on our left arms." [5]

On February 17, 2006, the authorities got hold of a document entitled "Oplan Hackle I" which detailed plans for bombings and attacks during the Philippine Military Academy Alumni Homecoming in Baguio City. The plot was to assassinate selected targets including some cabinet members and President Arroyo herself.[6] Upon the advice

of her security, President Arroyo decided not to attend the Alumni Homecoming. The next day, at the height of the celebration, a bomb was found and detonated at the PMA parade ground.

On February 21, 2006, Lt. San Juan was recaptured in a communist safehouse in Batangas province. Found in his possession were two (2) flash disks containing minutes of the meetings between members of the Magdalo Group and the National People's Army (NPA), a tape recorder, audio cassette cartridges, diskettes, and copies of subversive documents.[7] Prior to his arrest, Lt. San Juan announced through DZRH that the "Magdalo's D-Day would be on February 24, 2006, the 20th Anniversary of Edsa I."

On February 23, 2006, PNP Chief Arturo Lomibao intercepted information that members of the PNP- Special Action Force were planning to defect. Thus, he immediately ordered SAF Commanding General Marcelino Franco, Jr. to "disavow" any defection. The latter promptly obeyed and issued a public statement: "All SAF units are under the effective control of responsible and trustworthy officers with proven integrity and unquestionable loyalty."

On the same day, at the house of former Congressman Peping Cojuangco, President Cory Aquino's brother, businessmen and mid-level government officials plotted moves to bring down the Arroyo administration. Nelly Sindayen of TIME Magazine reported that Pastor Saycon, longtime Arroyo critic, called a U.S. government official about his group's plans if President Arroyo is ousted. Saycon also phoned a man code-named Delta. Saycon identified him as B/Gen. Danilo Lim, Commander of the Army's elite Scout Ranger. Lim said "it was all systems go for the planned movement against Arroyo."[8]

B/Gen. Danilo Lim and Brigade Commander Col. Ariel Querubin confided to Gen. Generoso Senga, Chief of Staff of the Armed Forces of the Philippines (AFP), that a huge number of soldiers would join the rallies to provide a critical mass and armed component to the Anti-Arroyo protests to be held on February 24, 2005. According to these two (2) officers, there was no way they could possibly stop the soldiers because they too, were breaking the chain of command to join the forces foist to unseat the President. However, Gen. Senga has remained faithful to his Commander-in-Chief and to the chain of command. He immediately took custody of B/Gen. Lim and directed Col. Querubin to return to the Philippine Marines Headquarters in Fort Bonifacio.

Earlier, the CPP-NPA called for intensification of political and revolutionary work within the military and the police establishments in order to forge alliances with its members and key officials. NPA spokesman Gregorio "Ka Roger" Rosal declared: "The Communist Party and revolutionary movement and the entire people look forward to the possibility in the coming year of accomplishing its immediate task of bringing down the Arroyo regime; of rendering it to weaken and unable to rule that it will not take much longer to end it."[9]

On the other hand, Cesar Renerio, spokesman for the National Democratic Front (NDF) at North Central Mindanao, publicly announced: "Anti-Arroyo groups within the military and police are growing rapidly, hastened by the economic difficulties suffered by the families of AFP officers and enlisted personnel who undertake counter-insurgency operations in the field." He claimed that with the forces of the national democratic movement, the anti-Arroyo conservative political parties, coalitions, plus the groups that have been reinforcing since June 2005, it is probable that the President's ouster is nearing its concluding stage in the first half of 2006.

Respondents further claimed that the bombing of telecommunication towers and cell sites in Bulacan and Bataan was also considered as additional factual basis for the issuance of PP 1017 and G.O. No. 5. So is the raid of an army outpost in Benguet resulting in the death of three (3) soldiers. And also the directive of the Communist Party of the Philippines ordering its front organizations to join 5,000 Metro Manila radicals and 25,000 more from the provinces in mass protests.[10]

By midnight of February 23, 2006, the President convened her security advisers and several cabinet members to assess the gravity of the fermenting peace and order situation. She directed both the AFP and the PNP to account for all their men and ensure that the chain of command remains solid and undivided. To protect the young students from any possible trouble that might break loose on the streets, the President suspended classes in all levels in the entire National Capital Region.

For their part, petitioners cited the events that followed after the issuance of PP 1017 and G.O. No. 5.

Immediately, the Office of the President announced the cancellation of all programs and activities related to the 20th anniversary celebration of Edsa People Power I; and revoked the permits to hold rallies issued earlier by the local governments. Justice Secretary Raul Gonzales stated that political rallies, which to the President's mind were organized for purposes of destabilization, are cancelled. Presidential Chief of Staff Michael Defensor announced that "warrantless arrests and take-over of facilities, including media, can already be implemented."[11]

Undeterred by the announcements that rallies and public assemblies would not be allowed, groups of protesters (members of Kilusang Mayo Uno [KMU] and National Federation of Labor Unions-Kilusang Mayo Uno [NAFLU-KMU]), marched from various parts of Metro Manila with the intention of converging at the EDSA shrine. Those who were already near the EDSA site were violently dispersed by huge clusters of anti-riot police. The well-trained policemen used truncheons, big fiber glass shields, water cannons, and tear gas to stop and break up the marching groups, and scatter the massed participants. The same police action was used against the protesters marching forward to Cubao, Quezon City and to the corner of Santolan Street and EDSA. That same evening, hundreds of riot policemen broke up an EDSA celebration rally held along Ayala Avenue and Paseo de Roxas Street in Makati City.[12]

According to petitioner Kilusang Mayo Uno, the police cited PP 1017 as the ground for the dispersal of their assemblies.

During the dispersal of the rallyists along EDSA, police arrested (without warrant) petitioner Randolf S. David, a professor at the University of the Philippines and newspaper columnist. Also arrested was his companion, Ronald Llamas, president of party-list Akbayan.

At around 12:20 in the early morning of February 25, 2006, operatives of the Criminal Investigation and Detection Group (CIDG) of the PNP, on the basis of PP 1017 and G.O. No. 5, raided the Daily Tribune offices in Manila. The raiding team confiscated news stories by reporters, documents, pictures, and mock-ups of the Saturday issue. Policemen from Camp Crame in Quezon City were stationed inside the editorial and business offices of the newspaper; while policemen from the Manila Police District were stationed outside the building.[13]

A few minutes after the search and seizure at the Daily Tribune offices, the police surrounded the premises of another pro-opposition paper, Malaya, and its sister publication, the tabloid Abante.

The raid, according to Presidential Chief of Staff Michael Defensor, is "meant to show a 'strong presence,' to tell media outlets not to connive or do anything that would help the rebels in bringing down this government." The PNP warned that it would take over any media organization that would not follow "standards set by the government during the state of national emergency." Director General Lomibao stated that "if they do not follow the standards - and the standards are - if they would contribute to instability in the government, or if they do not subscribe to what is in General Order No. 5 and Proc. No. 1017 - we will recommend a 'takeover.'" National Telecommunications' Commissioner Ronald Solis urged television and radio networks to "cooperate" with the government for the duration of the state of national emergency. He asked for "balanced reporting" from

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broadcasters when covering the events surrounding the coup attempt foiled by the government. He warned that his agency will not hesitate to recommend the closure of any broadcast outfit that violates rules set out for media coverage when the national security is threatened.[14]

Also, on February 25, 2006, the police arrested Congressman Crispin Beltran, representing the Anakpawis Party and Chairman of Kilusang Mayo Uno (KMU), while leaving his farmhouse in Bulacan. The police showed a warrant for his arrest dated 1985. Beltran's lawyer explained that the warrant, which stemmed from a case of inciting to rebellion filed during the Marcos regime, had long been quashed. Beltran, however, is not a party in any of these petitions.

When members of petitioner KMU went to Camp Crame to visit Beltran, they were told they could not be admitted because of PP 1017 and G.O. No. 5. Two members were arrested and detained, while the rest were dispersed by the police.

Bayan Muna Representative Satur Ocampo eluded arrest when the police went after him during a public forum at the Sulo Hotel in Quezon City. But his two drivers, identified as Roel and Art, were taken into custody.

Retired Major General Ramon Montaño, former head of the Philippine Constabulary, was arrested while with his wife and golfmates at the Orchard Golf and Country Club in Dasmariñas, Cavite.

Attempts were made to arrest Anakpawis Representative Satur Ocampo, Representative Rafael Mariano, Bayan Muna Representative Teodoro Casiño and Gabriela Representative Liza Maza. Bayan Muna Representative Josel Virador was arrested at the PAL Ticket Office in Davao City. Later, he was turned over to the custody of the House of Representatives where the "Batasan 5" decided to stay indefinitely.

Let it be stressed at this point that the alleged violations of the rights of Representatives Beltran, Satur Ocampo, et al., are not being raised in these petitions.

On March 3, 2006, President Arroyo issued PP 1021 declaring that the state of national emergency has ceased to exist.

In the interim, these seven (7) petitions challenging the constitutionality of PP 1017 and G.O. No. 5 were filed with this Court against the above-named respondents. Three (3) of these petitions impleaded President Arroyo as respondent.

In G.R. No. 171396, petitioners Randolf S. David, et al. assailed PP 1017 on the grounds that (1) it encroaches on the emergency powers of Congress; (2) it is a subterfuge to avoid the constitutional requirements for the imposition of martial law; and (3) it violates the constitutional guarantees of freedom of the press, of speech and of assembly.

In G.R. No. 171409, petitioners Ninez Cacho-Olivares and Tribune Publishing Co., Inc. challenged the CIDG's act of raiding the Daily Tribune offices as a clear case of "censorship" or "prior restraint." They also claimed that the term "emergency" refers only to tsunami, typhoon, hurricane and similar occurrences, hence, there is "absolutely no emergency" that warrants the issuance of PP 1017.

In G.R. No. 171485, petitioners herein are Representative Francis Joseph G. Escudero, and twenty one (21) other members of the House of Representatives, including Representatives Satur Ocampo, Rafael Mariano, Teodoro Casiño, Liza Maza, and Josel Virador. They asserted that PP 1017 and G.O. No. 5 constitute "usurpation of legislative powers"; "violation of freedom of expression" and "a declaration of martial law." They alleged that President Arroyo "gravely abused her discretion in calling out the armed forces without clear and verifiable factual basis of the possibility of lawless violence and a showing that there is necessity to do so."

In G.R. No. 171483, petitioners KMU, NAFLU-KMU, and their members averred that PP 1017 and G.O. No. 5 are unconstitutional because (1) they arrogate unto President Arroyo the power to enact laws and decrees; (2) their issuance was without factual basis; and (3) they violate freedom of expression and the right of the people to peaceably assemble to redress their grievances.

In G.R. No. 171400, petitioner Alternative Law Groups, Inc. (ALGI) alleged that PP 1017 and G.O. No. 5 are unconstitutional because they violate (a) Section 4[15] of Article II, (b) Sections 1,[16] 2,[17] and 4[18] of Article III, (c) Section 23[19] of Article VI, and (d) Section 17[20] of Article XII of the Constitution.

In G.R. No. 171489, petitioners Jose Anselmo I. Cadiz et al., alleged that PP 1017 is an "arbitrary and unlawful exercise by the President of her Martial Law powers." And assuming that PP 1017 is not really a declaration of Martial Law, petitioners argued that "it amounts to an exercise by the President of emergency powers without congressional approval." In addition, petitioners asserted that PP 1017 "goes beyond the nature and function of a proclamation as defined under the Revised Administrative Code."

And lastly, in G.R. No. 171424, petitioner Loren B. Legarda maintained that PP 1017 and G.O. No. 5 are "unconstitutional for being violative of the freedom of expression, including its cognate rights such as freedom of the press and the right to access to information on matters of public concern, all guaranteed under Article III, Section 4 of the 1987 Constitution." In this regard, she stated that these issuances prevented her from fully prosecuting her election protest pending before the Presidential Electoral Tribunal.

In respondents' Consolidated Comment, the Solicitor General countered that: first, the petitions should be dismissed for being moot; second, petitioners in G.R. Nos. 171400 (ALGI), 171424 (Legarda), 171483 (KMU et al.), 171485 (Escudero et al.) and 171489 (Cadiz et al.) have no legal standing; third, it is not necessary for petitioners to implead President Arroyo as respondent; fourth, PP 1017 has constitutional and legal basis; and fifth, PP 1017 does not violate the people's right to free expression and redress of grievances.

On March 7, 2006, the Court conducted oral arguments and heard the parties on the above interlocking issues which may be summarized as follows:

A. PROCEDURAL:

1) Whether the issuance of PP 1021 renders the petitions moot and academic.

2) Whether petitioners in 171485 (Escudero et al.), G.R. Nos. 171400 (ALGI), 171483 (KMU et al.), 171489 (Cadiz et al.), and 171424 (Legarda) have legal standing.

B. SUBSTANTIVE:

1) Whether the Supreme Court can review the factual bases of PP 1017.

2) Whether PP 1017 and G.O. No. 5 are unconstitutional.

a. Facial Challenge

b. Constitutional Basis

c. As Applied Challenge

A. PROCEDURAL

First, we must resolve the procedural roadblocks.

I- Moot and Academic Principle

One of the greatest contributions of the American system to this country is the concept of judicial review enunciated in Marbury v. Madison.[21] This concept rests on the extraordinary simple foundation --

> The Constitution is the supreme law. It was ordained by the people, the ultimate source of all political authority. It confers limited powers on the national government. x x x If the government consciously or unconsciously oversteps these limitations there must be some authority competent to hold it in control, to thwart its unconstitutional attempt, and thus to vindicate and preserve inviolate the will of the people as expressed in the Constitution. This power the courts exercise. This is the beginning and the end of the theory of judicial review.[22]

But the power of judicial review does not repose upon the courts a "self-starting capacity."[23] Courts may exercise such power only when the following requisites are present: first, there must be an actual case or controversy; second, petitioners have to raise a question of constitutionality; third, the constitutional question must be raised at the earliest opportunity; and fourth, the decision of the constitutional question must be necessary to the determination of the case itself.[24]

Respondents maintain that the first and second requisites are absent, hence, we shall limit our discussion thereon.

An actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest;" a real and substantial controversy admitting of specific relief.[25] The Solicitor General refutes the existence of such actual case or controversy, contending that the present petitions were rendered "moot and academic" by President Arroyo's issuance of PP 1021.

Such contention lacks merit.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events,[26] so that a declaration thereon would be of no practical use or value.[27] Generally, courts decline jurisdiction over such case[28] or dismiss it on ground of mootness.[29]

The Court holds that President Arroyo's issuance of PP 1021 did not render the present petitions moot and academic. During the eight (8) days that PP 1017 was operative, the police officers, according to petitioners, committed illegal acts in implementing it. Are PP 1017 and G.O. No. 5 constitutional or valid? Do they justify these alleged illegal acts? These are the vital issues that must be resolved in the present petitions. It must be stressed that "an unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection; it is in legal contemplation, inoperative."[30]

The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution;[31] second, the exceptional character of the situation and the paramount public interest is involved;[32] third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public;[33] and fourth, the case is capable of repetition yet evading review.[34]

All the foregoing exceptions are present here and justify this Court's assumption of jurisdiction over the instant petitions. Petitioners alleged that the issuance of PP 1017 and G.O. No. 5 violates the Constitution. There is no question that the issues being raised affect the public's interest, involving as they do the people's basic rights to freedom of expression, of assembly and of the press. Moreover, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petitions, the military and the police, on the extent of the protection given by constitutional guarantees.[35] And lastly, respondents' contested actions are capable of repetition. Certainly, the petitions are

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subject to judicial review.

In their attempt to prove the alleged mootness of this case, respondents cited Chief Justice Artemio V. Panganiban's Separate Opinion in Sanlakas v. Executive Secretary.[36] However, they failed to take into account the Chief Justice's very statement that an otherwise "moot" case may still be decided "provided the party raising it in a proper case has been and/or continues to be prejudiced or damaged as a direct result of its issuance." The present case falls right within this exception to the mootness rule pointed out by the Chief Justice.

II-Legal Standing

In view of the number of petitioners suing in various personalities, the Court deems it imperative to have a more than passing discussion on legal standing or locus standi.

Locus standi is defined as "a right of appearance in a court of justice on a given question."[37] In private suits, standing is governed by the "real-parties-in interest" rule as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "every action must be prosecuted or defended in the name of the real party in interest." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit."[38] Succinctly put, the plaintiff's standing is based on his own right to the relief sought.

The difficulty of determining locus standi arises in public suits. Here, the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or "taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer.

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in Beauchamp v. Silk,[39] where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern. As held by the New York Supreme Court in People ex rel Case v. Collins:[40] "In matter of mere public right, however...the people are the real parties...It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied." With respect to taxpayer's suits, Terr v. Jordan[41] held that "the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied."

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United State Supreme Court laid down the more stringent "direct injury" test in Ex Parte Levitt,[42] later reaffirmed in Tileston v. Ullman.[43] The same Court ruled that for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public.

This Court adopted the "direct injury" test in our jurisdiction. In People v. Vera,[44] it held that the person who impugns the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." The Vera doctrine was upheld in a litany of cases, such as, Custodio v. President of the Senate,[45] Manila Race Horse Trainers' Association v. De la Fuente,[46] Pascual v.

Secretary of Public Works[47] and Anti-Chinese League of the Philippines v. Felix.[48]

However, being a mere procedural technicality, the requirement of locus standi may be waived by the Court in the exercise of its discretion. This was done in the 1949 Emergency Powers Cases, Araneta v. Dinglasan,[49] where the "transcendental importance" of the cases prompted the Court to act liberally. Such liberality was neither a rarity nor accidental. In Aquino v. Comelec,[50] this Court resolved to pass upon the issues raised due to the "far-reaching implications" of the petition notwithstanding its categorical statement that petitioner therein had no personality to file the suit. Indeed, there is a chain of cases where this liberal policy has been observed, allowing ordinary citizens, members of Congress, and civic organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.[51]

Thus, the Court has adopted a rule that even where the petitioners have failed to show direct injury, they have been allowed to sue under the principle of "transcendental importance." Pertinent are the following cases:

> (1) Chavez v. Public Estates Authority,[52] where the Court ruled that the enforcement of the constitutional right to information and the equitable diffusion of natural resources are matters of transcendental importance which clothe the petitioner with locus standi;
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> (2) Bagong Alyansang Makabayan v. Zamora,[53] wherein the Court held that "given the transcendental importance of the issues involved, the Court may relax the standing requirements and allow the suit to prosper despite the lack of direct injury to the parties seeking judicial review" of the Visiting Forces Agreement;
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> (3) Lim v. Executive Secretary,[54] while the Court noted that the petitioners may not file suit in their capacity as taxpayers absent a showing that "Balikatan 02-01" involves the exercise of Congress' taxing or spending powers, it reiterated its ruling in Bagong Alyansang Makabayan v. Zamora,[55] that in cases of transcendental importance, the cases must be settled promptly and definitely and standing requirements may be relaxed.

By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

> (1) the cases involve constitutional issues;
>
> (2) for taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> (3) for voters, there must be a showing of obvious interest in the validity of the election law in question;
>
> (4) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
>
> (5) for legislators, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

Significantly, recent decisions show a certain toughening in the Court's attitude toward legal standing.

In Kilosbayan, Inc. v. Morato,[56] the Court ruled that the status of Kilosbayan as a people's organization does not give it the requisite personality to question the validity of the on-line lottery contract, more so where it does not raise any issue of constitutionality. Moreover, it cannot sue as a taxpayer absent any allegation that public funds are being misused. Nor can it sue as a concerned citizen as it does not allege any specific injury it has suffered.

In Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Comelec,[57] the Court reiterated the "direct injury" test with respect to concerned citizens' cases involving constitutional issues. It held that "there must

be a showing that the citizen personally suffered some actual or threatened injury arising from the alleged illegal official act."

In Lacson v. Perez,[58] the Court ruled that one of the petitioners, Laban ng Demokratikong Pilipino (LDP), is not a real party-in-interest as it had not demonstrated any injury to itself or to its leaders, members or supporters.

In Sanlakas v. Executive Secretary,[59] the Court ruled that only the petitioners who are members of Congress have standing to sue, as they claim that the President's declaration of a state of rebellion is a usurpation of the emergency powers of Congress, thus impairing their legislative powers. As to petitioners Sanlakas, Partido Manggagawa, and Social Justice Society, the Court declared them to be devoid of standing, equating them with the LDP in Lacson.

Now, the application of the above principles to the present petitions.

The locus standi of petitioners in G.R. No. 171396, particularly David and Llamas, is beyond doubt. The same holds true with petitioners in G.R. No. 171409, Cacho-Olivares and Tribune Publishing Co. Inc. They alleged "direct injury" resulting from "illegal arrest" and "unlawful search" committed by police operatives pursuant to PP 1017. Rightly so, the Solicitor General does not question their legal standing.

