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**Law and Newly Restored Democracies:
The Philippines Experience
in Restoring Political Participation
and Accountability**

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PREFACE

The evolution of the market-oriented economy and the increase in cross-border transactions have brought an urgent need for research and comparisons of judicial systems and the role of law in the development of Asian countries. Last year, in FY 2000, the Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) conducted legal researches in Asian countries with two main themes. The first theme was to figure out the role of law in social and economic development and the second was to survey the judicial systems and the ongoing reform process thereof. We organized joint research projects with research institutions in Asia and had a roundtable meeting entitled “Law, Development and Socio-Economic Change in Asia” in Manila. The outcomes of the joint researches and the meeting were published in March 2001 as *IDE Asian Law Series No. 1-10*.

This year, in FY 2001, based on the last year’s achievement, we established two research committees: the Committee on “Law and Political Development in Asia” and the Committee on “Dispute Resolution Process in Asia”. The former committee focused on legal and institutional reforms following democratic movements in several Asian countries. Since late 1980s many Asian countries have experienced drastic political changes by the democratic movements with mass action, which have resulted in the reforms of political and administrative system for ensuring the transparency and accountability of the political and administrative process, human rights protection, and the participation of the people to those process. Such reforms are essential to create the stability of the democratic polity while law and legal institutions need to function effectively as designed for democracy. The latter committee conducted a comparative study on availability of the court system and out-of-court systems (namely Alternative Dispute Resolutions), with the purpose of determining underlying problems in the courts. As social and economic conditions drastically change, Asian countries face challenges to establish systems for fairly and effectively resolving the variety of disputes that arise increasingly in our societies. For dispute resolution, litigation in the court is not the only option. Mediation and arbitration proceedings outside the courts are important facilities as well. In order to capture the entire picture of dispute resolution systems, a comprehensive analysis of both the in- and out-of-court dispute resolution processes is essential.

In order to facilitate the committees' activities, IDE organized joint research projects with research institutions in seven Asian countries. This publication, titled *IDE Asian Law Series*, is the outcome of research conducted by the respective counterparts. This series is composed of papers corresponding to the research themes of the abovementioned committees, i.e. studies on law and political development in Indonesia, the Philippines and Thailand, and studies on the dispute resolution process in China, India, Malaysia, the Philippines, Thailand and Vietnam. The former papers include constitutional issues that relate to the recent democratization process in Asia. Studies conducted by member researchers investigated the role of law under those conditions while taking up such subjects as rule of law, impeachment, Ombudsman activities, human rights commissions, and so on. The latter papers include an overview of dispute resolution mechanisms for comparative study, such as court systems and various ADRs, as well as case studies on the dispute resolution process in consumer, labor and environmental disputes.

We believe that this work is unprecedented in its scope, and we hope that this publication will make a contribution as research material and for the further understanding of the legal issues we share.

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TABLE OF CONTENTS

Preface	i
Contributors	iii
Table of Contents.....	v
Introduction	1
	<i>Raul C. Pangalangan</i>
Chapter One “Anointing Power with Piety”: People Power, Democracy and the Rule of Law	
	<i>Raul C. Pangalangan</i>
I. Organization	7
II. Brief Constitutional History	8
A. Malolos Constitution	8
B. U.S. “organic acts”	8
C. 1935 Constitution	9
D. 1973 Constitution	9
E. Cory’s Freedom Constitution	11
F. The current 1987 Constitution.....	12
III. Institutionalization of “Direct Democracy” after EDSA 1	12
IV. A Bogus People’s Initiative to Amend the Constitution	13
V. Factual Framework of EDSA 2	15
VI. Reconciling EDSA 2 with Constitutional Traditions	17
VII. The State of Philippine Constitutional Discourse	20
Conclusion.....	21
Chapter Two Democratization of the Legislative Executive, and Judicial Departments of Government	
	<i>Carmelo V. Sison</i>
Introduction	23
I. The Legislative Department	23
II. The Executive Department	31
III. The Judicial Department.....	40
Summary.....	45
References	47

