

LISTENING TO THE RESONANT VOICE OF THE PEOPLE

AN ANALYSIS AND COMMENTARY ON THE
FREEDOM OF ASSEMBLY

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“What then?... Who shall dare resist the people?
No, we will assemble in Convention; wholly
recall our delegated powers, or reform them so
as to prevent such abuse...”

– Edmund Pendleton

I. INTRODUCTION

Political rallies, conventions, opposition marches, freedom parades... these are examples of what we usually see in our public streets and thoroughfares. We, Filipinos are free to exercise all these things because it is enshrined in the Bill of Rights that, “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.*”¹

Going through the pages of the history of contemporary Philippines, the exercise by the people of the right of assembly and petition has played a significant role in reshaping our democratic landscape.

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¹ CONST. art. III, § 4.

Two Philippine Presidents² ended their reign through an unconventional means used by the Filipino people converging along the stretch of EDSA to shout in a resounding voice for them to relinquish their seat in Malacañan.

However, the freedom of assembly in order to protest sometimes conflicts with laws intended to protect public safety, even in democratic countries: in many cities, the police are authorized by law to disperse any crowd (including a crowd of political protesters) which threatens public safety, or which the police cannot control. The idea is to prevent rioting. Often local law requires that a permit must be obtained in advance by protest organizers if a protest march is anticipated; the permit application can be denied. Sometimes this bureaucratic power is abused by lawmakers if the protest is not a popular one in the community or with the local government, with the permit process in some cities taking a great deal of time, organization, and even money required before a permit is issued – and then, when issued, time and location restrictions are sometimes added.³

This conflict between governmental authorities and the people exercising their freedom is what is to be more understood in the light of the prevailing laws of the land. When does the legitimacy of the assembly begins and when does it ceases to be one? What does this right, enshrined in the Constitution, guarantee? How is this right regulated? These are just some questions that need to be more appreciated. On this note, let it be remembered that:

The expression of one's opinion or complaints need not only be limited to pure words. An individual with a grievance that needs to be articulated may find a more effective manner of having his message get across by associating

² Ferdinand Marcos in the 1986 EDSA People Power Revolution and Joseph Estrada in 2001 EDSA II.

³ http://en.wikipedia.org/wiki/Freedom_of_assembly (last accessed January 9, 2006).

and joining with others and expressing themselves in a collaborative manner and through a collective voice.⁴

This article will deal with the concept of freedom of assembly, its nature, the limitations, and the regulations pertaining to this freedom as applied in the Philippines. The salient points in the Public Assembly Act will be discussed as well as the significant Supreme Court decisions regarding the said subject matter will also be tackled. This article aims to impart a deeper appreciation of the concept of the freedom of assembly and petition.

II. ITS NATURE AND THE ESTEEM

The right to peaceably assemble is enshrined in the 1987 Constitution: “*No law shall be passed abridging the freedom of speech, of expression, or of the press, or of the right of the people peaceably to assemble and petition the government for redress of grievances.*”⁵ [Emphasis supplied]

It is the constitutional right – guaranteed by the First Amendment – of the people to gather peaceably for public expression of religion, politics, or grievances.⁶ Freedom of assembly is held to be a key right in liberal democracies, whereby citizens may form or join any political party, special interest group, or union without government restrictions.⁷

The State recognizes with great esteem this right of the people as an attribute of a democratic and free society. In the case of *US v. Bustos*⁸ the Supreme Court said that it is a “necessary consequence of

⁴ 1 R. GOROSPE, CONSTITUTIONAL LAW: NOTES AND READINGS ON THE BILL OF RIGHTS, CITIZENSHIP AND SUFFRAGE, 662 (2204).

⁵ *Supra*, note 1.

⁶ BLACK’S LAW DICTIONARY (2nd pocket ed. 2001).

⁷ *Supra*, note 3.

⁸ 37 PHIL. 731, at 742.

republican and democratic institutions.” The Court further held in the illustrative case of *Reyes v. Bagatsing*⁹ that freedom of assembly “is entitled to be accorded utmost deference and respect.” And in a country where liberty has been intensely fought, the State’s curtailment of the same may lead to drastic consequences and therefore should be given utmost respect. It should be noted, thus, that “in legal or political systems where rights tend to be ranked in a hierarchy, or “tiered”, such that some rights are considered more worthy of protection by the state than others, freedom of assembly is generally located on the top tier.”¹⁰

In the case of *PBM Employees Association v PBM*,¹¹ “...in the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; and such priority *gives these liberties the sanctity and the sanction not permitting dubious intrusions.*”

III. AS A TOOL OF POPULAR SOVEREIGNTY

The concept of freedom of assembly and petition, however, should not be confined purely on the right of the people to freely express their public views, opinions or concerns in an assemblage, nor on the right of the people to ventilate their grievances to the government. Far from being a purely academic exercise, it may be used as an effective means to abolish or overthrow a government.¹² The right of the people to assemble “does not simply protect the ability of self selected clusters of individuals to meet together; it also is an

⁹ 125 SCRA 553, at 561.

