

26. 63 Phil. p. 711
27. Citizen' Bank of Fayette v. i. Black & Sons Inc., 228 Ala. 246, 153 So. 404; Hutches ware Co. v. Planters State Bank, 26 Ga. App. 321, 105 SE 854; and numerous cases cited in II Patons Digest 1809.
28. 1 Paton's Digest 120
29. Birmingham National Bank v. Bradley (1893) 103 Ala. 109,15 So. 440; Espy v. Bank of Cincinnati, cited above; Redington v. Woods (1973) 45 Cal. 406, 13 Am. Rep. 190; Trust Co. v. Bank (1923) 29 Ga. App. 472, 116 S. E. 204; Continental National Bank v. Metropolitan National Bank (1903) 107 III. Ap. 455; Merchant's Bank v. Exchange Bank (1840) 16 La. 457; Third National Bank v. Allen (1875) 59 Mo. 310; Parke v. Roser (19867) 6 Ind. 500, 33 Am. Rep. 102; Bank v. Jewelry Co. (1920) 203 Mo. App. 646, 220 S. W. 511; Rapp v. National Security Bank v. State Bank (1888) 22 Neb. 769, 36 N. W. 289, 3 Am. St. Rep. 294 77, 7 Am. Rep. 310, National Bank of Commerce v Manufacturer's Bank (1980) 122 N. Y. 307, 25 N. E. 353.
30. Fourth National Bank of Macon vs. Lattimor, 168 Ga. 547, 138, 396. To the same effect is the ruling in the case of Andrew vs. Sibley, 220 Mass. 10, 107 N. E. 395 and First Nat. Bank v. Gridley, 112 Div. 398, 98 N. E. Supp. 445.
31. 35 SCRA pp. 145-146
32. 43 Phil. 678
33. Id. at pp. 683-683
34. Britton on Bills and Notes p. 657
34. 10 SCRA p. 8.
35. Britton on Bills and Notes, p. 645, citing State Planters Bank & Trust Co. of Richmond v. Fifth Third Union Trust Co., 1937, 56 Ohio App. 309, 10 N. E. 2d, 935.
36. Please see Patons Digest of Legal Opinions of the American Bankers Ass. p. 1203 citing National Bank of Baltimore v. Drover's & Mechanics' Merchants' National Bank 122 app. Div. 554, 112 N. Y. S. 937 (words in parenthesis supplied)

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RECONCILIATION THROUGH THE RESTORATION OF RIGHTS

Opening Statement

The search for a restoration of the rights of the Filipino people cannot be candid and meaningful without a discussion of Presidential Decrees 1834, 1835, 1836, 1877 and 1877-A, and Proclamation No. 2045 as amended by Proclamation No. 2045-A.

Presidential Decree No. 1834

Presidential Decree No. 1834 increases the penalties for the crimes of rebellion, sedition and related crimes. To appreciate it, we must look to its legislative history.

Since January 1, 1932, the law prescribing penalties for crimes against public order was Act No. 3815 as amended, otherwise known as the Revised Penal Code. On June 10, 1976 however Presidential Decree No. 942 was issued on the basis of the following policy statements:

"WHEREAS, it is the primary goal of the martial law administration to restore peace, order and normalcy to Philippine conditions as early as possible;

WHEREAS, the attainment of this goal is greatly hampered by certain elements of society who continue to pursue acts and engage in activities destructive to the stability and security of the State;

WHEREAS, there is a pressing need to strengthen and reenforce the continuing campaign against subversion by increasing the penalties for crimes against public order and by treating as distinct other offenses committed in the course of the commission of such crimes."

Fundamentally, PD 942 increased by one degree the penalties imposed upon crimes against public order. Where the penalty under the Revised Penal Code was prison mayor or from six years and one day to twelve years imprisonment, the penalty was raised to reclusion temporal or from twelve years and one day to twenty years imprisonment. Where the crime was punishable by prison correccional or six months and one day to six years imprisonment, it was increased to prison mayor or six years and one day to twelve years.

Thus in 1976 when the state of martial law was subsisting, the President considered it necessary to increase the penalties for crimes against public order, more or less consistently by one degree. On January 16, 1981

the membership of the accused in the subversive organization under Sec. 6, the state must also prove that said member committed overt acts, other than those enumerated in Sec. 6, which should show a specific intent to further the unlawful goals of the associations or organizations. (People vs. Ferrer)

3. PD 1835 and PD 885 authorize the sequestration of property to prevent the utilization of the same for purposes inimical to national security or when necessary to protect the interest of the government or any of its instrumentalities. This particular provision does not appear in R. A. 1700. As worded, PD 1835 and PD 885 do not require prior conviction for purposes of sequestering a property allegedly utilized for subversive activities. Further, this authority to sequester is even broad enough to cover situations when "necessary to protect the interest of the government". Strictly speaking, this phrase must have a relation to national security.