Chapter Three The Revolution After EDSA: Issues of Reconstruction And People Empowerment

Florin T. Hilbay

Introduction	49
I. The People Power Constitution	51
A. Proportional Representation in the House of Representatives	53
B. Initiative and Referendum	59
C. The Ombudsman.....	62
II. People Power Legislation	67
A. The Local Government Code.....	67
B. The Code of Conduct and Ethical Standards Law.....	75
Conclusion.....	77

Chapter Four Human Rights in the Philippines: Restoration, Recognition and Institutionalization

Ibarra M. Gutierrez III

Introduction	79
I. Recognition and Reform.....	81
II. Institutionalized Protection	82
III. The Limits of Hope.....	85
IV. Broader Guarantees	89
V. Defending the Marginalized	93
Conclusion.....	95

APPENDIX.....	95
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**LAW AND NEWLY RESTORED DEMOCRACIES:
THE PHILIPPINE EXPERIENCE IN RESTORING POLITICAL PARTICIPATION
AND ACCOUNTABILITY**

AN INTRODUCTION

by

Raul C. Pangalangan

This collection looks at the problems of emerging democracies and transition governments as they struggle to restore constitutional mechanisms for political participation and accountability. The Philippine experience presents an excellent test case. On one hand, in 1986, it emerged from fourteen years of Marcos rule, determined to restore democracy and human rights, while addressing the welfare and redistributive welfare claims of a people mired in poverty. Cory Aquino enshrined those aspirations in its 1987 Constitution, creating explicit guarantees in its Bill of Rights and social justice clauses; institutionalizing check-and-balance mechanisms; constitutionalizing “People Power”, the peaceful but extra-legal exercise of the sovereign power. That framework has been sorely tested over the years: by military *coup* attempts borne by impatience with the slowness of democratic decision-making; by politicians manipulating democracy itself and projecting their machinations as the people’s will; and, most recently, by “People Power” itself, as impatient multitudes demanded successfully the ouster of President Joseph (Erap) Estrada. These four essays look at the heroic struggle to translate democratic aspirations into workable frameworks, and the ironies of juridifying the political and freezing into formal institutions the free and ever flowing energies of a democratic people.

In the essay “*Anointing Power with Piety*”: *People Power, Democracy and the Rule of Law*, I examine the “classic tension between constitutionalism and the raw power of mass struggles”, using our experiences with “People Power” in ousting Marcos and restoring democracy, and in ousting Erap and testing our democratic institutions.

I begin with a brief survey of our constitutional history, and examine the dilemma of following the rules strictly *vis-à-vis* following the peoples' will. This dilemma was fully articulated in three episodes in our constitutional history, in which the democratic forces, significantly, took different positions. In the case involving the ratification of the Marcos constitution in 1973, the Supreme Court applied the political test, i.e., whether the people had accepted the new constitution, rather than the legal text, i.e., whether they ratified that constitution in a proper plebiscite – and the democrats vehemently objected. In the next episode, involving Cory Aquino's interim and "revolutionary" Freedom Constitution, the political prevailed over the legal, but this time the democrats loudly applauded. Next, when some politicians manipulated a bogus "people's initiative" to lift term-limits and thus extend themselves in power, the Court applied a strict legal standard, to the delight of Filipino democratic forces.

The most recent, by no means final, episode is the ouster of President Erap through "People Power" protests, which showcases most starkly the Filipino constitutionalist's dilemma. On one hand, a sitting President can be ousted only through his voluntary resignation, or his conviction after an impeachment trial. There was neither an express resignation nor a conviction in Erap's case. Yet widespread protests had made it impossible for him to govern, notwithstanding that his electoral mandate remained and that he continued to enjoy the support of a disorganized, largely inarticulate mass. The essay discusses how the Philippine constitutional order balanced the competing claims between the rule of law and democratic governance.

In the essay *Democratization of the Legislative, Executive and Judicial Departments of Government*, Professor Carmelo V. Sison examines how the principle that the Philippines is "a democratic and republican state" is actualized through both direct democracy and through representative government.