¹⁰ *Supra*, note 3.

¹¹ 51 SCRA 189, at 202; Emphasis supplied.

¹² As may be seen in the later discussion of the case *Estrada v. Desierto* 353 SCRA 452 (2001) regarding the exercise of the people of their freedom of assembly which led to the downfall of the Estrada presidency.

express reservation of the collective right of We, the People, to assemble in a future convention and exercise our sovereign right to alter or abolish our government.”¹³ In the words of Jean-Jacques Rousseau in his 1762 treatise on the social contract, “the sovereign can act only when *the people are assembled*.”¹⁴

The remark of President Edmund Pendleton at the Virginia Ratifying Convention is emphatic on this point:

We, the people, possessing all power, form of a government, such as we think will secure happiness: and suppose, in adopting this plan, we should be mistaken in the end; where is the cause of alarm on that quarter? In the same plan we point out an easy and quiet method of reforming what may be found amiss. No, but, say gentlemen, we have put the introduction of that method in the hands of our servant, who will interrupt it from motives of self-interest. What then?... Who shall dare resist the people? No, *we will assemble in Convention*; wholly recall our delegated powers, or reform them so as to prevent such abuse...¹⁵

When the right of the people to assemble is utilized for this gallant objective, it cannot be gainsaid that the people are but just exercising their popular sovereignty which rightfully belongs to them. “Whenever self-interested government actors abused their powers or shirked their duties, ‘the people’ could ‘assemble’ in convention and reassert their sovereignty.”¹⁶ Accordingly, “[T]he people have an indubitable, unalienable, and inalienable right to reform or change their Government...”¹⁷

¹³ A. R. AMAR, THE BILL OF RIGHTS 26 (1998).

¹⁴ *Id.* at 26 citing ROUSSEAU, DU CONTRAT SOCIAL ch. XII (1762).

¹⁵ *Id.* at 26. citing DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 449-50 (Jonathan Elliot ed. reprint ed. 1987).

¹⁶ *Id.* at 47

¹⁷ *Id.* at 27. as cited in 2 SCHWARTZ, THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 1027 (1971).

IV. THE COGNATE RIGHTS

In the words of Justice Isagani Cruz, he said in this wise:

The right of assembly is important to freedom of expression because public issues are better resolved after an exchange of views among citizens meeting with each other for the purpose. The public meeting is an effective forum for the ventilation of ideas affecting the common welfare. The size of these gatherings is an often dependable gauge of the people's support, or lack of it, for particular causes or candidates, and a barometer also of political climate in general.¹⁸

In discussing the freedom of assembly and petition, one cannot shun away from another equally significant freedom, that is, the "freedom of speech, of expression or of the press."¹⁹ The right of the people to peaceably assemble is a "complement of the right of free speech."²⁰ "Today, however, the right of peaceable assembly is, in the language of the Court, "cognate to those of free speech and free press and is equally fundamental.... [It] is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions – principles which the Fourteenth Amendment embodies in the general terms of its due process clause..."²¹ In the case of *Reyes*,²² citing the case of *American Supreme Court Thomas v. Collins*, the Court decreed:

Even prior to the 1935 Constitution, Justice Malcolm had occasion to stress that it is a necessary consequence of our republican institutions and complements the right of free speech. To paraphrase opinion of Justice Rutledge speaking for the majority of the *American Supreme Court Thomas v.*

¹⁸ I. CRUZ, CONSTITUTIONAL LAW 230 (2000).

¹⁹ *Supra*, note 1.

²⁰ *US v. Bustos, et. al, supra* note 8.

²¹ <http://supreme.lp.findlaw.com/constitution/amendment01/21.html> (last accessed January 5, 2006).

²² *Supra*, note 9, at 561.

Collins, it was not by accident or coincidence that the right to freedom of speech and of the press were coupled in a single guarantee with the and to petition the rights of the people peaceably to assemble and to petition the government for redress of grievances. *All these rights, while not identical, are inseparable.*²³

The jurisprudence laid down in the *Estrada v. Desierto*²⁴ also recognized the indispensability of both these cognate freedoms in a democracy. In discussing its crucial role in democratic institution, the High Court pronounced:

The indispensability of the people's freedom of speech and of assembly to democracy is now self-evident. The reasons are well put by Emerson: first, freedom of expression is essential as a means of assuring individual fulfillment; second, it is an essential process for advancing knowledge and discovering truth; third, it is essential to provide for participation in decision-making by all members of society; and fourth, it is a method of achieving a more adaptable and hence, a more stable community of maintaining the precarious balance between healthy cleavage and necessary consensus." In this sense, freedom of speech and of assembly provides a framework in which the "conflict necessary to the progress of a society can take place without destroying the society." In *Hague v. Committee for Industrial Organization*, this function of free speech and assembly was echoed in the *amicus curiae* brief filed by the Bill of Rights Committee of the American Bar Association which emphasized that "the basis of the right of assembly is the substitution of the expression of opinion and belief by talk rather than force; and this means talk for all and by all." In the relatively recent case of *Subayco v. Sandiganbayan*, this Court similarly stressed that "... it should be clear even to those with intellectual deficits that when the sovereign people assemble to petition for redress of grievances, all should listen. For

²³ Emphasis supplied.

