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SOME REFLECTIONS ON CONSTITUTIONAL AUTHORITARIANISM*

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"Some call it dictatorship; others call it 'crisis government' or refer to it as a military necessity; I call it constitutional authoritarianism" were President Marcos' words, when asked as to our form of government after his proclamation of martial law as of September 21, 1972 and his issuance of General Order No. 1 dated September 22, 1972 proclaiming that "I shall govern the nation and direct the operation of the entire Government, including all its agencies and instrumentalities, in my capacity and shall exercise all the powers and prerogatives appurtenant and incident to my position as such Commander-in-Chief of all the armed forces of Philippines."

The President explained in his Statement to the Nation of September 23, 1972 that this two objectives were "to save the Republic and reform our society" and that

> "xxx xxx xxx I have proclaimed martial law in accordance with powers vested in the President by the Constitution of the Philippines.
>
> "The proclamation of martial law is not a military takeover. I, as your duly elected President of the Republic, use this power implemented by the military authorities to protect the Republic of the Philippines and our democracy. A republican and democratic form of government is not a helpless government. When it is imperilled by the danger of a violent overthrow, insurrection and rebellion, it has inherent and built-in powers wisely provided for under the Constitution. Such a danger confronts the Republic.
>
> "xxx xxx xxx
>
> "I repeat, this is not a military takeover of civil government functions. The Government of the Republic of the Philippines which was established by our people in 1946 continues. xxx xxx xxx."

With the issuance of Proclamation No. 1102 proclaiming the ratification of the 1973 Constitution by "an overwhelming majority of all the votes cast by the members of all the barangays (citizens

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assemblies)" (which was unsuccessfully challenged in the Supreme Court in the Ratification cases when the Supreme Court by a close 6 to 4 vote dismissed the petitions) a change in the form of government from presidential to the parliamentary system was adopted in the new Constitution, although neither the interim nor regular National Assembly has been convened, by virtue of the Transitory Provisions (sec. 3 (1), Art. XVII) that the incumbent President "shall continue to exercise his powers and prerogatives under the nineteen hundred and thirty-five Constitution and the powers vested in the President and the Prime Minister under this Constitution until he calls upon the interim National Assembly to elect the interim President and the interim Prime Minister, who shall then exercise their respective powers vested by this Constitution."

Parenthetically, it will be recalled that the Ratification cases, commonly known by the title of the lead case of **Javellana vs. Executive Secretary,**[1] were ordered dismissed although a majority of Justices of the ten-man Supreme Court held that "the Constitution proposed by the 1971 Constitutional Convention was not validly ratified in accordance with Article XV, section 1 of the 1935 Constitution, which provides only one way for ratification, i.e., 'in an election orplebiscite held in accordance with law and participated in only by qualified and duly registered voters,'" because two of the six Justices nevertheless held that "(I)f there is any significance, both explicit and implicit, and certainly unmistakable, in the foregoing pronouncements, it is that the step taken in connection with the ratification of the Constitution was meant to be irreversible, and that nothing anyone could say would make the least difference. And if this is a correct and accurate assessment of the situation, then we would say that since it has been brought about by political action and is now maintained by the government that it is in undisputed authority and dominance, the matter lies beyond the power of judicial review," and joined the minority of four to form a six-man majority vote for dismissal of the petition. These cases with the extensive separate opinions therein rendered should perhaps be the subject of another lecture, but for now I only wish to mention as a historical footnote of President Marcos' recorded remarks, recently reiterated, that "Of course, if the Supreme Court decided that the plebiscite was improperly called and the Constitution improperly ratified, I was ready at the time that we should call a proper plebiscite or referendum for the Constitution. And I have no doubt that the people would ratify that Constitution."[1-a]

Now to go back to the subject at hand, what rights under the Bill of Rights and what limitations of the powers of government may or may not be invoked under the present state of martial law or constitutional authoritarianism?

[1] 50 SCRA 30, March 31, 1973.

[1-a] Pres. Marcos: The Practice of Government, Nov. 24, 1975, *Bulletin Today* issue of Nov. 26, 1975.

The President has declared that "The New Society looks to individual rights as a matter of paramount concern, removed from the vicissitudes of political controversy and beyond the reach of majorities. We are pledged to uphold the Bill of Rights and as the exigencies may so allow, we are determined that each provision shall be executed to the fullest,"[2] and has acknowledged that "martial law necessarily creates a command society" and is "a temporary constitutional expedient of safeguarding the republic . . ."[3] He has described the proclamatinn of martial law and "the setting up of a corresponding crisis government" as "constitutional authoritarianism" which is a recognition that while his government is authoritarianism it is essentially constitutional and recognizes the supremacy of the new Constitution.

He has further declared "that martial law should have legally terminated on January 17, 1973, when the New Constitution was ratified,"[4] but for the July 27-28, 1973 referendum "against stopping the use of martial law powers" and has written in his latest book published last year that "I do not intend to make a permanent authoritarianism as my legacy to the Filipino people."[5]

Three leading cases have been decided by the Supreme Court that shed light on our subject of constitutional authoritarianism.

In the Habeas Corpus cases, known by the lead case of **Aquino, Jr. vs. Ponce Enrile,**[6] the Court denied his habeas corpus petition to be set at liberty and held that the question of the validity of the proclamation of martial law (and of the detention without charges of the petitioners) has been foreclosed by the so-called validating provision of the Transitory Provisions, i.e. section 3 (2), Article XVII of the 1973 Constitution, that "(A)ll proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly."

In the Referendum cases, **Aquino, Jr. vs. Comelec,**[7] the Court in sustaining his right to call the "consultative referendum" of February 27, 1975 upheld the incumbent President's right to legislate through presidential decrees stating that "We affirm the proposition that as Commander-in-Chief and enforcer or administrator

[2] Pres. Marcos: "Democracy, a living ideology" delivered May 25, 1973 before the U.P. Law Alumni Association; Times Journal issue of May 23, 1973.

[3] Pres. Marcos: Foreword. Notes on the New Society, p. vi.

[4] U.S. News and World Report interview with Pres. Marcos, reported in Phil. Sunday Express issue of Aug. 18, 1974.

[5] Pres. Marcos: The Democratic Revolution in the Philippines, pp. 217-218 (1974).

[6] 59 SCRA 183, Sept. 17, 1974.

