

CONCLUSION

It is submitted that P.D. 1735 cannot legally provide for the commission of rebellion, sedition or subversion outside of Philippine territory. Likewise, it cannot order the confiscation of private property other than the proceeds or instruments of the crime.

With regard to the additional penalties of confiscation of real or personal property of the accused and forfeiture of citizenship, the Constitution prohibits the infliction of cruel and unusual punishment. In *People v. Etoista*, 93 Phil. 647, our Supreme Court held that such punishment, to be violative of the constitution, must be "flagrantly and plainly oppressive" and "wholly disproportionate to the nature of the offense as to shock the moral sense of the community." The U.S. Supreme Court in *Furman v. Georgia*, (1972) 408 US 238, laid down its own guidelines, to wit:

- 1) whether the method of punishment is inherently cruel or severe;
- 2) whether the punishment is excessive, disproportionate (to the offense) or unnecessary;
- 3) whether the punishment is unacceptable to society; and
- 4) whether the punishment is being inflicted arbitrarily.

Does P.D. 1735 satisfy the guidelines laid down in the above-mentioned cases?

Your answer is as good as mine.

At any rate, society, and particularly our lawmakers, should not be content with merely punishing the criminal. The offender should not be viewed solely as an object of punishment or retribution but a victim of heredity and environment, sometimes more sinned against than sinning.



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P.D. 1110-A:

MANDATORY DEATH FOR A MERE ATTEMPT

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In the course of our development as a nation, the fundamental principles that captured the imagination and the hearts of all the great constitutionalists have been subject to numerous trials and divergent interpretations. Needless to say, we work within a framework today that has been tempered by a number of world wars and constant internal, as well as, external conflicts. It has become incumbent upon the person who holds the reins of government to see to it that our people are amply protected against the rigors of a complex and growing society. It is incumbent upon people trained in the law not to forget the underpinnings of our ideologies and beliefs — and to, at least, be constantly aware of the events unfolding around us.

Under the 1973 constitution, legislative power is vested in the *Batasang Pambansa*.¹ Legislation inherently involves the power or authority to make laws and to alter or repeal them. When the Philippines was under martial law, the President exercised legislative power. The basis of this practice was founded on the exercise of police power which had for its end public safety. In 1976, extraordinary legislative power was given the President under Amendment No. 6 which reads:

"Whenever in the judgment of the President there exists a grave emergency or a threat or imminence thereof, or whenever the Interim *Batasang Pambansa* or the regular National Assembly fails or is unable to act adequately on any matter, for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions, which shall form part of the law of the land."

As a consequence of this proviso, upon the lifting of martial law, the President may still exercise legislative power when he deems the conditions exist. This then is the touchstone from which legislative power is still wielded by the executive branch of government under a so-called period of normalcy.

We shall not delve into the constitutionality of this amendment, nor shall we question its *raison d'être* (for the main reason that it already is there). But *a posteriori* to such delegation of legislative power, several notable decrees have been passed that now form part of our laws. It is on these that we shall focus our attention.

On March 29, 1977, President Ferdinand E. Marcos signed into law Presidential Decree No. 1110-A. This decree reads:

PENALIZING ANY ATTEMPT ON, OR CONSPIRACY AGAINST, THE LIFE OF THE CHIEF EXECUTIVE OF THE REPUBLIC OF THE PHILIPPINES, ANY MEMBER OF HIS CABINET, OR THEIR FAMILIES.

Whereas, prevailing circumstances require that the Chief Executive of the Republic of the Philippines, the members of his cabinet and their families, be given ample protection against lawless elements who may attempt on, or conspire against their lives;

Whereas, the maintenance of peace and order and national security depends greatly on the security of the lives of our national leaders; and

Whereas, as a deterrent, it is necessary to impose a heavier penalty for any attempt on or conspiracy against the life of the Chief Executive, that of any member of his family, or against the life of any member of his cabinet or that of any member of his family.

Now, Therefore, I, Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

Section 1. Any person who shall attempt on, or conspire against the life of the Chief Executive of the Republic of the Philippines, that of any member of his family, or against the life of any member of his cabinet or that of any member of the latter's family, shall suffer the penalty of death.

Sec. 2. Any provision of law, decree, proclamation or executive order inconsistent with this decree is hereby repealed, revised or modified accordingly.

Sec. 3. This Decree shall take effect immediately. Done in the City of Manila, this 29th day of March in the year of Our Lord, nineteen hundred and seventy seven.

