

RAFAEL BAYLOSIS AND BENJAMIN DE VERA, PETITIONERS, VS. HON. APOLONIO R. CHAVEZ, JR., RIZAL PROVINCIAL PROSECUTOR MAURO CASTRO, COL. VIRGILIO SALDAJENO, HON. FRANKLIN M. DRILON, ...

G.R. No. 95136. October 03, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

The constitutionality of the third paragraph of Section 1 of Presidential Decree No. 1866 is put at issue in the special action of certiorari, prohibition and mandamus at bar. That provision punishes with the penalty of reclusion perpetua,[1] any person who unlawfully manufactures, deals in, acquires, disposes of, or possesses any firearm[2] “in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion.”

This is the second such attack against the provision. The first was launched sometime in 1988 and eventually repelled in this Court’s decision in *Misolas v. Panga*, rendered on January 30, 1990.[3] The Court in that case declined to hold the provision unconstitutional, overruling such arguments as that —

- a) the questioned paragraph is violative of the principle of “substantive due process against arbitrary laws * * * because it disregards the overwhelming weight of national as well as international laws and jurisprudence behind the *Hernandez* (99 Phil. 515) and *Geronimo* (100 Phil. 90) rulings on the doctrine of absorption of common crimes in rebellion;”
- b) it has given rise to the practice of charging armed rebels or subversives with “‘qualified’ illegal possession of firearms instead of subversion or rebellion ** (because) (1) the former is easier to prosecute than the latter; and (2) the former has a higher penalty * * *,”
- c) it is a bill of attainder; and
- d) it allows a second jeopardy.

This second challenge to the constitutionality of said third paragraph of Section 1 of Presidential Decree No. 1866 relies on essentially the same arguments as those put forth in support of the first, petitioners’ insistence to the contrary notwithstanding. Since it does not seem that the passage of time has infused any validity into those arguments, they shall again be struck down as specious, and the second constitutional challenge, like the first, repulsed.

The case at bar originated from an information filed in the Regional Trial Court at Pasig charging petitioners Rafael Baylosis and Benjamin de Vera, together with one Marco Palo, with a violation of PD 1866,[4] committed as follows:

“That on or about the 29th day of March, 1988 in the Municipality of San Juan, Metro Manila, Philippines **

** , the above named accused, all known high ranking officers of the Communist Party of the Philippines, and its military arm, the New Peoples Army, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously have in their possession, control and custody, in furtherance of, or incident to, or in connection with the crimes of rebellion/subversion, the following, to wit:

- Firearms/Ammunition

One (1) AK 47 Automatic Rifle with M22N006726 with magazine and 9 rounds

- Explosives

Three (3) pieces fragmentation hand grenades without first securing the necessary license or permit thereof from a competent government authority.

Baylosis, de Vera, and Palo, filed a motion to quash the information on the following grounds, viz.:

“I. THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE BECAUSE THEY ARE FOUNDED ON AN UNCONSTITUTIONAL/ REPEALED STATUTE.

b) “FOR THE SAME REASONS, THIS HONORABLE COURT IS DEVOID OF JURISDICTION TO TRY THIS CASE.”

After receiving the parties’ arguments on the matter, the Trial Court denied the motion to quash, by an extended Resolution dated April 24, 1990. A motion for reconsideration filed by Baylosis, et al. was also denied in an Order dated July 12, 1990.

Baylosis and de Vera thereupon instituted the present action in this Court. Here, they plead for the nullification and setting aside of the Trial Judge’s Orders of April 24, 1990 and July 12, 1990; the dismissal of Criminal Case No. 72705 or, alternatively, that the information therein be considered as charging only simple rebellion; and that the public officials impleaded as respondents — the Rizal Public Prosecutor, the Secretary of Justice, the Secretary of National Defense, the Chief of Staff of the Armed Forces of the Philippines, and the Special Military Prosecutor — be “restrained from further initiating, filing or prosecuting cases involving common crimes against the petitioners.”

What the petitioners advocate at bottom is that a doctrine laid down by jurisprudence or case law is superior to a statute afterwards enacted by legislative authority; that decisions construing certain specific provisions of one law are sufficient basis for a declaration of the unconstitutionality of a subsequently enacted law. More specifically, they contend that the rulings in *People v. Amado Hernandez*[5] (reiterated in some ten other subsequent rulings), *Enrile v. Salazar*,[6] and *Enrile v. Amin*[7] — to the effect that the felony of rebellion defined and penalized in the Revised Penal Code cannot, in accordance with Article 48 of the same Code, be complexed with the offense of murder, homicide, arson, or other crimes committed in connection with, or on the occasion or in furtherance of, rebellion — render invalid, as unconstitutional, Section 1 (3) of Presidential Decree No. 1866, as amended.

The petitioners further posit the unconstitutionality of the challenged provision because “repugnant to the provisions of the 1987 Constitution, which guarantee full respect for human rights, equal protection of the laws, due process, right to bail, protection against double jeopardy and from cruel, degrading or inhuman punishment, and supremacy of civilian authority over the military.”

PD 1866 was enacted on June 29, 1983[8] by the late President Marcos in the exercise of his legislative powers under the 1973 Constitution, with the avowed purpose, indicated in its title, to codify “the laws on illegal/unlawful possession, manufacture, dealing in, acquisition or disposition, of firearms, ammunition or explosives or instruments used in the manufacture of firearms, ammunition or explosives; and imposing stiffer

penalties for certain violations thereof and for relevant purposes.” The section (numbered 1) containing the allegedly unconstitutional provision[9] reads as follows:

“SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. — The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed.

The penalty reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs.

The penalty of prision mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.