[7] 62 SCRA 275, Jan. 31, 1975, and Gonzalez vs. Comelec, L-40117, Feb. 22, 1975.

of martial law, the incumbent President of the Philippines 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 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 worldwide recession, inflation or economic crisis which presently threatens all nations including highly developed countries," and that "the Constitutional Convention intended to leave to him the determination of the time when he shall initially convene the interim National Assembly consistent with the prevailing conditions of peace and order in the country."

In the Military Commissions case, **Aquino, Jr. vs. Military Commission No. 2,**[8] the Court upheld the jurisdiction of military commissions created under General Orders of the President as Commander-in-Chief of the Armed Forces of the Philippines to hear and try cases against civilians again citing the validating provision of the Transitory Provisions and held that trials before military commissions "adequately meet the due process requirement;" and in rejecting petitioner's claim of his right to due process by way of trial before civil courts, ruled that "This argument ignores the reality of the rebellion and the existence of martial law. It is, of course, essential that in a martial law situation, the martial law administrator must have ample and sufficient means to quell the rebellion and restore civil order. Prompt and effective trial and punishment of offenders have been considered as necessary in a state of martial law, as a mere power of detention may be wholly inadequate for the exigency."

I held the contrary and minority view in all these three cases. I trust that it may not be an imposition for me to take this occasion to now expound my views as set out in my separate opinions (by reproduction or paraphrase). I trust also that I may not be misunderstood in so expounding my dissenting views in this forum, as conducting outside the Court's chambers a running debate on the issues. The Court has resolved the issues through the vote of the majority and those of us in the minority have to abide by it. As I said regarding the close decision in the Ratification cases, "the remaining three dissenting Justices (notwithstanding their vote with three others that the new Constitution had not been validly ratified) had to abide under the Rule of Law by the decision of the majority dismissing the cases brought to enjoin the enforcement by the Executive of the new Constitution and had to operate under it as the fundamental charter of the government, unless they were to turn from legitimate dissent to internecine dissidence for which they have neither the inclination nor the capability." Still, as has been said time and again, "it is through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful exchange is effected."[9] I hope

[8] 63 SCRA 546 May 9, 1975.

[9] Justice Hughes: "De Jonge v. Oregon."

that the exposition may be of interest to you, considering that minority views seldom get as much exposure and coverage as the Court's final verdict.

I. The Habeas Corpus Cases.

In the first case, the Habeas Corpus cases, my view was that the Court should adhere to the well-grounded principle of not ruling on constitutional issues except when necessary in an appropriate case. The Diokno petition had become moot with the welcome news of his release from detention on September 11, 1974 upon the President's order and the Aquino petition should be deemed superseded by his petition for prohibition questioning the filing of criminal charges against him with a military commission (rather than with the civil courts) which case was not yet submitted for decision.

I there propounded the following grave and fundamental constitutional questions involved which I urged to be pondered and deliberated upon for resolution in the appropriate case:

Can the procedure for reception of evidence concerning the cause or reason for detention as indicated in the case of **Lansang vs. Garcia**[9-a] (to receive evidence directly or through a commissioner on whether as stated in the answer or return the petitioners have been apprehended and detained "on reasonable belief that they had participated in the crime of insurrection or rebellion" or to expedite the preliminary investigation of the criminal complaints filed against them in court two months after their habeas corpus petition) be likewise applied to a detainee's case considering his prolonged detention under martial law for almost two years without charges?

While a state of martial law may bar such judicial inquiries under the writ of habeas corpus in the actual theater of war, would the proscription apply when martial law is maintained as an instrument of social reform and the civil courts (as well as military commissions) are open and freely functioning?

What is the extent and scope of the validating provision of Article XVII, section 3 (2) of the Transitory Provisions of the 1973 Constitution?

Granting the validation of the initial preventive detention, would the validating provision cover indefinite detention thereafter or may inquiry be made as to its reasonable relation to meeting the emergency situation?

What rights under the Bill of Rights, e.g. the rights to due process and to "speedy, impartial and public trial" may be invoked under the present state of martial law?

Is the exercise of martial law powers for the institutionalization of reforms incompatible with recognizing the fundamental liberties granted in the Bill of Rights?

[9-a] 42 SCRA 448 (1971).

II. The Referendum Cases.

In the second case, the Referendum cases, I noted that they were landmark cases in that they were the first cases before the Court where purely constitutional issues (with regard to the questioned referendum) were raised and joined for the first time for the Court's determination without a challenge being raised by the Solicitor General under General Order No. 3 dated September 22, 1972 against the Court's authority and jurisdiction to rule upon the validity of the President's decrees, orders and acts, notwithstanding the state of martial law.

In dissenting from the dismissal of the petitions, I cited the following serious constitutional grounds:

1. It cannot be gainsaid that the single most important change effected by the 1973 Constitution is the change of our system of government from presidental to parliamentary wherein the legislative power is vested in a National Assembly[10] and the Executive Power is vested in the Prime Minister who "shall be elected by a majority of all the members of the National Assembly from among themselves."[11] The President who is likewise elected by a majority vote of all the members of the National Assembly from among themselves "shall be the symbolic head of state."[12]

To carry out the "orderly transition from the presidential to the parliamentary system," section 1 of the Transitory Provisions decreed that:

> "SECTION 1. There shall be an interim National Assembly which shall exist immediately upon the ratification of this Constitution and shall continue until the Members of the regular National Assembly shall have been elected and shall have assumed office following an election called for the purpose by the interim National Assembly. Except as otherwise provided in this Constitution, the interim National Assembly shall have the same powers and its Members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the regular National Assembly and the Members thereof." (Art. XVII).

Section 2 of the Transitory Provisions provides for the members of the interim National Assembly. It was admitted at the hearing that the interim National Assembly came into existence immediately after the proclamation on January 17, 1973 of the ratification of the new Constitution per Proclamation No. 1102 when the members thereof took their oath of office and qualified thereto in accordance with the above-cited section and continues in existence at the present time without having been convened.

Petitioners raise the question as to the referendum called for February 27, 1975 that the calling of a referendum and the appropriation of funds therefor are essentially legislative acts while the transitory powers and prerogatives vested in President Marcos until the election of the interim Prime Minister and interim President under section 3 (1) of the Transitory Provisions are executive and not legislative powers, since the powers of the President under the 1935 Constitution and those of the Prime Minister under the 1973 Constitution are essentially executive powers; more so, with respect to the powers of the President under the 1973 Constitution which are symbolic and ceremonial.

[10] Art. VIII, sec. 1, 1973 Constitution.
[11] Art. IX, secs. 1 and 3, idem.
[12] Art. VII, secs. 1 and 2, idem.