²⁴ 353 SCRA 452 (2001), at 494.

in a democracy, it is the people who count; those who are deaf to their grievances are ciphers.”

From these court pronouncements, it can be gleaned that the complementary roles of the freedoms of assembly and of speech are essential in strengthening the democratic interplay not only between the State and its people; but also the people among themselves. This unbridled interchange is an authentication that the rewards of freedom and democracy are subsisting in a society. Continuous existence and development of the people’s liberty is assured by the constitutional guaranty in the exercise of these two cognate rights.

V. WHAT IS GUARANTEED

The Constitution is explicit that what it guarantees is the right of the people “*peaceably*”²⁵ to assemble. What it recognizes is a peaceful assembly. An assembly which orbits out of non-violence and order is not the one intended by the Constitution. Once violence, hostility or crimes characterize the assemblage, the protection of the Constitution cannot be availed. The Supreme Court in the case of *Reyes v. Bagatsing*²⁶ stated thus:

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 disorder or tumult attending a rally or assembly. Resort to force is ruled out and outbreaks of violence to be avoided.

An illustration of the guarantee of peaceful assembly may be seen in a case wherein the Supreme Court of the United States invalidated ordinance which prohibits “loitering” with one another or with other persons in any public place and allowing police authorities to break up groups of young people on street corners if they believed the gathering

²⁵ Emphasis supplied.

²⁶ *Supra*, note 9, at 563.

was gang-related. The Court held that absent any criminal intent a person cannot be punished for his innocent stay in a public place with others, it ruled in this wise:

Since the city cannot conceivably have meant to criminalize each instance a citizen stands in public with a gang member, the vagueness that dooms this ordinance is not the product of uncertainty about the normal meaning of “loitering,” but rather about what loitering is covered by the ordinance and what is not. The Illinois Supreme Court emphasized the law’s failure to distinguish between innocent conduct and conduct threatening harm. Its decision followed the precedent set by a number of state courts that have upheld ordinances that criminalize loitering combined with some other overt act or evidence of criminal intent. However, state courts have uniformly invalidated laws that do not join the term “loitering” with a second specific element of the crime.²⁷

The Supreme Court of the United States in another case had the occasion to emphasize that:

It is fundamental that our constitutions accord to the citizen of the United States the right of freedom of speech and of assembly and to peaceably petition for a redress of grievances. Such freedoms are jealously guarded and when exercised in good faith and in good order may not be lawfully interfered with by governmental action.

Controversies between citizens and governmental units are not unique. In nearly every instance there is a conflict in what the citizen contends he has a right to claim and the governmental entity which would deny the validity of such claim. The citizen may freely express his views and seek to cultivate converts to them with a view of bringing moral or political pressures on the officers of the public body to accord his demands. However, such means must be exercised in a manner that is reasonable and not harmful to the rights of others or the peace and good order of the commu-

²⁷ See *City of Chicago v. Morales*, 527 U.S. 41 (1999).

nity. Especially is this true when the controversy is one of public interest in which there are strong and emotional feelings on the part of a substantial number of persons in the community.²⁸

Of course, our Supreme Court is mindful of the possible consequences, when a group of individuals gather to present and ventilate their grievances to the government in a public assembly. The people would naturally be armed with strong convictions and resolute feelings and as a result, as noted by the Court in the same case of *Reyes*, citing the vintage case of *US v. Apurado*.²⁹

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 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 become a delusion and a snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest form of punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. It bears repeating that for the constitutional right to be invoked, riotous conduct, injury to property, and acts of vandalism must be avoided, To give free rein to one's destructive urges is to call for condemnation. It is to make a mockery of the high estate occupied by intellectual liberty in our scheme of values. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefore, but the utmost discretion must be

²⁸ *Dressner v. City of Tallahassee*, 375 U.S. 136.

²⁹ 7 PHIL 422 (1907), at 426.

exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising.