In G.R. No. 171485, the opposition Congressmen alleged there was usurpation of legislative powers. They also raised the issue of whether or not the concurrence of Congress is necessary whenever the alarming powers incident to Martial Law are used. Moreover, it is in the interest of justice that those affected by PP 1017 can be represented by their Congressmen in bringing to the attention of the Court the alleged violations of their basic rights.

In G.R. No. 171400, (ALGI), this Court applied the liberality rule in Philconsa v. Enriquez,[60] Kapatiran Ng Mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan,[61] Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,[62] Basco v. Philippine Amusement and Gaming Corporation,[63] and Tañada v. Tuvera,[64] that when the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws.

In G.R. No. 171483, KMU's assertion that PP 1017 and G.O. No. 5 violated its right to peaceful assembly may be deemed sufficient to give it legal standing. Organizations may be granted standing to assert the rights of their members.[65] We take judicial notice of the announcement by the Office of the President banning all rallies and canceling all permits for public assemblies following the issuance of PP 1017 and G.O. No. 5.

In G.R. No. 171489, petitioners, Cadiz et al., who are national officers of the Integrated Bar of the Philippines (IBP) have no legal standing, having failed to allege any direct or potential injury which the IBP as an institution or its members may suffer as a consequence of the issuance of PP No. 1017 and G.O. No. 5. In Integrated Bar of the Philippines v. Zamora,[66] the Court held that the mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. However, in view of the transcendental importance of the issue, this Court declares that petitioner have locus standi.

In G.R. No. 171424, Loren Legarda has no personality as a taxpayer to file the instant petition as there are no allegations of illegal disbursement of public funds. The fact that she is a former Senator is of no consequence. She can no longer sue as a legislator on the allegation that her prerogatives as a lawmaker have been impaired by PP 1017 and G.O. No. 5. Her claim that she is a media personality will not likewise aid her because there was no showing that the enforcement of these issuances prevented her from pursuing her occupation. Her submission that she has pending electoral protest before the Presidential Electoral Tribunal is likewise of no relevance. She has

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not sufficiently shown that PP 1017 will affect the proceedings or result of her case. But considering once more the transcendental importance of the issue involved, this Court may relax the standing rules.

It must always be borne in mind that the question of locus standi is but corollary to the bigger question of proper exercise of judicial power. This is the underlying legal tenet of the "liberality doctrine" on legal standing. It cannot be doubted that the validity of PP No. 1017 and G.O. No. 5 is a judicial question which is of paramount importance to the Filipino people. To paraphrase Justice Laurel, the whole of Philippine society now waits with bated breath the ruling of this Court on this very critical matter. The petitions thus call for the application of the "transcendental importance" doctrine, a relaxation of the standing requirements for the petitioners in the "PP 1017 cases."

This Court holds that all the petitioners herein have locus standi.

Incidentally, it is not proper to implead President Arroyo as respondent. Settled is the doctrine that the President, during his tenure of office or actual incumbency,[67] may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people[68] but he may be removed from office only in the mode provided by law and that is by impeachment.[69]

B. SUBSTANTIVE

I. Review of Factual Bases

Petitioners maintain that PP 1017 has no factual basis. Hence, it was not "necessary" for President Arroyo to issue such Proclamation.

The issue of whether the Court may review the factual bases of the President's exercise of his Commander-in-Chief power has reached its distilled point - from the indulgent days of Barcelon v. Baker[70] and Montenegro v. Castaneda[71] to the volatile era of Lansang v. Garcia,[72] Aquino, Jr. v. Enrile,[73] and Garcia-Padilla v. Enrile.[74] The tug-of-war always cuts across the line defining "political questions," particularly those questions "in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government."[75] Barcelon and Montenegro were in unison in declaring that the authority to decide whether an exigency has arisen belongs to the President and his decision is final and conclusive on the courts. Lansang took the opposite view. There, the members of the Court were unanimous in the conviction that the Court has the authority to inquire into the existence of factual bases in order to determine their constitutional sufficiency. From the principle of separation of powers, it shifted the focus to the system of checks and balances, "under which the President is supreme, x x x only if and when he acts within the sphere allotted to him by the Basic Law, and the authority to determine whether or not he has so acted is vested in the Judicial Department, which in this respect, is, in turn, constitutionally supreme."[76] In 1973, the unanimous Court of Lansang was divided in Aquino v. Enrile.[77] There, the Court was almost evenly divided on the issue of whether the validity of the imposition of Martial Law is a political or justiciable question.[78] Then came Garcia-Padilla v. Enrile which greatly diluted Lansang. It declared that there is a need to re-examine the latter case, ratiocinating that "in times of war or national emergency, the President must be given absolute control for the very life of the nation and the government is in great peril. The President, it intoned, is answerable only to his conscience, the People,

and God."[79]

The Integrated Bar of the Philippines v. Zamora[80] -- a recent case most pertinent to these cases at bar -- echoed a principle similar to Lansang. While the Court considered the President's "calling-out" power as a discretionary power solely vested in his wisdom, it stressed that "this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion." This ruling is mainly a result of the Court's reliance on Section 1, Article VIII of 1987 Constitution which fortifies the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Under the new definition of judicial power, the courts are authorized 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 the government." The latter part of the authority represents a broadening of judicial power to enable the courts of justice to review what was before a forbidden territory, to wit, the discretion of the political departments of the government.[81] It speaks of judicial prerogative not only in terms of power but also of duty.[82]

As to how the Court may inquire into the President's exercise of power, Lansang adopted the test that "judicial inquiry can go no further than to satisfy the Court not that the President's decision is correct," but that "the President did not act arbitrarily." Thus, the standard laid down is not correctness, but arbitrariness.[83] In Integrated Bar of the Philippines, this Court further ruled that "it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis" and that if he fails, by way of proof, to support his assertion, then "this Court cannot undertake an independent investigation beyond the pleadings."

Petitioners failed to show that President Arroyo's exercise of the calling-out power, by issuing PP 1017, is totally bereft of factual basis. A reading of the Solicitor General's Consolidated Comment and Memorandum shows a detailed narration of the events leading to the issuance of PP 1017, with supporting reports forming part of the records. Mentioned are the escape of the Magdalo Group, their audacious threat of the Magdalo D-Day, the defections in the military, particularly in the Philippine Marines, and the reproving statements from the communist leaders. There was also the Minutes of the Intelligence Report and Security Group of the Philippine Army showing the growing alliance between the NPA and the military. Petitioners presented nothing to refute such events. Thus, absent any contrary allegations, the Court is convinced that the President was justified in issuing PP 1017 calling for military aid.

Indeed, judging the seriousness of the incidents, President Arroyo was not expected to simply fold her arms and do nothing to prevent or suppress what she believed was lawless violence, invasion or rebellion. However, the exercise of such power or duty must not stifle liberty.

II. Constitutionality of PP 1017 and G.O. No. 5
Doctrines of Several Political Theoristson the Power of the Presidentin Times of Emergency

This case brings to fore a contentious subject -- the power of the President in times of emergency. A glimpse at the various political theories relating to this subject provides an adequate backdrop for our ensuing discussion.

John Locke, describing the architecture of civil government, called upon the English doctrine of prerogative to cope with the problem of emergency. In times of danger to the nation, positive law enacted by the legislature might be inadequate or even a fatal obstacle to the promptness of action necessary to avert catastrophe. In these situations, the Crown retained a prerogative "power to act according to discretion for the public good, without the proscription of the law and sometimes even against it."[84] But Locke recognized that this moral restraint might not suffice to avoid abuse of prerogative powers. Who shall judge the need for resorting to the prerogative and

how may its abuse be avoided? Here, Locke readily admitted defeat, suggesting that "the people have no other remedy in this, as in all other cases where they have no judge on earth, but to appeal to Heaven."[85]

Jean-Jacques Rousseau also assumed the need for temporary suspension of democratic processes of government in time of emergency. According to him:

> The inflexibility of the laws, which prevents them from adopting themselves to circumstances, may, in certain cases, render them disastrous and make them bring about, at a time of crisis, the ruin of the State...
>
> It is wrong therefore to wish to make political institutions as strong as to render it impossible to suspend their operation. Even Sparta allowed its law to lapse...
>
> If the peril is of such a kind that the paraphernalia of the laws are an obstacle to their preservation, the method is to nominate a supreme lawyer, who shall silence all the laws and suspend for a moment the sovereign authority. In such a case, there is no doubt about the general will, and it clear that the people's first intention is that the State shall not perish.[86]

Rosseau did not fear the abuse of the emergency dictatorship or "supreme magistracy" as he termed it. For him, it would more likely be cheapened by "indiscreet use." He was unwilling to rely upon an "appeal to heaven." Instead, he relied upon a tenure of office of prescribed duration to avoid perpetuation of the dictatorship.[87]

John Stuart Mill concluded his ardent defense of representative government: "I am far from condemning, in cases of extreme necessity, the assumption of absolute power in the form of a temporary dictatorship."[88]

Nicollo Machiavelli's view of emergency powers, as one element in the whole scheme of limited government, furnished an ironic contrast to the Lockean theory of prerogative. He recognized and attempted to bridge this chasm in democratic political theory, thus:

> Now, in a well-ordered society, it should never be necessary to resort to extra-constitutional measures; for although they may for a time be beneficial, yet the precedent is pernicious, for if the practice is once established for good objects, they will in a little while be disregarded under that pretext but for evil purposes. Thus, no republic will ever be perfect if she has not by law provided for everything, having a remedy for every emergency and fixed rules for applying it.[89]

Machiavelli - in contrast to Locke, Rosseau and Mill - sought to incorporate into the constitution a regularized system of standby emergency powers to be invoked with suitable checks and controls in time of national danger. He attempted forthrightly to meet the problem of combining a capacious reserve of power and speed and vigor in its application in time of emergency, with effective constitutional restraints.[90]

Contemporary political theorists, addressing themselves to the problem of response to emergency by constitutional democracies, have employed the doctrine of constitutional dictatorship.[91] Frederick M. Watkins saw "no reason why absolutism should not be used as a means for the defense of liberal institutions," provided it "serves to protect established institutions from the danger of permanent injury in a period of temporary emergency and is followed by a prompt return to the previous forms of political life."[92] He recognized the two (2) key elements of the problem of emergency governance, as well as all constitutional governance: increasing administrative powers of the executive, while at the same time "imposing limitation upon that power."[93] Watkins placed his real faith in a scheme of constitutional dictatorship. These are the conditions of success of such a dictatorship: "The period of dictatorship must be relatively short...Dictatorship should always be strictly legitimate in character...Final authority to determine the need for dictatorship in any given case must never rest with the dictator himself..."[94] and the objective of such an emergency dictatorship should be "strict political conservatism."

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Carl J. Friedrich cast his analysis in terms similar to those of Watkins.[95] "It is a problem of concentrating power - in a government where power has consciously been divided - to cope with... situations of unprecedented magnitude and gravity. There must be a broad grant of powers, subject to equally strong limitations as to who shall exercise such powers, when, for how long, and to what end."[96] Friedrich, too, offered criteria for judging the adequacy of any of scheme of emergency powers, to wit: "The emergency executive must be appointed by constitutional means - i.e., he must be legitimate; he should not enjoy power to determine the existence of an emergency; emergency powers should be exercised under a strict time limitation; and last, the objective of emergency action must be the defense of the constitutional order."[97]

Clinton L. Rossiter, after surveying the history of the employment of emergency powers in Great Britain, France, Weimar, Germany and the United States, reverted to a description of a scheme of "constitutional dictatorship" as solution to the vexing problems presented by emergency.[98] Like Watkins and Friedrich, he stated a priori the conditions of success of the "constitutional dictatorship," thus:

> 1) No general regime or particular institution of constitutional dictatorship should be initiated unless it is necessary or even indispensable to the preservation of the State and its constitutional order...
>
> 2) ...the decision to institute a constitutional dictatorship should never be in the hands of the man or men who will constitute the dictator...
>
> 3) No government should initiate a constitutional dictatorship without making specific provisions for its termination...
>
> 4) ...all uses of emergency powers and all readjustments in the organization of the government should be effected in pursuit of constitutional or legal requirements...
>
> 5) ... no dictatorial institution should be adopted, no right invaded, no regular procedure altered any more than is absolutely necessary for the conquest of the particular crisis . . .
>
> 6) The measures adopted in the prosecution of the a constitutional dictatorship should never be permanent in character or effect...
>
> 7) The dictatorship should be carried on by persons representative of every part of the citizenry interested in the defense of the existing constitutional order. . .
>
> 8) Ultimate responsibility should be maintained for every action taken under a constitutional dictatorship. . .
>
> 9) The decision to terminate a constitutional dictatorship, like the decision to institute one should never be in the hands of the man or men who constitute the dictator. . .
>
> 10) No constitutional dictatorship should extend beyond the termination of the crisis for which it was instituted...
>
> 11) ...the termination of the crisis must be followed by a complete return as possible to the political and governmental conditions existing prior to the initiation of the constitutional dictatorship...[99]

Rossiter accorded to legislature a far greater role in the oversight exercise of emergency powers than did Watkins. He would secure to Congress final responsibility for declaring the existence or termination of an emergency, and he places great faith in the effectiveness of congressional investigating committees.[100]

Scott and Cotter, in analyzing the above contemporary theories in light of recent experience, were one in saying that, "the suggestion that democracies surrender the control of government to an authoritarian ruler in time of grave danger to the nation is not based upon sound constitutional theory." To appraise emergency power in terms of constitutional dictatorship serves merely to distort the problem and hinder realistic analysis. It matters not

whether the term "dictator" is used in its normal sense (as applied to authoritarian rulers) or is employed to embrace all chief executives administering emergency powers. However used, "constitutional dictatorship" cannot be divorced from the implication of suspension of the processes of constitutionalism. Thus, they favored instead the "concept of constitutionalism" articulated by Charles H. McIlwain:

> A concept of constitutionalism which is less misleading in the analysis of problems of emergency powers, and which is consistent with the findings of this study, is that formulated by Charles H. McIlwain. While it does not by any means necessarily exclude some indeterminate limitations upon the substantive powers of government, full emphasis is placed upon procedural limitations, and political responsibility. McIlwain clearly recognized the need to repose adequate power in government. And in discussing the meaning of constitutionalism, he insisted that the historical and proper test of constitutionalism was the existence of adequate processes for keeping government responsible. He refused to equate constitutionalism with the enfeebling of government by an exaggerated emphasis upon separation of powers and substantive limitations on governmental power. He found that the really effective checks on despotism have consisted not in the weakening of government but, but rather in the limiting of it; between which there is a great and very significant difference. In associating constitutionalism with "limited" as distinguished from "weak" government, McIlwain meant government limited to the orderly procedure of law as opposed to the processes of force. The two fundamental correlative elements of constitutionalism for which all lovers of liberty must yet fight are the legal limits to arbitrary power and a complete political responsibility of government to the governed.[101]

In the final analysis, the various approaches to emergency of the above political theorists - from Lock's "theory of prerogative," to Watkins' doctrine of "constitutional dictatorship" and, eventually, to McIlwain's "principle of constitutionalism" --- ultimately aim to solve one real problem in emergency governance, i.e., that of allotting increasing areas of discretionary power to the Chief Executive, while insuring that such powers will be exercised with a sense of political responsibility and under effective limitations and checks.

Our Constitution has fairly coped with this problem. Fresh from the fetters of a repressive regime, the 1986 Constitutional Commission, in drafting the 1987 Constitution, endeavored to create a government in the concept of Justice Jackson's "balanced power structure."[102] Executive, legislative, and judicial powers are dispersed to the President, the Congress, and the Supreme Court, respectively. Each is supreme within its own sphere. But none has the monopoly of power in times of emergency. Each branch is given a role to serve as limitation or check upon the other. This system does not weaken the President, it just limits his power, using the language of McIlwain. In other words, in times of emergency, our Constitution reasonably demands that we repose a certain amount of faith in the basic integrity and wisdom of the Chief Executive but, at the same time, it obliges him to operate within carefully prescribed procedural limitations.

a. "Facial Challenge"

Petitioners contend that PP 1017 is void on its face because of its "overbreadth." They claim that its enforcement encroached on both unprotected and protected rights under Section 4, Article III of the Constitution and sent a "chilling effect" to the citizens.

A facial review of PP 1017, using the overbreadth doctrine, is uncalled for.

First and foremost, the overbreadth doctrine is an analytical tool developed for testing "on their faces" statutes in free speech cases, also known under the American Law as First Amendment cases.[103]

A plain reading of PP 1017 shows that it is not primarily directed to speech or even speech-related conduct. It is actually a call upon the AFP to prevent or suppress all forms of lawless violence. In United States v. Salerno,[104] the US Supreme Court held that "we have not recognized an "overbreadth' doctrine outside the limited context of

the First Amendment" (freedom of speech).

Moreover, the overbreadth doctrine is not intended for testing the validity of a law that "reflects legitimate state interest in maintaining comprehensive control over harmful, constitutionally unprotected conduct." Undoubtedly, lawless violence, insurrection and rebellion are considered "harmful" and "constitutionally unprotected conduct." In Broadrick v. Oklahoma,[105] it was held:

> It remains a 'matter of no little difficulty' to determine when a law may properly be held void on its face and when 'such summary action' is inappropriate. But the plain import of our cases is, at the very least, that facial overbreadth adjudication is an exception to our traditional rules of practice and that its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from 'pure speech' toward conduct and that conduct -even if expressive - falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.

Thus, claims of facial overbreadth are entertained in cases involving statutes which, by their terms, seek to regulate only "spoken words" and again, that "overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct."[106] Here, the incontrovertible fact remains that PP 1017 pertains to a spectrum of conduct, not free speech, which is manifestly subject to state regulation.

Second, facial invalidation of laws is considered as "manifestly strong medicine," to be used "sparingly and only as a last resort," and is "generally disfavored;"[107] The reason for this is obvious. Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a law may be applied will not be heard to challenge a law on the ground that it may conceivably be applied unconstitutionally to others, i.e., in other situations not before the Court.[108] A writer and scholar in Constitutional Law explains further:

> The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. Ordinarily, a particular litigant claims that a statute is unconstitutional as applied to him or her; if the litigant prevails, the courts carve away the unconstitutional aspects of the law by invalidating its improper applications on a case to case basis. Moreover, challengers to a law are not permitted to raise the rights of third parties and can only assert their own interests. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly. The factor that motivates courts to depart from the normal adjudicatory rules is the concern with the "chilling;" deterrent effect of the overbroad statute on third parties not courageous enough to bring suit. The Court assumes that an overbroad law's "very existence may cause others not before the court to refrain from constitutionally protected speech or expression." An overbreadth ruling is designed to remove that deterrent effect on the speech of those third parties.

In other words, a facial challenge using the overbreadth doctrine will require the Court to examine PP 1017 and pinpoint its flaws and defects, not on the basis of its actual operation to petitioners, but on the assumption or prediction that its very existence may cause others not before the Court to refrain from constitutionally protected speech or expression. In Younger v. Harris,[109] it was held that:

> [T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes,...ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided.

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And third, a facial challenge on the ground of overbreadth is the most difficult challenge to mount successfully, since the challenger must establish that there can be no instance when the assailed law may be valid. Here, petitioners did not even attempt to show whether this situation exists.

Petitioners likewise seek a facial review of PP 1017 on the ground of vagueness. This, too, is unwarranted.

Related to the "overbreadth" doctrine is the "void for vagueness doctrine" which holds that "a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application."[110] It is subject to the same principles governing overbreadth doctrine. For one, it is also an analytical tool for testing "on their faces" statutes in free speech cases. And like overbreadth, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. Again, petitioners did not even attempt to show that PP 1017 is vague in all its application. They also failed to establish that men of common intelligence cannot understand the meaning and application of PP 1017.

b. Constitutional Basis of PP 1017

Now on the constitutional foundation of PP 1017.

The operative portion of PP 1017 may be divided into three important provisions, thus:

> First provision:
>
> "by virtue of the power vested upon me by Section 18, Artilce VII ... do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well any act of insurrection or rebellion"
>
> Second provision:
>
> "and to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction;"
>
> Third provision:
>
> "as provided in Section 17, Article XII of the Constitution do hereby declare a State of National Emergency."

First Provision: Calling-out Power

The first provision pertains to the President's calling-out power. In Sanlakas v. Executive Secretary,[111] this Court, through Mr. Justice Dante O. Tinga, held that Section 18, Article VII of the Constitution reproduced as follows:

> 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 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.

grants the President, as Commander-in-Chief, a "sequence" of graduated powers. 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. Citing Integrated Bar of the Philippines v. Zamora,[112] the Court ruled that the only criterion for the exercise of the calling-out power is that "whenever it becomes necessary," the President may call the armed forces "to prevent or suppress lawless violence, invasion or rebellion." Are these conditions present in the instant cases? As stated earlier, considering the circumstances then prevailing, President Arroyo found it necessary to issue PP 1017. Owing to her Office's vast intelligence network, she is in the best position to determine the actual condition of the country.