While the Solicitor General cited the President's powers under martial law and under the validating provision, section 3 (2) of the Transitory Provisions, as vesting him with legislative powers, there is constitutional basis for the observation that his legislative and appropriation powers under martial law are confined to the law of necessity of preservation of the state which gave rise to its proclamation (including appropriations for operations of the government and its agencies and instrumentalities).

Even from the declared Presidential objective of using Martial Law powers to institutionalize reforms and to remove the causes of rebellion, such powers by their very nature and from the plain language of the Constitution[13] are limited to such necessary measures as will safeguard the Republic and suppress the rebellion (or invasion) and measures directly connected with removing the root causes thereof, such as the tenant emancipation proclamation.[14] The concept of martial law may not be expanded, as the main opinion does, to cover the lesser threats of "worldwide recession, inflation or economic crisis which presently threatens all nations" in derogation of the Constitution.

On the other hand, the specific legislative powers granted in the cited section 3 (2), known as the validating provision which validated the President's acts and decrees after the proclamation of martial law up to the proclamation of ratification of the Constitution are limited to modifying, revoking or superseding such validated acts and decrees done or issued prior to the proclaimed ratification, since section 7 of the Transitory Provisions[15] expressly reserves to the National Assembly the legislative power to amend, modify or repeal "all existing laws not inconsistent with this Constitution."

2. The question is thus reduced as to whether now after the lapse of two years since the adoption of the 1973 Constitution, the mandate of section 1 of the Transitory Provisions (heretofore quoted) for the immediate existence of the existing interim National Assembly should be implemented.

The cited pertinent provisions indicate an affirmative answer. It is axiomatic that the primary task in constitutional construction is to ascertain and assure the realization of the purpose of the framers and of the people in the adoption of the Constitution and that the courts may not inquire into the wisdom and efficacy

[13] Article IX, sec. 12, 1973 Constitution Martial Law provision.
[14] P.D. No. 27, Oct. 21, 1972 and amendatory decrees.
[15] "SEC. 7. All existing laws not inconsistent with this Constitution shall remain operative until amended, modified, or repealed by the National Assembly" (Art. XVII)

of a constitutional or statutory mandate. Where the language used is plain and unambiguous, there is no room for interpretation.

The mandate of section 1 of the Transitory Provisions that the interim National Assembly shall "exist immediately upon the ratification of this Constitution" calls for its coming into existence "right away" as conceded by respondents at the hearing. Likewise, as affirmed by the Solicitor General, its members as provided in section 2 duly took their oath of office and qualified thereto, upon the proclamation of ratification. The clear import of section 3 in order to give meaning and effect to the creation and "immediate existence" of the interim National Assembly is that the incumbent President shall then proceed to "initially (i.e. 'in the first place: at the beginning') convene" it and preside over its sessions until the election of the interim Speaker after which he calls for the election of the interim President and the interim Prime Minister" who shall then exercise their respective powers vested by this Constitution." (The "incumbent President" then bows out and is succeeded by the Prime Minister who may of course be himself).

This view is further strengthened by the expectation aired in the debates of the 1971 Constitutional Convention that a parliamentary government would be more responsible and responsive to the people's needs and aspirations. Thus, in section 5 of the Transitory Provisions, the interim National Assembly was charged with the mandate to "give priority to measures for the orderly transition from the presidential to the parliamentary system, the reorganization of the Government, the eradication of graft and corruption, the effective maintenance of peace and order, the implementation of declared agrarian reforms, the standardization of compensation of government employees, and such other measures as shall bridge the gap between the rich and the poor" — urgent and long-lasting measures which the President has single-handedly confronted up to now.

3. The manifestation of the Solicitor General that the scheduled referendum was merely consultative and thus included the participation of voters below 18 years of age but at least 15 years old (who are not qualified enfranchised voters under Article VI on suffrage of the 1973 Constitution which decrees a minimum age of 18 years for qualified voters) strengthened the view that the existing interim National Assembly be now convened and perform its constitutional functions as the legislative authority. From the very nature of the transitory provisions which created it, its existence must likewise be interim, i.e. temporary, provisional, of passing and temporary duration (as opposed to permanent and the regular institutions provided for in the first 15 Articles of the Constitution) until after it shall have reapportioned the Assembly seats[16] and called for the election of the members of the regular National Assembly.[17] The convening of the interim

[16] Art. XVII, sec. 6.
[17] Idem., sec. 1.

National Assembly with its cross-section of knowledgeable representatives from all over the country was obviously hopefully conceived to serve (more than consultative referendums) to apprise the President of the people's and their constituencies' views as well as to assist him as mandated by the Constitution in the enactment of prority measures to achieve fundamental and far-reaching reforms.

4. While it has been advanced that the decision to defer the initial convocation of the interim National Assembly was supported by the results of the referendum in January, 1973 when the people voted against the convening of the interim National Assembly for at least seven years, such sentiment cannot be given any legal force and effect in the light of the State's admission at the hearing that such referendums are merely consultative and cannot amend the Constitution or any provision or mandate thereof.

This seems self-evident for the sovereign people through their mutual compact of a written constitution have themselves thereby set bounds to their own power, as against the sudden impulse of mere and fleeting majorities, and hence have provided for strict adherence with the mandatory requirements of the amending process through a fair and proper submission at a plebiscite, with sufficient information and full debate to assure intelligent consent or rejection.[18]

5. The Court is confronted with new questions involving the new Constitution and the extent and limits thereunder of the incumbent President's legislative powers as Commander-in-Chief and martial law administrator during the period of martial rule, which may be stated in proposition form, as follows:

— The decrees and acts referring to the questioned referendum were issued no longer under the martial law powers vested in the incumbent President as Commander-in-Chief of all the Armed Forces but "by virtue of powers in (him) vested by the Constitution;"

— The Martial Law clause of the New Constitution found in Article IX, section 12 is a verbatim reproduction of Article VII, section 10 (2) of the 1935 Constitution and provides for the imposition of martial law only "in case of invasion, insurrection or rebellion, or imminent danger thereof, when the public safety requires it" and hence the use of the "legislative power" or more accurately "military power" under martial rule[19] is limited to such necessary measures as will safeguard the Republic and suppress the rebellion (or invasion);

— The delegation-of-legislative powers clause permitting the delegation of legislative powers by the National Assembly to the

[18] Cf. Tolentino vs. Comelec, 41 SCRA 702 (Oct. 14, 1971) and cases cited.
[19] In re Egan 8 Fed. Cas. 367, holding that "Martial law is neither more nor less than the will of the general in command of the army. It overreaches and supersedes, all civil law by the exercise of military power..." as cited in the Secretary of Justice's outline of a study on the exercise of Legislative Power by the President under Martial Law, dated Dec. 27, 1972, as reported in Lawyers' Journal, March 31, 1973 issue, p. 90.

