evidence, does not give such evidence any probative value (People vs. Valero, 112 SCRA 661).

Conclusion

In the proposed 1987 Rules on Evidence, there has been a conscious effort to clarify ambiguous provisions and to incorporate decisional principles in the Rules. Some sections, particularly with regard to parental, filial and spousal privilege, have been expanded to cover other direct ascendants or descendants and conform with Filipino traditions. To make the proposed Rules humane and to encourage compassion to victims, an offer to pay or the payment of medical or hospital bills is not made admissible as proof of civil or criminal liability for the victim's injury. However, conspicuously absent in the proposed rules and recent Supreme Court decisions is an express policy to render flexible the rigid rules of evidence when circumstances warrant, to shorten proceedings and to permit (unless abused) recordation of what otherwise would be objectionable testimony or evidence for review by the appellate courts. Such a policy is necessary to meet the current problems of slow-paced adjudication of disputes and the presence of some unqualified judges in the trial courts.

THE 1987 CONSTITUTION: FOSSILIZING MARTIAL LAW JURISPRUDENCE

ALAN A. TAN*

> . . . although little overt reference to it was made at that time, the future verdict of history was very much a factor in the thinking of the members, no other case of such transcendental significance to the life of the nation having confronted the Court before.
>
> — Chief Justice Makalintal, in AQUINO vs ENRILE, 59 SCRA 183

> When the judgment of history is written, as leaders of our people, we shall be asked to account not only for what we did, not only for what we did not do, but also for what visions we have today of our tomorrow.
>
> — Justice Concepcion, Jr., in MORALES vs ENRILE, 121 SCRA 538

A reader of the law encounters this doctrine spelled out in its Latin fullness in many a preface to the Supreme Court Reports Anotated: *stare decisis et non quieta movere*. Idiomatically, it simply means, "let sleeping dogs lie." The doctrine finds legislative sanction in Article 8 of the Civil Code starting that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."[1] This has been held to mean that the Court's interpretation of a statute, while not deemed a source of law, nonetheless forms part of the statute as originally passed because the construction establishes the contemporaneous legislative intent which such statute carries into effect.[2] Consequently, once a question of law has been examined and finally decided by the high court it should be deemed settled and closed to furhter argument,[3] presumably on the theory that there is no other forum to which the question may be brought for further determination.

Of all the laws in a given State there is perhaps none more susceptible to judicial interpretation and construction than its constitution. This paper will focus on a subsection on the Presidency tucked into the 1935 Constitution, here quoted in full as follows[4] –

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[1] Ours being of the civil law system, this provision refers only to Supreme Court divisions. Cf. MIRANDA vs IMPERIAL, 77 Phil 1066.

[2] SENARILLOS vs HERMOSISIMA, 100 Phil. 501.

[3] PRAIL vs. BURCKHART, 299 Ill. 19, 132 NE 280, cited in Tolentino, I Civil Code of the Philippines 1983 ed.), p. 39.

[4] Section 10(2), Article VII, 1935 Constitution.

> "The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or immiment danger thereof, when the public safety requires it, he may suspend to privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law."

Save for a couple of stylistic changes, this is transposed verbatim into the 1973 Constitution where it stands on its own as Section 9 in the Article on the President.

Nostradamus was not a delegate to the 1934 Constitutional Convention and none of those who were had any inkling this provision would form a chapter in Philippine history lasting, at least officially, for more than eight years. By itself, the same provision would spawn a corpus of jurisprudence unrivalled in verbiage by any other jurisdiction. The task of this paper is to reveal that jurisprudence in the light of the provisions in the 1987 Constitution on the same matter.

THE SOURCE OF MARTIAL LAW POWERS

The power to place the Philippines or a part thereof under martial law is but one of the three emergency powers granted by the Constitution to the President in the provisions quoted above. It does not automatically attach to the President by virtue of his being elected as such; rather, the exercise of the power is made to depend by the 1935 Constitutions on two factual bases, viz., (1) the existence of invasion, insurrection, rebellion, or the imminent danger of any of these three; and, (2) the requirements of public safety. It is not enough that the first condition is present; public safety must also require the imposition of martial law. Said the Supreme Court in one case,[5]

> The specific mention in the Constitution of rebellion and insurrection along with invasion and imminent danger thereof shows that the terms "rebellion and insurrection" are used therein in the sense of a state or condition of the Nation, not in the concept of a statutory offense.