Under the calling-out power, the President may summon the armed forces to aid him in suppressing lawless violence, invasion and rebellion. This involves ordinary police action. But every act that goes beyond the President's calling-out power is considered illegal or ultra vires. For this reason, a President must be careful in the exercise of his powers. He cannot invoke a greater power when he wishes to act under a lesser power. There lies the wisdom of our Constitution, the greater the power, the greater are the limitations.

It is pertinent to state, however, that there is a distinction between the President's authority to declare a "state of rebellion" (in Sanlakas) and the authority to proclaim a state of national emergency. While President Arroyo's authority to declare a "state of rebellion" emanates from her powers as Chief Executive, the statutory authority cited in Sanlakas was Section 4, Chapter 2, Book II of the Revised Administrative Code of 1987, which provides:

> 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.

President Arroyo's declaration of a "state of rebellion" was merely an act declaring a status or condition of public moment or interest, a declaration allowed under Section 4 cited above. Such declaration, in the words of Sanlakas, is harmless, without legal significance, and deemed not written. In these cases, PP 1017 is more than that. In declaring a state of national emergency, President Arroyo did not only rely on Section 18, Article VII of the Constitution, a provision calling on the AFP to prevent or suppress lawless violence, invasion or rebellion. She also relied on Section 17, Article XII, a provision on the State's extraordinary power to take over privately-owned public utility and business affected with public interest. Indeed, PP 1017 calls for the exercise of an awesome power. Obviously, such Proclamation cannot be deemed harmless, without legal significance, or not written, as in the case of Sanlakas.

Some of the petitioners vehemently maintain that PP 1017 is actually a declaration of Martial Law. It is no so. What defines the character of PP 1017 are its wordings. It is plain therein that what the President invoked was her

calling-out power.

The declaration of Martial Law is a "warn[ing] to citizens that the military power has been called upon by the executive to assist in the maintenance of law and order, and that, while the emergency lasts, they must, upon pain of arrest and punishment, not commit any acts which will in any way render more difficult the restoration of order and the enforcement of law."[113]

In his "Statement before the Senate Committee on Justice" on March 13, 2006, Mr. Justice Vicente V. Mendoza,[114] an authority in constitutional law, said that of the three powers of the President as Commander-in-Chief, the power to declare Martial Law poses the most severe threat to civil liberties. It is a strong medicine which should not be resorted to lightly. It cannot be used to stifle or persecute critics of the government. It is placed in the keeping of the President for the purpose of enabling him to secure the people from harm and to restore order so that they can enjoy their individual freedoms. In fact, Section 18, Art. VII, provides:

> 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.

Justice Mendoza also stated that PP 1017 is not a declaration of Martial Law. It is no more than a call by the President to the armed forces to prevent or suppress lawless violence. As such, it cannot be used to justify acts that only under a valid declaration of Martial Law can be done. Its use for any other purpose is a perversion of its nature and scope, and any act done contrary to its command is ultra vires.

Justice Mendoza further stated that specifically, (a) arrests and seizures without judicial warrants; (b) ban on public assemblies; (c) take-over of news media and agencies and press censorship; and (d) issuance of Presidential Decrees, are powers which can be exercised by the President as Commander-in-Chief only where there is a valid declaration of Martial Law or suspension of the writ of habeas corpus.

Based on the above disquisition, it is clear that PP 1017 is not a declaration of Martial Law. It is merely an exercise of President Arroyo's calling-out power for the armed forces to assist her in preventing or suppressing lawless violence.

Second Provision: "Take Care" Power

The second provision pertains to the power of the President to ensure that the laws be faithfully executed. This is based on Section 17, Article VII which reads:

> SEC. 17. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

As the Executive in whom the executive power is vested,[115] the primary function of the President is to enforce the laws as well as to formulate policies to be embodied in existing laws. He sees to it that all laws are enforced by the officials and employees of his department. Before assuming office, he is required to take an oath or affirmation to the effect that as President of the Philippines, he will, among others, "execute its laws."[116] In the exercise of such function, the President, if needed, may employ the powers attached to his office as the Commander-in-Chief of all the armed forces of the country,[117] including the Philippine National Police[118] under the Department of Interior and Local Government.[119]

Petitioners, especially Representatives Francis Joseph G. Escudero, Satur Ocampo, Rafael Mariano, Teodoro Casiño, Liza Maza, and Josel Virador argue that PP 1017 is unconstitutional as it arrogated upon President Arroyo

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the power to enact laws and decrees in violation of Section 1, Article VI of the Constitution, which vests the power to enact laws in Congress. They assail the clause "to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction."

Petitioners' contention is understandable. A reading of PP 1017 operative clause shows that it was lifted[120] from Former President Marcos' Proclamation No. 1081, which partly reads:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines by virtue of the powers vested upon me by Article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in Article 1, Section 1 of the Constitution under martial law and, in my capacity as their Commander-in-Chief, do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction.

We all know that it was PP 1081 which granted President Marcos legislative power. Its enabling clause states: "to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction." Upon the other hand, the enabling clause of PP 1017 issued by President Arroyo is: to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction."

Is it within the domain of President Arroyo to promulgate "decrees"?

PP 1017 states in part: "to enforce obedience to all the laws and decrees x x x promulgated by me personally or upon my direction."

The President is granted an Ordinance Power under Chapter 2, Book III of Executive Order No. 292 (Administrative Code of 1987). She may issue any of the following:

> Sec. 2. Executive Orders. --- Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.
>
> Sec. 3. Administrative Orders. --- Acts of the President which relate to particular aspect of governmental operations in pursuance of his duties as administrative head shall be promulgated in administrative orders.
>
> 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.
>
> Sec. 5. Memorandum Orders. --- Acts of the President on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government shall be embodied in memorandum orders.
>
> Sec. 6. Memorandum Circulars. --- Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus or offices of the Government, for information or compliance, shall be embodied in memorandum circulars.
>
> Sec. 7. General or Special Orders. --- Acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines shall be issued as general or special orders.

President Arroyo's ordinance power is limited to the foregoing issuances. She cannot issue decrees similar to those issued by Former President Marcos under PP 1081. Presidential Decrees are laws which are of the same category and binding force as statutes because they were issued by the President in the exercise of his legislative power during the period of Martial Law under the 1973 Constitution.[121]

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This Court rules that the assailed PP 1017 is unconstitutional insofar as it grants President Arroyo the authority to promulgate "decrees." Legislative power is peculiarly within the province of the Legislature. Section 1, Article VI categorically states that "[t]he legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives." To be sure, neither Martial Law nor a state of rebellion nor a state of emergency can justify President Arroyo's exercise of legislative power by issuing decrees.

Can President Arroyo enforce obedience to all decrees and laws through the military?

As this Court stated earlier, President Arroyo has no authority to enact decrees. It follows that these decrees are void and, therefore, cannot be enforced. With respect to "laws," she cannot call the military to enforce or implement certain laws, such as customs laws, laws governing family and property relations, laws on obligations and contracts and the like. She can only order the military, under PP 1017, to enforce laws pertinent to its duty to suppress lawless violence.

Third Provision: Power to Take Over

The pertinent provision of PP 1017 states:

> x x x and to enforce obedience to all the laws and to all decrees, orders, and regulations promulgated by me personally or upon my direction; and as provided in Section 17, Article XII of the Constitution do hereby declare a state of national emergency.

The import of this provision is that President Arroyo, during the state of national emergency under PP 1017, can call the military not only to enforce obedience "to all the laws and to all decrees x x x" but also to act pursuant to the provision of Section 17, Article XII which reads:

> Sec. 17. 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.

What could be the reason of President Arroyo in invoking the above provision when she issued PP 1017?

The answer is simple. During the existence of the state of national emergency, PP 1017 purports to grant the President, without any authority or delegation from Congress, to take over or direct the operation of any privately-owned public utility or business affected with public interest.

This provision was first introduced in the 1973 Constitution, as a product of the "martial law" thinking of the 1971 Constitutional Convention.[122] In effect at the time of its approval was President Marcos' Letter of Instruction No. 2 dated September 22, 1972 instructing the Secretary of National Defense to take over "the management, control and operation of the Manila Electric Company, the Philippine Long Distance Telephone Company, the National Waterworks and Sewerage Authority, the Philippine National Railways, the Philippine Air Lines, Air Manila (and) Filipinas Orient Airways . . . for the successful prosecution by the Government of its effort to contain, solve and end the present national emergency."

Petitioners, particularly the members of the House of Representatives, claim that President Arroyo's inclusion of Section 17, Article XII in PP 1017 is an encroachment on the legislature's emergency powers.

This is an area that needs delineation.

A distinction must be drawn between the President's authority to declare "a state of national emergency" and to exercise emergency powers. To the first, as elucidated by the Court, Section 18, Article VII grants the President such power, hence, no legitimate constitutional objection can be raised. But to the second, manifold constitutional

issues arise.

Section 23, Article VI of the Constitution reads:

> SEC. 23. (1) 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.
>
> (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.

It may be pointed out that the second paragraph of the above provision refers not only to war but also to "other national emergency." If the intention of the Framers of our Constitution was to withhold from the President the authority to declare a "state of national emergency" pursuant to Section 18, Article VII (calling-out power) and grant it to Congress (like the declaration of the existence of a state of war), then the Framers could have provided so. Clearly, they did not intend that Congress should first authorize the President before he can declare a "state of national emergency." The logical conclusion then is that President Arroyo could validly declare the existence of a state of national emergency even in the absence of a Congressional enactment.

But the exercise of emergency powers, such as the taking over of privately owned public utility or business affected with public interest, is a different matter. This requires a delegation from Congress.

Courts have often said that constitutional provisions in pari materia are to be construed together. Otherwise stated, different clauses, sections, and provisions of a constitution which relate to the same subject matter will be construed together and considered in the light of each other.[123] Considering that Section 17 of Article XII and Section 23 of Article VI, previously quoted, relate to national emergencies, they must be read together to determine the limitation of the exercise of emergency powers.

Generally, Congress is the repository of emergency powers. This is evident in the tenor of Section 23 (2), Article VI authorizing it to delegate such powers to the President. Certainly, a body cannot delegate a power not reposed upon it. However, knowing that during grave emergencies, it may not be possible or practicable for Congress to meet and exercise its powers, the Framers of our Constitution deemed it wise to allow Congress to grant emergency powers to the President, subject to certain conditions, thus:

> (1) There must be a war or other emergency.
>
> (2) The delegation must be for a limited period only.
>
> (3) The delegation must be subject to such restrictions as the Congress may prescribe.
>
> (4) The emergency powers must be exercised to carry out a national policy declared by Congress.[124]

Section 17, Article XII must be understood as an aspect of the emergency powers clause. The taking over of private business affected with public interest is just another facet of the emergency powers generally reposed upon Congress. Thus, when Section 17 states that the "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," it refers to Congress, not the President. Now, whether or not the President may exercise such power is dependent on whether Congress may delegate it to him pursuant to a law prescribing the reasonable terms thereof. Youngstown Sheet & Tube Co. et al. v. Sawyer,[125] held:

> It is clear that if the President had authority to issue the order he did, it must be found in some provision of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The

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> contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President . . . .;" that "he shall take Care that the Laws be faithfully executed;" and that he "shall be Commander-in-Chief of the Army and Navy of the United States.
>
> The order cannot properly be sustained as an exercise of the President's military power as Commander-in-Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander-in-Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the nation's lawmakers, not for its military authorities.
>
> Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States. . ."[126]

Petitioner Cacho-Olivares, et al. contends that the term "emergency" under Section 17, Article XII refers to "tsunami," "typhoon," "hurricane" and "similar occurrences." This is a limited view of "emergency."

Emergency, as a generic term, connotes the existence of conditions suddenly intensifying the degree of existing danger to life or well-being beyond that which is accepted as normal. Implicit in this definitions are the elements of intensity, variety, and perception.[127] Emergencies, as perceived by legislature or executive in the United Sates since 1933, have been occasioned by a wide range of situations, classifiable under three (3) principal heads: a) economic,[128] b) natural disaster,[129] and c) national security.[130]

"Emergency," as contemplated in our Constitution, is of the same breadth. It may include rebellion, economic crisis, pestilence or epidemic, typhoon, flood, or other similar catastrophe of nationwide proportions or effect.[131] This is evident in the Records of the Constitutional Commission, thus:

> MR. GASCON. Yes. What is the Committee's definition of "national emergency" which appears in Section 13, page 5? It reads:
>
> When the common good so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.
>
> MR. VILLEGAS. What I mean is threat from external aggression, for example, calamities or natural disasters.
>
> MR. GASCON. There is a question by Commissioner de los Reyes. What about strikes and riots?
>
> MR. VILLEGAS. Strikes, no; those would not be covered by the term "national emergency."
>
> MR. BENGZON. Unless they are of such proportions such that they would paralyze government service.[132]
>
> x x x x x x
>
> MR. TINGSON. May I ask the committee if "national emergency" refers to military national emergency or could this be economic emergency?"
>
> MR. VILLEGAS. Yes, it could refer to both military or economic dislocations.

> MR. TINGSON. Thank you very much.[133]

It may be argued that when there is national emergency, Congress may not be able to convene and, therefore, unable to delegate to the President the power to take over privately-owned public utility or business affected with public interest.

In Araneta v. Dinglasan,[134] this Court emphasized that legislative power, through which extraordinary measures are exercised, remains in Congress even in times of crisis.

> "x x x
>
> After all the criticisms that have been made against the efficiency of the system of the separation of powers, the fact remains that the Constitution has set up this form of government, with all its defects and shortcomings, in preference to the commingling of powers in one man or group of men. The Filipino people by adopting parliamentary government have given notice that they share the faith of other democracy-loving peoples in this system, with all its faults, as the ideal. The point is, under this framework of government, legislation is preserved for Congress all the time, not excepting periods of crisis no matter how serious. Never in the history of the United States, the basic features of whose Constitution have been copied in ours, have specific functions of the legislative branch of enacting laws been surrendered to another department - unless we regard as legislating the carrying out of a legislative policy according to prescribed standards; no, not even when that Republic was fighting a total war, or when it was engaged in a life-and-death struggle to preserve the Union. The truth is that under our concept of constitutional government, in times of extreme perils more than in normal circumstances "the various branches, executive, legislative, and judicial,' given the ability to act, are called upon "to perform the duties and discharge the responsibilities committed to them respectively."

Following our interpretation of Section 17, Article XII, invoked by President Arroyo in issuing PP 1017, this Court rules that such Proclamation does not authorize her during the emergency to temporarily take over or direct the operation of any privately owned public utility or business affected with public interest without authority from Congress.

Let it be emphasized that while the President alone can declare a state of national emergency, however, without legislation, he has no power to take over privately-owned public utility or business affected with public interest. The President cannot decide whether exceptional circumstances exist warranting the take over of privately-owned public utility or business affected with public interest. Nor can he determine when such exceptional circumstances have ceased. Likewise, without legislation, the President has no power to point out the types of businesses affected with public interest that should be taken over. In short, the President has no absolute authority to exercise all the powers of the State under Section 17, Article VII in the absence of an emergency powers act passed by Congress.

c. "AS APPLIED CHALLENGE"

One of the misfortunes of an emergency, particularly, that which pertains to security, is that military necessity and the guaranteed rights of the individual are often not compatible. Our history reveals that in the crucible of conflict, many rights are curtailed and trampled upon. Here, the right against unreasonable search and seizure; the right against warrantless arrest; and the freedom of speech, of expression, of the press, and of assembly under the Bill of Rights suffered the greatest blow.

Of the seven (7) petitions, three (3) indicate "direct injury."

In G.R. No. 171396, petitioners David and Llamas alleged that, on February 24, 2006, they were arrested without warrants on their way to EDSA to celebrate the 20th Anniversary of People Power I. The arresting officers cited PP 1017 as basis of the arrest.

In G.R. No. 171409, petitioners Cacho-Olivares and Tribune Publishing Co., Inc. claimed that on February 25, 2006, the CIDG operatives "raided and ransacked without warrant" their office. Three policemen were assigned to guard their office as a possible "source of destabilization." Again, the basis was PP 1017.

And in G.R. No. 171483, petitioners KMU and NAFLU-KMU et al. alleged that their members were "turned away and dispersed" when they went to EDSA and later, to Ayala Avenue, to celebrate the 20th Anniversary of People Power I.

A perusal of the "direct injuries" allegedly suffered by the said petitioners shows that they resulted from the implementation, pursuant to G.O. No. 5, of PP 1017.

Can this Court adjudge as unconstitutional PP 1017 and G.O. No 5 on the basis of these illegal acts? In general, does the illegal implementation of a law render it unconstitutional?

Settled is the rule that courts are not at liberty to declare statutes invalid although they may be abused and misabused[135] and may afford an opportunity for abuse in the manner of application.[136] The validity of a statute or ordinance is to be determined from its general purpose and its efficiency to accomplish the end desired, not from its effects in a particular case.[137] PP 1017 is merely an invocation of the President's calling-out power. Its general purpose is to command the AFP to suppress all forms of lawless violence, invasion or rebellion. It had accomplished the end desired which prompted President Arroyo to issue PP 1021. But there is nothing in PP 1017 allowing the police, expressly or impliedly, to conduct illegal arrest, search or violate the citizens' constitutional rights.

Now, may this Court adjudge a law or ordinance unconstitutional on the ground that its implementor committed illegal acts? The answer is no. The criterion by which the validity of the statute or ordinance is to be measured is the essential basis for the exercise of power, and not a mere incidental result arising from its exertion.[138] This is logical. Just imagine the absurdity of situations when laws maybe declared unconstitutional just because the officers implementing them have acted arbitrarily. If this were so, judging from the blunders committed by policemen in the cases passed upon by the Court, majority of the provisions of the Revised Penal Code would have been declared unconstitutional a long time ago.

President Arroyo issued G.O. No. 5 to carry into effect the provisions of PP 1017. General orders are "acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines." They are internal rules issued by the executive officer to his subordinates precisely for the proper and efficient administration of law. Such rules and regulations create no relation except between the official who issues them and the official who receives them.[139] They are based on and are the product of, a relationship in which power is their source, and obedience, their object.[140] For these reasons, one requirement for these rules to be valid is that they must be reasonable, not arbitrary or capricious.

G.O. No. 5 mandates the AFP and the PNP to immediately carry out the "necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence."

Unlike the term "lawless violence" which is unarguably extant in our statutes and the Constitution, and which is invariably associated with "invasion, insurrection or rebellion," the phrase "acts of terrorism" is still an amorphous and vague concept. Congress has yet to enact a law defining and punishing acts of terrorism.

In fact, this "definitional predicament" or the "absence of an agreed definition of terrorism" confronts not only our country, but the international community as well. The following observations are quite apropos:

> In the actual unipolar context of international relations, the "fight against terrorism" has become one of the basic slogans when it comes to the justification of the use of force against certain states and against groups

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operating internationally. Lists of states "sponsoring terrorism" and of terrorist organizations are set up and constantly being updated according to criteria that are not always known to the public, but are clearly determined by strategic interests.

The basic problem underlying all these military actions - or threats of the use of force as the most recent by the United States against Iraq - consists in the absence of an agreed definition of terrorism.

Remarkable confusion persists in regard to the legal categorization of acts of violence either by states, by armed groups such as liberation movements, or by individuals.

The dilemma can by summarized in the saying "One country's terrorist is another country's freedom fighter." The apparent contradiction or lack of consistency in the use of the term "terrorism" may further be demonstrated by the historical fact that leaders of national liberation movements such as Nelson Mandela in South Africa, Habib Bourgouiba in Tunisia, or Ahmed Ben Bella in Algeria, to mention only a few, were originally labeled as terrorists by those who controlled the territory at the time, but later became internationally respected statesmen.

What, then, is the defining criterion for terrorist acts - the differentia specifica distinguishing those acts from eventually legitimate acts of national resistance or self-defense?

Since the times of the Cold War the United Nations Organization has been trying in vain to reach a consensus on the basic issue of definition. The organization has intensified its efforts recently, but has been unable to bridge the gap between those who associate "terrorism" with any violent act by non-state groups against civilians, state functionaries or infrastructure or military installations, and those who believe in the concept of the legitimate use of force when resistance against foreign occupation or against systematic oppression of ethnic and/or religious groups within a state is concerned.