These discussions make it clear that the right that is constitutionally guaranteed and protected is that of peaceful and orderly assembly. It is the responsibility of the assembly leaders to police their own ranks and control the actions of their followers, such that neither violence nor crime would characterize the assembly; otherwise, the authorities may legally disperse them before it may lead to a public security concern, detrimental to the welfare of the rest of the public and the peace of society. Nevertheless, the authorities should be mindful that it is impracticable to expect that there will absolutely be no disorder that will smear the assembly for as what was said in *Apurado*, “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 irresponsible followers.” Moreover, “if instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefore, 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.”³⁰

VI. FREEDOM OF ASSEMBLY AND THE PENAL CODE

To strengthen this guaranty, Article 131 of the Revised Penal Code penalizes the *prohibition, interruption, and dissolution of peaceful meetings*, and imposes a penalty to any public officer or employee who, without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same; or hinder any person from joining any lawful association or from attending any of its meetings.

The article further provides that the same penalty shall be imposed upon public officers or employee who shall prohibit or hinder any person from addressing any petition to the authorities for the correction of abuses

³⁰ *Malabanan et al v. Ramento*, 129 SCRA 359, at 370.

or redress of grievances, whether such petitioning person is alone or together with others.

However, the Code also serves as a guard against the use of this freedom to the detriment public welfare. Thus, Article 146 of the Revised Penal Code punishes the crime of *illegal assemblies* and imposes a penalty to those organizers or leaders of any meeting attended by armed person for the purpose of committing any of the crimes punishable under the Penal Code, or of any meeting 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. But it is not only the organizers or leaders who are liable under the law; the law is explicit that persons who are merely present at such meeting shall also be punished.

Article 147 of the Penal Code, on the other hand, punishes *illegal associations* and provides for a penalty on founders, directors and presidents of associations totally or partially organized for the purpose of committing any of the crimes punishable under the Penal Code or for some purpose contrary to public morals. Mere members thereof shall also suffer a penalty.

VII. LIMITATIONS UNDER BATAS PAMBANSA BILANG 880

As a rule, “like other rights embraced in freedom of expression, the right to assemble is not subject to previous restraint or censorship.”³¹ Hence, “it may not be conditioned upon the prior issuance of permit or authorization from government authorities.”³² But the exercise of these freedoms may be subject to certain limitations and may thus be regulated by law. As said in the case of *Dressner*:³³

It is fundamental that our constitutions accord to the citizen of the United States the right of freedom of speech and of assembly and to peaceably petition for a redress of grievances. Such

³¹ I. CRUZ, CONSTITUTIONAL LAW 231 (2001).

³² A. NACHURA, OUTLINE REVIEWER: POLITICAL LAW 104 (2005).

³³ *Supra*, note 28.

freedoms are jealously guarded and when exercised in good faith and in good order may not be lawfully interfered with by governmental action. However, it is not a license to take into one's own hands the enforcement of law or by excessive harassment, effect coercion and acceptance of one's convictions and interpretations of legal rights by governmental entities whose policies are in conflict. Such procedures wholly ignore the very machinery provided by the constitutions and laws of the nation and state for the declaring, securing and enforcement of constitutional and other legal rights.

Moreover, it is said that this constitutional right is not to be treated as a promise that everyone is free to enjoy, unhampered and without restrictions; thus:

The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction. It is a non sequitur to say that First Amendment rights may not be regulated because they hold a preferred position in the hierarchy of the constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has definitely indicated the contrary.³⁴

A. PUBLIC ASSEMBLY AND PUBLIC PLACE

Batas Pambansa Bilang 880 or The Public Assembly Act of 1985³⁵ is the governing statute in the Philippines with respect to the regulation of the right to peaceably assemble. This law laid down the rules and procedures in the application and the granting of permits to rally. It recognizes nonetheless, "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

³⁴ *Poulos v. New Hampshire*, 345 U.S. 395 (1953).

³⁵ An Act the Free Exercise by the People of Their Right Peaceably to Assemble and Petition the Government for Other Purposes, Batas Pambansa Blg. 880 (1985) [hereinafter, BP 880].

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.”³⁶

Public Assembly

Under said law, Public Assembly has been defined as, “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.”³⁷

The law expressly excludes “the processions, rallies, parades, demonstrations, public meetings and assemblages for religious purposes” from the coverage of the law and states that “it shall be governed by local ordinances.”³⁸ However, the law mandates that the declaration of policy in *Section 2* shall be faithfully observed. Likewise, “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.”³⁹

Public Place

The law also defines the meaning of the word *public place* as it is used in the statute. It defines *public place* by inclusion, providing that it “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.”⁴⁰

³⁶ BP 880, § 2.

³⁷ BP 880, § 3, ¶ a.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ BP 880, § 3, ¶ b.