It is worthy of note that under this section —

- 1) simple possession of a firearm without license or lawful authority (or unlawful manufacture, dealing in, acquisition, or disposal of any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition), without more, is punished by reclusion temporal maximum to reclusion perpetua — a penalty that, to be sure, is heavier than prision mayor, which is the penalty prescribed for rebellion or insurrection by Article 135 of the Revised Penal Code;
- 2) indeed, even if the firearm be licensed but is brought by the possessor outside of his residence without authority, the penalty imposed for the act is prision mayor, the same sanction as for rebellion;
- 3) the penalty is however increased to death (now reclusion perpetua[10]) if —
 - a) the unlicensed firearm is used in the commission of murder or homicide, or
 - b) the unlicensed firearm (or part thereof, or ammunition or machinery, tool or instrument in the manufacture of any firearm or ammunition) is possessed, dealt in, acquired, disposed of or possessed in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion.

Equally noteworthy is that the same PD 1866, as amended,[11] also defines as a crime punishable by reclusion temporal in its maximum period to reclusion perpetua, the act of any person —

“ * * * who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess hand-grenade(s), rifle grenade(s), and other explosives, including but not limited to ‘philbox bombs (sic),’ ‘molotov cocktail bomb,’ ‘firebombs,’ or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person.

In other words, the mere possession of the weapons (or the unlawful manufacture or assembly thereof, or dealing in, acquisition or disposal thereof) is also punished by reclusion temporal maximum to reclusion perpetua, a penalty higher than that imposed for rebellion or insurrection, prision mayor, *supra*.

But the even higher penalty of death (now reclusion perpetua) is imposed if the aforementioned explosives, detonation agents or incendiary devices —

- 1) are used in the commission of any of the crimes defined in the Revised Penal Code, and this results in the death of any person or persons; or
- 2) are manufactured, assembled, dealt in, acquired, disposed of or possessed “in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion * * * .”

It is of no little significance that the petitioners do not condemn these other provisions of Sections 1 and 3 — defining crimes also involving possession or manufacturing and/or use of firearms, ammunition and explosives, and penalizing them by reclusion temporal maximum to reclusion perpetua, or even by death — as being unconstitutionally infirm because imposing cruel or unusual punishment, or violative of due process, or otherwise.

What they say is that “laws and jurisprudence on political crimes are intended, and should always be interpreted, as favoring the political offender” since “political crimes are committed by the best of patriots,” a theory that, it is said, runs counter to the *Misolas* decision[12] and impels re-examination of the latter. What they condemn is the imposition of such heavy penalties on the crime of possession, manufacture or use of firearms or explosives if committed “in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion,” as if by some juridic alchemy, relation to rebellion or subversion works a transformation in the nature of the crimes in question. The contention, in other words, as the petitioners unabashedly affirm, is that the act of illicitly possessing or using a firearm is ennobled and mitigated by its being connected with an attempt or a publicly asserted intention to overthrow the Government; that killers, arsonists, terrorists should not be treated as “common criminals,” i.e., condemned and punished as the killers, arsonists or terrorists that they are, if they commit their acts of violence and destruction in the name of “the Revolution.” This is sophistry, totally unacceptable under the constitutional scheme of things in this country. It is a theory which has never been and should never be sanctioned by this Court. It is a proposition that is not in essence defensible, especially in the context of contemporary events.[13]

The petitioners further theorize that Section 1 (3) of PD 1866 is invalid because it gives the public prosecutor an option not to file a case for rebellion and instead file as many crimes for murder, frustrated murder, etc. as might have been perpetrated in furtherance of, or incident to, or in connection with rebellion, insurrection or subversion. The argument is not tenable. The fact is that the Revised Penal Code treats rebellion or insurrection as a crime distinct from murder, homicide, arson, or other felonies that might conceivably be committed in the course of a rebellion. It is the Code, therefore, in relation to the evidence in the hands of the public prosecutor, and not the latter’s whim or caprice, which gives the choice. The Code allows, for example, separate prosecutions for either murder or rebellion, although not for both where the indictment alleges that the former has been committed in furtherance of or in connection with the latter. Surely, whether people are killed or injured in connection with a rebellion, or not, the deaths or injuries of the victims are no less real, and the grief of the victims’ families no less poignant.

Moreover, it certainly is within the power of the legislature to determine what acts or omissions other than those set out in the Revised Penal Code or other existing statutes are to be condemned as separate, individual crimes and what penalties should be attached thereto. The power is not diluted or improperly wielded simply because at some prior time the act or omission was but an element or ingredient of another offense, or might usually have been connected with another crime.

The interdict laid in *Hernandez*, *Enrile* and the other cases cited is against attempts to complex rebellion with the so called “common” crimes committed in furtherance, or in the course, thereof; this, on the authority alone of the

first sentence of Article 48 of the Revised Penal Code. Stated otherwise, the ratio of said cases is that Article 48 cannot be invoked as the basis for charging and prosecuting the complex crime of rebellion with murder, etc., for the purpose of obtaining imposition of the penalty for the more serious offense in its maximum period (in accordance with said Art. 48). Said cases did not — indeed they could not and were never meant to — proscribe the legislative authority from validly enacting statutes that would define and punish, as offenses sui generis, crimes which, in the context of *Hernandez, et al.* may be viewed as a complex of rebellion with other offenses. There is no constitutional prohibition against this, and the Court never said there was. What the Court stated in said cases about rebellion “absorbing” common crimes committed in its course or furtherance must be viewed in light of the fact that at the time they were decided, there were no penal provisions defining and punishing, as specific offenses, crimes like murder, etc. committed in the course or as part of a rebellion. This is no longer true, as far as the present case is concerned, and there being no question that PD 1866 was a valid exercise of the former President’s legislative powers. Thus, *Misolas*,^[14] to the effect that charging the qualified offense of illegal possession of firearms under PD 1866 does not charge the complex crime of subversion with illegal possession of firearms, and hence does not run counter to *Hernandez, et al.*, is good and correct rule and is applicable here.

In *Enrile v. Salazar*, the Court intimated that the remedy against the perceived lightness of the penalty for rebellion was not to be sought from the courts, but by legislation. It may not unreasonably be supposed that the purpose of PD 1866 appears to be precisely to remedy that perceived lenity of the penalty prescribed by the Revised Penal Code for rebellion or insurrection and the legal impossibility, pronounced by this Court, of complexing that felony with other crimes punished by higher penalties in accordance with Article 48 of the same Code.