The first question that comes to one's mind is what in effect does P.D. 1110-A create. The answer is simple. It establishes a mandatory penalty of death to anyone who *attempts* on the life of the Chief Executive, any member of his family, or against the life of any member of his cabinet or that of any member of the latter's family. It is interesting to note that consummated homicide carries with it the maximum penalty of *reclusion temporal*² whilst the crime of murder is punished by *reclusion temporal* in its maximum period to death.³ Furthermore, the Revised Penal Code provides that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an *attempt* to commit a felony.⁴

It is clear that the decree's severity in dealing with an attempt on the life of the class of people named therein is founded on a well-grounded fear, as well as, the circumstances of time and place. But a reasonable inference would be that it virtually creates a privileged class, upon which the law now lays down a greater protective mantle than that of the average Filipino. In the words of Dean Antonio L. Gregorio, "while possibly

there is some reason to justify the decree in a government under martial law, surely, in a democratic government, it seems there will be no urgency nor expediency for such a law as such partakes of the nature of *regicide*."⁵

In the case of *People v. Perfecto*,⁶ the Supreme Court struck down as invalid Art. 256 of the Spanish Penal Code which punishes any person who "shall defame, abuse or insult any Minister of the crown or other person in authority," it being totally incompatible with the principles of a democratic government such as ours. In a representative system of government wherein public officers are considered public servants, it seems discordant to discriminate between the aforementioned individuals and the people as a whole. In the eyes of the law, all are to be considered equal. It seems that P.D. 1110-A deviates from this inherent democratic maxim making some a little more equal than others.

If one inquires a little further, it would be no mean feat to realize that P.D. 1110-A is a mere supplement to a principal decree, i.e., P.D. 1110. As such, it is akin to a supplemental bill which is an addition to an original bill in order to supply some defect, or to allege facts which have occurred since the filing of the original bill.⁷ It would therefore be reasonable to state that P.D. 1110-A was issued in order to supplement some defect, or to allege facts which have occurred since the issuance of the original decree. If the supplemental decree is entirely distinct or different from the original one, it would be safe to conclude that it should have been given an independent number of its own. But at first glance, it is clear that P.D. 1110-A is dependent on or has some reasonable relation to P.D. 1110.

The title of P.D. 1110 reads: AMENDING REPUBLIC ACT NO. 3680 OTHERWISE KNOWN AS THE ACT CONVERTING THE PRESENT PHILIPPINE NAUTICAL SCHOOL INTO PHILIPPINE MERCHANT MARINE ACADEMY. The title is that part of the statute which gives a general statement of, and calls attention to, the subject matter of an act, so that the legislators and the public may be apprised of the subject matter of the legislation, and be put upon inquiry in regard thereto.⁸ By this definition alone, it is obvious that P.D. 1110-A is totally incongruous with its principal presidential decree. There appears no syntax that can bind the two together. This raises some very disturbing questions. What is the purpose of such inconsistency? Did the lawmaker not foresee the clear disparity between the two decrees? Is P.D. 1110-A a rider to P.D. 1110? If such a practice is allowed to be perpetuated, are there sufficient safeguards for it? The reader who sees the title of P.D. 1110 and finds no interest in the Philippine Merchant Marine Academy will probably not bother to read its supplement. And it has been established, that P.D. 1110-A contains provisions that clearly entail an inquiring mind to wrestle with the proverbial horns of a dilemma.

It should be noted further that although it appears that P.D.1110 and P.D.1110-A were signed on the same date, i.e. March 29, 1977, the former appeared on the June 6, 1977 issue of the Official Gazette, whilst the latter was published a week later on the June 13, 1977 issue of the same gazette. The significance of such a seemingly minute discrepancy is sufficient enough to raise the possibility that the latter decree was so numbered in order that it would take effect on March 29, 1977 and not later. The reason behind such plays a secondary role in this matter. We can only conjecture as to its imputation. The crux of the matter is, that it seems only fair that where the reason for the prohibition against *ex post facto* laws applies, the restriction must be applied — not so much against the law itself, but as against the procedure by which the law was passed.

P.D. 1743 which was signed by the President on November 11, 1980 and appears in the March 1, 1982 issue of the Official Gazette further amends P.D. 1110-A. Section 1 of P.D. 1743 states:

"Any person who shall attempt on or conspire against the life of the Chief Executive of the Republic of the Philippines, that of any member of his family, or against the life of any member of his cabinet, the Interim Batasang Pambansa, the Supreme Court, the Constitutional Commissions, general officers of major services and commands of the Armed Forces of the Philippines, or any member of their families, or who uses any firearms or deadly weapon against the person of any of the government officials enumerated herein, or any member of his family, shall suffer the mandatory penalty of death."

Now it seems that the blanket of protection has been extended to other officials of the government. As we have come to know, such power to do so is well within the competence of the Chief Executive under the present Constitution. Though it seems that there exists a discrimination between the Filipino people on one hand and these government officials on the other, it is not for us to decide on its legality. Whether or not the discrimination rests on a substantive and valid classification is also beyond our competency. It is enough that we are aware . . . for it is ironic and a sad state of affairs, when public officers hide behind the severity of the law to protect them from the people whom they are supposed to represent.

FOOTNOTES

1. 1973 Constitution, Article 8, Sec. 1.
2. Revised Penal Code, Art. 249.
3. *Ibid.*, Art. 248
4. *Ibid.*, Art. 51

5. Survey and Analysis of 1977 Supreme Court Decisions and Presidential Decrees: UP Law Center, pp. 107-108.
6. 43 Phil. 887 (1922).
7. Cochran's Law Lexicon, 5th ed.
8. STATUTES: 1972 ed., p. 4; citing 50 Am Jur., Sec. 106 p. 135.