He traces the history of the legislature as "a barometer and an enabler of democracy", as antidote to the "despotic and unaccountable" governance. In response to

the excesses of presidential power under Marcos, the 1987 Constitution has strengthened Congress, and enhanced its power over the public purse and its investigative powers.

The Congress is made even more widely representative, by providing for the election of “party-list representatives”, who run not as candidates of the traditional political parties, but are voted upon as representatives of marginalized sectors who otherwise remain under-represented in the ordinary electoral process, e.g., sectors such as labor, the peasantry, urban poor, indigenous cultural communities, women and the youth.

Another set of reforms heightens the congressmen’s “fidelity to the public trust” and the fiduciary nature of their office. They are required to declare their wealth, and disclose conflicts of interest arising from pending laws. Their traditional power to dispense patronage through “pork barrel” is now constrained by accounting rules – the accounting books to be accessible to the public and to be audited by the independent Commission on Audit – to guard against abuse and the use of public moneys for private purposes. Finally, the legislature, a *representative* body, is subjected to the people’s *direct* power of “initiative and referendum” to propose laws.

Professor Sison also examines the challenge of democratizing the executive branch, where power is in its essence reposed in “just one person, the President of the Philippines”, and who is alone is elected, everybody else in the executive branch theoretically acting solely on his behalf. The president’s power encompasses the “awesome responsibility” and the “plenitude of authority” actually reposed in the executive’s power “to enforce and administer the laws.” Having stated earlier that the 1987 Constitution was a response to executive excesses under Marcos, Professor Sison identifies the “structural limitations” placed on the president’s powers: *first*, the term-limit confiding him to a single six-year term; *second*, clearer rules on presidential succession, including disclosure of the incapacitating illness of the president; *third*, a ban on multiple positions by the President and his Cabinet; *fourth*, rules to preclude conflicts of interests, arising from outside professional, business or financial interests by the President and his Cabinet; *fifth*, an anti-

nepotism rule which bans the President from appointing his relatives to powerful and lucrative offices; *sixth*, and most significantly, strict substantive and procedural constraints on the commander-in-chief clause and the President's power to declare a state of emergency.

Finally, Professor Sison examines the place of judicial power in democratic governance. He begins with the expanded scope of judicial power, i.e., to review just about any grave abuse of power by government, an obvious response to judicial timidity, if not complicity, during the Marcos years. He also examines the structural mechanisms for judicial independence from the political branches of government. The new Constitution provides for the courts' fiscal autonomy from the Congress (which controls the purse) and the executive (which drafts the budget and disburses funds). It further insulates the courts from partisan politics by vetting judicial appointments through an appointive Judicial and Bar Council, in place of congressional confirmation hearings.

In the essay *The Revolution After EDSA: Issues of Reconstruction and People Empowerment*, Professor Florin T. Hilbay builds upon this framework in "re-scaling [] the balance of power between the people and their representatives." In his conceptual framework, there are horizontal and vertical axes in structuring the mechanisms of political accountability. Horizontally, the tripartite division of power among co-equal branches of government was restored, producing a weaker president and a strengthened judiciary. Vertically, however, democracy was institutionalized *first*, through clauses which allow the people to exercise political power more directly, and *second*, through a powerful Ombudsman – "champion of the citizen, eyes and ears of the people, super lawyer-for-free of the oppressed and the downtrodden" – side-by-side with an enhanced Code of Conduct for Public Officials, a law adopted by the first Congress after the fall of Marcos.

Professor Hilbay looks at the thorny problems arising from the "party-list" system of ensuring sectoral representation in Congress. He looks at Supreme Court decisions

which define the proper ratio between the party-list representatives of marginalized sectors, on one hand, and the regular congressman elected by political majorities, on the other. He also looks at another decision laying down the principle that the only bona fide party-list representatives are those who represent the marginalized and under-represented groups.

He further looks at how local governments have brought political power closer to the affected communities. The Constitution has strengthened local autonomy, whereby state functions are devolved to local governments. It further enables these constituencies to exercise the direct power to recall public officials, that is to say, to unseat the people they have elected.

