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First, let me explain why political prisoners or detainees should not be treated like common criminals. A difference exists between those accused of so-called political offenses, on the one hand, and of common crimes, on the other. In a democratic and republican setting, this proposition is not seriously disputed. Whether the distinction is respected or not, is however another matter we will discuss later.

The problem of when a particular citizen or group has overstepped the allowable boundaries of the valid exercise of the freedom of speech and dissent is one that has perplexed jurists throughout the years. No exact, single and unanimously accepted measure has yet been evolved. Lawyers continue to debate whether the "clear and present danger" rule, or the "dangerous tendency rule" or the balancing of interests" rule or combinations or variations thereof, is the proper test to use when government attempts to "abridge" the freedom of speech or the right to dissent. We need not discuss the problem here. But, even beyond the confines of freedom of speech and the right to dissent, is another principle inherent in republicanism. And this is the *right of revolution.*

He may be a most unseemly source, but it would appear that even former President Marcos, (1971, 1-4), the dictator himself, recognized and accepted this principle. He said:

> Of all the established forms of government, democracy is the only one which recognizes the inherent right of the people to cast out their rulers, change their policy, effect radical reforms in their system of government or institutions, by force or by general uprising, when the legal and constitutional methods of making such changes proved inadequate, or so obstructed as to be unavailable. The right to rebel is an elemental human right, just as the right to repress rebellion is an elemental public right.

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The right to revolution is expressly recognized in the American Declaration of Independence of 1776, the French Declaration of the Rights of Man of 1789 and the Universal Declaration of the Rights of People, among others.

When the state seeks to enforce its law and proceeds against the dissenters, objectors or critics whom it views as having abused their rights, or arrests rebels or revolutionaries, or even those rightly or wrongly considered merely as their sympathizers, in what it may claim as an exercise of state self-defense, those who are charged and prosecuted are what we today generally refer to as "political offenders." If caught and detained they are the "political detainees or political prisoners."

Political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government of the Philippine Islands or any part thereof," then said offense becomes stripped of its "common," complexion, inasmuch as being part and parcel of the crime of rebellion, the former acquires the political character of the latter (People vs. Hernandez, 99 Phil. 515).

What specifically constitutes a political offense in penal laws or statutes differs from country to country, or in each country from regime to regime, or at its stage of political development. In the Philippine example, the law on the matter has been in constant change. There were even times when government denied the existence of political prisoners, based on their narrow definition that only those imprisoned merely for their political beliefs are "political prisoners." And since all detainees are somehow charged for one violation or another of the Penal Code, or some existing special law, then the claim was, that there are no political prisoners.

In the case of President Corazon Aquino, if we are to judge from what she classified as "political detainees" in 1986, the following are included (Ministry of Justice 1986):

Those charged, detained, or imprisoned for the commission of any of the following crimes/offenses:

- Treason, under Art. 114, Revised Penal Code (RPC)
- Conspiracy or proposal to commit the crime of treason under Art. 115, RPC

- Misprision of treason, under Art. 116, RPC
- Rebellion or insurrection, under Art. 134 RPC
- Conspiracy and proposal to commit rebellion, under Art. 136 in relation to Art. 8, RPC
- Disloyalty of public officers and employees, under Art. 137, RPC
- Inciting to rebellion or insurrection, under Art. 138 RPC
- Sedition, under Art. 139, RPC
- Conspiracy to commit sedition, Art. 141, in relation to Art. 8, RPC
- Inciting to sedition, under Art. 142, RPC
- Acts tending to prevent the meeting of the National Assembly, Art. 143 RPC
- Illegal assemblies, if meeting is one in which the audience is incited to the commission of the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents. Art. 146 RPC
- Espionage, Art. 117 RPC
- Subversion, under Presidential Decree (P.D.) No. 1835
- Unlawful rumor-mongering, under P.D. No. 80

Those charged, detained, or imprisoned, for any crime/offense other than those enumerated above, committed in connection with, or by reason or in furtherance of the same.