Prime Minister (incumbent President under section 3 (1) of the Transitory Provisions) for a limited period in times of war or other national emergency found in Article VIII, section 15 of the New Constitution is also a verbatim reproduction of Article VI, section 26 of the 1935 Constitution, with the specific safeguard added that "Unless sooner withdrawn by resolution of the National Assembly, such [delegated] powers shall cease upon its next adjournment;"[20]

— The legislative powers invoked for the incumbent President as Commander-in-Chief during the period of martial rule must be circumscribed by the Constitution which concededly is not abrogated by martial law;[21] and

— It is questionable whether the "purely consultative" character of the referendum would constitutionally permit the holding of the same as against the contrary assertion that the 1973 Constitution does not provide for nor authorize referendums, since "there can be no valid referendum of any enacted law except pursuant to constitutional authority."[22]

6. The general question of "Do you want the President to continue exercising such [martial law] powers" even if viewed as "purely consultative" is subject to grave constitutional objection. The continuance of martial law hardly presents an appropriate subject for submittal in a referendum. In the Habeas Corpus cases, five members of the Court voted to erode the Court's unanimous ruling to the contrary in **Lansang vs. Garcia** and opined that "the determination of the necessity for the exercise of the power to declare martial law [and also to declare its termination] is within the exclusive domain of the President and his determination is final and conclusive upon the courts and upon all persons."[23] By the same token, when the conditions of rebellion (or invasion) which have called for the declaration of martial law under the Constitution no longer exist in the President's determination, then martial law itself thereby ceases to exist, regardless of the holding of any referendum or the outcome thereof. Prescinding from the question of whether it is subject to judicial review and determination, the termination of martial law is not a matter of choice for

[20] See the Emergency Powers cases, Araneta vs. Dinglasan, etc., 84 Phil. 368, and Rodriguez vs. Gella, 92 Phil. 603, in which latter case the Court, through Paras, C.J. reaffirmed the principle that "emergency in itself cannot and should not create power. In our democracy the hope and survival of the nation lie in the wisdom and unselfish patriotism of all officials and in their faithful adherence to the Constitution.

[21] In the study of the Secretary of Justice, supra, fn. 10, it is conceded that "the proclamation of martial law does not abrogate the Constitution."

[22] 82 C.J.S. 197-198, which adds that "the referendum power of the people is a negative power through which appeal may be taken directly to the people from an affirmative action taken by their representatives."

[23] 59 SCRA see separate opinion of Antonio, J., at pp. 460, 472 concurred in by Makasiar, Fernandez and Aquino, JJ. and joined by Esguerra, J., note in brackets supplied.

the people[24] (who much less than the courts can have "judicially discoverable and manageable standards" nor "the complete picture of the emergency" to make the determination[25]) but a matter of the President's constitutional duty to determine and declare the termination of martial law when the necessity therefor has ceased. As necessity creates the rule, so it limits its duration.

III. The Military Commission Case.

In the third case, the Military Commission case, I felt that the Court was called upon to discharge its great burden of defining constitutional boundaries under the 1973 Constitution and of upholding the individual's fundamental liberties as guaranteed by the Bill of Rights even in a state of martial law, and that consequently due process and fair play called for the granting of the petition, based upon the following considerations:

1. Civilians like petitioner placed on trial for civil offenses under general law are entitled to trial by judicial process, not by executive or military process.

Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law.[26] Judicial power exists only in the courts, which have "exclusive power to hear and determine those matters which affect the life or liberty or property of a citizen."[27]

Military commission or tribunals are admittedly not courts and do not form part of the judicial system. As admitted by the State itself, "military commissions are authorized to exercise jurisdiction over two classes of offenses, whether committed by civilians or by military personnel either (a) in the enemy's country during its occupation by an army and while it remains under military government or (b) in the locality, not within the enemy's country, in which martial law has been established by competent authority. The classes of offenses are (a) violation of the laws and customs of war and (b) civil crimes, which because the civil courts are closed or their functions suspended or limited, cannot be taken cognizance of by the ordinary tribunals."

Since we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning.

[24] See UPI dispatch of Jan. 22, 1975 in Times-Journal issue of January 23, 1975 that "President Marcos pledged Wednesday to immediately dismantle his martial law regime and return the country to parliamentary government if the Filipino people vote so in next month's national referendum."

[25] 59 SCRA at p. 471.

[26] Article X, section 1, 1973 Constitution.

[27] Words and Phrases, Perm. Ed. Vol. 23, p. 317-318. See Lopez vs. Roxas, 17 SCRA 756 (1966); Scoty's Dept. Store vs. Micaller, 99 Phil. 762 (1956).

The late Justice Frank Murphy in his concurring opinion in the leading case of **Duncan vs. Kahanamoku,**[28] repudiated the government's appeal to abandon the "open courts" rule on the alleged ground of its unsuitability to "modern warfare conditions where all the territories of a warring nation may be in combat zones or imminently threatened with long range attack even while civil courts are operating" as seeking "to justify military usurpation of civilian authority to punish crime without regard to the potency of the Bill of Rights," and observed that "Constitutional rights are rooted deeper than the wishes and desires of the military."

And in **Toth vs. Quarles**[29] the U.S. Supreme Court further stressed that "the assertion of military authority over civilians cannot rest on the President's power as Commander-in-Chief or on any theory of martial law."

Thus, the President filled up vacancies in the judiciary and "allayed effectively the fears expressed during the initial days of martial law that the rule of the military would prevail because other countries under martial law had dispensed with civilian courts of justice" and stressed the supremacy of the Constitution at the 38th anniversary rites of the AFP when he told the Armed Forces that "The military is the force that enforces the law, but the civil government is the ruling power in our country," and that "we have stuck to the Constitution. We have pledged loyalty to that Constitution."[30]

2. Even assuming that military tribunals could validly exercise jurisdiction over offenses allegedly committed by civilians notwithstanding the absence of a state of war or belligerency and the unimpaired functioning of the regular courts of justice, such jurisdiction could not encompass civil offenses (defined by the general civil law as per the Revised Penal Code and Republic Act 1700 known as the Anti-Subversion Act) alleged to have been committed by civilians like petitioner in 1965, 1967, 1969, 1970 and 1971, long before the declaration of martial law as of September 21, 1972.