From this it can be gleaned that the commission of the crime of rebellion or insurrection[6] – invasion is not a felony – will not *ipso facto* vest in the President Martial law powers. The state of rebellion or insurrection, or invasion, must be of such extent that the requirements of public safety would warrant the exercise of the powers.

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[5] GARCIA-PADILLA vs ENRILE, 121 SCRA 472, 492 (1983).

[6] "Rebellion or insurrection" is one crime penalized under Article 134 of the Revised Penal Code.

In the 1987 Constitution,[7] the first of the two factual bases is now limited to the existence of either invasion or rebellion. Dropped by the drafters of the new constitution are the terms "insurrection" and "or imminent danger thereof." "Insurrection" is really a colonial term which has died of its own accord, colonialism having become *passe* in today's geopolitics. As for the phrase "or imminent danger thereof," its inclusion in the previous Constitutions was for the reason that the state of emergency due to the invasion or rebellion should not be allowed to reach an extent that the President would be powerless to do anything about it anymore. The phrase referred more to rebellion than to invasion, for reasons that should be obvious enough. Its deletion from the new constitution may be of no earth-shaking significance so long as the warning not to "ignore the sophisticated nature and ramifications of rebellion in a modern setting"[8] is heeded, at the same time counterbalancing this with the caution not to mistake "mere dissent – no matter how emphatic or intemperate it may be – for dissidence amounting to rebellion or insurrection."[9] It is thus submitted that despite the deletion the President may still exercise the power if in his view there is a need to do so, subject only to the operation of the mechanism set up in the present constitution calling for the interplay of the three branches of government, as discussed below.

THE NATURE AND CONCEPT OF MARTIAL LAW POWERS

Willoughby classifies martial law into three, the third of which refers to that emergency Presidential power which he calls "Martial Law *in sensu strictiore*, or that law which has application when the military arm does not supersede the civil authority but is called upon it to aid in the execution of its civil functions."[10] The military "takes the place of certain governmental agencies which for the time being are unable to cope with existing conditions in a given locality which remains subject to the sovereignty."[11]

Martial law has been characterized further as an exercise of police power,[12] with the added observation that while the exericse of police power is basically legislative in nature, its exercise under martial law is given to the executive branch of government which is aided by the military.[13] The necessities laid down in the constitution as giving rise to the occasion for the exercise of the power also determine the extent to which the powers of the President may be expanded or constricted. In the most extreme of cases, "the executive power is fully lawmaker, judge, and executive all rolled into one."[14] Thus the Supreme Court pronouncement, through the pen of Justice de Castro, that:[15]

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[7] First paragraph of Section 18, Article VII, 1987 Constitution.

[8] AQUINO vs ENRILE, 59 SCRA 183 (1974).

[9] LANSANG vs GARCIA 448, 475 (1971).

[10] Cited in Bernas, I The 1973 Philippine Constitution (1983 ed.), pp. 171-2.

[11] Magoon, Reports on the Law of Civil Government in Territories Subject to Military Occupation, cited in III WILLOUGHBY 1592-3, cited in Bernas, op. cit., p. 173.

[12] Bernas, op. cit., pp. 174-5.

[13] Ibid.

[14] Bernas, op. cit., p. 176.

[15] GARCIA-PADILLA vs. ENRILE, supra, passim.

> The presidential responsibility is one attended with all urgency when so grave a peril to the life of the Nation besets the country x x x. In the discharge of this awesome and sacred responsibility, the President should be free from interference. xxxx. Worthy of profound notice and keen appreciation is the fact that the authority to suspend the privilege of the writ of habeas corpus has been vested in the President, together with the related powers to call out the armed forces to suppress lawless violence and impose martial law. x x x x. The legislature was considered in the alternative upon which to lodge the power, or to share in its exercise, but the distilled wisdom of the Constitutional Convention finally made its choice for the President alone.

As for the judiciary, its duty to "protect the individual rights must yield to the power of the Executive to protect the State, for if the State perishes, the Constitution, with the Bill of Rights that guarantees the right to personal liberty, perishes with it."[16] Illustrative of this most extreme of cases is AQUINO vs. MILITARY COMMISSION No. 2, 63 SCRA 546 (1975) where the Supreme Court truly allowed the Executive to be judge, jury and executioner.