It is next argued that the proviso in question is unconstitutional because it inflicts on the convicted felon a cruel or unusual punishment, considering that the Revised Penal Code penalizes rebellion or subversion only by prison mayor. The penalty fixed in said challenged section is, it is contended, flagrantly and plainly oppressive, greatly disproportionate to the offense, and shocking to the people’s sense of justice. The result, it is further argued, is that the right to bail is denied under PD 1866 when the act thereby punished is only an ingredient of simple rebellion or subversion (which are bailable offenses) under the Revised Penal Code.

It is well settled that as far as the constitutional prohibition goes, it is not so much the extent as the nature of the punishment that determines whether it is, or is not, cruel and unusual and that sentences of imprisonment, though perceived to be harsh, are not cruel or unusual if within statutory limits.^[15] As pointed out by a brother in the Court, a noted authority on Constitutional Law, this Court has held (in *People v. Dionisio*, 22 SCRA 1299), “that mere severity does not constitute cruel and unusual punishment. Reiterating the rule first announced in *People v. Estoista* (93 Phil. 674), it declared that ‘it takes more than merely being harsh, excessive out of proportion, or severe for a penalty to be obnoxious to the Constitution . . . to come under the ban, the punishment must be ‘flagrantly and plainly oppressive’ ‘wholly disproportionate to the nature of the offense as to shock the moral sense of the community.’”^[16] The same noted author further points out that “a penalty not normally proportionate to the offense may be imposed in some instances without violation of the Constitution * * * (as) for example, where the offense has become so rampant as to require the adoption of a more effective deterrent, like the stealing of jeeps or coconuts, which is punished by the Revised Penal Code as qualified theft”^[17] -- or, it may be added, like such crimes as assassinations, bombings and robberies which are committed nowadays with frightening frequency and seeming impunity with the use of high-powered weapons, explosives or similar devices, whether in connection with or in furtherance or pursuance of, rebellion or subversion, or not.

It bears repeating in this connection that mere possession of a firearm without license or lawful authority,^[18] without more, is punished by reclusion temporal maximum to reclusion perpetua; and that the use of an

unlicensed firearm in the commission of murder or homicide is punished by death (now reclusion perpetua[19]), yet there is no challenge to these penalties as being cruel or unusual.

The petitioners next proffer the argument that the Revised Penal Code punishes the crime of rebellion or insurrection (including the “common crimes” of murder, homicide, arson, etc. therein absorbed) only with the penalty of prision mayor. Comparisons, as the saying goes, are odious; and in this case, the attempt to compare PD 1866 with the Revised Penal Code is unwarranted. That there is a difference in penalty between the two laws does not necessarily establish that the heavier penalty imposed by one of said laws is excessive, disproportionate, or “cruel or unusual.” For it might be argued, too, and certainly not without more than a modicum of validity, that the penalty in the Penal Code for rebellion may be regarded as unduly light given the conditions now prevailing in the country. In fact, no lack of commensuration may be pleaded if the avowed premises of PD 1866 (particularly the first, second and fifth whereas clauses of the preamble) are taken into account, viz.:

- 1) “there has been an upsurge of crimes vitally affecting public order and safety (including, not to say specially, offenses of rebellion or subversion) due to the proliferation of illegally possessed and manufactured firearms, ammunition and explosives;”
- 2) “these criminal acts have resulted in loss of human lives, damage to property and destruction of valuable resources of the country;”
- 3) “there are some provisions in * * * (the) laws and presidential decrees which must be updated and revised in order to more effectively deter violators of the law on firearms, ammunition and explosives.”

The existence of rebellious groups in our society today, and of numerous bandits, or irresponsible or deranged individuals, is a reality that cannot be ignored or belittled. Their activities, the killings and acts of destruction and terrorism that they perpetrate, unfortunately continue unabated despite the best efforts that the Government authorities are exerting, although it may be true that the insurrectionist groups of the right or the left no longer pose a genuine threat to the security of the state. The need for more effective measures against these nefarious activities, including of course more stringent laws and more rigorous law-enforcement, cannot be gainsaid.

It is also argued that PD 1866 offends against the equal protection clause of the Constitution in that government prosecutors may arbitrarily choose those they want to prosecute under said law and those under Article 135 of the Revised Penal Code (or RA 1700, the Anti-Subversion Act). The argument is unimpressive. It is not much different from saying that a suspected killer is denied the equal protection of the laws because the prosecutor charges him with murder, not homicide, both crimes, though essentially consisting in the taking of human life, being punished with different penalties under separate provisions of the penal code. As already stressed, it is the prerogative of the legislature to determine what acts or omissions shall be deemed criminal offenses and what sanctions should attach to them. Certainly, the public prosecutors should have the option to ascertain which prosecutions should be initiated on the basis of the evidence at hand. That a criminal act may have elements common to more than one offense does not rob the prosecutor of that option (or discretion) and mandatorily require him to charge the lesser offense although the evidence before him may warrant prosecution of the more serious one. Now, if government prosecutors make arbitrary choices of those they would prosecute under a particular law, excluding from the indictment certain individuals against whom there is the same evidence as those impleaded, the fault is not in the law but in the prosecutors themselves whose duty it is to file the corresponding information or complaint against all persons who appear to be liable for the offense involved,[20] a duty that should be performed responsibly, without discrimination, arbitrariness or oppression. If that duty is not performed even-handedly, the persons aggrieved are not without remedy. They may avail of the remedy of mandamus to compel compliance with that duty by the prosecutors concerned.[21]

The petitioners' invocation of the doctrine of double jeopardy as an argument against the constitutionality of PD 1866 is equally futile. They maintain that a person held liable under PD 1866 can still be made to answer subsequently for rebellion. The argument is here disposed of by simply adverting to the resolution of that self-same contention in *Misolas*:

"The right against double jeopardy is a matter which the accused may raise in a motion to quash (Sec. 3[h], Rule 117). But, precisely, petitioner's motion to quash filed in the trial court did not raise the issue of double jeopardy because it had not arisen. The Court cannot anticipate that the opportunity for a second jeopardy will still arise if he is acquitted or convicted as charged under P.D. 1866.