BP 880 is definitive of what public places shall include. But it is noteworthy to observe in the case of *United States v. Grace*,⁴¹ wherein an ordinance prohibits the display of any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement in the United States Supreme Court building or on its grounds, which are defined to include the public sidewalks constituting the outer boundaries of the grounds. The US Supreme Court resolved the issue on whether or not such prohibition violates the First Amendment clause and whether or not the term public place as used in the ordinance includes the sidewalks surrounding the SC building. The Court ruled:

Publicly owned or operated property does not become a “public forum” simply because members of the public are permitted to come and go at will. Although whether the property has been “generally opened to the public” is a factor to consider in determining whether the government has opened its property to the use of the people for communicative purposes, it is not determinative of the question. We have regularly rejected the assertion that people who wish “to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please.” There is little doubt that in some circumstances the government may ban the entry on to public property that is not a “public forum” of all persons except those who have legitimate business on the premises. The government, “no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated.”

The prohibitions imposed by 13k technically cover the entire grounds of the Supreme Court. That section describes the Court grounds as extending to the curb of each of the four streets enclosing the block on which the building is located. Included within this small geographical area, therefore, are not only the building, the plaza and surrounding promenade, lawn area, and steps, but also the sidewalks. The sidewalks comprising the outer boundaries of the Court grounds are indistinguishable from any other sidewalks in Washington, D.C., and we can discern no

⁴¹ 461 U.S. 171 (1983).

reason why they should be treated any differently. Sidewalks, of course, are among those areas of public property that traditionally have been held open to the public for expressive activities and are clearly within those areas of public property that may be considered, generally without further inquiry, to be public forum property. In *United States Postal Service v. Greenburgh Civic Assns.*, we stated that “Congress... may not by its own ipse dixit destroy the ‘public forum’ status of streets and parks which have historically been public forums...” The inclusion of the public sidewalks within the scope of 13k’s prohibition, however, results in the destruction of public forum status that is at least presumptively impermissible. Traditional public forum property occupies a special position in terms of First Amendment protection and will not lose its historically recognized character for the reason that it abuts government property that has been dedicated to a use other than as a forum for public expression. Nor may the government transform the character of the property by the expedient of including it within the statutory definition of what might be considered a nonpublic forum parcel of property.

The US Supreme Court concluded that, “The public sidewalks forming the perimeter of the Supreme Court grounds, in our view, are public forums and should be treated as such for First Amendment purposes.”⁴²

The Philippines Supreme Court also explained the nature of a public place in this wise:

There can be no legal objection, absent the existence of a clear and present danger of a substantive evil, on the choice of Luneta as the place where the peace rally would start. The Philippines is committed to the view expressed in the plurality opinion, of 1939 vintage, of Justice Roberts in *Hague v. CIO*: Whenever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from

⁴² *Id.*

ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied. The above excerpt was quoted with approval in *Primicias v. Fugoso*. Primicias made explicit what was implicit in *Municipality of Cavite v. Rojas*,⁴³ a 1915 decision, where this Court categorically affirmed that plazas or parks and streets are outside the commerce of man and thus nullified a contract that leased Plaza Soledad of plaintiff-municipality. Reference was made to such plaza “being a promenade for public use,” which certainly is not the only purpose that it could serve. To repeat, there can be no valid reason why a permit should not be granted for the proposed march and rally starting from a public park that is the Luneta.⁴³

In relation to the holding of the assembly in a public place, obviously, the local officials have the power to define the parameters over which they will perform the rallies or meetings, especially so when public thoroughfares are used to prevent public inconvenience. It may designate the route of the participants or reroute the vehicular traffic itself. The law states, “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.”⁴⁴

Nonetheless, the grant of such power and prerogative to the authorities does not empower them to strictly monitor the compliance of the participants to the designate route allowed by them by the authority,

⁴³ *Reyes v. Bagatsing*, *supra*, note 9.

⁴⁴ BP 880, § 7.

through the deployment of peace officers who will continually monitor the “potential effects” of their acts during the assembly. Doing so, is virtually restricting their freedom of action, thereby curbing their rights which they can legitimately exercise in the assembly, and may constitute a prior restraint which is frowned upon by the courts. This pronouncement of the US Supreme Court is at point.

[a]lthough this Court has recognized that a statute may be enacted which prevents serious interference with normal usage of streets and parks, ... we have consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places Even when the use of its public streets and sidewalks is involved, therefore, a municipality may not empower its licensing officials to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade, according to their own opinions regarding the potential effect of the activity in question on the “welfare,” “decency,” or “morals” of the community.⁴⁵

B. LICENSE – WHEN NOT REQUIRED

A permit to hold a public assembly is not necessary if the public assembly is to be done in any of the following areas: 1. a freedom park⁴⁶ duly established by law or ordinance; or 2. in private property, in which case only the consent of the owner or the one entitled to its legal possession is required; or 3. in the campus of a government-owned and operated

⁴⁵ *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969).

⁴⁶ See of BP 880 Section 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 of this Act.

educational institution which shall be subject to the rules and regulations of said educational institution.”⁴⁷

In all other instances and in all other places specified in Section 4 of the law, a permit is required before the staging of the assembly. If the assembly is to be held in a public place, a permit for the use of such place and not for the assembly itself may be validly required.