The dilemma facing the international community can best be illustrated by reference to the contradicting categorization of organizations and movements such as Palestine Liberation Organization (PLO) - which is a terrorist group for Israel and a liberation movement for Arabs and Muslims - the Kashmiri resistance groups - who are terrorists in the perception of India, liberation fighters in that of Pakistan - the earlier Contras in Nicaragua - freedom fighters for the United States, terrorists for the Socialist camp - or, most drastically, the Afghani Mujahedeen (later to become the Taliban movement): during the Cold War period they were a group of freedom fighters for the West, nurtured by the United States, and a terrorist gang for the Soviet Union. One could go on and on in enumerating examples of conflicting categorizations that cannot be reconciled in any way - because of opposing political interests that are at the roots of those perceptions.

How, then, can those contradicting definitions and conflicting perceptions and evaluations of one and the same group and its actions be explained? In our analysis, the basic reason for these striking inconsistencies lies in the divergent interest of states. Depending on whether a state is in the position of an occupying power or in that of a rival, or adversary, of an occupying power in a given territory, the definition of terrorism will "fluctuate" accordingly. A state may eventually see itself as protector of the rights of a certain ethnic group outside its territory and will therefore speak of a "liberation struggle," not of "terrorism" when acts of violence by this group are concerned, and vice-versa.

The United Nations Organization has been unable to reach a decision on the definition of terrorism exactly because of these conflicting interests of sovereign states that determine in each and every instance how a particular armed movement (i.e. a non-state actor) is labeled in regard to the terrorists-freedom fighter dichotomy. A "policy of double standards" on this vital issue of international affairs has been the unavoidable consequence.

This "definitional predicament" of an organization consisting of sovereign states - and not of peoples, in spite of the emphasis in the Preamble to the United Nations Charter! - has become even more serious in the present

> global power constellation: one superpower exercises the decisive role in the Security Council, former great powers of the Cold War era as well as medium powers are increasingly being marginalized; and the problem has become even more acute since the terrorist attacks of 11 September 2001 I the United States.[141]

The absence of a law defining "acts of terrorism" may result in abuse and oppression on the part of the police or military. An illustration is when a group of persons are merely engaged in a drinking spree. Yet the military or the police may consider the act as an act of terrorism and immediately arrest them pursuant to G.O. No. 5. Obviously, this is abuse and oppression on their part. It must be remembered that an act can only be considered a crime if there is a law defining the same as such and imposing the corresponding penalty thereon.

So far, the word "terrorism" appears only once in our criminal laws, i.e., in P.D. No. 1835 dated January 16, 1981 enacted by President Marcos during the Martial Law regime. This decree is entitled "Codifying The Various Laws on Anti-Subversion and Increasing The Penalties for Membership in Subversive Organizations." The word "terrorism" is mentioned in the following provision: "That one who conspires with any other person for the purpose of overthrowing the Government of the Philippines x x x by force, violence, terrorism, x x x shall be punished by reclusion temporal x x x."

P.D. No. 1835 was repealed by E.O. No. 167 (which outlaws the Communist Party of the Philippines) enacted by President Corazon Aquino on May 5, 1985. These two (2) laws, however, do not define "acts of terrorism." Since there is no law defining "acts of terrorism," it is President Arroyo alone, under G.O. No. 5, who has the discretion to determine what acts constitute terrorism. Her judgment on this aspect is absolute, without restrictions. Consequently, there can be indiscriminate arrest without warrants, breaking into offices and residences, taking over the media enterprises, prohibition and dispersal of all assemblies and gatherings unfriendly to the administration. All these can be effected in the name of G.O. No. 5. These acts go far beyond the calling-out power of the President. Certainly, they violate the due process clause of the Constitution. Thus, this Court declares that the "acts of terrorism" portion of G.O. No. 5 is unconstitutional.

Significantly, there is nothing in G.O. No. 5 authorizing the military or police to commit acts beyond what are necessary and appropriate to suppress and prevent lawless violence, the limitation of their authority in pursuing the Order. Otherwise, such acts are considered illegal.

We first examine G.R. No. 171396 (David et al.)

The Constitution provides that "the right of the people to be secured in their persons, houses, papers and effects against unreasonable search 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."[142] The plain import of the language of the Constitution is that searches, seizures and arrests are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest. Thus, the fundamental protection given by this provision is that between person and police must stand the protective authority of a magistrate clothed with power to issue or refuse to issue search warrants or warrants of arrest.[143]

In the Brief Account[144] submitted by petitioner David, certain facts are established: first, he was arrested without warrant; second, the PNP operatives arrested him on the basis of PP 1017; third, he was brought at Camp Karingal, Quezon City where he was fingerprinted, photographed and booked like a criminal suspect; fourth, he was treated brusquely by policemen who "held his head and tried to push him" inside an unmarked car; fifth, he was charged with Violation of Batas Pambansa Bilang No. 880[145] and Inciting to Sedition; sixth, he was detained for seven (7) hours; and seventh, he was eventually released for insufficiency of evidence.

Section 5, Rule 113 of the Revised Rules on Criminal Procedure provides:

> 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.

Neither of the two (2) exceptions mentioned above justifies petitioner David's warrantless arrest. During the inquest for the charges of inciting to sedition and violation of BP 880, all that the arresting officers could invoke was their observation that some rallyists were wearing t-shirts with the invective "Oust Gloria Now" and their erroneous assumption that petitioner David was the leader of the rally.[146] Consequently, the Inquest Prosecutor ordered his immediate release on the ground of insufficiency of evidence. He noted that petitioner David was not wearing the subject t-shirt and even if he was wearing it, such fact is insufficient to charge him with inciting to sedition. Further, he also stated that there is insufficient evidence for the charge of violation of BP 880 as it was not even known whether petitioner David was the leader of the rally.[147]

But what made it doubly worse for petitioners David et al. is that not only was their right against warrantless arrest violated, but also their right to peaceably assemble.

Section 4 of Article III guarantees:

> No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

"Assembly" means a right on the part of the citizens to meet peaceably for consultation in respect to public affairs. It is a necessary consequence of our republican institution and complements the right of speech. As in the case of freedom of expression, this right is not to be limited, much less denied, except on a showing of a clear and present danger of a substantive evil that Congress has a right to prevent. In other words, like other rights embraced in the freedom of expression, the right to assemble is not subject to previous restraint or censorship. It may not be conditioned upon the prior issuance of a permit or authorization from the government authorities except, of course, if the assembly is intended to be held in a public place, a permit for the use of such place, and not for the assembly itself, may be validly required.

The ringing truth here is that petitioner David, et al. were arrested while they were exercising their right to peaceful assembly. They were not committing any crime, neither was there a showing of a clear and present danger that warranted the limitation of that right. As can be gleaned from circumstances, the charges of inciting to sedition and violation of BP 880 were mere afterthought. Even the Solicitor General, during the oral argument, failed to justify the arresting officers' conduct. In De Jonge v. Oregon,[148] it was held that peaceable assembly cannot be made a crime, thus:

> Peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceful assembly are not to be preserved, is not as to the auspices under which the meeting was held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are

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> engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violations of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

On the basis of the above principles, the Court likewise considers the dispersal and arrest of the members of KMU et al. (G.R. No. 171483) unwarranted. Apparently, their dispersal was done merely on the basis of Malacañang's directive canceling all permits previously issued by local government units. This is arbitrary. The wholesale cancellation of all permits to rally is a blatant disregard of the principle that "freedom of assembly is not to be limited, much less denied, except on a showing of a clear and present danger of a substantive evil that the State has a right to prevent."[149] Tolerance is the rule and limitation is the exception. Only upon a showing that an assembly presents a clear and present danger that the State may deny the citizens' right to exercise it. Indeed, respondents failed to show or convince the Court that the rallyists committed acts amounting to lawless violence, invasion or rebellion. With the blanket revocation of permits, the distinction between protected and unprotected assemblies was eliminated.

Moreover, under BP 880, the authority to regulate assemblies and rallies is lodged with the local government units. They have the power to issue permits and to revoke such permits after due notice and hearing on the determination of the presence of clear and present danger. Here, petitioners were not even notified and heard on the revocation of their permits.[150] The first time they learned of it was at the time of the dispersal. Such absence of notice is a fatal defect. When a person's right is restricted by government action, it behooves a democratic government to see to it that the restriction is fair, reasonable, and according to procedure.

G.R. No. 171409, (Cacho-Olivares, et al.) presents another facet of freedom of speech i.e., the freedom of the press. Petitioners' narration of facts, which the Solicitor General failed to refute, established the following: first, the Daily Tribune's offices were searched without warrant; second, the police operatives seized several materials for publication; third, the search was conducted at about 1:00 o' clock in the morning of February 25, 2006; fourth, the search was conducted in the absence of any official of the Daily Tribune except the security guard of the building; and fifth, policemen stationed themselves at the vicinity of the Daily Tribune offices.

Thereafter, a wave of warning came from government officials. Presidential Chief of Staff Michael Defensor was quoted as saying that such raid was "meant to show a "strong presence,' to tell media outlets not to connive or do anything that would help the rebels in bringing down this government." Director General Lomibao further stated that "if they do not follow the standards -and the standards are if they would contribute to instability in the government, or if they do not subscribe to what is in General Order No. 5 and Proc. No. 1017 - we will recommend a 'takeover.'" National Telecommunications Commissioner Ronald Solis urged television and radio networks to "cooperate" with the government for the duration of the state of national emergency. He warned that his agency will not hesitate to recommend the closure of any broadcast outfit that violates rules set out for media coverage during times when the national security is threatened.[151]

The search is illegal. Rule 126 of The Revised Rules on Criminal Procedure lays down the steps in the conduct of search and seizure. Section 4 requires that a search warrant be issued upon probable cause in connection with one specific offence to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. Section 8 mandates that the search of a house, room, or any other premise be made in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, in the presence of two (2) witnesses of sufficient age and discretion residing in the same locality. And Section 9 states that the warrant must direct that it be served in the daytime, unless the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the

day or night. All these rules were violated by the CIDG operatives.

Not only that, the search violated petitioners' freedom of the press. The best gauge of a free and democratic society rests in the degree of freedom enjoyed by its media. In the Burgos v. Chief of Staff[152] this Court held that --

> As heretofore stated, the premises searched were the business and printing offices of the "Metropolitan Mail" and the "We Forum" newspapers. As a consequence of the search and seizure, these premises were padlocked and sealed, with the further result that the printing and publication of said newspapers were discontinued.
>
> Such closure is in the nature of previous restraint or censorship abhorrent to the freedom of the press guaranteed under the fundamental law, and constitutes a virtual denial of petitioners' freedom to express themselves in print. This state of being is patently anathematic to a democratic framework where a free, alert and even militant press is essential for the political enlightenment and growth of the citizenry.

While admittedly, the Daily Tribune was not padlocked and sealed like the "Metropolitan Mail" and "We Forum" newspapers in the above case, yet it cannot be denied that the CIDG operatives exceeded their enforcement duties. The search and seizure of materials for publication, the stationing of policemen in the vicinity of the The Daily Tribune offices, and the arrogant warning of government officials to media, are plain censorship. It is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey.[153] Undoubtedly, the The Daily Tribune was subjected to these arbitrary intrusions because of its anti-government sentiments. This Court cannot tolerate the blatant disregard of a constitutional right even if it involves the most defiant of our citizens. Freedom to comment on public affairs is essential to the vitality of a representative democracy. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. The motto should always be obsta principiis.[154]

Incidentally, during the oral arguments, the Solicitor General admitted that the search of the Tribune's offices and the seizure of its materials for publication and other papers are illegal; and that the same are inadmissible "for any purpose," thus:

> JUSTICE CALLEJO:
>
> You made quite a mouthful of admission when you said that the policemen, when inspected the Tribune for the purpose of gathering evidence and you admitted that the policemen were able to get the clippings. Is that not in admission of the admissibility of these clippings that were taken from the Tribune?
>
> SOLICITOR GENERAL BENIPAYO:
>
> Under the law they would seem to be, if they were illegally seized, I think and I know, Your Honor, and these are inadmissible for any purpose.[155]
>
> x x x x x x x x x
>
> SR. ASSO. JUSTICE PUNO:
>
> These have been published in the past issues of the Daily Tribune; all you have to do is to get those past issues. So why do you have to go there at 1 o'clock in the morning and without any search warrant? Did they become suddenly part of the evidence of rebellion or inciting to sedition or what?
>
> SOLGEN BENIPAYO:
>
> Well, it was the police that did that, Your Honor. Not upon my instructions.

SR. ASSO. JUSTICE PUNO:

Are you saying that the act of the policeman is illegal, it is not based on any law, and it is not based on Proclamation 1017.

SOLGEN BENIPAYO:

It is not based on Proclamation 1017, Your Honor, because there is nothing in 1017 which says that the police could go and inspect and gather clippings from Daily Tribune or any other newspaper.

SR. ASSO. JUSTICE PUNO:

Is it based on any law?

SOLGEN BENIPAYO:

As far as I know, no, Your Honor, from the facts, no.

SR. ASSO. JUSTICE PUNO:

So, it has no basis, no legal basis whatsoever?

SOLGEN BENIPAYO:

Maybe so, Your Honor. Maybe so, that is why I said, I don't know if it is premature to say this, we do not condone this. If the people who have been injured by this would want to sue them, they can sue and there are remedies for this.[156]

Likewise, the warrantless arrests and seizures executed by the police were, according to the Solicitor General, illegal and cannot be condoned, thus:

CHIEF JUSTICE PANGANIBAN:

There seems to be some confusions if not contradiction in your theory.

SOLICITOR GENERAL BENIPAYO:

I don't know whether this will clarify. The acts, the supposed illegal or unlawful acts committed on the occasion of 1017, as I said, it cannot be condoned. You cannot blame the President for, as you said, a misapplication of the law. These are acts of the police officers, that is their responsibility.[157]

The Dissenting Opinion states that PP 1017 and G.O. No. 5 are constitutional in every aspect and "should result in no constitutional or statutory breaches if applied according to their letter."

The Court has passed upon the constitutionality of these issuances. Its ratiocination has been exhaustively presented. At this point, suffice it to reiterate that PP 1017 is limited to the calling out by the President of the military to prevent or suppress lawless violence, invasion or rebellion. When in implementing its provisions, pursuant to G.O. No. 5, the military and the police committed acts which violate the citizens' rights under the Constitution, this Court has to declare such acts unconstitutional and illegal.

In this connection, Chief Justice Artemio V. Panganiban's concurring opinion, attached hereto, is considered an integral part of this ponencia.

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S U M M A T I O N

In sum, the lifting of PP 1017 through the issuance of PP 1021 - a supervening event - would have normally rendered this case moot and academic. However, while PP 1017 was still operative, illegal acts were committed allegedly in pursuance thereof. Besides, there is no guarantee that PP 1017, or one similar to it, may not again be issued. Already, there have been media reports on April 30, 2006 that allegedly PP 1017 would be reimposed "if the May 1 rallies" become "unruly and violent." Consequently, the transcendental issues raised by the parties should not be "evaded;" they must now be resolved to prevent future constitutional aberration.

The Court finds and so holds that PP 1017 is constitutional insofar as it constitutes a call by the President for the AFP to prevent or suppress lawless violence. The proclamation is sustained by Section 18, Article VII of the Constitution and the relevant jurisprudence discussed earlier. However, PP 1017's extraneous provisions giving the President express or implied power (1) to issue decrees; (2) to direct the AFP to enforce obedience to all laws even those not related to lawless violence as well as decrees promulgated by the President; and (3) to impose standards on media or any form of prior restraint on the press, are ultra vires and unconstitutional. The Court also rules that under Section 17, Article XII of the Constitution, the President, in the absence of a legislation, cannot take over privately-owned public utility and private business affected with public interest.

In the same vein, the Court finds G.O. No. 5 valid. It is an Order issued by the President - acting as Commander-in-Chief - addressed to subalterns in the AFP to carry out the provisions of PP 1017. Significantly, it also provides a valid standard - that the military and the police should take only the "necessary and appropriate actions and measures to suppress and prevent acts of lawless violence." But the words "acts of terrorism" found in G.O. No. 5 have not been legally defined and made punishable by Congress and should thus be deemed deleted from the said G.O. While "terrorism" has been denounced generally in media, no law has been enacted to guide the military, and eventually the courts, to determine the limits of the AFP's authority in carrying out this portion of G.O. No. 5.

On the basis of the relevant and uncontested facts narrated earlier, it is also pristine clear that (1) the warrantless arrest of petitioners Randolf S. David and Ronald Llamas; (2) the dispersal of the rallies and warrantless arrest of the KMU and NAFLU-KMU members; (3) the imposition of standards on media or any prior restraint on the press; and (4) the warrantless search of the Tribune offices and the whimsical seizures of some articles for publication and other materials, are not authorized by the Constitution, the law and jurisprudence. Not even by the valid provisions of PP 1017 and G.O. No. 5.

Other than this declaration of invalidity, this Court cannot impose any civil, criminal or administrative sanctions on the individual police officers concerned. They have not been individually identified and given their day in court. The civil complaints or causes of action and/or relevant criminal Informations have not been presented before this Court. Elementary due process bars this Court from making any specific pronouncement of civil, criminal or administrative liabilities.

It is well to remember that military power is a means to an end and substantive civil rights are ends in themselves. How to give the military the power it needs to protect the Republic without unnecessarily trampling individual rights is one of the eternal balancing tasks of a democratic state. During emergency, governmental action may vary in breadth and intensity from normal times, yet they should not be arbitrary as to unduly restrain our people's liberty.

Perhaps, the vital lesson that we must learn from the theorists who studied the various competing political philosophies is that, it is possible to grant government the authority to cope with crises without surrendering the two vital principles of constitutionalism: the maintenance of legal limits to arbitrary power, and political

responsibility of the government to the governed.[158]

WHEREFORE, the Petitions are partly granted. The Court rules that PP 1017 is CONSTITUTIONAL insofar as it constitutes a call by President Gloria Macapagal-Arroyo on the AFP to prevent or suppress lawless violence. However, the provisions of PP 1017 commanding the AFP to enforce laws not related to lawless violence, as well as decrees promulgated by the President, are declared UNCONSTITUTIONAL. In addition, the provision in PP 1017 declaring national emergency under Section 17, Article VII of the Constitution is CONSTITUTIONAL, but such declaration does not authorize the President to take over privately-owned public utility or business affected with public interest without prior legislation.

G.O. No. 5 is CONSTITUTIONAL since it provides a standard by which the AFP and the PNP should implement PP 1017, i.e. whatever is "necessary and appropriate actions and measures to suppress and prevent acts of lawless violence." Considering that "acts of terrorism" have not yet been defined and made punishable by the Legislature, such portion of G.O. No. 5 is declared UNCONSTITUTIONAL.

The warrantless arrest of Randolf S. David and Ronald Llamas; the dispersal and warrantless arrest of the KMU and NAFLU-KMU members during their rallies, in the absence of proof that these petitioners were committing acts constituting lawless violence, invasion or rebellion and violating BP 880; the imposition of standards on media or any form of prior restraint on the press, as well as the warrantless search of the Tribune offices and whimsical seizure of its articles for publication and other materials, are declared UNCONSTITUTIONAL.

No costs.

SO ORDERED.

Panganiban, C. J., please see concurring opinion.
Quisumbing, Austria-Martinez, Azcuna, Chico-Nazario, and Garcia, JJ., concur.
Puno, J., on leave.
Ynares-Santiago, J., please see concurring opinion.
Carpio, Carpio-Morales, and Callejo, Sr., JJ., join dissenting opinion of C. J. Panganiban.
Tinga, J., please see dissenting opinion.
Corona, and Velasco, Jr., JJ., join dissenting opinion of J. Tinga.

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[1] Law and Disorder, The Franklin Memorial Lectures, Justice Tom C. Clark - Lecturer, Volume XIX, 1971, p. 29.

[2] Chief Justice Artemio V. Panganiban, Liberty and Prosperity, February 15, 2006.

[3] Articulated in the writings of the Greek philosopher, Heraclitus of Ephesus, 540-480 B.C., who propounded universal impermanence and that all things, notably opposites are interrelated.

[4]Respondents' Comment dated March 6, 2006.

[5]Ibid.

[6] Ibid.

[7] Minutes of the Intelligence Report and Security Group, Philippine Army, Annex "I" of Respondents' Consolidated Comment.

[8]Respondents' Consolidated Comment.

[9] Ibid.

[10]Ibid.

[11]Petition in G.R. No. 171396, p. 5.

[12]Police action in various parts of Metro Manila and the reactions of the huge crowds being dispersed were broadcast as "breaking news" by the major television stations of this country.

[13]Petition in G.R. No. 171400, p. 11.

[14]Ibid.

[15] The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.

[16]No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[17]The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by 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.

[18]No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

[19] (1) 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.

(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.

[20]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.

[21]1 Cranch 137 [1803].

[22]Howard L. MacBain, "Some Aspects of Judicial Review," Bacon Lectures on the Constitution of the United States (Boston: Boston University Heffernan Press, 1939), pp. 376-77.