In the essay *Human Rights in the Philippines: Restoration, Recognition and Institutionalization*, Professor Ibarra Gutierrez III examines how President Corazon Aquino harnessed both international and domestic law to ensure that the democratic gains of the newly restored democracy will endure. Fresh from the human rights nightmare under the heavily militarized years under Marcos, Cory Aquino ratified key international treaties on human rights, as it were, a virtual insurance policy for liberty during that turbulent season when Aquino was under siege from periodic *coup* attempts. Aquino also called for the drafting of a new constitution to institutionalize democracy. The result, the 1987 Constitution, showcases what Professor Gutierrez calls “innovations” in democratic experimentalism. It contained a strong Bill of Rights, protecting rights traditionally called “civil and political”, and a completely new article on “Social Justice and Human Rights”, protecting rights traditionally called “economic, social and economic.” Finally, it created a new, independent Commission on Human Rights.

Professor Gutierrez discusses the strengths and weaknesses of such a Commission. He recognizes the creation of a national human rights commission as a “milestone” in human rights advocacy. On the other hand, he also speaks of “the limits of hope”, as he

examines the Supreme Court decisions which have constricted the scope of the Commission's work.

Finally, Professor Gutierrez discusses the "broader guarantees" for human dignity, which address the needs of the marginalized sectors, e.g., labor, farmers and the urban poor, which entail a legal framework for economic redistribution.

CHAPTER ONE

“ANOINTING POWER WITH PIETY”¹: PEOPLE POWER, DEMOCRACY AND THE RULE OF LAW

*Raul C. Pangalangan*²

The ouster of Philippine President Estrada was peaceful though barely constitutional, but for a careful patchwork of legal arguments. Is the “People Power” overthrow of unwanted leaders a step *forward* in “democratic experimentalism”, or a step *backward* for the rule of law so instrumental in constraining business and feudal elites?

The classic tension between constitutionalism and the raw power of mass struggles finds a fresh setting in the downfall of President Joseph Estrada (hereinafter, “Erap”), following civilian protests coupled with passive military support and induced economic paralysis. What is the place of law in democratic governance, in a newly restored democracy where political institutions are weak, business elites strong, and the Church even stronger? What is the role of constitutions in political transitions?

I. Organization

The current Philippine Constitution was the fruit of the first “People Power” revolution led by Cory Aquino which ousted the Marcos regime in February 1986 (hereinafter, EDSA 1, named after the major road in Metro Manila where the protests converged) through a peaceful uprising which relied upon the moral indignation of a concerned citizenry. After EDSA 1, the Philippines constitutionalized “people power”, the direct but peaceful exercise of the will of the sovereign people. The second “People Power” (hereinafter, EDSA 2) led to the ouster of President Erap by Gloria Macapagal-

¹ ROBERTO UNGER, POLITICS (1990).

Arroyo in January 2001. In May 2001, Erap's supporters, typically poor and uneducated, converged on EDSA and marched to the presidential palace, asking for their hero's return (hereinafter, EDSA 3), committing acts of violence which compelled Arroyo to declare a "state of rebellion."³

In this paper, *first*, I will situate EDSA 2 within the constitutional history of the Philippines, more specifically, vis-à-vis the virtually bloodless transition from the Marcos regime to Cory Aquino's democracy; *second*, I will examine the factual and constitutional framework for EDSA 2; and *third*, I will look at the implications of EDSA 2 for the future of democratic and rule-based governance in the Philippines.

II. Brief Constitutional History

A. Malolos Constitution

Philippine Constitutional history has bifurcated beginnings. One line begins and ends with the Malolos Constitution of 1899⁴, which established a parliamentary government with an express bill of rights. The Malolos charter was adopted during that brief interval in early 1899 between the triumph of our revolution for independence against Spain, and the outbreak of the Spanish-American War, and subsequently, the continuation of the Philippine war of independence, this time against the United States, in the Philippine-American War.⁵

B. U.S. "organic acts"

The other line begins with the "organic acts" by which the triumphant U.S. forces governed the "new territories", e.g., Cuba, Puerto Rico and the Philippines, starting with

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³ Proclamation No. 38, Declaring a State of Rebellion in the National Capital Region (1 May 2001).

