A Play with Words: B.P. Blg. 880 and The Calibrated Preemptive Response Policy

Vera M. De Guzman[*]

The language of laws should be simple;
directness is always better than elaborate wordings.

– Charles Louis de Montesquieu

I. INTRODUCTION

A democratic society jealously and zealously guards the right to peaceably assemble and petition the government for redress of grievances, which, together with the freedom of speech, expression and the press, enjoys the primacy in the realm of constitutional protection.

Bayan, et al. v. Eduardo Ermita, et al.,[1] is one of the most recent venues where the Supreme Court was able to discuss once again this right and its ramifications. This comment seeks to highlight the important points relating to the right to peaceably assemble and petition the government for redress of grievances, raised and discussed in the case. At the same time, it seeks to try to explore the implications of the Executive Department's Calibrated Preemptive Response (C.P.R.) Policy, which was ultimately the controversy catalyst in the preceding

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* '07 J.D. cand., Ateneo de Manila University School of Law. Member, Board of Editors and Executive Committee, *Ateneo Law Journal*.

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1. Bayan, et al. v. Eduardo Ermita, et al., G.R. Nos.169838, 169848 and 169881, Apr. 25, 2006.

incidents to the case, and the implications of its holding in relation to Freedom Parks.

II. FACTS OF THE CASE

Plaintiffs, through Certiorari, Prohibition and Mandamus filed a petition with the Supreme Court assailing the constitutionality of Batas Pambansa Blg. 880[2] and the C.P.R. Policy[3] of the government. Some assailed B.P. Blg. 880 *in toto*, while the others only Sections 4, 5, 6, 12, 13(a) and 14(a)[4] as well as the C.P.R.

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2. An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petition the Government [and] for Other Purposes, Batas Pambansa Blg. 880 (1985).

3. The Calibrated Pre-emptive Response (C.P.R.) Policy was set forth in a press release by Malacañang on Sept. 21, 2005.

4. B.P. Blg. 880 provides:

> SECTION 1. *Title.* — This Act shall be known as "The Public Assembly Act of 1985."
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> SEC. 2. *Declaration of policy.* — The constitutional right of the people peaceably to assemble and petition the government for redress of grievances is essential and vital to the strength and stability of the State. To this end, the State shall ensure the free exercise of such right without prejudice to the rights of others to life, liberty and equal protection of the law.
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> SEC. 3. *Definition of terms.* — For purposes of this Act:
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> (a) "Public assembly" means any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances.
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> The processions, rallies, parades, demonstrations, public meetings and assemblages for religious purposes shall be governed by local ordinances; *Provided, however*, That the declaration of policy as provided in Section 2 of this Act shall be faithfully observed.
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> The definition herein contained shall not include picketing and other concerted action in strike areas by workers and employees resulting from a labor dispute as defined by the Labor Code, its implementing rules and regulations, and by the Batas Pambansa Bilang 227.
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> (b) "Public place" shall include any highway, boulevard, avenue, road, street, bridge or other thoroughfare, park, plaza square, and/or any open space of public ownership where the people are allowed access.
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> (c) "Maximum tolerance" means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.

(d) "Modification of a permit" shall include the change of the place and time of the public assembly, rerouting of the parade or street march, the volume of loud-speakers or sound system and similar changes.

SEC. 4. *Permit when required and when not required.* — A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.

SEC. 5. *Application requirements.* — All applications for a permit shall comply with the following guidelines:

(a) The applications shall be in writing and shall include the names of the leaders or organizers; the purpose of such public assembly; the date, time and duration thereof, and place or streets to be used for the intended activity; and the probable number of persons participating, the transport and the public address systems to be used.

(b) The application shall incorporate the duty and responsibility of applicant under Section 8 hereof.

(c) The application shall be filed with the office of the mayor of the city or municipality in whose jurisdiction the intended activity is to be held, at least five (5) working days before the scheduled public assembly.

(d) Upon receipt of the application, which must be duly acknowledged in writing, the office of the city or municipal mayor shall cause the same to immediately be posted at a conspicuous place in the city or municipal building.

SEC. 6. *Action to be taken on the application.* —

(a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.

(b) The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.

(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.

(d) The action on the permit shall be in writing and served on the applica[nt] within twenty-four hours.

(e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.

(f) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court, the Regional Trial Court, or the Intermediate Appellate court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such permit or modifying if in terms satisfactory to the applicant shall be immediately executory.

(g) All cases filed in court under this section shall be decided within twenty-four (24) hours from date of filing. Cases filed hereunder shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.

(h) In all cases, any decision may be appealed to the Supreme Court.

(i) Telegraphic appeals to be followed by formal appeals are hereby allowed.

SEC. 7. *Use of Public throroughfare.* — Should the proposed public assembly involve the use, for an appreciable length of time, of any public highway, boulevard, avenue, road or street, the mayor or any official acting in his behalf may, to prevent grave public inconvenience, designate the route thereof which is convenient to the participants or reroute the vehicular traffic to another direction so that there will be no serious or undue interference with the free flow of commerce and trade.

SEC. 8. *Responsibility of applicant.* — It shall be the duty and responsibility of the leaders and organizers of a public assembly to take all reasonable measures and steps to the end that the intended public assembly shall be conducted peacefully in accordance with the terms of the permit. These shall include but not be limited to the following:

a. To inform the participants of their responsibility under the permit;
b. To police the ranks of the demonstrators in order to prevent non-demonstrators from disrupting the lawful activities of the public assembly;
c. To confer with local government officials concerned and law enforcers to the end that the public assembly may be held peacefully;
d. To see to it that the public assembly undertaken shall not go beyond the time stated in the permit; and
e. To take positive steps that demonstrators do not molest any person or do any act unduly interfering with the rights of other persons not participating in the public assembly.