Those charged, detained, or imprisoned by reason of their political beliefs or resistance to the immediately preceding government/administration.

In 1989, those whom the Aquino government would classify as "rebels" were those charged with the following (E.O. 350 1989)

- Treason
- Conspiracy or proposal to commit treason
- Misprision of treason
- Espionage
- Rebellion or insurrection
- Inciting to rebellion or insurrection
- Sedition
- Conspiracy to commit sedition
- Inciting to sedition
- Illegal assemblies
- Illegal associations
- Direct assault

- Indirect assault
- Resistance and disobedience to a person in authority or the agents of such person
- Subversion, and
- Illegal possession of firearms and/or explosives

From the foregoing, the difference between common criminals and political offenders is at once obvious. It lies in the element of motive and intent. "Common criminals are motivated by individual interests: profit, greed, lust. Political offenders, on the other hand, are motivated by larger societal interest" (Diokno).

"Dissenters disobey the law, not because of a criminal desire for gain in wealth or power, but because they must obey a higher law. Their appeal is to the joint knowledge of conscience."

And because of this difference between the political offender and the common criminal, there is also indicated a difference in treatment. President Marcos as above-quoted observes that there is an "apparent judicial leniency towards rebels and revolutionaries."

The political offender cannot therefore be regarded in like manner as the common criminal. For one, the leniency with which political offenders are to be regarded is judicially recognized. It appears, however, that government considers political detainees to be entitled to much less than common criminals. And this is not referring to physical conditions in jails and prisons alone. In the Philippines this inferior and discriminatory treatment starts long before the political offender is actually arrested and detained.

In this country it is easier to get arrested and detained if you are suspected of a political offense, than if you were suspected of a common crime. The fallacy of the so-called leniency begins that early. The leniency or liberality, if it exists at all, exists in favor of law enforcement agencies and police forces, and not for the political offender or suspect. Actually the "dice is loaded" against him.

The general rule therefore is that no arrest, search, or seizure shall be made without a warrant and only upon probable cause to be determined personally by a judge. And strict adherence to this provision has long been the rule.

We have a law that provides some exceptions. Thus, warrantless arrests may be made, but only in the following instances: a) When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; b) When an

offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgement or is temporarily confined while his case is pending, or has escaped while being transported from one confinement to another (Rules of Court, Section 5, Rule 113).

Are these laws and provisions against unreasonable searches and seizures as well as warrantless arrests applicable equally to all citizens, or are they diminished when it comes to suspected political offenders. Unfortunately, the present Supreme Court, not the Supreme Court of Mr. Marcos, has come up with the following rulings:

Valmonte vs. de Villa, 29 September 1989. The Court here held that "checkpoints" manned by military, police, as well as paramilitary units are valid and can conduct "routine" searches without warrants.

Furthermore, the Constitution states that the people are entitled to security in their persons, unless a judge has issued a warrant for their arrest, or search of their persons or effects, in which case, and only then, do they forfeit their security. The Constitution does not say that they may nevertheless be stopped at checkpoints if necessary, in the opinion of the State, to thwart left-wing and right-wing conspiracies to grab State power. What the Constitution does say, on the other hand, is that it is unreasonable to disturb their peace in that manner.

Finally, and perhaps most compelling, "checkpoints" leave the liberty of citizens too much in the hands of sentries. The Constitution says that only a judge can deprive us of liberty—subject to, and upon observance of, an elaborate procedure.

Another source, Valmonte says, that a member of the Citizens Armed Forces Geographical Unit (CAFGU) can also deprive us of our liberty—yes, the CAFGU can do that, as he is bound by no procedure or possessed of qualification except the fact that he is a sharpshooter (IBP).

Guazon vs. de Villa, 30 January 1990. The court ruled as valid and legal "areal target zoning," "zonas" and "saturation drives" conducted by police forces wherein hundreds, and in one instance more than a thousand, usually of urban poor residents in a locality are rounded up, herded and their dwellings searched, without warrants, even despite the admission that abuses are committed in the course of the search.