⁴ THE LAWS OF THE FIRST PHILIPPINE REPUBLIC (THE LAWS OF MALOLOS, 1898-1899) (Sulpicio Guevara, ed., National Historical Institute, Manila, 1972) at 88.

⁵ CESAR A. MAJUL, THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION (Univ. of the Philippines, Quezon City, 1967).

President William McKinley's famous Instructions to the Second Philippine Commission⁶ (as commander-in-chief), the subsequent executive and legislative "charters" for the Philippine Islands, culminating with the 1916 Jones Law which allowed the colony to write its own constitution in preparation for independence. The most significant characteristic of these organic acts were express guarantees of rights to the natives, and the creation of institutions for representative government.

C. 1935 Constitution

Accordingly, the 1935 Constitution was drafted by Filipinos and, as required, approved by the U.S. Congress. It was a faithful copy of the U.S. Constitution, with a tripartite separation of powers and, again, an express bill of rights. The 1935 Constitution is the charter that was in force the longest, from 1935 until 1973 when it was "killed" after Marcos declared martial law. By that time, that Constitution had provided a textbook example of liberal democracy: periodic elections for the president and a bicameral congress; a vigorous free press; a free market, hortatory clauses on social justice for the poor and disadvantaged. Its biggest challenge came from the social ferment and the student movement of the mid-1960s, articulated by the campus Left, a straightforward critique of the legal fictions of the liberal state.

D. 1973 Constitution

Marcos, then on his second and last term as President, initiated the re-drafting of the 1935 Constitution. Beset by Left-inspired student protests and by a countryside Maoist rebellion, he suspended the writ of habeas corpus in 1971⁷ and altogether declared martial law in 1972.⁸ By January 1973, a tired but pliant nation approved the new Constitution⁹, changing our presidential into a parliamentary government and which provided a transition period that allowed Marcos to concentrate powers in himself.

⁶ VICENTE V. MENDOZA, FROM MCKINLEY'S INSTRUCTIONS TO THE NEW CONSTITUTION: DOCUMENTS ON THE PHILIPPINE CONSTITUTIONAL SYSTEM (Central Lawbook, Quezon City, 1978), at 65.

⁷ *Lansang v. Garcia*, G.R. L-33964, 42 SCRA 448 (11 December 1971).

⁸ Proclamation No. 1081, Proclaiming a State of Martial Law in the Philippines (21 September 1972).

⁹ Proclamation 1102, Announcing the Ratification by the Filipino People of the 1973 Constitution (17 January 1973).

The bogus ratification of the 1973 Constitution was challenged before the Supreme Court. In *Javellana v. Executive Secretary*¹⁰, the Court found that that the Constitution had not been ratified according to the rules but that the people had acquiesced to it. What the rules required was the approval by the people in a plebiscite wherein voters cast their ballots. What Marcos arranged was for a mere show of hands in so-called “peoples’ assemblies”, where people were supposedly asked: “Do you approve of the new Constitution? Do you still want a plebiscite to be called to ratify the new Constitution?”. The people allegedly having acquiesced to the new government, the Supreme Court declared it a political question and stated: “There is no further judicial obstacle to the new Constitution being considered in full force and effect.” The sovereign people is the fount of all authority, and once the people have spoken, the Courts are not in a position to second-guess that judgment.

Regardless of the modality of [ratification] – even if it deviates from ... the old Constitution, once the new Constitution is ratified ... by the people, the Court is precluded from inquiring into the validity of those acts. (Makasiar, separate opinion)

If they had risen up in arms and by force deposed the then existing government ... there could not be the least doubt that their act would be political and not subject to judicial review. We do not see any difference if no force had been resorted to and the people, in defiance of the existing Constitution but peacefully... ordained a new Constitution. (Makalintal and Castro, separate opinion) (emphases supplied)

In 1976, Marcos had this 1973 Constitution amended making him a one-man legislature, and in 1981, he fully “constitutionalized” his government by further amending the Constitution and declaring a “new” republic altogether¹¹.