"Moreover, even if such a subsequent or second jeopardy does arise, P.D. No. 1866 will not be rendered unconstitutional. That an accused will be exposed to double jeopardy if he is prosecuted under another law is not a ground to nullify that law. Double jeopardy is merely a defense that an accused may raise to defeat a subsequent prosecution or conviction for the same offense."

WHEREFORE, the petition is DENIED for lack of merit, with costs against petitioners.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, and Davide, Jr., JJ., concur.

Gutierrez, J., I join J. Cruz in his dissent.

Cruz and Sarmiento, JJ., see dissent.

Regalado, J., I join Justice Sarmiento in his dissent.

[1] The penalty of death was originally imposed by the law, but upon effectivity of the 1987 Constitution was deemed ipso facto reduced to reclusion perpetua in view of the proscription (in Sec. 19, ART. III of said Constitution) of the imposition of the death penalty.

[2] Or "part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition"

[3] 181 SCRA 648, verdict arrived at by a vote of 12 to 3; Cortes, J., ponente

[4] Annex C, petition

[5] 99 Phil. 515 (1956)

[6] 186 SCRA 217 (1990)

[7] G.R. No. 93375, Sept. 13, 1990

[8] With effect "after fifteen (15) days following the completion of its publication in the Official Gazette" (Sec. 10)

[9] Indicated by italics and underscoring in the reproduced section; see footnotes 1 and 2, *supra*

[10] SEE footnote 1, *supra*

[11] Sec. 3

[12] *Misolas v. Panga*, 181 SCRA 648 (1990)

[13] In *Enrile v. Salazar*, 186 SCRA 217, 233, a similar observation was made: “It may be that in the light of contemporary events, the act of rebellion has lost that quintessentially quixotic quality that justifies the relative leniency with which it is regarded and punished by law, that present-day rebels are less impelled by love of country than by lust for power and have become no better than mere terrorists to whom nothing, not even the sanctity of human life, is allowed to stand in the way of their ambitions. Nothing so underscores this aberration as the rash of seemingly senseless killings, bombings, kidnappings and assorted mayhem so much in the news these days, as often perpetrated against innocent civilians as against the military, but by and large attributable to, or even claimed by so-called rebels to be part of, an ongoing revolution.”

[14] *Id.*

[15] SEE 10A Words and Phrases, Perm. Ed., pp. 307, 311, 315-316

[16] Cruz, I.A., Constitutional Law, 1985 ed., p. 304

[17] *Op. cit.*, pp. 304-305

[18] Or of hand-grenade(s), rifle grenade(s), and other explosives, including but not limited to ‘philbox bombs (sic),’ ‘molotov cocktail bomb,’ ‘firebombs,’ or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person

[19] SEE footnotes 1 and 10, *supra*

[20] Secs. 2 and 6, Rule 110, Rules of Court, as amended

[21] *Guiao v. Figueroa*, 94 Phil. 1018, 1021-1023 (1954); *de Castro, Jr. v. Castañeda*, 1 SCRA 1131, 1134-1135 (1961), both cited in *Jacinto, G.V., Criminal Procedure*, 1979 ed., p. 8

DISSENTING OPINION

CRUZ, J.:

If the petitioners are convicted of rebellion under the Revised Penal Code and found to have used an illegally possessed firearm in connection therewith, they will be subject to the penalty of only *prision mayor*. The illegal possession of firearms is absorbed in the crime of rebellion and may not be separately punished.

On the other hand, if they are convicted of illegal possession of firearms in connection with the crime of rebellion under P.D. 1866, they will be subject to the extreme penalty of *reclusion perpetua* (reduced from death). Conviction of the illegal possession carries with it a finding that the accused was engaged in rebellion.

I am unable to understand the obvious disparity. In both instances, two circumstances are established, to wit, rebellion and illegal possession of firearms. Yet the first offense is punished only with *prision mayor* but the second is punished with *reclusion perpetua*.

Due process requires as a desideratum of fairness the equivalence of the degree of the offense and the degree of the penalty. A serious offense deserves a heavy penalty while a light offense authorizes only a mild penalty. Otherwise stated, a light offense cannot be punished with a heavy penalty, as where, say, littering is penalized with life imprisonment.

It is true, as the ponencia states, that there are cases where an offense not serious per se may be punished with a heavy penalty as a deterrent to its proliferation or because of some special social purpose that may be justified under the police power. But in such cases, it must be established that the offenses are *sui generis* to justify

deviation from the general rule. Lacking such justification, the disproportionate penalty may be struck down as a cruel or inhuman punishment.

In the cases before us, the law takes an ambivalent position toward the crime of illegal possession of firearms when committed in connection with rebellion. As the basic offense under PD 1866, it is considered a serious offense and penalized with no less than reclusion perpetua. However, as a mere attendant circumstance in committing rebellion under the Revised Penal Code, it is not even separately punished, being deemed absorbed in the main offense.

It seems to me that if it is the intention of the legislature to consider a particular crime a serious offense deserving a heavy penalty, it should be consistent in the application of such penalty. It cannot punish the offense heavily in one case and practically condone it in another case.

One might say that this involves a question of policy or wisdom that is resolvable only by Congress and not by this Court. That may be so, again as a general rule, but not where considerations of due process and equal protection are involved.

Under the laws as they stood when the petitioners were formally indicted, the prosecuting officer was given the choice of the offense he could charge, depending on his discretion, which could in turn depend on his attitude toward the suspect. This circumstance gave a dangerous power to the government to discriminate in the prosecution of persons charged with practically the same offense, treating some of them severely and the others with benign leniency.

It has been held that although a law may be fair and impartial on its face, it must nevertheless be annulled if it gives the administrative officer the discretion to enforce it with "an evil eye and an uneven hand" (*Yick Wo v. Hopkins*, 118 U.S. 356; *People v. Vera*, 65 Phil. 56). That is exactly what PD 1866 empowered the prosecuting officer to do. In fact, at the hearing of this case before this Court, the government counsel frankly admitted that the petitioners were prosecuted under the decree because it prescribed the heavier penalty although they could also have been prosecuted for rebellion under the Revised Penal Code.