SEC. 9. *Non-interference by law enforcement authorities.* — Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent

under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meters away from the area of activity ready to maintain peace and order at all times.

SEC. 10. *Police assistance when requested.* — It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

a. Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;

b. The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

c. Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

SEC. 11. *Dispersal of public assembly with permit.* — No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:

a. At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the leaders of the public assembly and ask the latter to prevent any possible disturbance;

b. If actual violence starts to a point where rocks or other harmful objects from the participants are thrown at the police or at the non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly will be dispersed;

c. If the violence or disturbance prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the public assembly, and after allowing a reasonable period of time to lapse, shall immediately order it to forthwith disperse;

d. No arrest of any leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this Act. Such arrest shall be governed by Article 125 of the Revised Penal Code, as amended;

e. Isolated acts or incidents of disorder or breach of the peace during the public assembly may be peacefully dispersed.

SEC. 12. *Dispersal of public assembly without permit.* — When the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

SEC. 13. *Prohibited acts.* — The following shall constitute violations of the Act:

a. The holding of any public assembly as defined in this Act by any leader or organizer without having first secured that written permit where a permit is required from the office concerned, or the use of such permit for such purposes in any place other than those set out in said permit: *Provided, however,* That no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly;

b. Arbitrary and unjustified denial or modification of a permit in violation of the provisions of this Act by the mayor or any other official acting in his behalf;

c. The unjustified and arbitrary refusal to accept or acknowledge receipt of the application for a permit by the mayor or any official acting in his behalf;

d. Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly;

e. The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;

f. Acts in violation of Section 10 hereof;

g. Acts described hereunder if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof:

    1. the carrying of a deadly or offensive weapon or device such as firearm, pillbox, bomb, and the like;
    2. the carrying of a bladed weapon and the like;
    3. the malicious burning of any object in the streets or thoroughfares;
    4. the carrying of firearms by members of the law enforcement unit;
    5. the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.

SEC. 14. *Penalties.* — Any person found guilty and convicted of any of the prohibited acts defined in the immediately preceding section shall be punished as follows:

a. violation of subparagraph (a) shall be punished by imprisonment of one month and one day to six months;

Policy[5] as violations of their constitutional right to peaceably assemble and petition the government for redress of grievances.

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b. violations of subparagraphs (b), (c), (d), (e), (f), and item 4, subparagraph (g) shall be punished by imprisonment of six months and one day to six years;

c. violation of item 1, subparagraph (g) shall be punished by imprisonment of six months and one day to six years without prejudice to prosecution under Presidential Decree No. 1866;

d. violations of item 2, item 3, or item 5 of subparagraph (g) shall be punished by imprisonment of one day to thirty days.

SEC. 15. *Freedom parks.* — Every city and municipality in the country shall within six months after the effectivity of this Act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the poblacion where demonstrations and meetings may be held at any time without the need of any prior permit.

In the cities and municipalities of Metropolitan Manila, the respective mayors shall establish the freedom parks within the period of six months from the effectivity this Act.

SEC. 16. *Constitutionality.* — Should any provision of this Act be declared invalid or unconstitutional, the validity or constitutionality of the other provisions shall not be affected thereby.

SEC. 17. *Repealing clause.* — All laws, decrees, letters of instructions, resolutions, orders, ordinances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SEC. 18. *Effectivity.* — This Act shall take effect upon its approval.

5. The Malacañang Press Release on the C.P.R. Policy dated Sept. 21, 2005 states:

In view of intelligence reports pointing to credible plans of anti-government groups to inflame the political situation, sow disorder and incite people against the duly constituted authorities, we have instructed the PNP as well as the local government units to strictly enforce a "no permit, no rally" policy, disperse groups that run afoul of this standard and arrest all persons violating the laws of the land as well as ordinances on the proper conduct of mass actions and demonstrations.

The rule of calibrated preemptive response is now in force, in lieu of maximum tolerance. The authorities will not stand aside while those with ill intent are herding a witting or unwitting mass of people and inciting them into actions that are inimical to public order, and the peace of mind of the national community.

Unlawful mass actions will be dispersed. The majority of law-abiding citizens have the right to be protected by a vigilant and proactive government.

Petitioners conducted peaceful mass actions, and during these instances, their rallies and assemblies were violently dispersed by the police. In some cases, rallyists and protesters were injured and arrested without warrant.

B.P. Blg. 880 requires groups to have permits[6] before they can engage in mass actions in the exercise of their right to peaceably assemble and petition the government for redress of grievances. Permits shall be required if a mass action shall be conducted in a public place, but the same is not required when it shall be conducted in a private property or in a freedom park.[7] Petitioners argued that this is the case regardless of the presence or absence of a clear and present danger. They believed that this is a curtailment of their constitutionally guaranteed right as it puts a condition for the valid exercise of the said right. Moreover, the authority given to the mayor in the issuance of permits is disputed as an undue delegation of power as there are no clear standards to guide him in the exercise of said authority.

In relation to the C.P.R. Policy, petitioners argued that the policy is vague, that it is *ultra vires* as it alters the standard of maximum tolerance set forth by B.P. Blg. 880, and that it is preemptive, given the fact that the government can take action even before rallyists make a move.