[23]The Court has no self-starting capacity and must await the action of some litigant so aggrieved as to have a justiciable case. (Shapiro and Tresolini, American Constitutional Law, Sixth Edition, 1983, p. 79).

[24] Cruz, Philippine Political Law, 2002 Ed., p. 259.

[25] Ibid.

[26] Province of Batangas v. Romulo, G.R. No. 152774, May 27, 2004, 429 SCRA 736.

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[27] Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr., G.R. No. 132795, March 10, 2004, 425 SCRA 129; Vda. De Dabao v. Court of Appeals, G.R. No. 1165, March 23, 2004, 426 SCRA 91; and Paloma v. Court of Appeals, G.R. No. 145431, November 11, 2003, 415 SCRA 590.

[28] Royal Cargo Corporation v. Civil Aeronautics Board, G.R. Nos. 103055-56, January 26, 2004, 421 SCRA 21; Vda. De Dabao v. Court of Appeals, supra.

[29]Lacson v. Perez, G.R. No. 147780, May 10, 2001, 357 SCRA 756.

[30]Cruz, Philippine Political Law, 2002, p. 268 citing Norton v. Shelby, 118 U.S. 425.

[31]Province of Batangas v. Romulo, supra.

[32] Lacson v. Perez, supra.

[33] Province of Batangas v. Romulo, supra.

[34] Albaña v. Commission on Elections, G.R. No. 163302, July 23, 2004, 435 SCRA 98, Acop v. Guingona, Jr., G.R. No. 134855, July 2, 2002, 383 SCRA 577, Sanlakas v. Executive Secretary, G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[35] Salonga v. Cruz Paño, et al., No. L- 59524, February 18, 1985, 134 SCRA 438.

[36] G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[37] Black's Law Dictionary, 6th Ed. 1991, p. 941.

[38] Salonga v. Warner Barnes & Co., 88 Phil. 125 (1951).

[39]275 Ky 91, 120 SW2d 765 (1938).

[40]19 Wend. 56 (1837).

[41]232 NC 48, 59 SE2d 359 (1950).

[42]302 U.S. 633.

[43]318 U.S. 446.

[44]65 Phil. 56 (1937).

[45] G.R. No. 117, November 7, 1945 (Unreported).

[46]G.R. No. 2947, January 11, 1959 (Unreported).

[47]110 Phil. 331 (1960).

[48] 77 Phil. 1012 (1947).

[49]84 Phil. 368 (1949) The Court held: "Above all, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure."

[50] L-No. 40004, January 31, 1975, 62 SCRA 275.

[51]Tañada v. Tuvera, G.R. No. 63915, April 24, 1985, 136 SCRA 27, where the Court held that where the question is one of public duty and the enforcement of a public right, the people are the real party in interest, and it is sufficient that the petitioner is a citizen interested in the execution of the law;

Legaspi v. Civil Service Commission, G.R. No. 72119, May 29, 1987, 150 SCRA 530, where the Court held that in cases involving an assertion of a public right, the requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen and part of the general public which possesses the right.

Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Tan, L. No. 81311, June 30, 1988, 163 SCRA 371, where the Court held that objections to taxpayers' lack of personality to sue may be disregarded in determining the validity of the VAT law;

Albano v. Reyes, G.R. No. 83551, July 11, 1989, 175 SCRA 264, where the Court held that while no expenditure of public funds was involved under the questioned contract, nonetheless considering its important role in the economic development of the country and the magnitude of the financial consideration involved, public interest was definitely involved and this clothed petitioner with the legal personality under the disclosure provision of the Constitution to question it.

Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform, G.R. No. 78742, July 14, 1989, 175 SCRA 343, where the Court ruled that while petitioners are strictly speaking, not covered by the definition of a "proper party," nonetheless, it has the discretion to waive the requirement, in determining the validity of the implementation of the CARP.

Gonzales v. Macaraig, Jr., G.R. No. 87636, November 19, 1990, 191 SCRA 452, where the Court held that it enjoys the open discretion to entertain taxpayer's suit or not and that a member of the Senate has the requisite personality to bring a suit where a constitutional issue is raised.

Maceda v. Macaraig, Jr., G.R. No. 88291, May 31, 1991, 197 SCRA 771, where the Court held that petitioner as a taxpayer, has the personality to file the instant petition, as the issues involved, pertains to illegal expenditure of public money;

Osmeña v. Comelec, G.R. No. 100318, 100308, 100417,100420, July 30, 1991, 199 SCRA 750, where the Court held that where serious constitutional questions are involved, the "transcendental importance" to the public of the cases involved demands that they be settled promptly and definitely, brushing aside technicalities of procedures;

De Guia v. Comelec, G.R. No. 104712, May 6, 1992, 208 SCRA 420, where the Court held that the importance of the issues involved concerning as it does the political exercise of qualified voters affected by the apportionment, necessitates the brushing aside of the procedural requirement of locus standi.

[52]G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[53] G.R. Nos. 138570, 138572, 138587, 138680, 138698, October 10, 2000, 342 SCRA 449.

[54]G.R. No. 151445, April 11, 2002, 380 SCRA 739.

[55] Supra.

[56] G.R. No. 118910, November 16, 1995, 250 SCRA 130.

[57] G.R. No. 132922, April 21, 1998, 289 SCRA 337.

[58] G.R. No. 147780, 147781, 147799, 147810, May 10, 2001, 357 SCRA 756.

[59] G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[60] 235 SCRA 506 (1994).

[61] Supra.

[62] Supra.

[63] 197 SCRA 52, 60 (1991).

[64]Supra.

[65]See NAACP v. Alabama, 357 U.S. 449 (1958).

[66] G.R. No. 141284, August 15, 2000, 338 SCRA 81.

[67]From the deliberations of the Constitutional Commission, the intent of the framers is clear that the immunity of the President from suit is concurrent only with his tenure and not his term. (De Leon, Philippine Constitutional Law, Vol. 2, 2004 Ed., p. 302).

[68] Section 1, Article XI of the Constitution provides: Public Office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

[69]Ibid., Sec. 2.

[70] No. 2908, September 30, 2005, 471 SCRA 87.

[71]91 Phil. 882 (1952).

[72]No. L-33964, December 11, 1971, 42 SCRA 448.

[73] No. L-35546, September 17, 1974, 59 SCRA 183.

[74]No. L-61388, April 20, 1983, 121 SCRA 472.

[75]Tañada v. Cuenco, 103 Phil. 1051 (1957).

[76] Lansang v. Garcia, supra, pp. 473 and 481.

[77] Supra.

[78] "Five Justices - Antonio, Makasiar, Esguerra, Fernandez, and Aquino - took the position that the proclamation of martial law and the arrest and detention orders accompanying the proclamation posed a "political question" beyond the jurisdiction of the Court. Justice Antonio, in a separate opinion concurred in by Makasiar, Fernandez, and Aquino, argued that the Constitution had deliberately set up a strong presidency and had concentrated powers in times of emergency in the hands of the President and had given him broad authority and discretion which the Court was bound to respect. He made reference to the decision in Lansang v. Garcia but read it as in effect upholding the "political question" position. Fernandez, in a separate opinion, also argued Lansang, even understood as giving a narrow scope of review authority to the Court, affirmed the impossible task of "checking' the action taken by the President. Hence, he advocated a return to Barcelon v. Baker. Similarly, Esguerra advocated the abandonment of Lansang and a return to Barcelon. And, although Justices Castro, Fernando, Muñoz- Palma, and, implicitly, Teehankee, lined up on the side of justiciability as enunciated in Lansang, x x x Barredo, however, wanted to have the best of both worlds and opted for the view that "political questions are not per se beyond the Court's jurisdiction ... but that as a matter of policy implicit in the Constitution itself the Court should abstain from interfering with the Executive's Proclamation." (Bernas, The 1987

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Constitution of the Republic of the Philippines: A Commentary, 1996 Edition, p. 794.)

[79] See Separate Opinion of J. Puno in Integrated Bar of the Philippines v. Zamora, supra.

[80] Supra.

[81]Cruz, Philippine Political Law, 2002 Ed., p. 247.

[82] Santiago v. Guingona, Jr., G.R. No. 134577, November 18, 1998, 298 SCRA 756.

[83] Supra, 481-482.

[84]Smith and Cotter, Powers of the President during Crises, 1972, p. 6.

[85]Ibid.

[86] The Social Contract (New York: Dutton, 1950), pp. 123-124.

[87] Smith and Cotter, Powers of the President during Crises, 1972, pp. 6-7.

[88] Representative Government, New York, Dutton, 1950, pp. 274, 277-78.

[89] The Discourses, Bk. 1, Ch. XXXIV.

[90]Smith and Cotter, Powers of the President During Crises, 1972. p. 8.

[91] Ibid.

[92] See The Problem of Constitutional Dictatorship, p. 328.

[93] Ibid., p. 353.

[94] Ibid., pp. 338-341.

[95]Smith and Cotter, Powers of the President During Crises, 1972, p. 9.

[96] Constitutional Government and Democracy, Ch. XXVI, rev. ed., Boston: Ginn & Co., 1949, p. 580.

[97] Ibid, pp. 574-584.

[98] Smith and Cotter, Powers of the President During Crises, 1972, p. 10.

[99] Rossiter, Constitutional Dictatorship, Princeton: Princeton University Press, 1948, pp. 298-306.

[100]Smith and Cotter, Powers of the President During Crises, 1972, p. 11.

[101] Smith and Cotter, Powers of the President During Crises, 1972, p. 12.

[102] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579; 72 Sup. Ct. 863; 96 L. Ed. 1153 (1952), See Concurring Opinion J. Jackson.

[103]See Concurring Opinion of Justice Mendoza in Estrada v. Sandiganbayan, G.R. No. 148560, November 19, 2001, 369 SCRA 393.

[104] 481 U.S. 739, 95 L. Ed. 2d 697 (1987).

[105] Supra.

[106] See Concurring Opinion of Justice Mendoza in Estrada v. Sandiganbayan, supra.

[107] Broadrick v. Oklahoma, 413 U.S. 601 (1973).

[108] Ibid.

[109]401 U.S. 37, 52-53, 27 L.Ed.2d 669, 680 (1971), United States v. Raines, 362 U.S. 17, 4 L.Ed.2d 524 (1960); Board of Trustees, State Univ. of N.Y v. Fox, 492 U.S. 469, 106 L.Ed.2d 388 (1989).

[110] Ermita-Malate Hotel and Motel Operators Association v. City Mayor, No. L-24693, July 31, 1967, 20 SCRA 849 (1967).

[111] G.R. No. 159085, February 3, 2004, 421 SCRA 656, wherein this Court sustained President Arroyo's declaration of a "state of rebellion" pursuant to her calling-out power.

[112] Supra.

[113] Westel Willoughby, Constitutional Law of the United States 1591 [2d Ed. 1929, quoted in Aquino v. Ponce Enrile, 59 SCRA 183 (1974), (Fernando, J., concurring)].

[114] Retired Associate Justice of the Supreme Court.

[115] Section 1, Article VII of the Constitution.

[116] Section 5, Article VII of the Constitution.

[117] Section 18, Article VII of the Constitution.

[118] Section 6, Article XVI of the Constitution.

[119] See Republic Act No. 6975.

[120]Ironically, even the 7th Whereas Clause of PP 1017 which states that "Article 2, Section 4 of our Constitution makes the defense and preservation of the democratic institutions and the State the primary duty of Government" replicates more closely Section 2, Article 2 of the 1973 Constitution than Section 4, Article 2 of the 1987 Constitution which provides that, "[t[he prime duty of the Government is to serve and protect the people."

[121] Agpalo, Statutory Construction, Fourth Edition, 1998, p. 1, citing Legaspi v. Ministry of Finance, 115 SCRA 418 (1982); Garcia-Padilla v. Ponce-Enrile, supra. Aquino v. Commission on Election, supra.

[122] Section 17, Article XIV of the 1973 Constitution reads: "In times of national emergency when the public interest so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest."

[123]Antieau, Constitutional Construction, 1982, p.21.

[124] Cruz, Philippine Political Law, 1998, p. 94.

[125] 343 U.S. 579; 72 Sup. Ct. 863; 96 L. Ed. 1153 (1952).

[126] Tresolini, American Constitutional Law, 1959, Power of the President, pp. 255-257.

[127] Smith and Cotter, Powers of the President During Crises, 1972, p. 14

[128]The Federal Emergency Relief Act of 1933 opened with a declaration that the economic depression created a serious emergency, due to wide-spread unemployment and the inadequacy of State and local relief funds, . . . making it imperative that the Federal Government cooperate more effectively with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people. President

Roosevelt in declaring a bank holiday a few days after taking office in 1933 proclaimed that "heavy and unwarranted withdrawals of gold and currency from - banking institutions for the purpose of hoarding; ... resulting in "sever drains on the Nation's stocks of gold - have created a national emergency," requiring his action. Enacted within months after Japan's attack on Pearl Harbor, the Emergency Price Control Act of 1942 was designed to prevent economic dislocations from endangering the national defense and security and the effective prosecution of the war. (Smith and Cotter, Powers of the President During Crises, 1972, p.18)

[129] The Emergency Appropriation Act for Fiscal 1935 appropriated fund to meet the emergency and necessity for relief in stricken agricultural areas and in another section referred to "the present drought emergency."[129] The India Emergency Food Aid Act of 1951 provided for emergency shipments of food to India to meet famine conditions then ravaging the great Asian sub-continent. The Communication Act of 1934 and its 1951 amendment grant the President certain powers in time of "public peril or disaster." The other statutes provide for existing or anticipated emergencies attributable to earthquake, flood, tornado, cyclone, hurricane, conflagration an landslides.[129] There is also a Joint Resolution of April 1937. It made "funds available for the control of incipient or emergency outbreaks of insect pests or plant diseases, including grasshoppers, Mormon crickets, and chinch bugs. (66 Stat 315, July 1, 1952, Sec. 2 [a]) Supra.

[130] National Security may be cataloged under the heads of (1) Neutrality, (2) Defense, (3) Civil Defense, and (4) Hostilities or War. (p. 22) The Federal Civil Defense Act of 1950 contemplated an attack or series of attacks by an enemy of the United States which conceivably would cause substantial damage or injury to civilian property or persons in the United States by any one of several means; sabotage, the use of bombs, shellfire, or atomic, radiological, chemical, bacteriological means or other weapons or processes. Such an occurrence would cause a "National Emergency for Civil Defense Purposes," or "a state of civil defense emergency," during the term which the Civil Defense Administrator would have recourse to extraordinary powers outlined in the Act. The New York-New Jersey Civil Defense Compact supplies an illustration in this context for emergency cooperation. "Emergency" as used in this compact shall mean and include invasion, or other hostile action, disaster, insurrection or imminent danger thereof. (Id., p.15-16)

[131] Cruz, Philippine Political Law, 1998, p. 95.

[132] Record of the Constitutional Commission, Vol. III, pp. 266-267.

[133] Record of the Constitutional Convention, pp. 648-649.

[134] 84 Phil. 368 (1949).

[135] Uren v Bagley, 118 Or 77, 245 P 1074, 46 ALR 1173.

[136]Gutierrez v. Middle Rio Grande Conservancy Dist., 34 NM 346, 282 P 1, 70 ALR 1261, cert den 280 US 610, 74 L ed 653, 50 S Ct 158.

[137] Sanitation Dist. V. Campbell (Ky), 249 SW 2d 767; Rochester v. Gutberlett, 211 NY 309, 105 NE 548.

[138] Hammond Packing Co. v. Arkansas, 212 US 322, 53 L ed 530, 29 S Ct 370.

[139] De Leon and De Leon Jr., Administrative Law, Text and Cases, 2001 Ed., p. 115.

[140] Ibid.

[141]In a Lecture delivered on March 12, 2002 as part of the Supreme Court Centenary Lecture Series, Hans Koechler, Professor of Philosophy at the University of Innsbruck (Austria) and President of the International Progress Organization, speaking on "The United Nations, The International Rule of Law and Terrorism" cited in

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the Dissenting Opinion of Justice Kapunan in Lim v. Executive Secretary, G.R. No. 151445, April 11, 2002, 380 SCRA 739.

[142] Section 2, Article III of the 1987 Constitution.

[143] Bernas, The 1987 Constitution of the Republic of the Philippines, A Reviewer-Primer, p. 51.

[144] Annex "A" of the Memorandum in G.R. No. 171396, pp. 271-273.

[145] An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petition the Government for Other Purposes.

[146]Annex "A" of the Memorandum in G.R. No. 171396, pp. 271-273.

[147] Ibid.

[148] 299 U.S. 353, 57 S. Ct. 255, 81 L. Ed. 278.

[149] Reyes v. Bagatsing, No. L-65366, November 9, 1983, 125 SCRA 553.

[150] Section 5. Application requirements - All applications for a permit shall comply with the following guidelines:

x x x x x x

> (c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.

[151]Petition in G.R. No. 171400, p. 11.

[152]No. L-64161, December 26, 1984, 133 SCRA 816.

[153]Dissenting Opinion, J. Cruz, National Press Club v. Commission on Elections, G.R. Nos. 102653, 102925 & 102983, March 5, 1992, 207 SCRA 1.

[154] Boyd v. United States, 116 U.S. 616 (1886).

[155]Transcript of Stenographic Notes, Oral Arguments, March 7, 2006, p. 470.

[156]Ibid., pp. 432-433.

[157]Ibid, pp. 507-508.

[158] Smith and Cotter, Powers of the President During Crisis, 1972, p. 146.

CONCURRING OPINION

PANGANIBAN, CJ:

I was hoping until the last moment of our deliberations on these consolidated cases that the Court would be unanimous in its Decision. After all, during the last two weeks, it decided with one voice two equally contentious and nationally significant controversies involving Executive Order No. 464[1] and the so-called Calibrated Preemptive Response policy.[2]

However, the distinguished Mr. Justice Dante O. Tinga's Dissenting Opinion has made that hope an impossibility.

I now write, not only to express my full concurrence in the thorough and elegantly written ponencia of the esteemed Mme. Justice Angelina Sandoval-Gutierrez, but more urgently to express a little comment on Justice Tinga's Dissenting Opinion (DO).

The Dissent dismisses all the Petitions, grants no reliefs to petitioners, and finds nothing wrong with PP 1017. It labels the PP a harmless pronouncement -- "an utter superfluity" -- and denounces the ponencia as an "immodest show of brawn" that "has imprudently placed the Court in the business of defanging paper tigers."

Under this line of thinking, it would be perfectly legal for the President to reissue PP 1017 under its present language and nuance. I respectfully disagree.

Let us face it. Even Justice Tinga concedes that under PP 1017, the police -- "to some minds" -- "may have flirted with power." With due respect, this is a masterful understatement. PP 1017 may be a paper tiger, but -- to borrow the colorful words of an erstwhile Asian leader -- it has nuclear teeth that must indeed be defanged.

Some of those who drafted PP 1017 may be testing the outer limits of presidential prerogatives and the perseverance of this Court in safeguarding the people's constitutionally enshrined liberty. They are playing with fire, and unless prudently restrained, they may one day wittingly or unwittingly burn down the country. History will never forget, much less forgive, this Court if it allows such misadventure and refuses to strike down abuse at its inception. Worse, our people will surely condemn the misuse of legal hocus pocus to justify this trifling with constitutional sanctities.

And even for those who deeply care for the President, it is timely and wise for this Court to set down the parameters of power and to make known, politely but firmly, its dogged determination to perform its constitutional duty at all times and against all odds. Perhaps this country would never have had to experience the wrenching pain of dictatorship; and a past President would not have fallen into the precipice of authoritarianism, if the Supreme Court then had the moral courage to remind him steadfastly of his mortality and the inevitable historical damnation of despots and tyrants. Let not this Court fall into that same rut.

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[1] Senate v. Ermita, GR No. 169777, April 20, 2006.

[2] Bayan v. Ermita, GR No. 169838, April 25, 2006.

DISSENTING OPINION

TINGA, J:

I regret to say that the majority, by its ruling today, has imprudently placed the Court in the business of defanging paper tigers. The immodest show of brawn unfortunately comes at the expense of an exhibition by the Court of a fundamental but sophisticated understanding of the extent and limits of executive powers and prerogatives, as well as those assigned to the judicial branch. I agree with the majority on some points, but I cannot join the majority opinion, as it proceeds to rule on non-justiciable issues based on fears that have not materialized, departing as they do from the plain language of the challenged issuances to the extent of second-guessing the Chief Executive. I respectfully dissent.