Mention has been made of RA 6968 which now imposes for simple rebellion under Articles 134 and 135 of the Revised Penal Code the same penalty for violation of Sec. 1(3) or Sec. 3(3) of PD 1866. The subsequent passage of the amendatory law in 1990 does not, of course, affect the petitioners in the case at bar because the offense imputed to them were supposedly committed in 1988. Such amendment may have corrected the injustice inherent in the aforesaid provisions of PD 1866, which is thus now relieved of its constitutional infirmity. However, the decree may still not be applied to the herein petitioners as it was unconstitutional at the time it was made the basis for their prosecution and the subsequent enactment of RA 6968 did not retroactively validate it.

My vote is to grant the petition. So did I vote in *Misolas*.

DISSENTING OPINION

SARMIENTO, J.:

I dissent. I would like to point out that I was originally assigned to write the opinion for the majority in *Misolas v. Panga*.^[1] My opinion sought to strike down Presidential Decree No. 1866 for three reasons: (1) it is a bill of attainder because it presumes the accused to be guilty, as well, of the crime of subversion, in addition to "illegal possession"; (2) it is vague; and (3) it violates the rule against double jeopardy. I take the liberty in restating that opinion, as I originally wrote it:

The petitioner, a detained prisoner, prays that the Court declare "the third paragraph of Section 1 of Presidential Decree No. 1866" unconstitutional in this petition for certiorari.

The petitioner was apprehended by elements of the Philippine Constabulary (244[th] PC Company) on August 8, 1987, at Forest Village, Barangay Tagbobog, Pili, Camarines Sur. He was arrested along with two others, identified only as Ka Donna and Ka Menchie, following "information"[2] reaching the PC headquarters at Naga City that three "subversive terrorists"[3] were sojourning at an "underground house"[4] at Forest Village. On further information submitted by "neighbors", [5] that "the real owner (of the house) is in Binanauanan, Pili and that the occupants.... were strangers," [6] the Constabulary, through a raiding team, led a search of the house. Their account is as follows: "We searched the house and found among their personal belongings, voluminous subversive documents and one 20 gauge shotgun, commonly known as 'sumpak' with serial number 221534 and four (4) live ammos for the same firearm." [7] It was added that "we found inside three persons one (1) male and two (2) female but the two female [sic] escaped." [8] Thereafter, the petitioner was brought to Naga City for questioning.

On August 10, 1987, the Constabulary filed a complaint with the Provincial Fiscal. On September 4, 1987, or twenty-six days after the petitioner's arrest without a warrant, the Fiscal filed the corresponding information, for violation of the third paragraph, of Section 1, of Presidential Decree No. 1866. But it was only on September 11, 1987, or more than one month after his warrantless apprehension, that a warrant was issued, and bail for his provisional liberty fixed, in the sum of P170,000.00. No bail apparently has been posted up to now because he cannot afford it. As a matter of fact, the petitioner is represented by a counsel de oficio and has been allowed by the Court to litigate as a pauper.

On September 30, 1987, the lower court arraigned the petitioner, who entered a plea of not guilty. On October 14, 1987, he filed a "Motion to Withdraw Plea". Thereupon, he moved to quash the information, on the grounds as follows: "(1) That the facts charged do not constitute an offense because the Information does not charge the proper offense"; [10] and "(2) That the court trying the case has no jurisdiction over the person of the accused because of violations of his constitutional rights." [11]

On January 7, 1988, the court a quo issued an order denying quashal. On February 15, 1988, reconsideration was denied.

As indicated at the outset, the validity of certain provisions of Presidential Decree No. 1866 as primarily questioned in this petition.

Presidential Decree No. 1866, "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITIONS OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES," provides in its Section 1 as follows:

SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. — The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed.

The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon the

owner, president, manager, director or other responsible officer or any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs.

The penalty of prision mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.[12]

It should be noted that under paragraph 3, of Section 3, punishing "unlawful manufacture, sales, acquisition, disposition or possession of explosives," the penalty is likewise death if the offense is committed "in furtherance of, or incident to, or in connection with the crime of rebellion, insurrection or subversion." We quote:

SEC. 3. Unlawful Manufacture, Sales, Acquisition, Disposition or Possession of Explosives. — The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess handgrenade(s), rifle grenade(s), and other explosives, including but not limited to "pillbox bombs", "molotov cock-tail bomb", "firebombs", or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person.

Any person who commits any of the crimes defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons shall be punished with the penalty of death.

If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed.

The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the explosives owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs.[13]

The petitioner has been charged under the third paragraph of Section 1, that is, illegal possession of a firearm and ammunition "in furtherance of, or incident to, or in connection with rebellion, insurrection or subversion". He is not being held for rebellion, insurrection, or subversion, the offenses he precisely maintains are the proper offenses (specifically, subversion).

The Decree does not punish "rebellion, insurrection or subversion" as distinct crimes because rebellion, insurrection, and subversion are offenses already penalized by existing statutes (Articles 134 and 135 of the Revised Penal Code with respect to rebellion or insurrection; Republic Act No. 1700 as amended by Executive Orders Nos. 167 and 276 with respect to subversion). Neither can the Decree be said to be an amendment to the law, as "amendment" is legally defined, meaning to say, an "alteration or change"[14] for the purpose of "removing defects or faults"[15] in the statute. It is not necessarily tantamount to a "repeal" either, because, so it is said, while "an amendment keeps alive . . . a 'repeal' destroys."16

The Court sees nothing in the Decree that would convey this impression, i.e., to amend, much less repeal, existing legal provisions on national security and public order. By its explicit and express language, what it makes punishable is the unlawful manufacture, acquisition, disposition, possession of, and dealing in, firearms and armaments without proper legal sanction, and so makes it punishable by reclusion perpetua,[17] with the qualification that where such a prohibited act is committed in furtherance of, or incident to, or in connection with rebellion, insurrection, or subversion offenses against public order and national security, the penalty is increased to death as if rebellion, insurrection, or subversion were aggravating circumstances.[18]

In objecting to the Decree, the petitioner says that it cannot validly consider rebellion, insurrection, or subversion as an attendant circumstance to qualify the offense of "illegal possession" because, precisely, "illegal possession" is an "offense" absorbed by rebellion, etc., on the strength of the Court's rulings in *People v. Hernandez*,^[19] *People v. Geronimo*,^[20] *People v. Rodriguez*,^[21] and *People v. Lava*.^[22] As a consequence, so he avers, "illegal possession" when committed "in furtherance of rebellion, etc." constitutes a non-offense.