Again the political reason is introduced to justify the "liberalization" of the commands of the Constitution. The coup d'etat, the mutiny, the rebellion, the subversives are all pointed to as the reasons that allow this departure from a strict compliance with constitutional requirements.

Umil vs. Ramos, 9 July 1990. Here, so-called political offenses are described as "continuing offenses" and can therefore justify warrantless arrests. Since subversion is a "continuing offense" one commits it even in his/her sleep. Thus anyone suspected of the same could be arrested without warrant while asleep on his bed, recuperating on his sickbed in a hospital, or relaxing at home doing nothing overt against the government.

The same court has also lately held that:

a. Despite the rulings in Hernandez and Geronimo (the cases which said that political offenders be treated with leniency, that "common crimes, perpetrated in furtherance of a political offense, are divested of their character as 'common' offenses and assume the political complexion of the main crime"), the Supreme Court has held that one may separately be held accountable for the same act but for two separate and distinct offenses, namely:

1. Illegal possession of firearms qualified by subversion (P.D. No. 1866) and
2. Subversion qualified by the taking up of arms against the Government (R.A. No. 1700 & Misolas vs. Panga, 30 Jan 1991).

The court adds that there is no double jeopardy and that it is powerless to declare P.D. No. 1866 unconstitutional even as it admits that "the practical result of this may be harsh or it may pose grave difficulty on an accused."

b. The latitude given to law enforcement agents to conduct warrantless arrests, searches and seizures has further been broadened because the Supreme Court has also held that warrantless arrests, searches and seizures could be made:

1. On mere suspicion that one is in possession of prohibited articles (People vs. Malmstedt, 19 June 1991);
2. If one is merely acting suspiciously [obviously in the mere judgment or opinion of the peace officers] (People vs. Tangliben, 6 Apr 1990), or

3. If one is acting suspiciously and is perceived by the police officer as attempting to flee when accosted (People vs. C.A., Aug 1990).

It is unfortunate that in this country the change of attitude, from leniency to antagonism, seems to have been spearheaded by the courts. The Philippine constitution provides that only the President can proclaim an emergency, suspend the privilege of the *writ of habeas corpus* or declare martial law, and in the face only of actual invasion or rebellion.

Unfortunately, even without waiting for such a proclamation, the Supreme Court has been justifying its decisions on the existence of such alleged emergencies. In some cases it has even taken upon itself to "take judicial notice" of such conditions. It has utilized the following terms: "abnormal times" (Valmonte vs. Villa); "judicial notice of the shift to urban centers and their suburbs of the insurgency movement" (Valmonte vs. Villa); "there is large scale mutiny or actual rebellion" (Guazon vs. De Villa).

The Supreme Court has sadly taken unto itself to provide the recognition, if not the declaration, of the existence of a rebellion or an emergency and act as if it has officially been proclaimed. Something which the executive, upon whom the power is reposed, has not ventured to do. And this even in face of the constitutional provision which says that "a state of martial law does not suspend the operation of the Constitution," and this presumably includes the Bill of Rights, if it is at all to be meaningful (article VII, section 18).

As far as the physical conditions in jails are concerned no effort—except perhaps the Assistance and Visitorial Services Program of the Commission on Human Rights—has been made to complement by law the lenient regard which is supposed to be afforded political offenders. And with the recent shift from leniency to antagonism, it is doubtful if any such legislation is forthcoming.

And this defect exists not only in Philippine law. No such special treatment for political detainees can also be found in international documents—not even in the United Nations Principles for the Protection of Persons under any form of Detention or Imprisonment.

In fact, governments seeking an excuse for their omission may well argue that Part. I (6.1) of the Standard Minimum Rules for the Treatment of Prisoners precisely orders equal treatment to all prisoners and that no discrimination (and by implication—no special treatment)

shall be given to anyone on the ground among others of the "political or other opinion" of the prisoner.