C. APPLICATION AND ACTION FOR PERMIT

When a permit is required, “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”⁴⁸ it 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.”⁴⁹

It is the duty of the local chief executive to grant, deny or modify the permit applied for, “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.”⁵⁰ He may be allowed to deny or modify the application on ground specified by law namely: first, when “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,”⁵¹ and second, “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.”⁵²

⁴⁷ BP 880 § 4.

⁴⁸ BP 880, § 5, ¶ c.

⁴⁹ BP 880, § 5, ¶ a.

⁵⁰ BP 880, § 5, ¶ d.

⁵¹ BP 880, § 6, ¶ a.

⁵² BP 880, § 6, ¶ c.

In deciding whether to grant or deny the application, the local chief executive must act with expediency. The law requires him to “act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted.”⁵³

The action on the permit shall be in writing and served on the applicant within twenty-four (24) hours.⁵⁴ The applicant may appeal the action taken by the mayor to an appropriate court of law⁵⁵ and in such a case the law mandates that the decision must be reached within twenty-four hours (24) hours.⁵⁶

VIII. MAXIMUM TOLERANCE v. CALIBRATED PREEMPTIVE RESPONSE

BP 880 mandates that the policy of maximum tolerance shall be observed by authorities during the public assembly or the dispersal of the same.⁵⁷ Complementary to this is the non-interference provision found in Section 9 of the law. It states as a general rule that “law enforcement agencies shall not interfere with the holding of a public assembly.” However, the provision includes a qualification that “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) meter away from the area of activity ready to maintain peace and order at all times.”⁵⁸

In addition to this, although ironic as it may sound, the demonstrators themselves may likewise seek the assistance of the peace officers. The law provides: “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

⁵³ BP 880, § 6, ¶ b.

⁵⁴ BP 880, § 6, ¶ d.

⁵⁵ BP 880, § 6, ¶ e.

⁵⁶ BP 880, § 6, ¶ g.

⁵⁷ BP 880, § 3, ¶ c.

⁵⁸ See *Ruiz v. Gordon*, 126 SCRA 233.

responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial.”⁵⁹

What sparked controversy is when the Office of the President issued the so-called “calibrated preemptive response” order⁶⁰ in dealing with mass actions and demonstrations. This incited certain groups in the society to question the legality of the same saying it violates the Constitution as it infringes their right to “peaceably assemble.” In a clarificatory statement the Office of the Executive Secretary said:

At the outset, allow us to emphasize that calibrated preemptive response is not an exercise of any emergency power by the Executive. Rather, it is the responsible and judicious use of means allowed by existing laws and ordinances to protect public interest and restore public order. An example would be the strict implementation of the “no permit, no rally” rule. Or the more active enforcement of existing

⁵⁹ BP 880, § 10.

⁶⁰ *Statement of Executive Secretary Eduardo Ermita: On unlawful mass actions*, released 9/21/2005

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.

We appeal to the detractors of the government to engage in lawful and peaceful conduct befitting of a democratic society.

The President’s call for unity and reconciliation stands, based on the rule of law.

warrants of arrest issued by the courts of law. Thus, it is not accurate to call “calibrated pre-emptive response” a new rule but rather a more pro-active and dynamic enforcement of existing laws, regulations and ordinances to prevent chaos in the streets.⁶¹

At first glance, the view of the Office of the Executive Secretary is correct. It is no less the duty of the Executive to implement the laws of the land, in this case, BP 880 which is the prevailing law on public assemblies; and it is correct to state likewise that the same is just a enforcement of the “no permit, no rally” policy of BP 880.

However, the President should execute the laws as it is. He is not allowed to substitute what he thinks is more correct, other than what has been provided for by law. It is also the mandate of the President to execute not only the “no permit, no rally” policy of BP 880, but also the other provisions of the said statute, specifically the “maximum tolerance” provision.

Nowhere in BP 880 can you find the words, “calibrated preemptive response.” This has not been the context of the law when it enshrined the “maximum tolerance” policy in dealing with demonstrations and mass actions, for certainly the two are in conflicting ideas. The former, leans more on a restriction and curtailment of freedom, while the latter is more a recognition of the same. And it is a rule in interpretation of laws that the courts frown upon an interpretation that restricts civil liberties. More so, an interpretation that grants more to freedom should prevail, than the one that hoards it.

It can also be seen that the order “calibrated preemptive response” is *in lieu*⁶² of the “maximum tolerance” policy. *In lieu*, as defined in Black’s Law Dictionary⁶³ is “instead of”; in exchange or return for.” This order of the President is a reprehensible act for the

⁶¹ INSIDE PCIJ: Stories Behind Our Stories, <http://www.pcij.org/blog/?p=445> (last accessed January 9, 2006), as cited.

⁶² See Statement of Executtive Secretary, *supra*, note 60.