The Court finds no necessity in belaboring these objections since the Decree must, in any event, be stricken down for being plainly, a bill of attainder and an offense against due process.

A bill of attainder has been defined as "a legislative act which inflicts punishment without trial."^[23] It is expressly prohibited by the Constitution,^[24] but other than by explicit constitutional mandate, it is essentially repugnant to fundamentals of republicanism enshrined in the Charter. It has thus been said:

Its essence is the substitution of a legislative for a judicial determination of guilt. The constitutional ban against bills of attainder serves to implement the principle of separation of powers by confining legislatures to rule-making and thereby forestalling legislative usurpation of the judicial function. History in perspective, bills of attainder were employed to suppress unpopular causes and political minorities, and it is against this evil that the constitutional prohibition is directed. The singling out of a definite class, the imposition of a burden on it, and a legislative intent, suffice to stigmatize a statute as a bill of attainder.^[25]

As Ferrer indicates, the ban on bills of attainder was meant to implement the principle of separation of powers "by confining legislatures to rule-making and thereby forestalling legislative usurpation of the judicial function."^[26] The term originally applied, however, Congress prescribing the death penalty to specific individuals or groups, "attaining" the victims, and providing for disinheritance. Where the statute provides for lesser penalties, it is called a "bill of pains and penalties."^[27] In *Cummings v. Missouri*,^[28] the United States Supreme Court held that the prohibition covers both bills of attainder and bills of pains and penalties.

The concept of bills of attainder is said to be of American origin,^[29] although the Biak-na-Bato Constitution's injunction against imprisonment "except by virtue of judgment passed by a court of competent authority"^[30] vaguely resembled present-day constitutional aversion to bills of attainder. (Under the Malolos Constitution, it was likewise provided that "[n]o Filipino can become a prisoner unless by virtue of the mandate of a competent judge."^[31]) It was in McKinley's so-called instructions to the Second Philippine Commission, however, that the ban was specifically addressed: "Upon every division and branch of the Government of the Philippines....must be imposed these inviolable rules....that no bill of attainder or ex post facto law shall be passed...."^[32] Since then, the prohibition has devolved over from one organic act to another (Philippine Bill of 1902, Jones Law of 1916, the 1935 Constitution).

That bills of attainder are repulsive to the doctrine of separation of powers, as they are thought to be today, marks actually a departure from early opinions about the underlying reasons behind the injunction of the Constitution. Essentially, the inhibition was a response to acts of oppression and arbitrariness of tyrannies of the ancien regime by simple royal decree, which were central to American experience. Thus, in Ferrer, this Court spoke of the use of bills of attainder "to suppress unpopular causes and political minorities,"^[33] which, pertinently, would have made the ban, based on our own experiences under an authoritarian leadership and as a former colony, relevant to our jurisdiction in spite of its (the ban's) distinction as a relic from a colonial past.

Beginning with *U.S. v. Brown*,^[34] however, the Supreme Court of the United States declared that the proscription serves "as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature."³⁵ It provided a new tack to constitutional law analysis because in that event, the presence of punishment would no longer have been the essence of a bill of

attainder but rather, because it would have allowed the legislature to impinge on judicial prerogatives. According to one authority: "Critically, the Supreme Court had shifted its focus from punishment to trial, and the shift implied that the ban on bills of attainder was a limitation upon the legislative process rather than simply upon legislative policies." [36]

Three reasons are said to underlie the "shift": (1) The need to institutionalize the doctrine in the Constitution by "fractionalizing" power; [37] (2) The need to make the adjudicating process strictly the judge's concern, rather than the lawmaker's, because the legislature, as a political body, is swayed by popular opinions for which it cannot be said to be "impartial", which a judge is presumed to be; and (3) The concern to make the legislature disclose its purposes by leaving the construction of its acts to a separate body, which a bill of attainder cannot achieve as it covers both rule and application at the same time. [38]

However it is interpreted, the notion of bills of attainder in this jurisdiction has not been as specifically circumscribed, and has been in fact invoked in questions involving the equal protection, due process, and presumption of innocence clauses of the Charter. Thus, in *Dumlao v. COMELEC*, [39] this Court struck down Section 4 of Batas Blg. 52, which had barred individuals from running in the local elections of 1980, "who ha[ve] committed any act of disloyalty to the State, including acts amounting to subversion, insurrection, rebellion or other similar crimes....provided, that a judgment of conviction for any of the aforementioned crimes shall be conclusive evidence of such fact and the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be prima facie evidence of such fact." We invalidated the provision for repugnancy to the presumption-of-innocence clause of the Constitution:

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Explicit is the constitutional provision that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel (Article IV, section 19, 1973 Constitution). An accusation, according to the fundamental law, is not synonymous with guilt. The challenged proviso contravenes the constitutional presumption of innocence, as a candidate is disqualified from running for public office on the ground alone that charges have been filed against him before a civil or military tribunal. It condemns before one is fully heard. In ultimate effect, except as to the degree of proof, no distinction is made between a person convicted of acts of disloyalty and one against whom charges have been filed for such acts, as both of them would be ineligible to run for public office. A person disqualified to run for public office on the ground that charges have been filed against him is virtually placed in the same category as a person already convicted of a crime with the penalty of arresto, which carries with it the accessory penalty of suspension of the right to hold office during the term of the sentence (Art. 44, Revised Penal Code). [40]