In the Philippines, while political detainees believed to be of some rank in their organizations, have merited special treatment in terms of barracks and separate prison units, it is doubtful if the same was intended as an adherence to the rule that political detainees be afforded lenient treatment. Such special security arrangements, on the contrary, has at times proven disadvantageous not only to the detainees, but especially to relatives, friends and lawyers.

Torture committed on political detainees is also not uncommon in the Philippines. This is borne by available data whether the same be obtained from the Task Force Detainees of the Philippines (TFDP) or the government Commission on Human Rights. Political detainees are more "logical" candidates of torture because of the observation that: "Torture is most often used by governments as in integral part of their security strategy. If threatened by guerrillas, a government may condone torture as a means of exacting vital logistical information from captured insurgents. Torture is often used specifically to intimidate the victim and other potential dissidents, and to discourage them from further political activity . . . . Another reason is to obtain confessions as primary evidence against a detainee" (Amnesty International Report 1991, 25).

Political detainees, in comparison to those charged with common crimes (especially the affluent), will also encounter difficulty in seeking legal aid. In the Philippines, as well as in other countries, harassment and persecution of lawyers who make themselves available to political detainees has been prevalent. Here it has even gone beyond simple harassment. Between October 1987 and June 1989, seven Filipino lawyers handling human rights or politically related cases were killed. It is not too difficult therefore to understand why the majority of the members of the legal profession would shy away from politically colored cases. Not only are they not rewarding financially, they are also hazardous, professionally and physically.

And the litany can go on and on. Suffice it to say, that the foregoing, among others, leads to the conclusion that the Political offender is in fact discriminated against in comparison to the Common Criminal. The question to ask is—Why? That political detainees are not treated with the leniency dictated by previous court rulings; and that there is now a marked shift in attitude, though it may not offi-

cially be acknowledged, is more easily to observe as a reality and a fact, than to explain.

Uncertain, insecure, unstable, puppet regimes and client governments will avoid any exercise that will test, not just the innocence or guilt of a particular accused, but the "responsibility, morality, representation or legitimacy" of the system it represents, or its claim to power. The trials of political offenders pose this potential challenge questioning the very foundations, or some vital belief, of the regime. That they are feared and resented more than the common criminal is thus understandable.

Less sophisticated governments have simply eliminated their opposition. Others, especially those who proclaim lip service to the rule of law, have to device suitable means by which they could rid themselves of political dissenters with dispatch. In the Philippines, a convenient excuse to suppress dissent and dissenters and to justify the "special treatment" given them, is the doctrine of "national security." Underlying all the recent decisions of the Supreme Court which have rapidly diminished the value and vitality of constitutional rights is so-called "national security." And it comes in many guises.

Why do governments resort to state violence? In our society, the Philippines, state violence is not new. There were political detainees during the Spanish regime, during the U.S. regime, during the Japanese occupation, during "liberation," during "independence," during the Marcos regime, and recently. Torture, disappearances, extra-legal killings (salvaging), and hamletting were practiced then as they were practiced during the Marcos regime.

And the reason is simple enough: we were a colonial society then. We are still a neo-colonial society now. Then as very recently foreign power allied with our elite ruled our lives. Then as now ours was an export economy, satisfying the wants of foreigners and the rich, rather than the needs of our people. Then as now, the economy did not produce enough to meet both wants and needs, so the privileges of the wealthy and the powerful were threatened. Then as now, governments did not represent the poor and the have-nots. Then as now, using the tools of propaganda, elements in government wanted the military, the police and the people to believe that anyone who opposed the present system is a communist or communist sympathizer, and he should be denied his legal rights, though his criticisms might be well-founded. Put these circumstances together, mix them

well, and the product is state violence, the use of force to cow the people and coerce us into acquiescing to the iniquitous exactions of our "betters." How can there be peace without freedom, equality, justice and a respect for basic human dignity? How can there be peace if government continues to brutalize its people?

Diokno also provides the simple and obvious answer: "Against a united people, no force is strong enough to prevail. Not even state violence."

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