Respondents, however, stated that B.P. 880 is not void as it is content-neutral, narrowly tailored, and leaves open alternative channels for communication of information. The fact that B.P. 880 is content-neutral has already been settled in the cases of *Adiong v. Commission on Elections*[8] and *Osmeña v. COMELEC*.[9] The authority granted to the mayor is so circumscribed that there is no room for discretion. In addition, it has already been settled in

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> We appeal to the detractors of the government to engage in lawful and peaceful conduct befitting of a democratic society.
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> The President's call for unity and reconciliation stands, based on the rule of law.

6. B.P. Blg. 880, § 4.

7. *Id. See id.* § 15 which states that:

> [e]very city and municipality in the country shall within six months after the effectivity of this Act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the poblacion where demonstrations and meetings may be held at any time without the need of any prior permit.
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> In the cities and municipalities of Metropolitan Manila, the respective mayors shall establish the freedom parks within the period of six months from the effectivity this Act.

8. Adiong v. Commission on Elections, 207 SCRA 712 (1992).

9. Osmeña v. COMELEC, 288 SCRA 447 (1998).

Sangalang v. Intermediate Appellate Court[10] that the chief executive has the authority to exercise police power in meeting the demands of the common good in terms of traffic decongestion and public convenience. Respondents claimed that the C.P.R. Policy is "simply the responsible and judicious use of means allowed by existing law and ordinances to protect public interest and restore public order."[11] It is not a new rule but a more proactive enforcement of already existing laws.

Taking all of these issues into consideration, the Court held that B.P. Blg. 880 is constitutional as it neither curtails nor unduly restricts freedoms. Rather, it merely regulates the exercise of these rights and freedom through the use of public places as to time, place and manner of assemblies. Meanwhile, the Court held that the C.P.R. Policy, as it purports to differ from the "maximum tolerance" standard, is void and unconstitutional as it confuses the people and has become a tool for abuse by our policemen. As such, the Court metaphorically described the C.P.R. Policy as a "darkness that shrouds freedom."[12]

III. LEGAL HISTORY OF THE RIGHT TO PEACEABLY ASSEMBLE AND PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES

The Constitution first and foremost guarantees the right to peaceably assemble and petition the government for redress of grievances:

> No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.[13]

The text of the Constitutional provision has remained the same from the 1935 Constitution, which espoused faithfulness to the spirit of protecting and guaranteeing these rights.

In consonance with the recognition of the primacy of these rights, the Philippines is also a signatory to the International Covenant on Civil and Political Rights,[14] which provides:

> 1. Everyone shall have the right to hold opinions without interference.

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10. Sangalang v. Intermediate Appellate Court, 176 SCRA 719 (1989).

11. Bayan, et al. v. Eduardo Ermita, et al., G.R. Nos.169838, 169848 and 169881, Apr. 25, 2006 at 17.

12. *Id.* at 37.

13. PHIL. CONST. art. III, § 4.

14. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.[15]

While the Covenant recognizes these rights, it also realizes that there must be regulations in the exercise of these rights:

> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
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> a. For respect of the rights or reputations of others;
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> b. For the protection of national security or of public order (order public), or of public health or morals.[16]

The Constitution recognizes the importance and the primacy of the right to peaceably assemble and petition the government for redress of grievances. The regulations to the exercise of this right are not found categorically and explicitly in the Constitution.[17] The regulations are found in some other repositories of the law. As stated above, limits are found in an international convention wherein the Philippines is a signatory, and hence, forms part of the law of the land. But more importantly, the evolution of jurisprudence in relation to this right has explained and stated that regulations are necessary and are not violative of the right. If at all, these regulations are there to limit the *exercise* of the right, and not the right itself.

United States v. Apurado[18] dealt with a spontaneous gathering of some five hundred men who were demanding the ouster of municipal officials. While the case did not concern itself with public meetings *per se* since the crime charged was one for sedition, the Court nevertheless recognized the right to assembly and petition and stated that there is an allowable amount of disorder that is involved in the exercise of such.

> It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions, feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule will be the disciplinary control of the leaders over their

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15. *Id.* art. 19.

16. *Id.*

17. This statement is made in the sense that while the term "peaceably" is found before the term "assemble," said term does not lengthily and exhaustively give the impression and the recognition that the exercise of the right is limited and regulated.

18. United States v. Apurado, 7 Phil. 422 (1907).

> irresponsible followers. *But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities...* If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising.[19]

But what is the amount and limitation of this disorder that the Court pertained to in *Apurado*? What is the limit of this tolerable amount of disorder? In the case of *Evangelista v. Earnshaw*,[20] the Court observed that the limit depends on whether the actions taken in an assembly has a dangerous tendency in provoking or exciting disturbance of the peace.[21] In other words, the assembly is allowable in the absence of a *dangerous tendency* to incite substantive evil.

A few years later, the case of *Primicias v. Fugoso*[22] adopted the *clear and present danger rule* as the gauge for measuring the amount of tolerable disorder during public assemblies, as against the *dangerous tendency rule* adopted in *Evangelista.* In this case, Primicias, the campaign manager of the Coalesced Minority Party, sought a permit from Mayor Fugoso to hold a public meeting at the Plaza Miranda. This meeting was to be an indignation rally in protest of the alleged fraud committed by the Liberal Party in the recent elections. The Court stated that, in exercising the authority to grant or deny permits, the mayor must have a reasonable ground to believe that no serious evil will result and that there is no imminent evil that must be prevented.