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In his concurrence, then Chief Justice Enrique Fernando further states:

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x x x I would add that such a provision is moreover tainted with arbitrariness and therefore is violative of the due process clause. Such a constitutional right, to quote from *Luzon Surety Co., Inc. v. Beson*, is "not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern. It is a constitutional safeguard of the highest order. It is a response to man's innate sense of justice." As rightfully stressed in the opinion of the Court, the time element may invariably preclude a full hearing on the charge against him and thus effectively negate the opportunity of an individual to present himself as a candidate. If, as has been invariably the case, a prosecutor, whether in a civil court or in a military tribunal, saddled as he is with so many complaints filed

on his desk would give in to the all-too-human propensity to take the easy way out and to file charges, then a candidate would be hard put to destroy the presumption. A sense of realism for me compels a declaration of nullity of a provision which on its face is patently offensive to the Constitution.[41]

But clearly, the provision constituted a bill of attainder as well, in its fundamental sense as a legislative declaration of guilt. And while the provision prescribed no penalty as the term is known in penology, other than employment disability, it nonetheless imposed some hardship upon the aggrieved party. In *Cummings v. Missouri*,[42] we are told that deprivation of one's means of livelihood is tantamount to punishment.

In referring to the "legislature", we are not closing the coverage of the ban on acts of Congress purely, notwithstanding our pronouncement in *Montenegro v. Castañeda*[43] in which we said that "[t]he prohibition applies only to statutes." [44] In the first place, the Decree questioned herein is clearly in the nature of a "statute". Secondly, the attainder ban is made on any "law" and perforce, it should likewise apply to any executive act, if it has the character of law. To that extent, we consider *Montenegro v. Castañeda* as pro tanto modified.

We come to the questioned Decree.

We hold that the same, specifically, the second and third paragraphs, of Section one thereof, (and the third paragraph, of Section three thereof), is a bill of attainder because it presumes one accused under its provisions guilty—as well—of the crimes (murder and homicide under the second paragraph of Section one; rebellion, insurrection, and subversion under the third paragraph of Section one, and the third paragraph of Section 3) that supposedly aggravate "illegal possession of firearms" (or "unlawful manufacture of explosives") when the accused has not been tried and found guilty of such crimes in any judicial proceeding. In the case at bar, the fact that the petitioner has been charged with illegal possession of firearms "in furtherance of subversion" means that the petitioner has committed subversion notwithstanding the fact that he is not standing trial for subversion, or has been convicted thereof — because precisely, the Decree does not punish subversion. Otherwise, he should have been indicted under the first paragraph, defining simple "illegal possession."

The fact that one charged under the challenged provisions of the Decree, as was held in *People v. Ferrer*, would still have to be proven to have committed rebellion, insurrection, or murder or homicide in the course of the commission of the "main offenses" in a judicial trial would not, to the mind of the Court, salvage the statute. As we said, the Decree does not punish rebellion, insurrection, or rebellion, or murder or homicide, a fact that should make conviction for such offenses impossible (but which the Decree makes possible, anyway). To make the accused answer for such crimes at the same time, then, is to make him answer for an offense of which he has not been charged (violation of either Article 137 of the Revised Penal Code, Republic Act No. 1700, as amended by Executive Orders Nos. 167 and 276, or Article 248 or 249 of the Code), which cannot be done without doing violence to the right of accused persons "to be informed of the nature and cause of the accusation against him." [45]

At any rate, because the statute itself designates the various crimes abovesaid, including subversion, as "aggravating circumstances", conviction thereunder would of necessity carry with it the accompanying stain of such offenses. It would have made the accused guilty, at the same time, of such offenses notwithstanding the fact that he had been charged with simple illegal possession of firearms or unlawful manufacture of explosives.

Presidential Decree No. 1866, the Court is of the further opinion, is offensive to due process and the prohibition against double jeopardy. The Court reiterates that it does not penalize subversion (or rebellion, etc.) and because it does not, it allows the State to pursue a separate proceeding for the said crimes. But in that case, the prosecution need only present the self-same evidence constituting illegal possession of firearms since illegal possession is one of the means of committing subversion under the Anti-Subversion Act. We quote:

SEC. 4. After the approval of this Act, whoever knowingly, wilfully and by overt acts affiliates himself with, becomes or remains a member of the Communist Party of the Philippines, and/or its successor or of any subversive association as defined in sections two and three hereof shall be punished by the penalty of arresto mayor and shall be disqualified permanently from holding any public office, appointive and elective, and from exercising the right to vote; in case of a second conviction, the principal penalty shall be prision correccional, and in all subsequent convictions the penalty of prision mayor shall be imposed; and any alien convicted under this Act shall be deported immediately after he shall have served the sentence imposed upon him; Provided, That if such member is an officer or a ranking leader of the Communist Party of the Philippines or of any subversive association as defined in sections two and three hereof, or if such member takes up arms against the Government, he shall be punished by prision mayor to reclusion perpetua with all the accessory penalties provided therefor in the Revised Penal Code: And provided, finally, That one who conspires with any other person to overthrow the Government of the Republic of the Philippines or the government or any of its political subdivisions by force, violence, deceit, subversion or other illegal means, shall be punished by prision correccional to prision mayor with all the accessory penalties provided therefor in the same Code.[46]

It shall be noted that under the Act above-quoted, subversion may be committed, among other things, by conspiring in the overthrow of the Government by "other illegal means".[47] And doubtless, illegal possession of firearms or unlawful manufacture of explosives is an "illegal means". But because conviction under the Decree does not foreclose a future prosecution under the Anti-Subversion Act, it would have allowed a subsequent punishment for subversion (arising from illegal possession of firearms) based on the same evidence, when the accused has already been convicted of an offense that comprises a mere element of subversion. Certainly, it would have put him twice in jeopardy for the same offense.

While it is true that in double jeopardy cases, first jeopardy must have first attached and that the accused is under threat of a second one,[48] which does not obtain here, the fact that the Decree in question allows the possibility of such a succeeding jeopardy makes it, the Decree, repulsive to the fundamentals of due process.