⁶³ *Supra*, note 6.

reason that it is an encroachment of legislative powers Congress because it amends, alters and modifies what is provided for in BP 880 that “maximum tolerance” should be observed. It is a basic rule that a law such as the BP 880, can only be amended by legislation and not by some order originating from the desk of the Office of the President. Unless the Congress acts on the law, the President has no option but to execute BP 880 as it is worded.

IX. REGULATION NOT PROHIBITION

Our Supreme Court and the Supreme Court of the United States recognize the constitutionality of the power of the state to regulate the freedom of assembly. However, it is emphasized that such power is limited only to regulation. The case of *Reyes v. Bagatsing*⁶⁴ is illustrative of the power of local officials in this regard. It is only one of regulation and not prohibition. “This means they cannot altogether bar the use of public places for lawful assemblies; the most they can do is indicate the time and conditions for their use.”⁶⁵ In the said case, the Mayor of Manila denied the application for permit of petitioners to hold a peaceful march and rally starting from the Luneta, a public park, to the gates of the United States Embassy to express their anti-US Military Bases sentiments. The Supreme Court of the Philippines discussed the nature power of government authorities to regulate the freedom of assembly through the *ponencia* of C.J. Fernando, thus:

Neither can there be any valid objection to the use of the streets, to the gates of the US Embassy, hardly two block-away at the Roxas Boulevard. *Primicias v. Fugoso* has resolved any lurking doubt on the matter. In holding that the then Mayor Fugoso of the City of Manila should grant a permit for a public meeting at Plaza Miranda in Quiapo, this Court categorically declared: “Our conclusion finds support in the decision in the case of *Willis Cox vs. State of New Hampshire*, 312 U.S., 569. In that case, the statute of New Hampshire

⁶⁴ *Supra*, note 9, at 564.

⁶⁵ I. CRUZ, *supra* note 17, at 231.

P. L. chap. 145, section 2, providing that ‘no parade or procession upon any ground abutting thereon, shall ‘De [sic] permitted unless a special license therefore shall first be explained from the selectmen of the town or from licensing committee,’ was construed by the Supreme Court of New Hampshire as not conferring upon the licensing board unfettered discretion to refuse to grant the license, and held valid. And the Supreme Court of the United States, in its decision (1941) penned by Chief Justice Hughes affirming the judgment of the State Supreme Court, held that ‘a statute requiring persons using the public streets for a parade or procession to procure a special license therefore from the local authorities is not an unconstitutional abridgment of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance of licenses, to a consideration of the time, place, and manner of the parade or procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse license, ...’ Nor should the point made by Chief Justice Hughes in a subsequent portion of the opinion be ignored, “Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestricted abuses.

The Court continued stating that:

The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection.

X. THE ESTRADA *v.* DESIERTO CASE

In the celebrated case of *Estrada v. Desierto*,⁶⁶ as earlier said, the freedom of assembly was used as an effective tool in modifying or overthrowing the government. This is the fate that came to pass former President Joseph Estrada,⁶⁷ in the event popularly known as EDSA II, and led to the assumption of the then Vice-President Gloria Macapagal-Arroyo⁶⁸ to the seat of the Philippine Presidency. The Supreme Court compared what happened during the 1986 EDSA People Power Revolution, which ended the regime of former President Ferdinand Marcos,⁶⁹ and the events of the so-called EDSA II of January 2001, which toppled President Joseph Estrada:

The government of former President Aquino was the result of a successful revolution by the sovereign people, *albeit* a peaceful one. No less than the Freedom Constitution declared that the Aquino government was installed through a direct exercise of the power of the Filipino people “in defiance of the provisions of the 1973 Constitution, as amended.” It is familiar learning that the legitimacy of a government sired by a successful revolution by people power is beyond judicial scrutiny for that government automatically orbits out of the constitutional loop. In checkered contrast, the government of respondent Arroyo is not revolutionary in character. The oath that she took at the EDSA Shrine is the oath under the 1987 Constitution. In her oath, she categorically swore to preserve and defend the 1987 Constitution. Indeed, she has stressed that she is discharging the powers of the presidency under the authority of the 1987 Constitution.

In fine, the legal distinction between EDSA People Power I and EDSA People Power II is clear. EDSA I involves the exercise of the people power of revolution which overthrew

⁶⁶ *Supra*, at note 24.

⁶⁷ Thirteenth President of the Republic of the Philippines (1998-2001).

⁶⁸ Fourteenth President of the Republic of the Philippines (2001-present).

⁶⁹ Tenth President of the Republic of the Philippines (1965-1986).

the whole government. EDSA II is an exercise of people power of freedom of speech and *freedom of assembly to petition the government for redress of grievances*⁷⁰ which only affected the office of the President. EDSA I is extra constitutional and the legitimacy of the new government that resulted from it cannot be the subject of judicial review, but EDSA II is intra constitutional and the resignation of the sitting President that it caused and the succession of the Vice President as President are subject to judicial review. EDSA I presented political question; EDSA II involves legal questions...