However, what is more important in this case is the fact that the Court recognized that the exercise of the right to assembly and petition is not limitless, but is in fact subject to reasonable regulation. These regulations according to the Court are as important in an orderly society as this right is important in a democratic polity.

> The right to freedom of speech, and to peacefully assemble and petition the government for redress of grievances, are fundamental personal rights of the people recognized and guaranteed by the Constitutions of democratic countries. *But it is a settled principle growing out of the nature of well-ordered civil societies that the*

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19. *Id.* at 426 (emphasis supplied).

20. Evangelista v. Earnshaw, 57 Phil. 255 (1932).

21. *Id.* at 259. ("[i]t must be considered that the respondent mayor, whose sworn duty is 'to see that nothing should occur which would tend to provoke or excite the people to disturb the peace of the community or the safety of the Government,' did only the right thing under the circumstances.").

22. Primicias v. Fugoso, 80 Phil. 71 (1948).

> *exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society.* The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils enact ordinances for purpose.[23]

Reyes v. Bagatsing[24] further explained the right to peaceably assemble and petition the government for redress of grievances, and its limits. In *Reyes*, petitioner, retired Justice J.B.L. Reyes, on behalf of the Anti-Bases Coalition, sought a permit from the City of Manila to hold a peaceful march and rally from the Luneta Park, a public park, to the gates of the United States Embassy. Once there, and in an open space of public property, a short program would be held. The mayor denied the request for the permit, as there were police intelligence reports which had militated against the issuance of such permits at the time and at the place applied for. The reports warned that there were plans of subversive/criminal elements which would infiltrate and disrupt any assembly or congregation where a large number of people were expected to attend. In addition, the mayor stated that he would allow said assembly if the same would be held at the Rizal Coliseum or any other enclosed area where the safety of the participants and the general public may be ensured. The petitioners argued that this was a clear violation of their rights, to which the Court agreed and further stated that:

> Freedom of assembly connotes the right people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent... The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest...
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> ...There are, of course, well-defined limits. What is guaranteed is peaceable assembly. One may not advocate disorder in the name of protest, much less preach rebellion under the cloak of dissent. The Constitution frowns on

23. *Id.* at 75-76 (emphasis supplied).

24. Reyes v. Bagatsing, 125 SCRA 553 (1983).

> disorder or tumult attending a rally or assembly. Resort to force is ruled out and outbreaks of violence to be avoided... It bears repeating that for the constitutional right to be invoked, riotous conduct, injury to property, and acts of vandalism must be avoided...
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> ...Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do precedence and primacy...[25]

What *Reyes* did was to repeat and emphasize the principles elucidated in the previous cases; that while the right is protected, it must be exercised within reasonable limits. The *Reyes* case also stated that the right can only be limited when there are reasonable grounds to show that there is a clear and present danger of a substantive evil if the exercise is not regulated or limited. There was nothing novel in this case for the Court to deviate with its previous holdings.

But what is most important with *Reyes* in relation to the instant case is the fact that it also provided for a summary of requirements or guidelines in relation to obtaining permits for rallies, from which B.P. Blg. 880 took its cue.

IV. THE INSTANT CASE

The instant case once again reiterated the principles enunciated in the previously mentioned and discussed cases that: (1) while the right to peaceably assemble and petition the government is sacrosanct, it is not absolute and (2) the exercise of which can be subjected to certain reasonable regulations.

The Court stated that B.P. Blg. 880 is not unconstitutional for the grounds given by the petitioners. It is not violative of the right to peaceably assemble and petition the government for redress of grievances, but a mere regulation on the exercise of the right. There is no undue delegation of the power to the mayor as there are sufficient standards to guide him in the issuance or non-issuance of permits, and that the law is narrowly tailored to disallow the mayor's exercise of discretion. The law is content-neutral, consistent, not overbroad and does not impose a prior restraint on speech.

To begin with, the exercise of the right to peaceably assemble and petition the government for redress of grievances is subject to certain reasonable limitations provided for in jurisprudence, as has been held in the cases of *U.S. v. Apurado*,[26] *Primicias v. Fugoso*,[27] and *Reyes v. Bagatsing*.[28] These cases state that the

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25. *Id.* at 561-70 (emphasis supplied).

26. U.S. v. Apurado, 7 Phil. 422 (1907).

27. Primicias v. Fugoso, 80 Phil. 71 (1948).

28. Reyes v. Bagatsing, 125 SCRA 553 (1983).

right can be limited and curtailed in the existence of a clear and present danger of a substantive evil or on the ground of clear and present danger to public order, safety, convenience, morals or health. These instances when the right is subject to reasonable regulations are likewise recognized exceptions to the exercise of rights in the Universal Declaration of Human Rights[29] and the International Covenant on Civil and Political Rights.[30]

The requirement of a permit in the exercise of the right is not an absolute ban on the right but a mere regulation on the time, place and manner of the assemblies. As such permits are only required in instances when public assemblies will be conducted in a public place. However, no such permit shall be required if the public assembly shall be done or made in a freedom park established by law, or when done in private property, or in the campus of a government-owned and operated educational institutions.[31] In short, the permit, to a certain extent, is sought on the use of the public place and not for the exercise of the right.

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29. Universal Declaration of Human Rights, G. A. Res. 217 (A) (III), U.N. Doc. A/180 at 71 (1948), art. 29 states:

> 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
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> 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
>
> 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

30. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976. Art. 19 of this covenant states that:

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> > (a) For respect of the rights or reputations of others;
> >
> > (b) For the protection of national security or of public order (order public), or of public health or morals.