The key perspective from which I view these present petitions is my own ponencia in Sanlakas v. Executive Secretary,[1] which centered on Presidential Proclamation No. 427 (PP 427), declaring a "state of rebellion" in 2003. The Court therein concluded that while the declaration was constitutional, such declaration should be

regarded as both regarded as "an utter superfluity", which "only gives notice to the nation that such a state exists and that the armed forces may be called to prevent or suppress it", and "devoid of any legal significance", and "cannot diminish or violate constitutionally protected rights." I submit that the same conclusions should be reached as to Proclamation No. 1017 (PP 1017). Following the cardinal precept that the acts of the executive are presumed constitutional is the equally important doctrine that to warrant unconstitutionality, there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication.[2] Also well-settled as a rule of construction is that where thee are two possible constructions of law or executive issuance one of which is in harmony with the Constitution, that construction should be preferred.[3] The concerns raised by the majority relating to PP 1017 and General Order Nos. 5 can be easily disquieted by applying this well-settled principle.

I.PP 1017Has No Legal BindingEffect; Creates No Rights andObligations; and Cannot BeEnforced or Invoked in a CourtOf Law

First, the fundamentals. The President is the Chief of State and Foreign Relations, the chief of the Executive Branch,[4] and the Commander-in-Chief of the Armed Forces.[5] The Constitution vests on the President the executive power.[6] The President derives these constitutional mandates from direct election from the people. The President stands as the most recognizable representative symbol of government and of the Philippine state, to the extent that foreign leaders who speak with the President do so with the understanding that they are speaking to the Philippine state.

Yet no matter the powers and prestige of the presidency, there are significant limitations to the office of the President. The President does not have the power to make or legislate laws,[7] or disobey those laws passed by Congress.[8] Neither does the President have to power to create rights and obligations with binding legal effect on the Filipino citizens, except in the context of entering into contractual or treaty obligations by virtue of his/her position as the head of State. The Constitution likewise imposes limitations on certain powers of the President that are normally inherent in the office. For example, even though the President is the administrative head of the Executive Department and maintains executive control thereof,[9] the President is precluded from arbitrarily terminating the vast majority of employees in the civil service whose right to security of tenure is guaranteed by the Constitution.[10]

The President has inherent powers,[11] powers expressly vested by the Constitution, and powers expressly conferred by statutes. The power of the President to make proclamations, while confirmed by statutory grant, is nonetheless rooted in an inherent power of the presidency and not expressly subjected to constitutional limitations. But proclamations, as they are, are a species of issuances of extremely limited efficacy. As defined in the Administrative Code, proclamations are merely "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".[12] A proclamation, on its own, cannot create or suspend any constitutional or statutory rights or obligations. There would be need of a complementing law or regulation referred to in the proclamation should such act indeed put into operation any law or regulation by fixing a date or declaring a status or condition of a public moment or interest related to such law or regulation. And should the proclamation allow the operationalization of such law or regulation, all subsequent resultant acts cannot exceed or supersede the law or regulation that was put into effect.

Under Section 18, Article VII of the Constitution, among the constitutional powers of the President, as Commander-in-Chief, is to "call out such armed forces to prevent or suppress lawless violence, invasion or rebellion".[13] The existence of invasion or rebellion could allow the President to either suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law, but there is a fairly elaborate constitutional procedure to be observed in such a case, including congressional affirmation or revocation

of such suspension or declaration, as well as the availability of judicial review. However, the existence of lawless violence, invasion or rebellion does not ipso facto cause the "calling out" of the armed forces, the suspension of habeas corpus or the declaration of martial law â”€ it remains within the discretion of the President to engage in any of these three acts should said conditions arise.

Sanlakas involved PP 427, which declared the existence of a "state of rebellion." Such declaration could ostensibly predicate the suspension of the privilege of the writ of habeas corpus or the declaration of martial law, but the President did not do so. Instead, PP 427, and the accompanying General Order No. 4, invoked the "calling out" of the Armed Forces to prevent lawless violence, invasion and rebellion. Appreciably, a state of lawless violence, invasion or rebellion could be variable in scope, magnitude and gravity; and Section 18, Article VII allows for the President to respond with the appropriate measured and proportional response.

Indeed, the diminution of any constitutional rights through the suspension of the privilege of the writ or the declaration of martial law is deemed as "strong medicine" to be used sparingly and only as a last resort, and for as long as only truly necessary. Thus, the mere invocation of the "calling out" power stands as a balanced means of enabling a heightened alertness in dealing with the armed threat, but without having to suspend any constitutional or statutory rights or cause the creation of any new obligations. For the utilization of the "calling out" power alone cannot vest unto the President any new constitutional or statutory powers, such as the enactment of new laws. At most, it can only renew emphasis on the duty of the President to execute already existing laws without extending a corresponding mandate to proceed extra-constitutionally or extra-legally. Indeed, the "calling out" power does not authorize the President or the members of the Armed Forces to break the law.

These were the premises that ultimately informed the Court's decision in Sanlakas, which affirmed the declaration of a "state of rebellion" as within the "calling out" power of the President, but which emphasized that for legal intents and purposes, it should be both regarded as "an utter superfluity", which "only gives notice to the nation that such a state exists and that the armed forces may be called to prevent or suppress it," and "devoid of any legal significance," as it could not "cannot diminish or violate constitutionally protected rights." The same premises apply as to PP 1017.

A comparative analysis of PP 427 and PP 1017, particularly their operative clauses, is in order.

PP 427 PP 1017

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. NOW, THEREFORE, I Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Commander-in-Chief of the Armed Forces of the Philippines, by virtue of the powers vested upon me by Section 18, Article 7 of the Philippine Constitution which states that: "The President. . . whenever it becomes necessary, . . . may call out (the) armed forces to prevent or suppress. . . rebellion. . .," and in my capacity as their Commander-in-Chief, do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well any act of insurrection or rebellion and to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction; and as provided in Section 17, Article 12 of the Constitution do hereby declare a State of National Emergency.

Let us begin with the similarities. Both PP 427 and PP 1017 are characterized by two distinct phases. The first is the declaration itself of a status or condition, a "state of rebellion" in PP 437, and a "state of national emergency" under PP 1017. Both "state of rebellion" and "state of national emergency" are terms within constitutional contemplation. Under Section 18, Article VII, the existence of a "state of rebellion" is sufficient premise for either the suspension of the privilege of the writ of habeas corpus or the declaration of martial law, though in accordance with the strict guidelines under the same provision. Under Section 17, Article XII, the existence of a state of national emergency is sufficient ground for the State, during the emergency, under reasonable terms prescribed by it, and when the public interest so requires, to temporarily take over or direct the operation of any privately-owned public utility or business affected with public interest. Under Section 23(2), Article VI, the existence of a state of national emergency may also allow Congress to 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.

Certainly, the declaration could stand as the first step towards constitutional authorization for the exercise by the President, the Congress or the State of extraordinary powers and prerogatives. However, the declaration alone cannot put into operation these extraordinary powers and prerogatives, as the declaration must be followed through with a separate act providing for the actual utilization of such powers. In the case of the "state of rebellion," such act involves the suspension of the writ or declaration of martial law. In the case of the "state of national emergency," such act involves either an order for the takeover or actual takeover by the State of public utilities or businesses imbued with public interest or the authorization by Congress for the President to exercise emergency powers.

In PP 427, the declaration of a "state of rebellion" did not lead to the suspension of the writ or the declaration of martial law. In PP 1017, the declaration of a "state of national emergency" did not lead to an authorization for the takeover or actual takeover of any utility or business, or the grant by Congress to the President of emergency powers. Instead, both declarations led to the invocation of the calling out power of the President under Section 18, Article VII, which the majority correctly characterizes as involving only "ordinary police action."

I agree with the ponencia's holding that PP 1017 involves the exercise by the President of the "calling out" power under Section 18, Article VII. In Integrated Bar v. Zamora,[14] the Court was beseeched upon to review an order of President Estrada commanding the deployment of the Marines in patrols around Metro Manila, in view of an increase in crime.[15] The Court, speaking through Justice Santiago Kapunan, affirmed the President's order, asserting that "it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court."[16] Tellingly, the order of deployment by President Estrada was affirmed by the Court even though we held the view that the power then involved was not the "calling out" power, but "the power involved may be no more than the maintenance of peace and order and promotion of the general welfare."[17]

It was also maintained in Integrated Bar that while Section 18, Article VII mandated two conditions â”€ actual rebellion or invasion and the requirement of public safety â”€ before the suspension of the privilege of the writ of habeas corpus or the declaration of martial law could be declared, "these conditions are not required in the case of the power to call out the armed forces. The only criterion is that "whenever it becomes necessary", the President may call the armed forces "to suppress lawless violence, invasion or rebellion."[18] The Court concluded that the implication was "that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers."[19]

These propositions were affirmed in Sanlakas, wherein the invocation of the calling out power was expressly

made by President Arroyo. The Court noted that for the purpose of exercising the calling out power, the Constitution did not require the President to make a declaration of a state of rebellion.[20] At the same time, the Court in Sanlakas acknowledged that "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."[21]

For still unclear reasons, the majority attempts to draw a distinction between Sanlakas and the present petitions by that the statutory authority to declare a "state of rebellion" emanates from the Administrative Code of 1987, particularly the provision authorizing the President to make proclamations. As such, the declaration of a "state of rebellion," pursuant to statutory authority, "was merely an act declaring a status or condition of public moment or interest." The majority grossly misreads Sanlakas, which expressly roots the declaration of a state of rebellion from the wedded powers of the Chief Executive, under Section 1, Article VII, and as Commander-in-Chief, under Section 18, Article VII.

Insofar as PP 1017 is concerned, the calling out power is definitely involved, in view of the directive to the Armed Forces of the Philippines to "suppress all forms of lawless violence". But there are nuances to the calling out power invoked in PP 1017 which the majority does not discuss. The directive "to suppress all forms of lawless violence" is addressed not only to the Armed Forces but to the police as well. The "calling out" of the police does not derive from Section 17, Article VII, or the commander-in-chief clause, our national police being civilian in character. Instead, the calling out of the police is sourced from the power of the President as Chief Executive under Section 1, Article VII, and the power of executive control under Section 18, Article VII. Moreover, while the permissible scope of military action is limited to acts in furtherance of suppressing lawless violence, rebellion, invasion, the police can be commanded by the President to execute all laws without distinction in light of the presidential duty to execute all laws.[22]

Still, insofar as Section 17, Article VII is concerned, wide latitude is accorded to the discretion of the Chief Executive in the exercise of the "calling out" power due to a recognition that the said power is of limited import, directed only to the Armed Forces of the Philippines, and incapable of imposing any binding legal effect on the citizens and other branches of the Philippines. Indeed, PP 1017 does not purport otherwise. Nothing in its operative provisions authorize the President, the Armed Forces of the Philippines, or any officer of the law, to perform any extra-constitutional or extra-legal acts. PP 1017 does not dictate the suspension of any of the people's guarantees under the Bill of Rights.

If it cannot be made more clear, neither the declaration of a state of emergency under PP 1017 nor the invocation of the calling out power therein authorizes warrantless arrests, searches or seizures; the infringement of the right to free expression, peaceable assembly and association and other constitutional or statutory rights. Any public officer who nonetheless engaged or is engaging in such extra-constitutional or extra-legal acts in the name of PP 1017 may be subjected to the appropriate civil, criminal or administrative liability.

To prove this point, let us now compare PP 1017 with a different presidential issuance, one that was intended to diminish constitutional and civil rights of the people. The said issuance, Presidential Proclamation No. 1081, was issued by President Marcos in 1972 as the instrument of declaring martial law. The operative provisions read:

PD. 1081 PP 1017

Now, thereof, I, Ferdinand E. Marcos, President Of the Philippines, by virtue of the powers vested upon me by article VII, Section 10, Paragraph (2) of the Constitution, do hereby place the entire Philippines as defined in the article I, Section 1, of the Constitution under martial law, and in my capacity as their commander-in-chief, do hereby command the arned forces of the Philippines, to maintain law and order throughout the Philippines,

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prevent or suppress all forms of lawless violence as well as any act of insurrection or rebellion and to enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction.

In addition, I do hereby order that all persons presently detained, as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, and all other crimes and offenses committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes, against the fundamental laws of the state, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in Orders that I shall subsequently promulgate, as well as crimes as a consequence of any violation of any decree, order or regulation promulgated by me personally or promulgated upon my direction shall be kept under detention until otherwise ordered released by me or by my duly designated representative. (emphasis supplied)

NOW, THEREFORE, I Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Commander-in-Chief of the Armed Forces of the Philippines, by virtue of the powers vested upon me by Section 18, Article 7 of the Philippine Constitution which states that: "The President. . . whenever it becomes necessary, . . . may call out (the) armed forces to prevent or suppress. . . rebellion. . .," and in my capacity as their Commander-in-Chief, do hereby command the Armed Forces of the Philippines, to maintain law and order throughout the Philippines, prevent or suppress all forms of lawless violence as well any act of insurrection or rebellion and to enforce obedience to all the laws and to all decrees, orders and regulations promulgated by me personally or upon my direction; and as provided in Section 17, Article 12 of the Constitution do hereby declare a State of National Emergency.

Let us examine the differences between PP No. 1081 and PP 1017. First, while PP 1017 merely declared the existence of a state of rebellion, an act ultimately observational in character, PP 1081 "placed the entire Philippines under martial law," an active implement[23] that, by itself, substituted civilian governmental authority with military authority. Unlike in the 1986 Constitution, which was appropriately crafted with an aversion to the excesses of Marcosian martial rule, the 1935 Constitution under which PP 1081 was issued left no intervening safeguards that tempered or limited the declaration of martial law. Even the contrast in the verbs used, "place" as opposed to "declare," betrays some significance. To declare may be simply to acknowledge the existence of a particular condition, while to place ineluctably goes beyond mere acknowledgement, and signifies the imposition of the actual condition even if it did not exist before.

Both PP 1081 and PP 1017 expressly invoke the calling out power. However, the contexts of such power are wildly distaff in light of PP 1081's accompanying declaration of martial law. Since martial law involves the substitution of the military in the civilian functions of government, the calling out power involved in PP 1081 is significantly greater than the one involved in PP 1017, which could only contemplate the enforcement of existing laws in relation to the suppression of lawless violence, rebellion or invasion and the maintenance of general peace and order.

Further proof that PP 1081 intended a wholesale suspension of civil liberties in the manner that PP 1017 does not even ponder upon is the subsequent paragraph cited, which authorizes the detention and continued detention of persons for a plethora of crimes not only directly related to the rebellion or lawless violence, but of broader range such as those "against national security," or "public order." The order of detention under PP 1081 arguably includes every crime in the statute book. And most alarmingly, any person detained by virtue of PP 1081 could remain in perpetual detention unless otherwise released upon order of President Marcos or his duly authorized representative.

Another worthy point of contrast concerns how the Supreme Court, during the martial law era, dealt with the challenges raised before it to martial law rule and its effects on civil liberties. While martial law stood as a valid presidential prerogative under the 1935 Constitution, a ruling committed to safeguard civil rights and liberties could have stood ground against even the most fundamental of human rights abuses ostensibly protected under the 1935 and 1973 constitutions and under international declarations and conventions. Yet a perusal of Aquino v. Enrile,[24] the case that decisively affirmed the validity of martial law rule, shows that most of the Justices then sitting exhibited diffidence guised though as deference towards the declaration of martial law. Note these few excerpts from the several opinions submitted in that case which stand as typical for those times:

> The present state of martial law in the Philippines is peculiarly Filipino and fits into no traditional patterns or judicial precedents. xxx In the first place I am convinced (as are the other Justices), without need of receiving evidence as in an ordinary adversary court proceeding, that a state of rebellion existed in the country when Proclamation No. 1081 was issued. It was a matter of contemporary history within the cognizance not only of the courts but of all observant people residing here at that time. xxx The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed newssheets or rumors disseminated in whispers; recruiting of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence â”€ all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.[25]
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> xxx
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> [T]he fact that courts are open cannot be accepted as proof that the rebellion and insurrection, which compellingly called for the declaration of martial law, no longer imperil the public safety. Nor are the many surface indicia adverted to by the petitioners (the increase in the number of tourists, the choice of Manila as the site of international conferences and of an international beauty contest) to be regarded as evidence that the threat to public safety has abated. There is actual armed combat, attended by the somber panoply of war, raging in Sulu and Cotabato, not to mention the Bicol region and Cagayan Valley. I am hard put to say, therefore, that the Government's claim is baseless.
>
> I am not insensitive to the plea made here in the name of individual liberty. But to paraphrase Ex parte Moyer, if it were the liberty alone of the petitioner Diokno that is in issue we would probably resolve the doubt in his favor and grant his application. But the Solicitor General, who must be deemed to represent the President and the Executive Department in this case, has manifested that in the President's judgment peace and tranquility cannot be speedily restored in the country unless the petitioners and others like them meantime remain in military custody. For, indeed, the central matter involved is not merely the liberty of isolated individuals, but the collective peace, tranquility and security of the entire nation.[26]
>
> x x x
>
> It may be that the existence or non-existence or imminence of a rebellion of the magnitude that would justify the imposition of martial law is an objective fact capable of judicial notice, for a rebellion that is not of general knowledge to the public cannot conceivably be dangerous to public safety. But precisely because it is capable of judicial notice, no inquiry is needed to determine the propriety of the Executive's action.
>
> Again, while the existence of a rebellion may be widely known, its real extent and the dangers it may actually pose to the public safety are not always easily perceptible to the unpracticed eye. In the present day practices of

rebellion, its inseparable subversion aspect has proven to be more effective and important than "the rising (of persons) publicly and taking arms against the Government" by which the Revised Penal Code characterizes rebellion as a crime under its sanction. Subversion is such a covert kind of anti-government activity that it is very difficult even for army intelligence to determine its exact area of influence and effect, not ot mention the details of its forces and resources. By subversion, the rebels can extend their field of action unnoticed even up to the highest levels of the government, where no one can always be certain of the political complexion of the man next to him, and this does not exclude the courts. Arms, ammunition and all kinds of war equipment travel and are transferred in deep secrecy to strategic locations, which can be one's neighborhood without him having any idea of what is going on. There are so many insidious ways in which subversives act, in fact too many to enumerate, but the point that immediately suggests itself is that they are mostly incapable of being proven in court, so how are We to make a judicial inquiry about them that can satisfy our judicial conscience.

The Constitution definitely commits it to the Executive to determine the factual bases and to forthwith act as promptly as possible to meet the emergencies of rebellion and invasion which may be crucial to the life of the nation. He must do this with unwavering conviction, or any hesitancy or indecision on his part will surely detract from the needed precision in his choice of the means he would employ to repel the aggression. The apprehension that his decision might be held by the Supreme Court to be a transgression of the fundamental law he has sworn to "defend and preserve" would deter him from acting when precisely it is most urgent and critical that he should act, since the enemy is about to strike the mortal blow.[27]

x x x

To start with, Congress was not unaware of the worsening conditions of peace and order and of, at least, evident insurgency, what with the numerous easily verifiable reports of open rebellious activities in different parts of the country and the series of rallies and demonstrations, often bloody, in Manila itself and other centers of population, including those that reached not only the portals but even the session hall of the legislature, but the legislators seemed not to be sufficiently alarmed or they either were indifferent or did not know what to do under the circumstances. Instead of taking immediate measures to alleviate the conditions denounced and decried by the rebels and the activists, they debated and argued long on palliatives without coming out with anything substantial much less satisfactory in the eyes of those who were seditiously shouting for reforms. In any event, in the face of the inability of Congress to meet the situation, and prompted by his appraisal of a critical situation that urgently called for immediate action, the only alternative open to the President was to resort to the other constitutional source of extraordinary powers, the Constitution itself.[28]

x x x

Proclamation 1081 is in no sense any more constitutionally offensive. In fact, in ordering detention of persons, the Proclamation pointedly limits arrests and detention only to those "presently detained, as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, and all other crimes and offences committed in furtherance or on the occasion thereof, or incident thereto, or in connection therewith, for crimes against national security and the law of nations, crimes, against the fundamental laws of the state, crimes against public order, crimes involving usurpation of authority, rank, title and improper use of names, uniforms and insignia, crimes committed by public officers, and for such other crimes as will be enumerated in Orders that I shall subsequently promulgate, as well as crimes as a consequence of any violation of any decree, order or regulation promulgated by me personally or promulgated upon my direction." Indeed, even in the affected areas, the Constitution has not been really suspended much less discarded. As contemplated in the fundamental law itself, it is merely in a state of anaesthesia, to the end that the much needed major surgery to save the nation's life may be successfully undertaken.[29]

x x x

The quoted lines of reasoning can no longer be sustained, on many levels, in these more enlightened times. For

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one, as a direct reaction to the philosophy of judicial inhibition so frequently exhibited during the Marcos dictatorship, our present Constitution has explicitly mandated judicial review of the acts of government as part of the judicial function. As if to rebuff Aquino, the 1987 Constitution expressly allows the Supreme Court to review the sufficiency of the factual basis of the proclamation of martial law and decide the same within 30 days from the filing of the appropriate case.[30] The Constitution also emphasizes that a state of martial law did not suspend the operation of the Constitution or supplant the functioning of the judicial and legislative branches.[31] The expediency of hiding behind the political question doctrine can no longer be resorted to.