4. A new feature of PD 1835 is the additional prescribed penalty of "forfeiture of rights as a citizen of the Philippines". (This was taken from PD 1735)

One must distinguish between rights given to a citizen of the Philippines by the Constitution and those rights given to citizens of the Philippines by statute. The forfeiture must refer only to those rights given by statute. Rights accorded to citizens of the Philippines by the Constitution cannot be removed or negated by a mere statute. Otherwise the statute is unconstitutional.

Another additional penalty is confiscation of property of the accused (Also taken from PD 1735). The penalty of forfeiture of rights as a citizen of the Philippines as well as the forfeiture of property is most likely violative of the constitutional provision against deprivation of life, liberty or property without due process of law and against cruel or unusual punishment. The citizenship as well as the property rights of the accused do not only affect him but also the status and subsistence of his children and family. The members of his family would thus be unlawfully penalized for an offense which they have not committed.

Presidential Decree No. 1836

On January 16, 1981, PD 1836 was reportedly also supposed to have been issued. The full text of the decree reads:

PRESIDENTIAL DECREE NO. 1836

DEFINING THE CONDITIONS UNDER WHICH THE PRESIDENT MAY ISSUE ORDERS OF ARREST OR COMMITMENT ORDERS DURING MARTIAL LAW OR WHEN THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS IS SUSPENDED.

WHEREAS, implicit in the Constitution is the power of the President to issue orders of arrest or commitment orders during a state of martial law or when the privilege of the writ of habeas corpus is suspended; and

WHEREAS, it is desirable that the conditions under which such order of arrest or commitment orders may be issued by the President are defined;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby order:

SECTION 1. During a state of martial law or when the privilege of the writ of habeas corpus is suspended, the President may issue orders of arrest or commitment orders as to any person whose arrest or detention is, in the judgment of the President, required by public safety and as a means to repel or quell an invasion, insurrection or rebellion, or imminent danger thereof.

SECTION 2. The person so arrested or detained shall not be released until so ordered by the President or his duly authorized representative.

SECTION 3. Rules or instructions in implementation of the foregoing shall be issued by the President.

SECTION 4. This Decree shall take effect immediately.

Done in the City of Manila, this 16th day of January in the year of Our Lord, nineteen hundred and eighty-one.

Signed
President of the Philippines

By the President:

SIGNED
JUAN C. TUVERA
Presidential Executive Assistant

There is no known issuance of the rules and instructions implementing this decree. To that extent, therefore, there is every hope that PD 1836 is not yet enforced. If PD 1836 however has been issued and is effective, it will clearly violate the due process clause of the Bill of Rights.

"Section 1. 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 law."

Under Proclamation No. 2045, issued January 17, 1981, the privilege of the writ of habeas corpus remains suspended in the two (2) autonomous regions in Mindanao and in all other places, as to persons present-

ly detained or who may thereafter be detained for crimes of rebellion, insurrection, subversion and related crimes. PD 1836 therefore, if implemented in the context of Proclamation No. 2045, gives the President, the sole and full discretion and judgment to order the arrest or commitment of any person when such is required by public safety and as a means to repel or quell an invasion, insurrection or rebellion, or imminent danger thereof.

Proclamation No. 2045, as amended by 2045-A

On July 23, 1983, Proclamation No. 2045 was amended by Proclamation No. 2045-A so that the privilege of the writ of habeas corpus remain suspended in the regions mentioned and in all others with respect to persons presently detained or thereafter similarly detained for crimes against public order, adding to the original dispositive portion the phrase "such as but not limited to offenses involving economic sabotage, illegal association, illegal assemblies, tumult and other disturbances of public order, unlawful use of means of publication and unlawful utterances, and alarms and scandals, or with respect to any person whose arrest or detention is in the judgment of the President, required by public safety as a means to repel or quell the existing rebellion in the country".

Effectively, Proclamation No. 2045-A incorporated the power of the President under the reported PD 1836, to detain any person when in his judgment, such is required by public safety. Proclamation No. 2045-A however, also recognizes the "existing rebellion in the country".

PD 1836, by itself and together with Proclamation 2045 as amended by Proclamation 2045-A is subject to constitutional infirmity. Section 15 of Article IV of the Constitution allows the suspension of the privilege of the writ of habeas corpus only in cases of invasion, insurrection, rebellion or imminent danger thereof when the public safety requires it. There being no new invasion, insurrection or rebellion between the dates of Proclamation No. 2045 and Proclamation No. 2045-A, there is serious question about the validity of suspending the privilege of the writ of habeas corpus for the newly enumerated crimes added by Proclamation No. 2045-A specially since this list of new crimes do not essentially involve violence.