31. B.P. Blg. 880, § 4.

In granting or denying permits, there is no undue delegation of powers to the mayor as there are sufficient standards to guide him. Moreover, the mayor is not given utter discretion as it is ministerial on his part to issue such permits, except when there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, safety, convenience, morals or health.[32] This power is likewise granted to the mayor independently under the Local Government Code.[33]

In discussing these matters the Court then stated that it is as if, B.P. Blg. 880 codified the pronouncements made in *Reyes v. Bagatsing*:[34] *Reyes* provided for a summary by which a permit may be obtained through the local government as

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32. *See id.* § 6(a).

33. An Act Providing for the Local Government Code, Republic Act no. 7160 (1991), § 16 states:

> Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

34. Reyes v. Bagatsing, 125 SCRA 553, 569-70 (1983). In this case, the court held that:

> The applicants for a permit to hold an assembly *should inform the licensing authority of the date, the public place where and the time when it will take place*. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. *Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place*. It is an indispensable condition to such refusal or modification that the *clear and present danger test* be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, then, the applicants can have recourse to the proper judicial authority. Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, even more so than on the other departments rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights (emphasis supplied).

well as its requirements. B.P. Blg. 880 provided for the same. Sections 4, 5 and 6 of B.P. Blg. 880 provides for instances when a permit is required and when such is not needed, the application requirements and the actions to be taken on the application, respectively. Hence:

Reyes v. Bagatsing	B.P. Blg. 880
"…should inform the licensing authority of the date, public place where and the time when it will take place…"	Sec. 4 Permit when required and when not required
"Such application should be filed ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place."	Sec. 5 Application requirements
"…clear and present danger test…"	Sec. 6. Action to be taken on the application

The law, according to the Court, is content-neutral as it was already held to be such in the earlier case of *Osmeña v. COMELEC*.[35] The law is likewise consistent, as the reference to the *clear and present danger test* in section 6(a)[36] substantially means the same thing as the reference made to imminent and grave danger of a substantive evil in section 6(c).[37] Neither is the law overbroad as it regulates the exercise of the right only to the extent needed to avoid a clear and present danger to public order, public safety, public convenience, public morals

35. Osmeña v. COMELEC, 288 SCRA 447 (1998).

36. It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly will create *a clear and present danger* to public order, public safety, public convenience, public morals or public health (emphasis supplied).

37. If the mayor is of the view that there is *imminent and grave danger* of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter (emphasis supplied).

or public health. There is also no prior restraint in the law since the content of the speech is not relevant to the regulation.

As a final point of the Court's discussion of B.P. Blg. 880, the Court made a curious pronouncement in relation to freedom parks. It must first be noted and recalled that B.P. Blg. 880 requires that every city and municipality within six months after the effectivity of the act shall establish or designate one freedom park in their area.[38] The importance of which is that when a mass action shall be conducted in said freedom parks, a permit is no longer necessary. However, the Court pointed out that even after 20 years from the enactment of B.P. Blg. 880, only Cebu City has declared a freedom park—Fuente Osmeña. The designated freedom park in Manila—Sunken Gardens—has since been converted into a golf course. As it stands, the mandate in the law has not been complied with. The Court already stated that a freedom park is an alternative forum where the people may exercise their right, and without such alternative forum, it is tantamount to denying the people's constitutionally guaranteed right. Hence, the Court went one step further by giving local governments a deadline of 30 days within which to designate specific freedom parks as specified in B.P. Blg. 880. If after that period, no such park is designated, all public parks and plazas of the municipality or city shall in effect be freedom parks. And as such, no permit shall be required for public assemblies conducted in said parks.

As regards the C.P.R. Policy, the Court stated that in view of the *maximum tolerance*[39] standard provided for in B.P. Blg. 880, the former has no valid purpose if it means the same thing and is illegal if it means something else. The use of the term confuses not only the public but the law enforcement officials as well.

V. ANALYSIS

A. Batas Pambansa Blg. 880

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38. B.P. Blg. 880, § 15:

> [e]very city and municipality in the country shall within six months after the effectivity of this Act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the poblacion where demonstrations and meetings may be held at any time without the need of any prior permit.
>
> In the cities and municipalities of Metropolitan Manila, the respective mayors shall establish the freedom parks within the period of six months from the effectivity this Act.

39. B.P. Blg. 880, § 3 (c). ("'[m]aximum tolerance' means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.").

The concept of anarchy is antithetical to a civilized society. In the same manner, the concepts of oppression and suppression of rights and freedoms are antithetical to a democratic society. However, a democratic society cannot exist without prescinding from a civilized society. Hence, necessarily the *exercise* of rights and freedoms to some extent will be suppressed by certain limits and regulations.

Petitioners in the case of *Bayan* portray the right to peaceably assemble and petition the government for redress of grievances as if it were absolute and limitless. The statement of the right itself already alerts a well-informed individual that such is not absolute and limitless. The statement presupposes that the right is exercised through peaceful means; hence, the term "peaceable." The right does not cover some other assembly with a contrary nature. In addition, what petitioners failed to realize, which was realized in the case of *Apurado,* is the fact that during the instances of the exercise of the right, individuals are of heightened emotions that disorder, to some extent cannot be avoided. And it is when disorder results that the government has to come in and make sure that only the tolerable amount of disorder results from the exercise, otherwise, public order, public safety and public health is threatened. The important thing to be noted is that the government is tasked to safeguard not only the order, safety and health of outsiders but also those of the participants in the assembly.