For another, the renewed emphasis within domestic and international society on the rights of people, as can be seen in worldwide democratic movements beginning with our own in 1986, makes it more difficult for a government established and governed under a democratic constitution, to engage in official acts that run contrary to the basic tenets of democracy and civil rights. If a government insists on proceeding otherwise, the courts will stand in defense of the basic constitutional rights of the people.

Still, the restoration of rule under law, the establishment of national governmental instrumentalities, and the principle of republicanism all ensure that the constitutional government retains significant powers and prerogatives, for it is through such measures that it can exercise sovereign will in behalf of the people. Concession to those presidential privileges and prerogatives should be made if due. The abuses of past executive governments should not detract from these basic governmental powers, even as they may warrant a greater degree of wariness from those institutions that balance power and the people themselves. And the rule of law should prevail above all. The damage done by martial rule was not merely personal but institutional, and the proper rebuke to the caprices and whims of the iniquitous past is to respect the confines of the restored rule of law.[32]

Nothing in PP 1017, or any issuance by any President since Aquino, comes even close to matching PP 1081. It is a rank insult to those of us who suffered or stood by those oppressed under PP 1081 to even suggest that the innocuous PP 1017 is of equivalent import.

PP 1017 Does Not Purport orPretend that the President HasThe Power to Issue Decrees

There is one seeming similarity though in the language of PP 1017 and PP 1081, harped upon by some of the petitioners and alluded to by the majority. PP 1017 contains a command to the Armed Forces "to enforce obedience to all the laws and to all decrees, orders and regulations by [the President]". A similar command was made under PP 1081. That in itself should not be a cause of surprise, since both PP 1017 and PP 1081 expressly invoked the "calling out" power, albeit in different contexts.

The majority however considers that since the President does not have the power to issue decrees, PP 1017 is unconstitutional insofar as it enforces obedience "to all decrees." For one, it should be made clear that the President currently has no power to issue decrees, and PP 1017 by no measure seeks to restore such power to the President. Certainly, not even a single decree was issued by President Arroyo during the several days PP 1017 was in effect, or during her term thus far for that matter.

At the same time, such power did once belong to the President during the Marcos era and was extensively utilized by President Marcos. It has to be remembered that chafed as we may have under some of the Marcos decrees, per the 1987 Constitution they still remain as part of the law of the land unless particularly stricken down or repealed by subsequent enactments. Indeed, when the President calls upon the Armed Forces to enforce the laws, those subsisting presidential decrees issued by President Marcos in the exercise of his legislative powers are included in the equation.

This view is supported by the rules of statutory construction. The particular passage in PP 1017 reads '"to enforce

obedience to all the laws and to all decrees, orders and regulations," with the phrases "all the laws and to all decrees" separated by a comma from "orders and regulations promulgated by me." Inherently, laws and those decrees issued by President Marcos in the exercise of his legislative powers, and even those executive issuances of President Aquino in the exercise of her legislative powers, belong to the same class, superior in the hierarchy of laws than "orders and regulations." The use of the conjunction "and" denotes a joinder or union, "relating the one to the other."[33] The use of "and" establishes an association between laws and decrees distinct from orders and regulations, thus permitting the application of the doctrine of noscitur a sociis to construe "decrees" as those decrees which at present have the force of law. The dividing comma further signifies the segregation of concepts between ""laws and decrees" on one hand, and "orders and regulations" on the other.

Further proof that "laws and decrees" stand as a class distinct from "orders and regulations" is the qualifying phrase "promulgated by me," which necessarily refers only to orders and regulations. Otherwise, PP 1017 would be ridiculous in the sense that the obedience to be enforced only relates to laws promulgated by President Arroyo since she assumed office in 2001. "Laws and decrees" do not relate only to those promulgated by President Arroyo, but other laws enacted by past sovereigns, whether they be in the form of the Marcos presidential decrees, or acts enacted by the American Governor-General such as the Revised Penal Code. Certainly then, such a qualification sufficiently addresses the fears of the majority that PP 1017 somehow empowers or recognizes the ability of the current President to promulgate decrees. Instead, the majority pushes an interpretation that, if pursued to its logical end, suggests that the President by virtue of PP 1017 is also arrogating unto herself, the power to promulgate laws, which are in the mold of enactments from Congress. Again, in this respect, the grouping of "laws" and "decrees" separately from "orders" and "regulations" signifies that the President has not arrogated unto herself the power to issue decrees in the mold of the infamous Marcos decrees.

Moreover, even assuming that PP 1017 was intended to apply to decrees which the current President could not very well issue, such intention is of no consequence, since the proclamation does not intend or pretend to grant the President such power in the first place. By no measure of contemplation could PP 1017 be interpreted as reinstating to the President the power to issue decrees.

I cannot see how the phrase "enforce obedience to decrees" can be the source of constitutional mischief, since the implementation of PP 1017 will not vest on the President the power to issue such decrees. If the Court truly feels the need to clarify this point, it can do so with the expediency of one sentence or even a footnote. A solemn declaration that the phrase is unconstitutional would be like killing a flea with dynamite when insect powder would do.

PP 1017 A Valid Exercise of PrerogativesInherent and Traditional in the Office ofThe Presidency

Thus far, I have dwelt on the legal effects of PP 1017, non-existent as they may be in relation to the citizenry, the courts or on Congress. Still, there is another purpose and dimension behind PP 1017 that fall within the valid prerogatives of the President.

The President, as head of state, is cast in a unique role in our polity matched by no other individual or institution. Apart from the constitutional powers vested on the President lie those powers rooted in the symbolic functions of the office. There is the common expectation that the President should stand as the political, moral and social leader of the nation, an expectation not referred to in of the oath of office, but expected as a matter of tradition. In fact, a President may be cast in crisis even if the Chief Executive has broken no law, and faithfully executed those laws that exist, simply because the President has failed to win over the hearts and minds of the citizens. As a Princeton academic, Woodrow Wilson once observed that with the People, the President is everything, and without them nothing, and the sad decline of his own eventual presidency is no better proof of the maxim. Such

are among the vagaries of the political office, and generally beyond judicial relief or remedy.

Justice Robert Jackson's astute observation in Youngstown Sheet & Tube Co. v. Sawyer[34] on the unique nature of the presidency, has been widely quoted:

> Executive power has the advantage of concentration in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude, and finality, his decisions so far overshadow any others that almost alone he fills the public eye and ear. No other personality in public life can begin to compete with him in access to the public mind through modern methods of communications. By his prestige as head of state and his influence upon public opinion he exerts a leverage upon those who are supposed to check and balance his power which often cancels their effectiveness.[35]

Correspondingly, the unique nature of the office affords the President the opportunity to profoundly influence the public discourse, not necessarily through the enactment or enforcement of laws, but specially by the mere expediency of taking a stand on the issues of the day. Indeed, the President is expected to exercise leadership not merely through the proposal and enactment of laws, but by making such vital stands. U.S. President Theodore Roosevelt popularized the notion of the presidency as a "bully pulpit", in line with his belief that the President was the steward of the people limited only by the specific restrictions and prohibitions appearing in the Constitution, or impleaded by Congress under its constitutional powers.

Many times, the President exercises such prerogative as a responsive measure, as after a mass tragedy or calamity. Indeed, when the President issues a declaration or proclamation of a state of national mourning after a disaster with massive casualties, while perhaps de rigeur, is not the formalistic exercise of tradition, but a statement that the President, as the representative of the Filipino people, grieves over the loss of life and extends condolences in behalf of the people to the bereaved. This is leadership at its most solemn.

Yet the President is not precluded, in the exercise of such role, to be merely responsive. The popular expectation in fact is of a pro-active, dynamic chief executive with an ability to identify problems or concerns at their incipience and to respond to them with all legal means at the earliest possible time. The President, as head of state, very well has the capacity to use the office to garner support for those great national quests that define a civilization, as President Kennedy did when by a mere congressional address, he put America on track to the goal of placing a man on the moon. Those memorable presidential speeches memorized by schoolchildren may have not, by themselves, made operative any law, but they served not only merely symbolic functions, but help profoundly influence towards the right direction, the public opinion in the discourse of the times. Perhaps there was no more dramatic example of the use of the "bully pulpit" for such noble purposes than in 1964, when an American President from Texas stood before a Congress populated by many powerful bigots, and fully committed himself as no other President before to the cause of civil rights with his intonation of those lines from the civil rights anthem, "we shall overcome."

From an earlier era in American history, Lincoln's Emancipation Proclamation stands out as a presidential declaration which clearly staked American polity on the side of the democratic ideal, even though the proclamation itself was of dubitable legal value. The proclamation, in short form, "freed the slaves", but was not itself free of legal questions. For one, the notion that the President could, by himself, alter the civil and legal status of an entire class of persons was dubious then and now, although President Lincoln did justify his action as in the exercise of his powers as commander-in-chief during wartime, "as a fit and necessary war measure for suppressing [the] rebellion." Moreover, it has been pointed out that the Proclamation only freed those slaves in those states which were then in rebellion, and it eventually took the enactment of the Thirteenth Amendment of the U.S. Constitution to legally abolish involuntary servitude.[36] Notwithstanding the legal haze surrounding it, the Emancipation Proclamation still stands as a defining example not only of the Lincoln Presidency, but of

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American democratic principles. It may be remembered to this day not exactly as an operational means by which slaves were actually freed, but as a clear rhetorical statement that slavery could no longer thenceforth stand.

The President as Chief Government Spokesperson of the democratic ideals is entrusted with a heady but comfortable pursuit. But no less vital, if somewhat graver, is the role of the President as the Chief Defender of the democratic way of life. The "calling out" power assures the President such capability to a great extent, yet it will not fully suffice as a defense of democracy. There is a need for the President to rally the people to defend the Constitution which guarantees the democratic way of life, through means other than coercive. I assert that the declaration of a state of emergency, on premises of a looming armed threat which have hardly been disputed, falls within such proper functions of the President as the defender of the Constitution. It was designed to inform the people of the existence of such a threat, with the expectation that the citizenry would not aid or abet those who would overturn through force the democratic government. At the same time, the Proclamation itself does not violate the Constitution as it does not call for or put into operation the suspension or withdrawal of any constitutional rights, or even create or diminish any substantive rights.

I submit that it would be proper for the Court to recognize that PP 1017 strikes a commendable balance between the Constitution, the "calling out" power, and the inherent function of the Presidency as defender of the democratic constitution. PP 1017 keeps within the scope and limitations of these three standards. It asserts the primacy of the democratic order, civilian control over the armed forces, yet respects constitutional and statutory guarantees of the people.

II.Section 17, Article XIIof the ConstitutionIn Relation to PP 1017

My next issue with the majority pertains to the assertion that the President does not have the power to take over public utilities or businesses impressed with public interest under Section 17, Article XII of the Constitution without prior congressional authorization. I agree that the power of the State to take over such utilities and businesses is highly limited, and should be viewed with suspicion if actually enforced.

Yet qualifications are in order with regard to how Section 17, Article XII actually relates of PP 1017.

I agree with the majority that a distinction should be asserted as between the power of the President to declare a state of emergency, and the exercise of emergency powers under Section 17, Article XII. The President would have the power to declare a state of emergency even without Section 17, Article XII.

At the same time, it should be recognized that PP 1017, on its face and as applied, did not involve the actual takeover of any public utility or business impressed with public interest. To some minds, the police action in relation to the Daily Tribune may have flirted with such power, yet ultimately the newspaper was able to independently publish without police interference or court injunction. It may be so that since PP 1017 did make express reference to Section 17, Article XII, but it should be remembered that the constitutional provision refers to a two-fold power of the State to declare a national emergency and to take over such utilities and enterprises. The first power under Section 17, Article XII is not distinct from the power of the President, derived from other constitutional sources, to declare a state of national emergency. Reference to Section 17, Article XII in relation to the power to declare a state of national emergency is ultimately superfluous. A different situation would obtain though if PP 1017 were invoked in the actual takeover of a utility or business, and in such case, full consideration of the import of Section 17, Article XII would be warranted. But no such situation obtains in this case, and any discussion relating to the power of the State to take over a utility or business under Section 17, Article XII would ultimately be obiter dictum.

I respectfully submit that the Court, in these petitions, need not have engaged this potentially contentious issue,

especially as it extends to whether under constitutional contemplation, the President may act in behalf of the State in exercising the powers under Section 17, Article XII. Nonetheless, considering that the majority has chosen to speak out anyway, I will express agreement that as a general rule, the President may exercise such powers under Section 17, Article XII only under the grant of congressional approval. Certainly, the notion that congressional authority is required under Section 17, Article XII is not evident from the provision. Even Fr. Bernas notes that Section 17 does not require, as does Article VI, Section 23(2), that the authorization be "by law", thus leaving the impression that the authorization can come from the President.[37]

After the 1989 coup d'etat, President Aquino issued issued Proclamation No. 503 on 6 December 1989, declaring a state of national emergency, and referring therein to Section 17, Article XII by citing the entire provision. The declaration was subsequently reaffirmed by Congress when two weeks after, it enacted Republic Act No. 6826. Notably, Section 3(3) of the law authorized the President "to temporarily takeover or direct the operation of any privately-owned public utility or business affected with public interest that violates the herein declared national policy". Tellingly, however, such authority was granted by Congress expressly "pursuant to Article VI, Section 23(2) of the Constitution", and not the take-over provision in Section 17, Article XII. Evidently, the view that Section 17, Article XII requires prior congressional authority has some novelty to it.

Still, I concede that it is fundamentally sound to construe Section 17 as requiring congressional authority or approval before the takeover under the provision may be effected. After all, the taking over of a privately owned public utility or business affected with public interest would involve an infringement on the right of private enterprise to profit; or perhaps even expropriation for a limited period. Constitutionally, the taking of property can only be accomplished with due process of law,[38] and the enactment of appropriate legislation prescribing the terms and conditions under which the President may exercise the powers of the State under Section 17 stands as the best assurance that due process of law would be observed.

The fact that Section 17 is purposely ambivalent as to whether the President may exercise the power therein with or without congressional approval leads me to conclude that it is constitutionally permissible to recognize exceptions, such as in extreme situations wherein obtention of congressional authority is impossible or inexpedient considering the emergency. I thus dissent to any proposition that such requirement is absolute under all circumstances. I maintain that in such extreme situations, the President may exercise such authority subject to judicial review.

It should be admitted that some emergencies are graver and more imminent than others. It is not within the realm of impossibility that by reason of a particularly sudden and grave emergency, Congress may not be able to convene to grant the necessary congressional authority to the President. Certainly, if bombs from a foreign invader are falling over Manila skies, it may be difficult, not to mention unnecessarily onerous, to require convening Congress before the President may exercise the functions under Section 17, Article XII. The proposition of the majority may be desirable as the general rule, but the correct rule that should be adopted by the Court should not be so absolute so as to preclude the exercise by the President of such power under extreme situations.

In response to this argument, the majority cites portions of Araneta v. Dinglasan,[39] most pertinent of which reads: "The point is, under this framework of government, legislation is preserved for Congress all the time, not excepting periods of crisis no matter how serious."

For one, Araneta did not involve a situation wherein the President attempted to exercise emergency powers without congressional authority; concerning as it did the exercise by President Quirino of those emergency powers conferred several years earlier by Congress to President Quezon at the onset of the Pacific phase of World

War II. The Court therein ruled that the emergency that justified then the extraordinary grant of powers had since expired, and that there no longer existed any authority on the part of the President to exercise such powers, notwithstanding that the law, Commonwealth Act No. 671, "did not in term fix the duration of its effectiveness".

Clearly, the context in which the Court made that observation in Araneta is not the same context within which my own observations oscillate. My own submission is premised on the extreme situation wherein Congress may be physically unable to convene, an exceptional circumstance which the hard-line stance of the majority makes no concessions for.

Indeed, even the factual milieu recounted in Araneta conceded that such extreme circumstance could occur, when it noted President Quezon's claim that he was impelled to call for a special session of the National Assembly after foreseeing that "it was most unlikely that the Philippine Legislature would hold its next regular session which was to open on January 1, 1942."[40] That the National Assembly then was able to convene and pass Commonwealth Act No. 671 was fortunate, but somewhat a luxury nonetheless. Indeed, it is not beyond the realm of possibility that the emergency contemplated would be so grave that a sufficient number of members of Congress would be physically unable to convene and meet the quorum requirement.

Ultimately though, considering that the authorized or actual takeover under Section 17, Article XII, is not presented as a properly justiciable issue. Nonetheless, and consistent with the general tenor, the majority has undertaken to decide this non-justiciable issue, and to even place their view in the dispositive portion in a bid to enshrine it as doctrine. In truth, the Court's pronouncement on this point is actually obiter. It is hoped that should the issue become ripe for adjudication before this Court, the obiter is not adopted as a precedent without the qualification that in extreme situations wherein congressional approval is impossible or highly impractical to obtain, the powers under Section 17, Article XII may be authorized by the President.

III.Overbreadth and "Void for Vagueness"Doctrines Applicable Not Only ToFree Speech Cases

The majority states that "the overbreadth doctrine is an analytical tool developed for testing "on their faces" statutes in free speech cases"[41], and may thus be entertained "in cases involving statutes which, by their terms, seek to regulate only "spoken words", and not conduct. A similar characterization is made as to the "void for vagueness" doctrine, which according to the majority, is "subject to the same principles governing overbreadth doctrine " also an analytical tool for testing "on their faces" statutes in free speech cases."[42]

As I noted in my Separate Opinion in Romualdez v. Sandiganbayan,[43] citing Justice Kapunan, there is a viable distinction between "void for vagueness" and "overbreadth" which the majority sadly ignores.

> A view has been proferred that "vagueness and overbreadth doctrines are not applicable to penal laws." These two concepts, while related, are distinct from each other. On one hand, the doctrine of overbreadth applies generally to statutes that infringe upon freedom of speech. On the other hand, the "void-for-vagueness" doctrine applies to criminal laws, not merely those that regulate speech or other fundamental constitutional right. (not merely those that regulate speech or other fundamental constitutional rights.) The fact that a particular criminal statute does not infringe upon free speech does not mean that a facial challenge to the statute on vagueness grounds cannot succeed.[44]

The distinction may prove especially crucial since there has been a long line of cases in American Supreme Court jurisprudence wherein penal statutes have been invalidated on the ground that they were "void for vagueness." As I cited in Romualdez v. Sandiganbayan,[45] these cases are Connally v. General Construction Co,.[46] Lanzetta v. State of New Jersey,[47] Bouie v. City of Columbia,[48] Papachristou v. City of Jacksonville,[49] Kolender v. Lawson,[50] and City of Chicago v. Morales.[51]

Granting that perhaps as a general rule, overbreadth may find application only in "free speech"[52] cases, it is on

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the other hand very settled doctrine that a penal statute regulating conduct, not speech, may be invalidated on the ground of "void for vagueness". In Romualdez, I decried the elevation of the suspect and radical new doctrine that the "void for vagueness" challenge cannot apply other than in free speech cases. My view on this point has not changed, and insofar as the ponencia would hold otherwise, I thus dissent.

Moreover, even though the argument that an overbreadth challenge can be maintained only in free speech cases has more jurisprudential moorings, the rejection of the challenge on that basis alone may prove unnecessarily simplistic. I maintain that there is an even stronger ground on which the overbreadth and "void for vagueness" arguments can be refuted â”€ that Presidential Proclamation 1017 (PP 1017) neither creates nor diminishes any rights or obligations whatsoever. In fact, I submit again that this proposition is the key perspective from which the petitions should be examined.

IV.General Order No. 5Suffers No Constitutional Infirmity

The majority correctly concludes that General Order No. 5 is generally constitutional. However, they make an unnecessary distinction with regard to "acts of terrorism", pointing out that Congress has not yet passed a law defining and punishing terrorism or acts of terrorism.

That may be the case, but does the majority seriously suggest that the President or the State is powerless to suppress acts of terrorism until the word "terrorism" is defined by law? Terrorism has a widely accepted meaning that encompasses many acts already punishable by our general penal laws. There are several United Nations and multilateral conventions on terrorism[53], as well as declarations made by the United Nations General Assembly denouncing and seeking to combat terrorism.[54] There is a general sense in international law as to what constitutes terrorism, even if no precise definition has been adopted as binding on all nations. Even without an operative law specifically defining terrorism, the State already has the power to suppress and punish such acts of terrorism, insofar as such acts are already punishable, as they almost always are, in our extant general penal laws. The President, tasked with the execution of all existing laws, already has a sufficient mandate to order the Armed Forces to combat those acts of terrorism that are already punishable in our Revised Penal Code, such as rebellion, coup d'etat, murder, homicide, arson, physical injuries, grave threats, and the like. Indeed, those acts which under normal contemplation would constitute terrorism are associated anyway with or subsumed under lawless violence, which is a term found in the Constitution itself. Thus long ago, the State has already seen it fit to punish such acts.