The U.S. Supreme Court aptly pointed out in **Toth vs. Quarles,** in ruling that discharged army veterans (estimated to number more than 22.5 million) could not be rendered "helpless before some latter-day revival of old military charges"[31] and subjected to military trials for offenses committed while they were in the military service prior to their discharge, that "the presiding officer at a court martial is not a judge whose objectivity and independence are protected by tenure and undiminished salary and nurtured by the judicial tradition, but is a military law officer. Substantially different rules of evidence and procedure apply in military trials. Apart from these differences, the suggestion of the possibility of

[28] 327 U.S. 304 (1946).
[29] 350 U.S. 5, 14 (1955).
[30] Philippine Daily Express, Jan. 3, 1974, page 4.
[31] Chief Justice Earl Warren: "The Bill of Rights and the Constitution," 37 N.Y.U. Law Review, 181.

influence on the actions of the court-martial by the officer who convenes it, selects its members and the counsel on both sides, and who usually has direct command authority over its members is a pervasive one in military law, despite strenuous efforts to eliminate the danger."

The late Justice Black speaking for that Court added that "A) Court-Martial is not yet an independent instrument of justice but remains to a significant degree a specialized part of the over-all mechanism by which military discipline is preserved," and that ex-servicemen should be given "the benefits of a civilian court trial when they are actually civilians x x x. Free countries of the world have tried to restrict military tribunals to the narrowest jurisdiction deemed absolutely essential to maintaining discipline among troops in active service."

More so then should military trials be not sanctioned for civil offenses allegedly committed by civilians like petitioner long before the declaration of martial law and for which they could have been charged then as well as now before the civil courts which have always remained open and their process and functions unobstructed.

3. A civilian may not be deprived of his constitutional right to due process by means of the proceedings instituted against him before respondent military commission.

The vested rights invoked by petitioner as essential elements of his basic right to due process, which are not granted him under the decrees and orders for his trial by the military commission, are substantial and vital, viz. his right to a preliminary investigation as apparently recognized by Administrative Order No. 355 (as to the non-subversion charges) with right to counsel and of cross-examination of the witnesses against him, and the right under the Anti-Subversion Act to a preliminary investigation by the proper court of first instance; his right as a civilian to be tried by judicial process, by the regular independent civilian courts presided by permanent judges with tenure and with all the specific safeguards embodied in the judicial process; and his right to appeal in capital cases to this Court wherein a qualified majority of ten (10) affirmative votes for affirmance of the death penalty is required.

For the military tribunal to try petitioner under these circumstances is to deny petitioner due process of law as guaranteed under section 1 of the Bill of Rights as well as under section 17 which further specifically ordains that "No person shall be held to answer for a criminal offense without due process of law." The elimination by subsequent decrees of his right to preliminary investigation (with right of counsel and of cross-examination) of the subversion charges before the proper court of first instance under Republic Act 1700 and of other rights vested in him at the time of the alleged commission of the offense which were all meant to provide the accused with ample lawful protection in the enforcement of said Act, such as the basic right to be tried by judicial

process and the right of judicial review by this Court would further offend the Constitutional injunction against the enactment of **ex post facto** laws which would render it easier to convict an accused than before the enactment of such law[32]

4. Petitioner's plea that his trial by a military tribunal created by the President and composed of the President's own military subordinates without tenure and of non-lawyers (except the law member) and of whose decision the President is the final reviewing authority as Commander-in-Chief of the Armed Forces deprives him of a basic constitutional right to be heard by a fair and impartial tribunal, considering that the President had publicly declared the evidence against petitioner "not only strong (but) overwhelming" and in petitioner's view thereby prejudged and predetermined his guilt merited consideration.

While one may agree that the President as Commander-in-Chief would discharge his duty as the final reviewing authority with fealty to his oath "to do justice to every man," particularly because of his renowned legal sagacity and experience, still under the environmental facts where the military appears to have been impressed by the President's appraisal of the evidence and without casting any reflection on the integrity of the members of respondent military commission which petitioner himself acknowledged, the doctrine consistently held by the Court that "elementary due process requires a hearing before an impartial and disinterested tribunal"[33] and that "All suitors . . . are entitled to nothing short of the cold neutrality of an independent, wholly free, disinterested and impartial tribunal"[34] called for application in the case.

5. Prescinding from the issue of the military commission's lack of jurisdiction over the charges against the petitioner, the examination of the prosecution witnesses and the perpetuation of their testimony should properly be held before the Special Reinvestigating Committee created under Administrative Order No. 355 for the simple reason that all proceedings before the military commission; were demed suspended by virtue of the reinvest gation ordered by the President to determine whether there "really is reasonable ground" to hold petitioner for trial and the perpetuation of testimony given before the said Committee is expressly provided for in the Administrative Order.

It was precisely "to reassure the (petitioner) that he continues to enjoy his constitutional right to due process" and "to insure utmost fairness, impartiality and objectivity" and "to determine whether really there is reasonable ground to believe that the offenses charged were in fact committed and the (petitioner) is probably guilty thereof" that the President created under Adm. Order No. 355 on August 28, 1973 a special five-member committee "to conduct the preliminary investigation" of the charges against petitioner.

[32] Art. IV, sec. 12, 1973 Constitution.
[33] Geotina vs. Gonzales, 41 SCRA 66, per Castro, J.
[34] Luque vs. Mayanan, 20 SCRA 165, per Sanchez, J.