Furthermore, the continued suspension of the privilege of the writ of habeas corpus, together with the powers enumerated under PD 1836, violates the due process requirement of Sections 1 and 17 of Article IV of the Philippine Constitution.

It also violates the right of every person to a speedy disposition of their cases (Section 16), to be presumed innocent until proven guilty (Section 19), and to be "bailable by sufficient sureties (Section 18)".

Presidential Decree 1877 and 1877-A

The celebrated presidential commitment order (PCO) was originally provided for by Letter of Instructions No. 1211, which took effect on March 9, 1982.

The PCO was substituted by the Presidential Detention Action, or PDA, as provided for by PD No. 1877, promulgated on July 21, 1983. PD No. 1877 was promulgated to implement Proclamation No. 2045, (issued January 17, 1981) which declared the privilege of the writ of habeas corpus suspended for commission of the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes. PD No. 1877 provided that the PDA may be issued for the commission of these crimes, for a period of one (1) year; however, the President may authorize the further detention of a person under PDA, upon recommendation of a Review Committee composed of civilian and / or government lawyers as he may designate to evaluate evidence against persons covered by the PDA. PD 1877 took effect 15 days after its publication in the Official Gazette last August 22, 1983.

On 23 July, 1983, PD 1877-A was issued, amending PD 1877 to be consistent with Proclamation No. 2045-A (issued also on July 23, 1983), which amended Proclamation No. 2045. PD 1877-A, among others:

1. Expanded the crimes for the commission of which a PDA may be issued. These additional crimes are:

- a) economic sabotage;
- b) illegal assembly (Art. 146 of the Revised Penal Code — a meeting of armed persons for the purpose of committing crimes against public order);
- c) illegal association (Art. 147 of the Revised Penal Code);
- d) tumult and other disturbances of public order (Art. 153 of the Revised Penal Code);
- e) unlawful use of means of publication and unlawful utterances (Art. 154 of the Revised Penal Code); and
- f) alarms and scandals (Art. 155 of the Revised Penal Code).

Alarms and scandals is a light offense punished under Art. 155 of the Revised Penal Code, punishable by *arresto menor* (1-30 days imprisonment) OR a fine not exceeding P 200.00. Alarms and scandals is committed as follows:

1. Any person who within any town or public place, shall discharge any firearm, rocket, firecracker, or other explosive calculated to cause alarm or danger;

2. Any person who shall instigate or take an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility;

The term "charivari" is defined to include a medley of discordant voices, a mock serenade or discordant noises made on kettles, tin, horns, etc. designed to annoy and insult. (Reyes, Revised Penal Code, Book II, p. 146)

3. Any person who, while wandering about at night or while engaged in any other nocturnal amusements, shall disturb the public peace; or

4. Any person who, while intoxicated or otherwise, shall cause any disturbance or scandal in public places, provided that the circumstances of the case shall not make the provisions of Article 153 applicable.

II. The President may also issue a PDA against any person whose arrest and detention is "in his judgment" required by public safety as a means to repel or quell the existing rebellion in the country.

Finally, PD 1877-A provides for the following sanctions not contained in the PCO:

- a) search of the person or his premises, residence, office or place of business; and
- b) the sequestration, distraint, confiscation or destruction of all arms, equipment or property used or to be used in the commission of the crime. The PCO authorized only the sequestration of arms, equipment or property.

Conclusion

In the context of the Bishops-Businessmen's search for national reconciliation through the full restoration of the rights of the people, certain essential conditions must be recognized:

1. We must urge the President to review, revise or revoke altogether PD 1877, as amended by PD 1877-A.

2. We must earnestly request and submit the strongest plea for the President to repeal forthwith PD 1836 and reconsider the enumeration of crimes in Proclamation 2045, as amended by 2045-A, which crimes are likewise put outside the privilege of the writ of habeas corpus.

As for PD 1834 and 1835, a closer scrutiny can support the conclusion that they were visualized to create a deterrent effect upon persons seeking to overthrow the government, in the light of the termination of the state of martial law throughout the Philippines.

For myself, the crimes as defined, the penalties as prescribed and the

remedies made available by the Revised Penal Code, have served the Republic well since 1932 and can remain as it is. The deterrence upon the people should flow from a commitment to unity within the nation and the supreme effort of the sovereign Filipino people, with the aid of Divine Providence,

"to establish a Government that shall embody our ideals, promote the general welfare, conserve and develop the patrimony of our Nation, and secure to ourselves and our posterity the blessings of democracy under a regime of justice, peace liberty, and equality. . ."