Moreover, General Order No. 5 cannot redefine statutory crimes or create new penal acts, since such power belongs to the legislative alone. Fortunately, General Order No. 5 does not assume to make such redefinitions. It may have been a different matter had General Order No. 5 attempted to define "acts of terrorism" in a manner that would include such acts that are not punished under our statute books, but the order is not comported in such a way. The proper course of action should be to construe "terrorism" not in any legally defined sense, but in its general sense. So long as it is understood that "acts of terrorism" encompasses only those acts which are already punishable under our laws, the reference is not constitutionally infirm.

The majority cites a theoretical example wherein a group of persons engaged in a drinking spree may be arrested by the military or police in the belief that they were committing acts of terrorism pursuant to General Order No. 5. Under the same logical framework that group of persons engaged in a drinking spree could very well be arrested by the military or police in the belief that they are committing acts of lawless violence pursuant to General Order No. 5, instead of acts of terrorism. Obviously such act would be "abuse and oppression" on the part of the military and the police, whether justified under "lawless violence" or "acts of terrorism". Yet following the logic of the majority, the directive to prevent acts of "lawless violence" should be nullified as well.

If the point of the majority is that there are no justiciable standards on what constitutes acts of terrorism, it should

be pointed out that only the following scenarios could ensue. For one, a person would actually be arrested and charged with "acts of terrorism", and such arrest or charge would be thrown out of the courts, since our statute books do not criminalize the specific crime of terrorism. More probably, a person will be arrested and charged for acts that may under the layperson's contemplation constitutes acts of terrorism, but would be categorized in the information and charge sheet as actual crimes under our Revised Penal Code. I simply cannot see how General Order No. 5 could validate arrests and convictions for non-existent crimes.

Interestingly, the majority, by taking issue with the lack of definition and possible broad context of "acts of terrorism", seems to be positively applying the arguments of "overbreadth" or "void for vagueness", arguments which they earlier rejected as applicable only in the context of free expression cases. The inconsistency is breath-taking. While I disagree with the majority-imposed limitations on the applicability of the "overbreadth" or "void for vagueness" doctrines, I likewise cannot accede to the application of those doctrines in the context of General Order No. 5, for the same reason that they should not apply to PP 1017. Neither General Order No. 5 nor PP 1017 is a penal statute, or have an operative legal effect of infringing upon liberty, expression or property. As such, neither General Order No. 5 nor PP 1017 can cause the deprivation of life, liberty or property, thus divorcing those issuances from the context of the due process clause. The same absence of any binding legal effect of these two issuances correspondingly disassociates them from the constitutional infringement of free expression or association. Neither "void for vagueness" nor "overbreadth" therefore lie.

Another point. The majority concludes from General Order No. 5 that the military or police is limited in authority to perform those acts that are "necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence," and such acts committed beyond such authority are considered illegal. I do not dispute such conclusion, but it must be emphasized that "necessary and appropriate actions and measures" precisely do not authorize the military or police to commit unlawful and unconstitutional acts themselves, even if they be geared towards suppressing acts of terrorism or lawless violence. Indeed, with the emphasis that PP 1017 does not create new rights or obligations, or diminish existing ones, it necessarily follows that General Order No. 5, even if premised on a state of emergency, cannot authorize the military or police to ignore or violate constitutional or statutory rights, or enforce laws completely alien to the suppression of lawless violence. Again, following the cardinal principle of legal hermeneutics earlier adverted to, General Order No. 5 should be viewed in harmony with the Constitution, and only if it the Order irreconcilably deviates from the fundamental law should it be struck down.

V.
Court Should Refrain Making Any
Further Declaration, For Now,
Relating to the Individual Grievances

Raised by the Petitioners in RelationTo PP 1017

I respectfully disagree with the manner by which the majority would treat the "void as applied" argument presented by the petitioners. The majority adopts the tack of citing three particular injuries alleged by the petitioners as inflicted with the implementation of PP 1017. The majority analyzes the alleged injuries, correlates them to particular violations of the Bill of Rights, and ultimately concludes that such violations were illegal.

The problem with this approach is that it would forever deem the Court as a trier or reviewer at first instance over questions involving the validity of warrantless arrests, searches, seizures and the dispersal of rallies, all of which entail a substantial level of factual determination. I agree that PP 1017 does not expand the grounds for warrantless arrests, searches and seizures or dispersal of rallies, and that the proclamation cannot be invoked

before any court to assert the validity of such unauthorized actions. Yet the problem with directly adjudicating that the injuries inflicted on David, et al., as illegal, would be that such would have been done with undue haste, through an improper legal avenue, without the appropriate trial of facts, and without even impleading the particular officers who effected the arrests/searches/seizures.

I understand that the injurious acts complained of by the petitioners upon the implementation of PP 1017 are a source of grave concern. Indubitably, any person whose statutory or constitutional rights were violated in the name of PP 1017 or General Order No. 5 deserves redress in the appropriate civil or criminal proceeding, and even the minority wishes to makes this point as emphatically clear, if not moreso, as the majority. Yet a ruling from this Court, without the proper factual basis or prayer for remuneration for the injury sustained, would ultimately be merely symbolic. While the Court will not be harmed by a symbolic reaffirmation of commitment to the principles in the Bill of Rights, it will be harmed by a ruling that unduly and inappropriately expands the very limited function of the Court as a trier of facts on first instance.

In my dissent in Teves v. Sandiganbayan,[55] I alluded to the fact that our legal system may run counter-intuitive in the sense that the seemingly or obviously guilty may still, after trial, be properly acquitted or exonerated; to the extent that even an accused who murders another person in front of live television cameras broadcast to millions of sets is not yet necessarily guilty of the crime of murder or homicide.[56] Hence, the necessity of a proper trial so as to allow the entire factual milieu to be presented, tested and evaluated before the court. In my theoretical example, the said accused should nonetheless be acquitted if the presence of exempting circumstances is established. The same principle applies in these cases. Certainly, we in the Court can all agree that PP 1017 cannot be invoked to justify acts by the police or military officers that go beyond the Constitution and the laws. But the course of prudence dictates that the pronouncement of such a doctrine, while enforceable in a court of law, should not yet extend itself to specific examples that have not yet been properly litigated. The function of this Court is to make legal pronouncements not based on "obvious" facts, but on proven facts.

A haphazard declaration by the Court that the arrests or seizures were "illegal" would likewise preclude any meaningful review or reevaluation of pertinent legal doctrines that otherwise could have been reexamined had these acts been properly challenged in regular order. For example, the matter of the warrantless arrests in these cases could have most certainly compelled the Court to again consider the doctrine laid down in Umil v. Ramos on warrantless arrests and rebellion as a continuing crime, a doctrine that may merit renewed evaluation. Yet any healthy reexamination of Umil, or other precedents for that matter, require the presentation and trial of the proper factual predicates, a course which the majority unfortunately "short-cuts" in this present decision.

Of course, despite the grandiloquent pronouncement by the majority that the acts complained of by the petitioners and implemented pursuant to General Order No. 5 are illegal, it could nonetheless impose civil, criminal or administrative sanctions on the individual police officers concerned, as these officers had not been "individually identified and given their day in court". Of course, the Court would be left with pie on its face if these persons, once "given their day in court", would be able to indubitably establish that their acts were actually justified under law. Perhaps worse, the pronouncement of the majority would have had the effect of prejudging these cases, if ever lodged, even before trial on the merits.

Certainly, a declaration by the majority that PP 1017 or General Order No. 5 cannot justify violation of statutory or constitutional rights (a declaration which the minority would have no qualms assenting to) would sufficiently arm those petitioners and other persons whose rights may have been injured in the implementation of PP 1017, with an impeccable cause of action which they could pursue against the violators before the appropriate courts. At the same time, if the officers or officials concerned have basis to contend that no such rights were violated, for justifications independent of PP 1017 or General Order No. 5, such claims could receive due consideration before

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the courts. Such a declaration would squarely entrench the Court as a defender of the Bill of Rights, foster enforceable means by which the injured could seek actual redress for the injury sustained, and preserve the integrity and order of our procedural law.

VI.Conclusion

The country-wide attention that the instant petitions have drawn should not make the Court lose focus on its principal mission, which is to settle the law of the case. On the contrary, the highly political nature of these petitions should serve as forewarning for the Court to proceed ex abundante cautelam, lest the institution be unduly dragged into the partisan mud. The credibility of the Court is ensured by making decisions in accordance with the Constitution without regard to the individual personalities involved; with sights set on posterity, oblivious of the popular flavor of the day.

By deciding non-justiciable issues and prejudging cases and controversies without a proper trial on the merits, the majority has diminished the potency of this Court's constitutional power in favor of rhetorical statements that afford no quantifiable relief. It is for the poet and the politician to pen beautiful paeans to the people's rights and liberties, it is for the Court to provide for viable legal means to enforce and safeguard these rights and liberties. When the passions of these times die down, and sober retrospect accedes, the decision of this Court in these cases will be looked upon as an extended advisory opinion.

Yes, PP 1017 and General Order No. 5 warrant circumspect scrutiny from those interested and tasked with preserving our civil liberties. They may even stand, in the appropriate contexts, as viable partisan political issues. But the plain fact remains that, under legal contemplation, these issuances are valid on their face, and should result in no constitutional or statutory breaches if applied according to their letter.

I vote to DISMISS all the petitions.

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[1]G.R. Nos. 159085, 159103, 159185, 159196, 3 February 2004, 421 SCRA 656.

[2] R. Agpalo, Statutory Construction, 3rd.ed. (1995), at 21.

[3]"When a statute is reasonably susceptible of two constructions, one constitutional and the other unconstitutional, that construction in favor of its constitutionality shall be adopted and the construction that will render it invalid rejected." See R. Agpalo, id., at 266; citing Mutuc v. COMELEC, G.R. No. 32717, Nov. 26, 1970, 36 SCRA 228; J.M. Tuason & Co., Inc. v. Land Tenure Adm., G.R. No. 21064, Feb. 18, 1970, 31 SCRA 413; American Bible Society v. City of Manila, 101 Phil. 386 (1957); Alba v. Evangelista, 100 Phil. 683 (1957); Maddumba v. Ozaeta, 82 Phil. 345 (1948); Benguet Exploration, Inc. v. Department of Agriculture and Natural Resources, G.R. No. 29534, Fe. 28, 1977, 75 SCRA 285 (1977); De la Cruz v. Paras, G.R. No. 42591, July 25, 1983, 123 SCRA 569.

[4]See Constitution, Section 17, Article VII.

[5] See Constitution, Section 18, Article VII.

[6] See Constitution, Section 1, Article VII.

[7] The plenary legislative power being vested in Congress. See Constitution, Section 1, Article VI.

[8]"[The President] shall ensure that the laws be faithfully executed." See Constitution, Section 17, Article VII.

[9] Supra note 4.

[10] "No officer or employee of the civil service shall be removed or suspended except for cause provided by law." See Constitution, Section 2(3), Article IX-B.

[11] See, e.g., Marcos v. Manglapus, G.R. No. 88211, 27 October 1989, 178 SCRA 760, 763.

[12] See Administrative Code, Section 4, Chapter 2, Book III.

[13] See Section 18, Article VII, Constitution.

[14] 392 Phil. 618 (2000)

[15] Id. at 627.

[16] Id. at 644.

[17] Id. at 636.

[18] Id. at 643.

[19]Id.

[20] Sanlakas v. Executive Secretary, supra note 1, at 668.

[21] Id. at 677.

[22] Supra note 8.

[23]The declaration of martial law then within the President to make under authority of Section 10(2), Article VII of the 1935 Constitution.

[24]No. L-35546, 17 September 1974, 59 SCRA 183.

[25] Aquino, Jr. v. Enrile, id. at 240-241.

[26] Aquino, Jr. v. Enrile, id. at 262-263, Castro, J., Separate Opinion.

[27] Id. at 398-399, Barredo, J., concurring.

[28]Id. at 405-406, Barredo, J., concurring.

[29]Id. at 423, Barredo, J., concurring.

[30] Constitution, Section 18, Article VII.

[31] Constitution, Section 18, Article VII.

[32] See Mijares v. Hon. Ranada, G.R. No. 139325, 12 April 2005.

[33] See R. Agpalo, Statutory Construction, p. 206.

[34] 343 U.S. 579, 653-654, J. Jackson, concurring.

[35] Ibid.

[36] See George Fort Milton, The Use of Presidential Power: 1789-1943, 1980 ed., at 119-120.

[37] See J. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 2003 ed., at 1183.

[38] See Section 1, Article III, Constitution.

[39] 84 Phil. 368 (1949).

[40] Id. at 379.

[41] Decision, infra.

[42] Id.

[43] G.R. No. 152259, 29 July 2004, 435 SCRA 371, 395-406.

[44] Id., at 398, citing Estrada v. Sandiganbayan, 421 Phil. 290, J. Kapunan, dissenting, at pp. 382-384.

[45] Id., at 398-401.

[46] 269 U.S. 385, 393 (1926).

[47] 306 U.S. 451 (1939).

[48] 378 U.S. 347 (1964).

[49] 405 U.S. 156 (1972).

[50] 461 U.S. 352 (1983).

[51] Case No. 97-1121, 10 June 1999.

[52] But see United States v. Robel, 389 U.S. 258 (1967), wherein the U.S. Supreme Court invalidated a portion of the Subversive Control Activities Act on the ground of overbreadth as it sought to proscribe the exercise the right of free association, also within the First Amendment of the United States Constitution but a distinct right altogether from free expression.

[53] To name a few, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); International Convention for the Suppression of Terrorist Bombings (1997); International Convention for the Suppression of the Financing of Terrorism (1999); the International Convention for the Suppression of Acts of Nuclear Terrorism (2005). See "United Nations Treaty Collection - Conventions on Terrorism", http://untreaty.un.org/English/Terrorism.asp (last visited, 30 April 2006).

[54] See, e.g., Resolution No. 49/60, Adopted by the United Nations General Assembly on 17 February 1995.

[55] G.R. No. 154182, 17 December 2004, 447 SCRA 309, 335-348. J. Tinga, dissenting.

[56]Id. at 345.

CONCURRING OPINION

YNARES-SANTIAGO, J.:

> The only real security for social well-being is the free exercise of men's minds.
>
> -Harold J. Laski, Professor of Government and Member of the British Labor Party, in his book, Authority in the Modern State (1919).

The ideals of liberty and equality, the eminent U.S. Supreme Court Justice Benjamin Cardozo once wrote, are

preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles.[1] In an open and democratic society, freedom of thought and expression is the matrix, the indispensable condition, of nearly every other form of freedom.[2]

I share the view that Presidential Proclamation No. 1017 (PP 1017) under which President Gloria Macapagal Arroyo declared a state of national emergency, and General Order No. 5 (GO No. 5), issued by the President pursuant to the same proclamation are both partly unconstitutional.

I fully agree with the pronouncement that PP 1017 is no more than the exercise by the President, as the Commander-in-Chief of all armed forces of the Philippines, of her power to call out such armed forces whenever it becomes necessary to prevent or suppress lawless violence, invasion or rebellion. This is allowed under Section 18, Article VII of the Constitution.

However, such "calling out" power does not authorize the President to direct the armed forces or the police to enforce laws not related to lawless violence, invasion or rebellion. The same does not allow the President to promulgate decrees with the force and effect similar or equal to laws as this power is vested by the Constitution with the legislature. Neither is it a license to conduct searches and seizures or arrests without warrant except in cases provided in the Rules of Court. It is not a sanction to impose any form of prior restraint on the freedom of the press or expression or to curtail the freedom to peaceably assemble or frustrate fundamental constitutional rights.

In the case of Bayan v. Ermita[3] this Court thru Justice Adolfo S. Azcuna emphasized that the right to peaceably assemble and petition for redress of grievances is, together with freedom of speech, of expression, and of the press, a right that enjoys primacy in the realm of constitutional protection. These rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected.

On the other hand, the direct reference to Section 17, Article XII of the Constitution as the constitutional basis for the declaration of a state of national emergency is misplaced. This provision can be found under the article on National Economy and Patrimony which presupposes that "national emergency" is of an economic, and not political, nature. Moreover, the said provision refers to the temporary takeover by the State of any privately-owned public utility or business affected with public interest in times of national emergency. In such a case, the takeover is authorized when the public interest so requires and subject to "reasonable terms" which the State may prescribe.

The use of the word "State" as well as the reference to "reasonable terms" under Section 17, Article XII can only pertain to Congress. In other words, the said provision is not self-executing as to be validly invoked by the President without congressional authorization. The provision merely declares a state economic policy during times of national emergency. As such, it cannot be taken to mean as authorizing the President to exercise "takeover" powers pursuant to a declaration of a state of national emergency.

The President, with all the powers vested in her by Article VII, cannot arrogate unto herself the power to take over or direct the operation of any privately owned public utility or business affected with public interest without Congressional authorization. To do so would constitute an ultra vires act on the part of the Chief Executive, whose powers are limited to the powers vested in her by Article VII, and cannot extend to Article XII without the approval of Congress.

Thus, the President's authority to act in times of national emergency is still subject to the limitations expressly prescribed by Congress. This is a featured component of the doctrine of separation of powers, specifically, the

principle of checks and balances as applicable to the political branches of government, the executive and the legislature.

With regard to GO No. 5, I agree that it is unconstitutional insofar as it mandates the armed forces and the national police "to prevent and suppress acts of terrorism and lawless violence in the country." There is presently no law enacted by Congress that defines terrorism, or classifies what acts are punishable as acts of terrorism. The notion of terrorism, as well as acts constitutive thereof, is at best fraught with ambiguity. It is therefore subject to different interpretations by the law enforcement agencies.

As can be gleaned from the facts, the lack of a clear definition of what constitutes "terrorism" have led the law enforcement officers to necessarily guess at its meaning and differ as to its application giving rise to unrestrained violations of the fundamental guarantees of freedom of peaceable assembly and freedom of the press.

In Kolender v. Lawson,[4] the United States Supreme Court nullified a state statute requiring persons who loitered or wandered on streets to provide "credible and reliable" identification and to account for their presence when requested to do so by a police officer. Writing for the majority, Justice Sandra Day O'Connor noted that the most important aspect of vagueness doctrine was the imposition of guidelines that prohibited arbitrary, selective enforcement on constitutionally suspect basis by police officers. This rationale for invocation of that doctrine was of special concern in this case because of the potential for arbitrary suppression of the fundamental liberties concerning freedom of speech and expression, as well as restriction on the freedom of movement.

Thus, while I recognize that the President may declare a state of national emergency as a statement of a factual condition pursuant to our ruling in Sanlakas v. Executive Secretary,[5] I wish to emphasize that the same does not grant her any additional powers. Consequently, while PP 1017 is valid as a declaration of a factual condition, the provisions which purport to vest in the President additional powers not theretofore vested in her must be struck down. The provision under GO No. 5 ordering the armed forces to carry out measures to prevent or suppress "acts of terrorism" must be declared unconstitutional as well.

Finally, it cannot be gainsaid that government action to stifle constitutional liberties guaranteed under the Bill of Rights cannot be preemptive in meeting any and all perceived or potential threats to the life of the nation. Such threats must be actual, or at least gravely imminent, to warrant government to take proper action. To allow government to preempt the happening of any event would be akin to "putting the cart before the horse," in a manner of speaking. State action is proper only if there is a clear and present danger of a substantive evil which the state has a right to prevent. We should bear in mind that in a democracy, constitutional liberties must always be accorded supreme importance in the conduct of daily life. At the heart of these liberties lies freedom of speech and thought - not merely in the propagation of ideas we love, but more importantly, in the advocacy of ideas we may oftentimes loathe. As succinctly articulated by Justice Louis D. Brandeis:

> Fear of serious injury cannot alone justify suppression of free speech and assembly. x x x It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. x x x But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated.[6]

IN VIEW OF THE FOREGOING, I vote to PARTLY GRANT the petitions.

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[1] Cardozo, B. Nature of Judicial Process, 1921.

[2] Palko v. State of Connecticut, 302 U.S. 319 (1937).

[3] G.R. Nos. 169838, 169848, 169881, April 25, 2006.

[4] 461 U.S. 352 (1983).

[5] G.R. Nos. 159085, 159103, 159185 & 159196, February 3, 2004, 421 SCRA 656.

[6] Brandeis, J. , joined by Holmes, J., concurring in Whitney v. California, 274 U.S. 357 (1927).

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