

Also one must consider here the relative priority of the various constitutional provisions. The governor is empowered by Article 8 to suppress insurrection, and yet it may be that certain civil disorders cannot be put down without ignoring some present laws. One may argue that "suspension of the laws" is not forbidden in the instance when a governor acts reasonably to overcome a danger to the community with which the ordinary civil powers cannot cope. The courts before have used such a principle of necessity and self-preservation to carve out an exception to a seemingly absolute constitutional prohibition. One example is the "clear and present danger" doctrine exception to the First Amendment's guarantee of free speech.

Furthermore, Article 9 itself intends that the "execution of Laws" shall not be suspended. This is an added indication that a limited military rule used to execute the laws is proper when the situation requires it, even though some laws for a period are held in abeyance. Civil violence, according to its severity, may necessitate immediate action by the militia to enforce the law of domestic order; force must meet force and the rioter in the streets may not seek shelter for his deeds in Article 9.

As one writer has analyzed:

"The basic principle of [military rule] . . . is nothing more than an ancient principle of the common law, namely, that force to whatever extent is reasonably necessary may be used to repress unlawful force."²⁸

Article 44 of the Declaration of Rights provides:

"That the provisions of the Con-

stitution of the United States, and of this State, apply, as well in time of war, as in time of peace, and any departure therefrom, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism."

Article 44 is a creature of the 1867 Constitution and arose apparently from Civil War transgressions of personal rights. It embodies what Judge Niles termed "little more than a . . . point of view from which the court is expected to look at any particular concrete question."²⁹ The only statement from the Court of Appeals upon the "point of view" of Article 44 appears in the concurrence of three members to a depression-days decision holding that an equity court could not deny enforcement to a mortgage agreement solely because the price seemed insufficient. Article 44 was said to recognize that "it is in times of emergency, stress, and violence that we need the whole strength of an unbroken constitution to save us from destruction."³⁰

It is therefore suggested that the present purpose of the Article is, at heart, to guarantee due process and other constitutional rights such as freedom of contract during the season of depression and violence as well as in days of bounty and order.

Reference should be made to the subsequent discussion of the United States Supreme Court position that the courts will review a justification for military rule to determine whether it squares with the principle of due process. Article 44 seems not to prohibit military rule, but only to preserve constitutional rights during its continuance.

²⁸ NILES, *supra* at 7.

³⁰ Kenly v. Building Assn., 166 Md. 182, 194 (1934).