Hence, it is with this great task that the government enacted "The Public Assembly Act of 1985"[40] where the government itself recognized the primacy of the right to peaceably assemble and petition the government for redress of grievances:

> The constitutional right of the people to peaceably assemble and petition the government for redress of grievances is essential and vital to the strength and stability of the State. To this end, the State shall ensure the free exercise of such right without prejudice to the rights of others to life, liberty and equal protection of the law. [41]

1. Permits for Public Assemblies in Public Places

The regulations to the exercise of the right has been recognized as valid and not violative of the right, provided they are within reasonable bounds. Reasonable regulations to the right have been recognized as valid even before the enactment of "The Public Assembly Law of 1985" or B.P. Blg. 880. The question is whether or not the regulations provided for in B.P. Blg. 880 are reasonable in the light of regulations which have been considered by the Courts as such in previous cases.

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40. This is the short title of B.P. Blg. 880.

41. *Id.* § 2.

Primicias adopted the *clear and present danger rule* as a gauge in measuring whether or not the exercise of the right can be regulated. The application of the *clear and present danger rule* simply means that the exercise may be disallowed when authorities have reasonable ground to believe that the exercise of the right shall give rise to the clear and present danger of a substantive evil that will greatly affect public order, public safety or public health.

Bagatsing on the other hand adopts the *clear and present danger rule* and at the same time states that what is guaranteed is peaceable assembly, otherwise it is not covered. *Bagatsing* also laid down the fact that a permit must be sought for assemblies in public places, indicating to the licensing authority the time and place for such assembly. When the same shall be held in a private place, permission must be sought from the owner of such private place.[42]

What B.P. Blg 880 merely did was to put into concrete legislation what was stated in the case of *Bagatsing* as guideposts in the regulation of the exercise of the right. For instance, the permit requirement for assemblies in public places is found in section 4 of B.P. 880. The use and the application of the *clear and present danger rule* as a gauge in the regulation is found in section 6. Another example is in relation to the character of the assembly. *Bagatsing* says that it must be a *peaceable* assembly, in consonance with the Constitution. Hence, B.P. Blg, 880 provides that actions that tend to characterize the assembly as otherwise shall constitute a violation of the Act. Thus,

> [a]cts described hereunder if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof:
>
> 1. the carrying of a deadly or offensive weapon or device such as a firearm, pillbox, bomb, and the like;
> 2. the carrying of a bladed weapon and the like;
> 3. the malicious burning of any object in the streets or thoroughfares;
> 4. the carrying of firearms by members of the law enforcement unit;
> 5. the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.[43]

In reading the law in close scrutiny, safeguards in favor of the exercise of the right are provided for over and above apparent strict and unreasonable regulations. For instance, in relation to the filing of the permit, should the mayor or any official acting in his behalf *for any reason* refuse to receive said application, "said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed."[44] In addition, if the mayor

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42. Reyes v. Bagatsing, 125 SCRA 553, 569 (1983).

43. B.P. Blg. 880, § 13 (g).

44. *Id.* § 6(b).

or his officials fail to act on the permit within two working days from the date of the filing of the application, "the permit shall be deemed *granted.*"[45] Apart from these, when the mayor or official acting in his behalf believes that there is a clear and present danger of a substantive evil that must be avoided, he should not automatically deny the permit. Rather, the applicant shall first be heard before he may grant or deny the permit in twenty four (24) hours.[46] Hence, there is really not much room for the exercise of the mayor's discretion and bias. Any decision of the mayor or official acting in his behalf is appealable to any court of law.[47]

There are also limits on the authority granted to law enforcement officials. For example, they are mandated not to interfere with the public assembly, but to ensure public safety and order. Policemen may be stationed one hundred (100) meters away from the place of the assembly.[48] In addition, they are not allowed to carry firearms but may only "be equipped with batons or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards."[49] Also "tear gas, smoke grenades or any similar anti-riot device shall not be used unless the public assembly is attended by *actual violence or serious threats of violence or deliberate destruction of property.*"[50] There are also steps that guarantee that violence between the people and the policemen are avoided especially when they are to be dispersed. Thus:

> No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:
>
> (a) At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the leaders of the public assembly and ask the latter to prevent any possible disturbance;
>
> (b) If actual violence starts to a point where rocks or other harmful objects from the participants are thrown at the police or at the non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly will be dispersed;
>
> (c) If the violence or disturbance prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the

45. *Id.* (emphasis supplied).

46. *Id.* § 6(c) & (d).

47. *Id.* § 6(f), (g), (h) & (i).

48. *Id.* § 9.

49. B.P. Blg. 880, § 10(b).

50. *Id.* § 10 (c) (emphasis supplied).

> public assembly, and after allowing a reasonable period of time to lapse, shall immediately order it to forthwith disperse;
>
> (d) No arrest of any leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this Act. Such arrest shall be governed by Article 125 of the Revised Penal Code, as amended;
>
> (e) Isolated acts or incidents of disorder or breach of the peace during the public assembly may be peacefully dispersed.[51]

Most importantly, the mayors or their duly authorized officials and law-enforcement agencies may be held liable for certain acts that constitute violations of B.P. Blg. 880, such as the "arbitrary and unjustified denial or modification of a permit by the mayor or any official acting in his behalf,"[52] "unjustified and arbitrary refusal to accept or acknowledge receipt of application for a permit by the mayor or any official acting in his behalf,"[53] "obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly"[54] and "unnecessary firing of firearms by a member of any law enforcement agency…"[55]

It can then be seen that while there are limits imposed on the people—for instance, the obtainment of permits before engaging in a public assembly in a public place, otherwise the assembly shall be dismissed for being illegal—there are also limits imposed on the other side of the fence, particularly, on the side of the authorities. These limits are, in fact, quite stringent that there is not much room for the exercise of discretion and bias, which is detrimental to the people and ultimately to the exercise of their right; such that one can reasonably believe that while the law provides for limits in the exercise of the right, it is with the end-in-view of the responsible and protected exercise of the guaranteed right and freedom.