Seen in this manner, we encounter in the previous Constitutions a penumbral nexus where the functions of the three branches of government inextricably intertwine and converge to be lodged in the military arm of the Executive branch as headed by the President. One mind perceived its existence and utilized it sometime in 1972 for reasons better left to psychological historians for investigations; others bypassed it or looked at it with nothing more than an academic interest.

A. THE LANSANG DOCTRINE REVISITED

It could be that the then President was testing the judicial waters when he exercised the "lesser" power of the suspension of the privilege of the writ of habeas corpus by issuing Proclamation No. 889 on 23 August, 1971. Within that same year, the validity of the Presidential action would be questioned in the famous case of LANSANG vs. GARCIA, 42 SCRA 448. Eidetically, the doctrine of that case, as penned by Chief Justice Concepcion, may be summed up as: The Supreme Court has the authority to inquire into the existence of the factual bases for the suspension of the privilege of the writ in order to determine the constitutional sufficiency thereof; but in the exercise of such authority the Court can only check, not suppiant, the Executive. Hence the adoption of the test urged upon the Court by the then Solicitor-General[17] –

[16] Ibid., p. 502.

[17] At p. 481. Underscoring by the Court. (Note, though, that it is not the writ but the privilege thereof that may be suspended; hence the many "sics." – Author)

> xxx that judicial inquiry into the basis of the questioned proclamation can go *no further* (sic) than to satisfy the Court *not* that the President's decision is *correct* and that public safety was endangered by the rebellion and justified the suspension of the writ (sic), but that in suspending the writ (sic), the President did not act *arbitrarily*.

Said the Court, "no reason has been submitted to warrant the rejection of such test."

What is memorable with LANSANG is that there the Court explored itself until it discovered it had reached the threshhold of its constitutional powers. It could not, and would not, step beyond the edge into the penumbral nexus adverted to above. It is not the Court shirked from its constitutional duties as it perceived them to be. In fact, LANSANG chose to discard the doctrine in BARCELON vs BAKER, 5 Phil 87 (1985), that "the authority to decide whether the exigency has arisen requiring the suspension (of the privilege of the writ) belongs to the President and his 'decision is final and conclusive' upon the Court and upon all other persons."[18]

The LANSANG Court nevertheless reined itself. It was not out of fear nor awe. It was not out of personal admiration nor respect. Rather, the Court accorded respect to its co-equal branch of government, the institution that is the Executive. Thus did the Court define the parameters of its constitutional powers: it could not say whether the president was correct or not in suspending the privilege of the writ because to do so would amount to exercising a power expressly granted by the Constitution to the Executive. But it could check if the President acted arbitrarily, i.e. if he went beyond the bounds of his constitutional powers; but in this task, because the Court lacked the necessary machinery therefor, it must rely on the facts as gathered by the Executive branch through its civilian and military agencies. Whether or not those facts were correct the Court would not determine, all it could do was to check if those facts were sufficient for the President not to have acted arbitrarily. Wry is the comment by one author that the Court had to determine the constitutionality of the act on the President's own terms.[19]

By according much respect to its co-ordinate branch, the Court may be said to have emasculated itself, or at least diluted its powers, to a certain extent. It could have stepped into the constitutional nexus to determine its nature but it did not. A Supreme Court justice would later criticize LANSANG in a tone almost disdainful as being "based on naivete; it demonstrates a lack of contact with reality. xxx Lansang was an empty victory for the petitioners. They won a battle but lost the war. It could be that this Court also lost something in the process. It raised expectations which it could not fulfill."[20]

[18] Reiterated in MONTENEGRO vs CASTANEDA, 91 Phil 882 (1952). But see the pairstaking analysis of the BAR CELON doctrine by Chief Justice Concepcion in LANSANG at pp. 471-2.

[19] P.V. Fernandez, I PHILIPPINE CONSTITUTIONAL LAW (1977 ed.), p. 64.

[20] Concurring and disenting opinion of Justice Abad Santos in MORALES, JR. vs ENRILE, 121 SCRA 538, 592 (1983).