It may be seen from the above-stated premises and objectives that the administrative order was issued by the President pursuant to his "orientation towards the protection of the Bill of Rights (and) the judicial process." As the President himself declared in the same nationwide press conference of August 24, 1971:

> "I am a lawyer, my training is oriented towards the protection of the Bill of Rights, because if you will remember, I have repeatedly said, that if it were not for the Bill of Rights I would not be here now. If it were not for the judicial process, I would not be President of the Republic of the Philippines. x x x"[35]

6. Respondents have utterly failed to show the existence of public danger (that) warrants the substitution of executive process for the judicial process" and the setting aside of the constitutional mandate that lodges judicial power in the regular courts of law and not in military tribunals and guarantees civilians the benefits of a civilian court trial. To subject civilians to military trial just like military personnel and troops and enemy belligerents rather than to civilian trial by the regular civil courts is to negate the cardinal principle and state policy of supremacy at all times of civilian authority over the military.[36]

General Order No. 49 issued by the President on October 4, 1974 restored to the civil courts a large number of criminal cases that were transferred to military tribunals upon the proclamation of martial law on the express premises that "positive steps have been taken to revitalize the administration of justice and the new Constitution authorizes the reorganization of the courts" and "although there still exist areas of active rebellion in the country, on the whole there has been such an improvement in the general conditions obtaining in the country and in the administration of justice as to warrant the return of some of the criminal cases to the jurisdiction of civil courts;" and

These premises of G.O. No. 49 are borne out by the data and published reports. The twenty (20) military commissions (14 ambulatory and 6 regional commissions)[37] hearing cases from time to time in marathon hearings as the pressures of the military service allow the military commissions to convene could not conceivably match the work and cases disposition of around three hundred and twenty (320) courts of first instance and circuit criminal courts all over the country working continuously and regularly throughout the year

The argument of procedural delays in the civil courts and need of prompt and certain punishment has been long cut down by the late Justice Frank Murphy in his concurring opinion in Duncan when he stressed that "civil liberties and military expediency are often irreconcilable" and that "the swift trial and punishment which the military desires is precisely what the Bill of Rights outlaws. We would be false to our trust if we allowed the time

[35] Manila Times, Aug. 30, 1971, Annex A, petition.
[36] Art. 11, sec. 8, 1973 Constitution.
[37] Brig. Gen. Guillermo S. Santos, AFP JAGO Chief, Phil. Daily Express, April 26, 1975, p. 10.

it takes to give effect to constitutional rights to be used as the very reason for taking away those constitutional rights" as follows:

> "Delays in the civil courts and slowness in their procedure are also cited as an excuse for shearing away their criminal jurisdiction, although lack of knowledge of any undue delays in the Hawaiian courts is admitted. It is said that the military 'cannot brook a delay' and that 'the punishment must be swift; there is an element of time in it, and we cannot afford to let the trial linger and be protracted.' This military attitude toward constitutional processes is not novel. Civil liberties and military expediency are often irreconcilable. It does take time to secure a grand jury indictment, to allow the accused to procure and confer with counsel, to permit the preparation of a defense, to form a petit jury, to respect the elementary rules of procedure and evidence and to judge guilt or innocence according to accepted rules of law. But experience has demonstrated that such time is well spent. It is the only method we have of insuring the protection of constitutional rights and of guarding against oppression. The swift trial and punishment which the military desires is precisely what the Bill of Rights outlaws. We would be false to our trust if we allowed the time it takes to give effect to constitutional rights to be used as the very reason for taking away those rights. It is our duty, as well as that of the military, to make sure that such rights are respected whenever possible, even though time may be consumed."

As already indicated above, it should be noted that no actual case of undue delays in the prosecution of criminal cases in the regular civil courts has been claimed by respondents, nor has it been shown that military necessity or public danger require that petitioner be deprived of his rights to due process and to the cold neutrality of an impartial tribunal under the judicial process, should the reinvestigation ordered by the President bind him over for trial.

7. Finally, the Solicitor-General's submittal that "the decrees and orders relating to military commissions are now part of the law of the land and are beyond question" and that "as the trial and punishment of civilians by military tribunals under the circumstances . . . are valid and constitutional, objections based on differences between civil and military courts are immaterial" is constitutionally infirm and untenable.

The Solicitor General's premise is that "with the ratification of the new Constitution martial law as proclaimed by the President became part of the law of the land and now derives its validity from the new Constitution" and that by virtue of section 3 (2) of the Transitory Provisions the decrees and orders on the military commissions are now also part of the law of the land and beyond question states a rather prolix and sweeping concept that cannot be precipitately sanctioned.

Martial law has not become part of the law of the land and beyond question by virtue of the coming into force of the 1973 Constitution. In fact, the said Constitution has precisely reproduced the 1935 Constitution's commander-in-chief clause with power to declare martial law limited to exactly the same causes of invasion, insurrection or rebellion or imminent danger and with exactly the same requirement that the public safety require it. Going by

the doctrine enunciated in **Lansang vs. Garcia** by a unanimous Court, the existence of factual bases for the proclamation and continuation of martial law may under the said provision be judicially inquired into in order to determine the constitutional sufficiency thereof as well as to circumscribe the constraints thereof, in particular cases where they clash with an individual's constitutional rights, within the bounds of necessity for the public ends and the public safety, as indeed this Court did pass on such questions in the Habeas Corpus cases. And as the President expressly stated at his worldwide satellite press conference of September 30, 1974, the duration of martial law is "only as long as necessary" as per the following pertinent excerpt of his statement thereon:

> "Of course the problem here is, if you say that martial law leads to democracy, how long are you going to maintain martial law? I say again that only as long as necessary. As the constitutionalists put it, necessity gave life to martial law and martial law cannot continue unless necessity allows it to live."[38]

The cited Transitory Provision, known as the validating provision put the imprimatur of a law upon the President's acts and decrees under martial law which were not within or beyond his allocated constitutional powers. As aptly stated by Justice Muñoz Palma in her separate opinion in the Habeas Corpus cases, the people could not by the 1973 Constitution have thrown away "all their precious liberties, the sacred institutions enshrined in their Constitution, for that would be the result if we say that the people have stamped their approval on all the acts of the President executed after the proclamation of martial law irrespective of any taint of injustice, arbitrariness, oppression, or culpable violation of the Constitution that may characterize such acts. Surely, the people acting through their constitutional delegates could not have written a fundamental law which guarantees their rights to life, liberty and property, and at the same time in the same instrument provide for a weapon that could spell death to these rights."

The contention that the decrees and orders on military commissions as "part of the law of the land are beyond question" really begs the question, for as was stressed by Justice Muñoz Palma, it would be "incongruous" that while the acts of the regular National Assembly as the "permanent repository of legislative power" are subject to judicial review, "the acts of its temporary substitute, that is. the incumbent President" such as the decrees and orders in question would be claimed to be "beyond question."

Indeed, the majority resolution recognized that "Of course, from the fact that the President has this range of discretion, it does not necessarily follow that every action he may take, no matter how unjustified by the exigency, would bear the imprimature of validity."