Hence, as the law has remained faithful to the rulings of the Court in the recognition of the reasonable regulations in the exercise of the right and to the very essence of the right to peaceably assemble and petition the government for redress of grievances, the law is not unconstitutional.

2. Time, Place, Manner Regulation

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51. *Id.* § 11.

52. *Id.* § 13 (b).

53. *Id.* § 13 (c).

54. *Id.* § 13 (d).

55. B.P. Blg. 880, § 13 (e).

The regulations provided for in the law in relation to the exercise of the right ultimately pertains to the regulation of the time, place and manner of its exercise. The time and place regulation is manifested in the law through the directive that when a permit is sought, a written application indicating the date, time, and duration[56] among others must be made. The use of the public place, in this sense, is regulated. As such, in a public place, which naturally is open to the public, the use of one group may deprive the other groups or individuals of the use of the same, that is why, a permit is sought and the duration of the assembly is determined. For instance, the use of a public thoroughfare is regulated because a prolonged assembly in such an area may unduly hamper traffic and commerce.[57]

The regulation on the place is reasonable as well. When the assembly is to be held in a public place, a permit must be sought for the previously stated reasons while when it is in a private place, only the consent of the owner is needed. If the venue is in the campus of a government-owned and operated educational institution, the group only needs to comply with the regulations of the said institution. And when the venue is within a freedom park, no permit is necessary. Hence, there are various alternatives available to the people.

The manner on the other hand, is regulated in the sense that it must be a "peaceful assembly,"[58] otherwise it shall constitute a violation of the Act and would result to dispersals.[59]

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56. *Id.* § 5(a):

> [t]he applications shall be in writing and shall include the names of the leaders or organizers; the purpose of such public assembly; the date, time and duration thereof, and place or streets to be used for the intended activity; and the probable number of persons participating, the transport and the public address systems to be used.

57. *Id.* § 7:

> [s]hould the proposed public assembly involve the use, for an appreciable length of time, of any public highway, boulevard, avenue, road or street, the mayor or any official acting in his behalf may, to prevent grave public inconvenience, designate the route thereof which is convenient to the participants or reroute the vehicular traffic to another direction so that there will be no serious or undue interference with the free flow of commerce and trade.

58. Hence, acts that would tend to characterize the assembly as otherwise, shall be considered as violations, for instance:

> 1. the carrying of a deadly or offensive weapon or device such as a firearm, pillbox, bomb, and the like;
>
> 2. the carrying of a bladed weapon and the like;
>
> 3. the malicious burning of any object in the streets or thoroughfares;

B. Freedom Parks

The Court made a curious pronouncement relating to freedom parks, as there are none designated yet except Fuente Osmeña in Cebu, contrary to the mandate of B.P. Blg. 880. The Court then required all municipalities and cities to designate one in their area within 30 days from the promulgation of the decision for instance, there must already be one designated on 25 May 2006, otherwise, all public parks shall be considered freedom parks.

The Court in making this order once again recognized the primacy of the right in that B.P. Blg. 880 provided these freedom parks as alternative options in the venue for the exercise of the right, and when such alternative is not made available to the people, it is tantamount to denying them the very exercise of the right. It is no longer a reasonable regulation but already a denial.

To some extent, what the Court did is reasonable. As a jealously and zealously guarded right, all protection must be afforded to its exercise. And any step that is intended to make it unreasonably difficult to perform must be struck down. However, the question now is whether or not such thirty-day (30) limit and non-compliance therewith clause provided by the Court or imposed by the Court is valid under any of the powers of the Judiciary. The thirty-day (30) limit may be considered as a judicial construction[60] as it merely implements what is stated in the law or what the law has mandated for the past twenty (20) years. However, the non-compliance therewith clause which transforms all public places into freedom parks cannot be considered to fall under judicial construction, as this is not found in B.P. Blg. 880. It will ultimately render nugatory the purpose of the same law, which is to regulate the time, place and manner of public assemblies. If all public parks were deemed as freedom parks, the question of when the regulation will come in arises. Taking this into consideration, the efficacy of B.P. Blg. 880 is at the behest of the Judiciary.

This is an impending controversy that is yet to be questioned and seen. But for the meantime, the people are rest assured that the Court still accords and affords primacy to the right to peaceably assemble and petition the government.

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4. the carrying of firearms by members of the law enforcement unit;

5. the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.

Id. § 13 (g).

59. *Id.* § 11. ("…[h]owever, when an assembly becomes violent, the police may disperse such public assembly…").

60. JOSE JESUS G. LAUREL, STATUTORY CONSTRUCTION: CASES & MATERIALS 10 (1999) (citing Foote v. Nickerson, 54 L.R.A. 554) (1901)). ("[t]o declare what the law shall be is a legislative power, but to declare what the law is or has been is judicial.").