The ghost of LANSANG haunted the Supreme Court throughout the martial law cases until twelve years later when the case of GARCIA-PADILLA vs. ENRILE, 121 SCRA 472, laid it to rest by reverting to the BARCELON doctrine. It almost rose from the grave only six days after the GARCIA-PADILLA case was decided,[21] but its final, though only partial, vindication came only with the ratification of the 1987 Constitution.

Although dealing with another emergency power of the President, the impact of LANSANG in martial law jurisprudence cannot be shrugged off. If at all, the penumbral nexus had been dimly perceived, but there was also the refusal to examine it. And in its remembrance of the BARCELON doctrine, LANSANG opened the door for some Supreme Court justices to later take refuge in that convenient excuse for not examining actions of the Executive, that vague and amorphous idea which goes by the name of "political question."

Thus when the time came from the Court to determine the validity of the imposition of Martial Law in AQUINO vs. ENRILE, 59 SCRA 183 (1974), sharp was the division in the opinions of the justices on the issue of whether the Court could inquire into the validity of the Presidential act. Five justices said the question was political and beyond the ambit of the Court's power of judicial review. Four called for the application of the test adopted in LANSANG. One split hairs by saying that no all political questions are *per se* beyond the Court's jurisdiction, but that LANSANG was nevertheless inapplicable as it dealt with another emergency power. The most sensible was the observation of Chief Justice Makalintal that "the cleavage in the Court on the issue of justiciability is not of much more than academic interest for purposes of arriving at a judgment." For whatever was the road taken, the view was unanimous: the imposition of martial law was valid.

The extent to which some justices gave up the power of judicial review can be felt in the concurring opinion of Justice Munoz-Palma in AQUINO vs. COMELEC, 52 SCRA 275 (1975): "While it is true that the convening of the *interim* National Assembly cannot be said to be simply at the pleasure and convenience of the President, however, the matter is one addressed to his sound discretion and judgment for which he is answerable alone to his conscience, to the people he governs, to posterity, and to history." What a magnificent statement of delphic equivocation! And in SANIDAD vs. COMELEC, 73 SCRA 333 (1976), the *ponencia* of Justice Martin, Jr. stated that "the facts of our political, social, and economic disturbances had convincingly shown that in meeting the same, indefinite power should be attributed to the President to take emergency measures."

[21] In the case of MORALES, JR. vs. ENRILE, supra.

B. THE 1987 CONSTITUTION: CLARIFYING THE NEXUS[22]

"Experience is the best teacher." The adage is shopworm but it aptly describes the whys and the wherefores of the 1987 Constitution's provisions on martial law. The new constitution continues to recognize the Executive prerogative in the exercise of the power, but the intertwining of the functions of the three branches of government is no longer inextricable. The penumbra has been clarified by establishing the mechanics for the exercise of both the powers to suspend the privilege of the writ and to impose martial law.

Thus, where the Court had held that the duration of the Presidential exercise of the two powers should be left to the discretion of the President,[23] the new constitution now limits it to sixty days. The President is now required to report to Congress either in person or in writing within forty-eight hours from the suspension of the privilege of the writ or the imposition of martial law. Congress, with both Houses voting jointly, may then take one of two options. It may revoke the suspension or the imposition by at least a majority vote in a regular or special session. If Congress is not in session, the Constitution requires it to convene without need of call within twenty-four hours from the time the Presidential action is taken. And if Congress revokes the suspension or imposition, such revocation cannot be shunted by the exercise of the President's veto power. Alternatively, Congress may extend, on Presidential initiative, the suspension or the imposition for a period as Congress may determine, but only if the invasion or rebellion persists and the public safety requires it.

With respect to the judiciary, the new constitution now gives it the power to review the sufficiency of the factual bases for the suspension or imposition in an appropriate proceeding filed by any citizen. And, considering the importance of the case, mandatory is the constitutional directive that the decision thereon be promulgated within thirty days from the filing of the case. As for the convenient shield of an excuse called "political question", Section 1, Article VIII of the new constitution has effectively curtailed over-relaince thereon by providing that "(j)udicial power includes the duty of the courts of justice x x x 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 "distilled wisdom of the Constitutional Convention" of 1971 proved too strong a stuff for the health of the sovereign people; it was regurgitated through the 1987 Constitution.