For the reasons above-stated, we consider our ruling in *Lazaro v. People*[49] no longer good law. In that case, which involved a prosecution for illegal possession of unlicensed firearm used in parricide under the provisions of Presidential Decree No. 9 (Presidential Decree No. 1866's precursor), we held that "[t]he offense of 'Illegal Possession of Unlicensed Firearm used in Parricide' includes the lesser offense of Parricide." [50] We hold that it is no longer good law, in the first place, because in no way may parricide be considered a "lesser offense" than "illegal possession", for one thing, parricide being an offense punished by the Revised Penal Code and "illegal possession" being an act pena-lized by a special law. Secondly, if parricide is deemed included in illegal possession of firearm used in parricide, it means that a prosecution for one should be an abatement of a proceeding for the other,[51] yet, in *Tangan v. People*, [52] a prosecution for possession of an unlicensed firearm used in the commission of homicide under Presidential Decree No. 1866, it was held that "the offense charged . . . [possession of an unlicensed firearm used in the commission of homicide] . . . does not operate to extinguish his criminal liability for the [other] offense charged [homicide]." [53] Apparently, a subsequent prosecution for those offenses that are supposed to qualify "illegal possession" (or "illegal manufacture") under Presidential Decree No. 1866 is still possible (as Tangan tells us) but just as apparently, this is where the difficulty arises. For if we allow a trial for such offenses, we would have placed the accused in double jeopardy (as Lazaro tells us).[54] It is therefore no valid proposition to say that all talk of double jeopardy is too early pending conviction for the first offense, because that result would be inevitable (in case of a conviction). We find, as we have said, such a situation offensive to due process of law. The Solicitor General would, however, say:

Section 1 of P.D. No. 1866 is not unconstitutional. It is similar to Batas Pambansa Blg. 22. B.P. Blg. 22 punishes the issuance of an unfunded check. The issuance of an unfunded check is the mode or means of commission of estafa under paragraph 2(d), Article 315 of the Revised Penal Code. Under Section 5 of B.P.

Blg. 22, "Prosecution under this Act shall be without prejudice to any liability for any violation of the Revised Penal Code. Despite these circumstances, this Honorable Court upheld the constitutionality of B.P. Blg. 22 (Lozano vs. Martinez, 146 SCRA 323). Thus a person can be simultaneously prosecuted under B.P. Blg. 22 and paragraph 2(d), Article 315 of the Revised Penal Code.[55]

The Court sees no parallel between Batas Blg. 22 and Presidential Decree No. 1866 as to effects and implications. When Batas Blg. 22 allows a separate prosecution for estafa, it does so because the issuance of bad checks, the act punished by it, is a separate act that may or may not constitute estafa because estafa may be committed in ways other than the issuance of bouncing checks, so long as the act has been attended by deceit, which is not central to the Bouncing Checks Law. A successful prosecution for violation of Batas Blg. 22 does not give the fiscal any more advantage, nor does it place the accused at a disadvantage, because he, the fiscal, must further establish deceit, the essence of estafa.[56]

In the case at bar, however, the petitioner (the accused) is being held liable for illegal possession of firearms "in furtherance of subversion" which, in itself, is a fundamental ingredient of the offense or subversion, because as we have indicated, subversion is committed by "any illegal means". And in that event, the prosecution need not establish — in the separate proceeding for subversion — any other act constituting subversion as defined by law committed by the accused because the finding alone of illegal possession of firearms would be enough to support a conviction for subversion. It would have allowed the prosecution to strike two birds with a single stone in a manner that he would not have been permitted to do so under the due process clause of the Constitution.

There is no doubt that the privilege to arm oneself is subject to State regulation. Regulation, however, should be within rightful and reasonable limits, and with due regard to the rights and liberties of citizens. Centuries ago, we were told that tyranny begins by the disarming of the people, so that the people cannot defend themselves against tyranny. In that event, "regulation" would have been a plain excuse for the oppression of the people.

A final word. Presidential Decree No. 1866 was one of the many presidential issuances which had served the dictatorship, and served it well, as an instrument of repression during the dictatorial years. Because of it, many courageous freedom fighters had perished or languished in various places of detention throughout our country. It is unfortunate that this oppressive Presidential Decree had been allowed to remain in our statute books after the apparatus of dictatorship had been dismantled, and sadly, it is still being used as incessantly as in the previous regime. It is an anachronism in the broad democratic space that obtains today. We must strike it down.

WHEREFORE, the petition is GRANTED. Paragraphs two and three, of Section one, of Presidential Decree No. 1866 as amended, as well as paragraph three, of Section three thereof, are declared UNCONSTITUTIONAL and of no force and effect. The immediate release of the petitioner from custody is hereby ORDERED.

IT IS SO ORDERED.[2]

I would like to add, insofar as the majority in this case adverts to the "Hernandez doctrine", that Presidential Decree No. 1866 is, moreover, an invalid exercise of judicial power, and is therefore offensive to the principle of separation of powers prescribed by the Constitution. In *People v. Hernandez*,^[3] the Court held that common crime — such as illegal possession of firearms — are simple ingredients of the primary offense (rebellion, subversion, etc.), for which separate prosecutions are not possible. The Court has spoken. The legislature can not reinterpret the law by making mere ingredients of an offense punishable separately. Interpretation of the law is the sole domain of the Court.

As I said, Presidential Decree No. 1866 is one of the last vestiges of authoritarian rule in the country, whereby the State pounced on its opponents under rules that offered no sporting chance or hope to the State's opponents.

Democracy has however been restored, in which the State is called upon to lean favorably toward its opponents (i.e., through favorable penal laws and presumptions of innocence). It is time to wipe the Decree out of our statute books.

[1] G.R. No. 83341, January 30, 1990, 181 SCRA 648, 663-668.

[2] Footnotes omitted.

[3] 99 Phil. 515 (1956), and several cases that affirmed it. See Decision, 2, fn. 3.

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