While the decrees and orders on military tribunals were made part of the law of the land by the cited Transitory Provision (as-

[38] Phil. Daily Express, Sept. 23, 1974.

suming that they had been properly submitted for the purpose) still this general and transitory provision can in no way supersede or nullify the specific allocation of jurisdiction and judicial power to the Supreme Court and the regular courts of justice as established by law under Article X section 1 of the Constitution nor their proper exercise of jurisdiction to the exclusion of non-judicial agencies, under section 8 of Article XVII.

Insofar as the questioned decrees and orders encroached upon the jurisdiction of the regular courts over the trial of civilians, they must be deemed abrogated by the cited provisions of the Constitution itself, in accordance with the established rule that statutes as well as executive orders and regulations that are inconsistent with and transgress the provisions of a new Constitution must be deemed repealed thereby.

The Bill of Rights of the Constitution specifies the powers that have been withheld from the government and are reserved to the people. But the freedoms guaranteed by it against the overwhelming power of the State would be meaningless and of no use unless citizens could vindicate and enforce them against the government officials ad agencies by proper procedures in the courts, under the rule of law.

As was stressed by the late Chief Justice Stone in Duncan, "executive action is not proof of its own necessity, and the military's judgment here is not conclusive that every action taken pursuant to the declaration of martial law was justified by the exigency. In the substitution of martial law controls for the ordinary civil processes, 'what are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions,' Sterling vs. Constantin, supra (287 US 401, 77 L ed 387, 53 S Ct 190)."

It needs no emphasis that under Article 8, Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." As defined by Konvitz. "the Constitution and the laws enacted by the legislatures and the judgments and orders of the courts constitute the Rule of Law."

All that I have said represent my minority view in the three leading cases so far, as above discussed. Now, extra-judicially, let us reflect on the prospects for the restoration of normalcy.

Let me cite basic concepts and principles that form the strength of a republican state as ordained in the Constitution that were reiterated by the Court through Mr. Justice Makasiar in a relatively recent case[39], as follows:

> (1) In a democracy, the preservation and enhancement of the dignity and worth of the human personality is the central core as well as the cardinal article of faith of our civilization. The inviolable character of man as an individual must be "protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person."
>
> (2) The Bill of Rights is designed to preserve the ideals of liberty, equality and security "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles."
>
> "In the pithy language of Mr. Justice Robert Jackson, the purpose of the Bill of Rights is to withdraw 'certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's rights to life, liberty and property, to free speech, or free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.' Laski proclaimed that 'the happiness of the individual, not the well-being of the State, was the criterion by which its behaviour was to be judged. His interests, not its power, set the limits to the authority it was entitled to exercise."
>
> "(3) The freedoms of expression and of assembly as well as the right to petition are included among the immunities reserved by the sovereign people, in the rhetorical apohorism of Justice Holmes, to protect the ideas that we abhor or hate more than the ideas to cherish; or as Socrates insinuated, not only to protect the minority who want to talk, but also to benefit the majority who refuse to listen. And as Justice Douglas cogently stresses it, the liberties of one are the liberties of all; and the liberties of one are not safe unless the liberties of all are protected."
>
> "(4) The rights of free expression, free assembly and petition, are not only civil rights but also political rights essential to man's enjoyment of his life, to his happiness and to his full and complete fulfillment. Thru these freedoms the citizens can participate not merely in the periodic establishment of the government through their suffrage but also in the administration of public affairs as well as in the discipline of abusive public officers. The citizen is accorded these rights so that he can appeal to the appropriate governmental officers or agencies for redress and protection as well as for the imposition of the lawful sanctions on erring public officers and employees.
>
> "(5) While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Because these freedoms are 'delicate and vulnerable, as well as supremely precious in our society' and the 'threat of sanctions may deter their exercise almost as potently as the actual application of sanctions,' they 'need breathing space to survive,' permitting government regulation only 'with narrow specificity.' "

[39] Phil. Blooming Mill Employees Organization vs. PBM, 51 SCRA 200-202, 220-221, June 5, 1973.

Justice Makasiar went on to remind us of Justice Douglas' pointed reminder[40] that

> "The challenge to our liberties comes frequently not from those who consciously seek to destroy our system of government, but from men of goodwill — good men who allow their proper concerns to blind them to the fact that what they propose to accomplish involves an impairment of liberty."
>
> "x x x The motives of these men are often commendable. What we must remember, however, is that preservation of liberties does not depend on motives. A suppression of liberty has the same effect whether the suppressor be a reformer or an outlaw. The only protection against misguided zeal is constant alertness of the infractions

[40] A Living Bill of Rights (1961) pp. 61-64.

of the guarantees of liberty contained in our Constitution. Each surrender of liberty to the demands of the moment makes easier another, larger surrender. The battle over the Bill of Rights is a never ending one."

Claro M. Recto, architect of the 1935 Constitution gave us the same reminder in his immortal prose thus:

"For all of us, regardless of ideology or condition, must suffer equally from the debasement of the Constitution and the resulting impairment of democracy. Isolated actions, if left uncorrected, become in time pernicious habits. If the Constitution is violated in one provision, it will be easier to violate it in another provision. If the Constitution is suspended against one group of citizens, it can be suspended against another group of citizens. If one department of the government can invade and usurp the totality of power and if, as a result, the Constitution goes overboard, all of us shall go with it, the learned and the untutored, the farsighted and the improvident, the courageous and the hesitant, the wealthy and the poor, the lovers of liberty and its enemies and detractors. For let us not forget that the ideals of democracy, the spirit of the Constitution, can not only be uprooted or felled by direct assault but also wither through disuse, laches and abandonment. Because in the course of our national existence, we shall face, oftener than not, the temptations of expediency, the anger and anguish of suffering, and the fears that ripen into despair, the faith of our people in the Constitution must be constantly kept militant, vigorous and steadfast."

I believe former UP President Salvador P. Lopez best put it when he said in his Dillingham lecture last year in Hawaii that (while) "our political system, our economic system, indeed, the national society as a whole has required the double therapy of deep purgation and shock treatment such radical therapy is not without risk, and care must be taken to ensure that the deepseated vices are eradicated without killing the patient." He thus issued the warning that "(U)nduly prolonged, a regime of martial law soon becomes counter-productive. The holders and beneficiaries of emergency power, seduced by the attractions of unrestrained authority, may soon come to believe that the delegation of power to them is permanent. The absence of traditional checks and balances tends to encourage corrupt practices and abuse of authority. Because of its vital role in martial law, the military may develop certain inclinations and interests that could eventually dilute its attachment to the Republic and the Constitution."