[22] References to the 1987 Constitution are to Section 18, Article VII except where otherwise indicated.

[23] Cf. AQUINO vs ENRILE, supra.

THE EFFECTS OF MARTIAL LAW

A pebble thrown into a pond creates ripples on its surface. The Presidential exercise of martial law powers creates not ripples but waves, the effects of which can be disastrous to those directly affected. The previous Constitutions were silent as to the repercussions that flow from the flexing of martial law muscles. Opportunity thus knocked on the door of the Supreme Court – and opened the door it did – for the judiciary to tinker with "constitutional authoritarianism" and some such theories that belong more properly to a political science class. More than this, some justices simply waxed philoso-poetical. Take for instance Justice Barredo's statement in his concurring opinion in AQUINO vs. ENRILE, supra, that "the Constitution is merely in a state of anaesthesia since a major surgery is needed to save the nation's life." If recalls the first few lines of T.S. Eliot's "The Love Song of J. Alfred Prufrock," and the metaphor is striking not so much for its strength as for the fact that it holds no water: if the patient is the nation then why anaesthesize the constitution? The logical conclusion of the Barredo metaphor is less a nation anaesthesized and more a nation lobotomized. Every poet worth his verse would know that a poem must have rhyme and reason, but here is a prime jabberwocky. The Barredo metaphor is brought up here not to subject it to literary criticism nor to be frivolous but because the logical conclusion of such an illogical premise may spell the difference between life and death for, say. a political detainee. More concretely, it can lead to a failure of the judiciary's neverbe and its refusal to protect the constitutional rights of the people.[24]

GUMAUA vs ESPINO, 96 SCRA 402, was decided shortly before martial law was officially lifted through Proclamation No. 2045. It succintly summarizes some of the effects of martial law, viz. –

> 3. That the proclamation of martial law automatically suspends the privilege of the writ of habeas corpus xxx;
> 4. That the President of the Philippines, as commander-in-chief and an enforcer or administrator of martial law, xxx can promulgate proclamations, orders and decrees during the period of martial law essential to the security and preservation of the Republic, to the defense of the political and social liberties of the people, and to the institution of reforms to prevent the resurgence of rebellion or insurrection or secession or the threat thereof as well as to meet the impact of a world-wide recession, inflation, or economic crisis which presently threatens all nations including highly developed countries xxx;
> 5. That the President of the Philippines, as legislator during the period of martial law, can legally create military commissions or courts martial to try, not only members of the armed forces, but also civilian, offenders, for specified offenses, including kidnapping xxx.

[24] Cf. GARCIA-PADILLA vs ENRILE, supra, at p. 502.

Another major effect is that enunciated in the SANIDAD case, supra, which is – "If the President has been legitimately discharging the legislative functions of the *interim* Assembly, there is no reason why he cannot validly discharge the functions of that Assembly to propose amendments to the Constitution, which is but adjunct, although peculiar, to its gross legislative power. xxxx After all, constituent assemblies or constitutional conventions, like the President now, are mere agents of the people." And if the logic of GARCIA-PADILLA is to be followed, since martial law automatically suspends the privilege of the writ of habeas corpus, the right to bail is consequently unavailable with respect to persons to whom the privilege is suspended, thus answering a question that LANSANG left unanswered.

It is no longer necessary here to dwell too much on the justifications put forth by the Supreme Court for these vast powers given to the President. All of them are rooted in the failure to appreciate the true nature of the penumbral nexus in the previous Constitutions as a crucible where the separate powers of the three branches of government converge and are forged in order to vest in one man omnipotence or, in the language of SANIDAD, "indefinite power." The net effect of those pronouncements of the Court is recorded in the annals of history, in Swiss bank accounts, and in the scars of former political detainees.

With the ratification of the 1987 Constitution, the sovereign will throw away these schackles created by the Supreme Court. Thus, the Barredo metaphor has been returned to the dustbin where it came from: martial law no longer has the effect of suspending the operation of the Constitution. Neither are the functions of the civil courts and legislative assemblies supplanted by the Presidential exercise of emergency powers. Martial law shall not confer jurisdiction over civilians on military courts, and agencies so long as the civil courts continue to func- Article III), martial law does not have the effect of automatically suspending it. If and when it is suspended, it shall apply only to persons judicially charged with rebellion or offenses inherent in or directly connected with the invasion. During the suspension, any person thus arrested or detained shall be judicially charged within three days; otherwise, he shall be released. Finally, Section 13 of the Bill of Rights now clearly provides that the "right to bail shall not be impaired when the privilege of the writ of *habeas corpus* is suspended."