C. The C.P.R. Policy

The most controversial aspect in *Bayan* is the C.P.R. Policy enforced by the government. It is the most controversial for its vagueness and inconsistencies.

Uti loquitur vulgus, translated into English, it means that, "[i]n dealing with matters relating to the general public, statutes are presumed to use words in their popular sense."[61] In this instance, this principle shall be the guiding point in the exploration of the C.P.R. Policy as there are no specific guidelines provided for in the Malacañang Press Release that embodied the policy.

"Pre" is a prefix that means "earlier than or preceding."[62] Then, "pre-emptive" means "in anticipation."[63] "Calibrated" means "to indicate a scale."[64] Taken together to describe the character of the response enforced by Malacañang, in ordinary words mean that the response shall be in anticipation of any action from the other party, and the response shall be in grades or in scales or in steps.

The steps so to speak, to justify the term "calibrated" is not provided in said press release, but is found in B.P. Blg. 880.[65] The guidelines that would have defined "pre-emptive" are neither found in the Press Release nor in B.P. Blg. 880. In reality, "pre-emptive" runs contrary to the principles enunciated in B.P. Blg. 880 which seeks to enforce maximum tolerance and which seeks to avoid police interference, for as long as there is no violence taking place or about to take place.[66] The Press Release does not state at what point or at what stage should the police enforcers anticipate or interfere in the assembly. There are no standards provided for. As it is that vague, it threads on dangerous waters, which may amount to a violation of the right to peaceably assemble.

In the same Malacañang Press Release, Executive Secretary Eduardo Ermita stated that "[t]he rule of calibrated preemptive response is now in force, in lieu of maximum tolerance." In its ordinary sense and perhaps, its only sense, "in lieu of" means "instead or in substitute of."[67] Hence, such statement made by Secretary Ermita clearly seeks to implement the C.P.R. Policy as a substitute to the maximum tolerance standard set forth in B.P. Blg. 880.

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61. *Id.* at 125.

62. THE NEW LEXICON ENCYCLOPEDIC DICTIONARY OF THE ENGLISH LANGUAGE 788 (1993).

63. *Id.* at 790.

64. *Id.* at 138.

65. *See* B.P. Blg. 880, § 11.

66. *See id.* § 10 & 11.

67. THE NEW LEXICON ENCYCLOPEDIC DICTIONARY OF THE ENGLISH LANGUAGE 572 (1993).

C.P.R. in its ordinary meaning refers to the character of the response by the government that is in anticipation of any action from the other party, and a response which is in grades or in scales or in steps. Maximum tolerance on the other hand "means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same."[68] The two principles as it appears are conflicting standards prescribed for authorities in the regulation of public assemblies. And from the very statement in the Press Release, the government seeks to replace the maximum tolerance standard by a totally opposite concept.

However, Executive Secretary Ermita in an Affidavit he executed for the *Bayan* case stated that:

> ...when I stated that calibrated preemptive response is being enforced in lieu of maximum tolerance *I clearly was not referring to its legal definition but to the distorted and much abused definition that it has now acquired*. I only wanted to disabuse the minds of the public from the notion that law enforcers would shirk their responsibility of keeping the peace even when confronted with dangerously threatening behavior. I wanted to send a message that we would no longer be lax in enforcing the law but would henceforth follow it to the letter. Thus I said, "we have instructed the PNP as well as the local government units to strictly enforce a no permit, no rally policy... arrest all persons violating the laws of the land... unlawful mass actions will be dispersed." None of these is at loggerheads with the letter and spirit of Batas Pambansa Blg. 880.[69]

This is clearly inconsistent. One cannot use a term that means something and interpret it to be something that it does not mean or pertain to. "In lieu of" only means "in substitute of," the declarant cannot later on say that he meant it in its other sense, which is its opposite sense. This is just absurd.

It is the power of the executive to "...ensure that the laws are faithfully executed."[70] However, this power is of the pre-supposition that there is a law already in place and that the execution of the law is not tantamount to substituting something else in place of said law. The execution must remain true and faithful to the law, and must not move to supplant the same.

The guidelines in B.P. 880 are already complete. There is really no need to coin another policy when it will only breed confusion among the people and among the law enforcers, and is to the detriment of the right and of the exercise of the constitutionally guaranteed right to peaceably assemble and petition the government for redress of grievances.

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68. B.P. Blg. 880, § 3(c).

69. Bayan, et al. v. Eduardo Ermita, et al., G.R. Nos.169838, 169848 and 169881, Apr. 25, 2006 at 33 (citing Affidavit of Exec. Sec. Eduardo Ermita).

70. PHIL. CONST. art. VII, § 17.

VI. CONCLUSION

The right to peaceably assemble and petition the government for redress of grievances enjoys primacy in the realm of constitutional protection. And as observed from law and jurisprudence through the years, it is jealously and zealously guarded that regulations on its exercise must be reasonable. It may not be absolute but it is of utmost importance as the recognition of the right defines a democratic polity. The Court has repeatedly stated that its limits must always be well-defined and must be reasonable otherwise the regulation would amount to a curtailment of the right. Thus, the right must always be protected and respected. The right must not be toyed with, with mere play of words. The right to peaceful assembly is too important a right to be played with.

It seems quite ironic that the acronym C.P.R. stands for two different concepts—cardio-pulmonary resuscitation and calibrated pre-emptive response. The former seeks to give life, while the latter draws life out of the living, figuratively of course. It is ironic that the former seeks to revive someone who is precious and important, while the latter seeks to deter and impede something that is precious and important.