This pronouncement of the Court is acknowledgment not only of the nature of the freedom of assembly as a means to petition the government for the redress of grievances, but also freedom of assembly as an instrument for asserting popular sovereignty to overthrow or change the government.

XI. THE TESTS OF LEGITIMACY

There are two (2) tests recognized in ascertaining whether the assembly is legitimate or not. The first of these tests is the Purpose Test – the validity of the curtailment of the freedom of assembly is determined by the purpose for which the assembly is held – as illustrated in the case of *De Jonge v. Oregon*.⁷¹ In that case, the petitioner was convicted with the violation of Criminal Syndication Law of the State of Oregon for having participated in a meeting of a Communist Party allegedly advocating criminal syndicalism and sabotage. The US Supreme Court reversed the judgment of conviction by applying the purpose test. It ruled that the freedom of the people under the First Amendment is guaranteed and cannot be curtailed by the State unless such freedom is exercised abusively. It rationalized thus:

⁷⁰ Emphasis supplied.

⁷¹ 299 U.S. 353.

It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is *not as to the auspices under which the meeting is held but as to its purpose*;⁷² not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

The second of these tests is the Auspices Test. Under this test, the legitimacy of the assembly is determined as to the auspices under which the meeting is held. This kind of test looks more on the sponsorship of the assembly or for whose benefit or patronage is the meeting being held. Therefore, if the group holding the assembly is an illegal association, their right to assemble may be curtailed for the interest of the State. This is the test that was applied by our Supreme Court in the case of *Evangelista v. Earnshaw*.⁷³ In this case, the Mayor of Manila denied the plaintiff's petition and prohibited all kinds of meetings held by the Communist Party throughout the city, because he had revoked their permits and licenses; that consequently of the plaintiff who is the president of the Communist Party of the Philippines asked for a mandamus and questioned the action of the mayor

⁷² Emphasis supplied.

⁷³ 57 PHIL 255, at 260.

arguing that it is an infringement of their constitutional right. The Supreme Court, applying the auspices test ruled in favor of the Mayor of Manila. It held:

It will be readily seen that the doctrines and principles advocated and urged in the constitution and by-laws of the said Communist Party of the Philippines, and the speeches uttered, delivered, and made by its members in the public meetings or gatherings, as above stated, are highly seditious, in that they suggest and incite rebellious conspiracies and disturb and obstruct the lawful authorities in their duty.

Considering the actions of the so-called president of the Communist Party, it is evident that he cannot expect that the defendant will permit the Communist Party to hold meetings or parades in the manner herein described.

Instead of being condemned or criticized, the respondent mayor should be praised and commended for having taken a prompt, courageous, and firm stand towards the said Communist Party of the Philippines before the latter could do more damage by its revolutionary propaganda and by the seditious speeches and utterances of its members.

XII. CONCLUSION

As a conclusion, it is noteworthy to quote the statement of the Supreme Court, thru C.J Fernando, in the case of *Reyes v. Bagatsing*,⁷⁴ thus:

By way of a summary 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

⁷⁴ *Supra*, note 9.

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, 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. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitously termed by Justice Holmes “as the sovereign prerogative of judgment.” 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.

This statement of the Court says, how in summary, the freedom of assembly works in this country. Often times, the governmental authorities and the demonstrators are in conflict. Not only that this is to be expected when people publicly assemble, but more so, because too frequently, this assemblage is directed towards the government itself for the dissatisfaction the people experience, the feeling of being aggrieved and short-changed, or when the people feels that officials abuse their powers which they demand should be rectified. To what other means can the people convey their pleas to authorities – who, habitually blind themselves and instinctively become deaf once they sat in office, to the complaints of the public – but by joining and associating with others and collectively exclaim their petitions. The voice of three men assembled is as resonant as the voice of a multitude of three thousand.

The “calibrated preemptive response” policy in lieu of “maximum tolerance” should be viewed with disdain and scorn, not only because it virtually amends the law but also because it may be prone to abuse by officers implementing the same and thereby curtail the right of the people to peaceably assemble. The provisions of BP 880 or the Public Assembly Act is sufficient a regulation of the freedom of the people to peaceably assemble.

The democratic state, like the Philippines, when it sees people on the streets, gathered in a convention, assembly or meeting; should in one way or another, be appreciative; for it is an assertion that freedom and democracy is alive. Of course, the State has the prerogative to regulate the same when the assembly starts to develop into violence, or when it is used for an unlawful and illegitimate objective. But authorities should bear in mind that when they are gathered, these individuals are collectively exercising popular sovereignty and that the State should be mindful of the interrogative: *“Who shall dare resist the people?”*⁷⁵

⁷⁵ *Supra*, note 15.