This was to be echoed almost a year later by the President himself on September 19, 1975 (when he announced a massive government revamp) on the third anniversary of the New Society in these ringing words:

"Behind the facade of national unity and behind this front of popular enthusiasm for reform, I raise my voice in alarm today for we are in fact a nation divided against itself — divided between urban and rural, rich and poor, majorities and minorities, privileged and underprivileged. Among some of the poor, there is still the nagging fear that they have, again, been left behind, and that we have liquidated an oligarchy only to set up a new oligarchy. The poor of our people accepted their new burdens without flinching, without crying out in pain and without protest. But there is the feeling that all the sacrifices are not shared by all, that others are profiting from the situation at their own expense.

"Our people speak less of institutions, policies and programs, for these have not failed them. Our institutions are vigorous, our policies and programs are successful. But the people speak of men in high places, in power and men of affluence, men in government, of men of wealth and position, who have failed the popular expectations, who still seem to be fighting for those very same principles and causes which we are fighting against, and who mock the very foundations of a reform movement."

"Yes, the people speak of men of the law — servants and enforcers of the law — using their respective positions or ranks to inflict upon society the very abuses they have been appointed to fight. They also speak of men who seem particularly privileged to reinterpret the most profound message of government, and rearrange even the priorities of its social commitments and programs, according to their personal convenience and predilections."

"The establishment of constitutional authoritarianism, which enabled this government to seize the reins of national directions, has resulted in the growth of its bureaucracy as a massive machinery that affects every aspect of our national life. But along with this, there have also arisen massive opportunities for graft and corruption, the misuse of influence, opportunities which are now being exploited within the government service."

"The massive cleanup of government offices that followed the proclamation of Martial Law has failed to keep the slate clean. Worse, there are new sores that are clearly emerging, inflicted by the wrong belief that the leadership is too preoccupied with other problems, that the people will be intimidated or too complacent or that they can take any liberties they please with our people, with our Republic, with reforms.

"Clearly, we face here the danger that our New Society is giving birth to a new government elite, who resurrect in our midst the privileges we fought in the past, who employ the powers of high office for their personal enrichment, as well as of their business colleagues, relatives and friends."

I dare say that the perceptible lifting of restrictions on the press has greatly borne out the correctness and magnitude of the President's fears and disappointments, and that a vigilant uncowed and responsible press can help expose the votaries of the "new oligarchy" and "new government elite" as denounced by the President.

It may also be appropriate to stress to the "new government elite" and "new oligarchy" that favoring the President's termination of martial law is not dissidence nor is it disloyalty or subversion. The President himself has given repeated assurances that he will immediately dismantle the martial law regime and return the people to parliamentary government if this is what the people want and that "when they say we should shift to the normal functions of government, then we will do so."[41]

Such restoration of normalcy and full recognition of the Bill of Rights as ordained in the Constitution would be but in consonance with the President's constant reminder that authoritarianism is but "a temporary phase in the development of our country." It would be but the fitting culmination of his call that we "let

[41] U.S. News and World Report Interview with Pres. Marcos, reported in Phil. Sunday Express issue of August 18, 1974.

the Constitution remain firm and stable," his rejection of the "exercise (of) power that can be identified merely with a revolutionary government" that makes its own law[42] and his exhortation to "remain steadfast on the rule of law and the Constitution," which is but to say that no one should be above or below the law. So let me conclude, as I began, with the President's call uttered on the first anniversary of the proclamation of the 1973 Constitution, thus:

> "xxx xxx Whoever he may be and whatever position he may happen to have, whether in government or outside government, it is absolutely necessary now that we look solemnly and perceptively into the Constitution and try to discover for ourselves what our role is in the successful implementation of that Constitution. With this thought, therefore, we can agree on one thing and that is: Let all of us age, let all of us then pass away as a pace in the development of our country, but let the Constitution remain firm and stable and let institutions grow in strength from day to day, from achievement to achievement, and so long as that Constitution stands, whoever may the man in power be, whatever may his purpose be, that Constitution will guide the people and no man, however, powerful he may be, will dare to destroy and wreck the foundation of such a Constitution.
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> "These are the reasons why I personally, having proclaimed martial law, having been often induced to exercise power that can be identified merely with a revolutionary government, have remained steadfast on the rule of law and the Constitution."[43]

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[42] Pres. Marcos at satellite world press conference of Sept. 20, 1974: "(I) insisted that not only individuals but also we ourselves in government and the military be guided by a Constitution and that Constitution be respected. This was one of the agreements with those with whom I met before we agreed to proclaim martial law, and that is, that we would follow the Constitution and not establish a revolutionary form of government and start fighting all over the countryside again." (Phil. Daily Express issue of September 23, 1974).

[43] Pres. Marcos' address on observance of the first anniversary of the 1973 Constitution on Jan. 17, 1974; Phil. Labor Relations Journal, Vol. VII, Jan. 1974, p. 6.

THE HISTORY OF MARRIAGE LEGISLATION IN THE PHILIPPINES

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Law is one of the most enduring and significant records of a people's history. But law also follows and mirrors the changing life of a people, its gradual growth and sometimes its cataclysmic changes. Social and attitudinal changes affect the law and while legal enactions yield more slowly to such influences, inevitably they are forced to do so. One of the most significant factors in the development of modern society has been the changed status of woman in society. Their legal struggle has been capsulized in the Women's Rights Movement and today women are moving on all fronts to rectify the legal discriminations against them which are still contained in many juridical formulations of the past. Quite naturally therefore the Civil Code of the Philippines, originally promulgated in 1950 but in reality containing much that was based on the past, is being closely scrutinized with a view to change in this respect. Before looking to the future however, it is always useful to review the past. Hence it is the purpose of this study to attempt to give a history of the development of marriage legislation in the Philippines from pre-colonial days until the promulgation of the Civil Code of the Republic.

It may come as a surprise to some to realize that into this mold has been poured a mixture of the two great legal systems of the western world. But it should not be forgotten that these systems were built on the foundation of ancient Malay customs and laws as well as on the precepts of Moslem law in the areas of southern Mindanao and the Sulu archipelago. Through the Conquistadores and missionaries of Catholic Spain the great principles of Roman law which had formed the Spanish legal tradition entered into the lifestream of the simple barangay system of the pre-colonial Philippines and their effect on the ultimate formation of the Filipino nation cannot be underestimated. This legal tradition was embodied in the Spanish Civil Code of 1889 and was firmly implanted in the legal soil of the Philippines when the American occu-

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