CONCLUSION

As one compares the 1987 Constitutional provisions on martial law with the provisions of the prior constitutions on the same matter and the jurisprudence that grew out of it, the question necessarily crops up if the new constitution has sapped the Executive's ability to meet emergency situations. This present study avowedly limited its task to comparison and contrast, but a tentative submission may be ventured that what the 1987 Constitution has done is to distribute the power of martial law among the three co-ordinate branches of government where previously the power and its concomittant effects were concentrated in the military arm of the Executive with the President as commander-in-chief. Corollarily, the question may be asked if the 1987 Constitution can prevent any future aberration such as what happened in the fateful year of 1972. Think-tankers should be able to answer that sufficiently; we can only observe here that a Cons-

titution cannot eliminate human intentions, that even the sovereign will as reflected in that most basic of all laws cannot know what evil lurks in the hearts of men.

In sum, this paper was introduced through the doctrine of *stare decisis* which, as the reader ofthe law knows, has its limitations. For one, the possibility is always there that the Supreme Court will reverse itself, as in fact it did to LIN-SANG in GARCIA-PADILLA. And then again, since the interpreting decision becomes part of the law construed, that decision also becomes subject to the balancing principle in law that "when the reason for the law ceases, the law itself ceases." It is not therefore surprising that martial law jurisprudence in our jurisdiction has proved to be peerless as a *rex tyrannosaurus:* the *raison d'etre* of the law involved and of the jurisprudence has been banished from our land. And the sovereign will, scarred as it was by the martial law experience under the previous dispensation, has proved to be a greater forum than our Supreme Court could ever be.

THE LESSONS OF A MISCARRIAGE: THE CONSTITUTION ON ABORTION

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"Wherever law ends, tyranny begins"
John Locke[1]

INTRODUCTION:

Unlike Locke, we thought that with the advent of the 1987 Constitution, tyranny has ended and law has begun. But before the optimism could sink in, a serious doubt has been cast. Bigotry-which is tyranny in its most subtle form-seems to have made a comeback in Article II Section 12, to wit:

> "Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. *It shall equally protect the life of the mother and the life of the unborn from conception. xxx"*

This paper will argue that the doubt can still be resolved, happily, in favor of the law. The right to abort is a protected liberty under the Due Process Clause.

THE RIGHT TO PRIVACY AND ABORTION:

One of the more controversial discussions during the sessions of the 1986 Constitutional Commission was on the issue of abortion. Strewn all over the Records of that body are arguments that range from the placid, even contemplative, debate on when life actually begins to the impassioned plea against a form of eugenics likened to the anti-Semitic sentiments of Hitlerian Germany. Pro-life advocates among the Commissioners attacked the prevailing jurisprudence in the United States which allows abortion up to the sixth month of pregnancy without State intrusion on the ratio that this is pursuant to the expectant mother's right to privacy.[2]

This constitutional right to privacy or the "right to be let alone"[3] has not always been recognized in American Constitutional Law, having been reserved to the police power jurisdiction of the individual States. Until 1965, the right to privacy was limited to libel and Fourth Amendment questions regarding search and seizure.[4] The breakthrough was achieved in the leading case of Griswold v. Connecticut[5] but not without a considerable struggle because of the absence of a specific guarantee of the right to privacy in the text of the U.S. Constitution.

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[1] John Locke, *Second Treatise of Government,* edited with an introduction by C.B. Macpherson (Indianapolis: Hackett Publishing Co., 1980), p. 103.

[2] Roe V. Wade, 410 U.S. 113 (1973).

[3] Paul A. Freund *et al., Constitutional Law: Cases and Other Problems* (Boston: Little, Brown and Co., 1977), p. 1126.

[4] Joel B. Grossman and Richard S. Wells, *Constitutional Law and Judicial Policy Making* (New York: John Wiley and Sons, 1980), p. 1316.

[5] 381 U.S. 479.