¹⁰ G.R. No. 36142, 50 SCRA 30 (31 March 1973).

¹¹ Proclamation No. 2045, Proclaiming the Termination of the State of Martial Law (17 January 1981).

On 21 August 1983, Ninoy Aquino was executed upon landing at the Manila International Airport and his death triggered off nationwide indignation. In October 1985, yielding to international pressure caused by his human rights record, Marcos called for special elections on 7 February 1986 to get a fresh mandate. Declaring that he intended to resign the presidency before his term was over¹², he asked the parliament to pass a law calling for “snap elections.”¹³ Ninoy’s widow, Cory, ran against him and, despite overwhelming support, was cheated of victory. What ensued is what we now call the EDSA Revolution.

E. Cory’s Freedom Constitution

Marcos fled to exile in Honolulu, Cory took her oath, and no sooner promulgated her “Freedom Constitution”¹⁴ by “direct mandate of the sovereign Filipino people.” The Supreme Court, in the Freedom Constitution cases¹⁵, held that she drew her legitimacy from outside the constitution, and that all challenges raised political and non-justiceable questions.

The Freedom Constitution was the interim charter by which the Philippines was governed between February 1986 (EDSA 1) and February 1987 (when the present Constitution was adopted). The Court recognized however that Cory Aquino became President “in violation of [the] Constitution” as expressly declared by the Marcos-dominated parliament of that time (i.e., the Batasang Pambansa) and was “revolutionary in the sense that it came into existence in defiance of existing legal processes.”¹⁶ Thus the

¹² Letter from President Ferdinand E. Marcos to Speaker of the Batasang Pambansa Nicanor E. Yñiguez and other Members of the Parliament (11 November 1985).

¹³ Batas Pambansa Bilang 883, An Act Calling a Special Election for President and Vice-President (Snap Elections of 1986) (3 December 1985). See also *Philippine Bar Association v. Commission on Elections*, G.R. No. 72915, 140 SCRA 453 (19 December 1985) (setting aside legal objections to the “snap elections”, characterizing the matter as a political question, and declaring “the elections are on”).

¹⁴ Proclamation No. 3, Promulgating a Freedom Constitution (25 March 1986).

¹⁵ *Lawyer’s League for a Better Philippines v. President Aquino*, G.R. No. 73748 (22 May 1986); *In re Saturnino Bermudez*, G.R. No. 76180, 145 SCRA 160 (24 October 1986); *De Leon v. Esguerra*, G.R. No. 78059, 153 SCRA 602 (31 August 1987); and *Letter of Associate Justice Reynato S. Puno*, A.M. No. 90-11-2697-CA, 210 SCRA 589 (29 June 1992).

¹⁶ *Letter of Justice Puno*, supra.

Court stated that the people having accepted the Cory Government, and Cory being in effective control of the entire country, its legitimacy was “not a justiceable matter [but] belongs to the realm of politics where only the people ... are the judge.”¹⁷

F. The current 1987 Constitution

In January 1987, a new Constitution – written by an appointive (by Cory Aquino) Constitutional Commission – was ratified by the nation¹⁸, and which continues to govern, unrevised, until today.

III. Institutionalization of “Direct Democracy” after EDSA 1

The current Constitution is the fruit of the first “People Power” revolution led by Cory Aquino and reflects the values that animated EDSA 1. It embodied a long list of “directive principles” and welfare state clauses, but it also contained a strong Bill of Rights, detailed guarantees against a Marcos-style power-grab, and restored the checks-and-balances among three separate branches of government, including an independent Human Rights Commission. Finally, it institutionalized the direct exercise of democracy through “peoples’ initiatives” to recall officials and propose laws and charter amendments. It was as if the Constitution first listed all the things that the state had to do for the people; then reminded the state of the many things it couldn’t do to the people; and, the state thus paralyzed, allowed the state to be eternally second-guessed and subverted by the people.

The 1987 Constitution “institutionalized people power”¹⁹ and the Supreme Court has since “rhapsodized people power”²⁰ in several cases where the “direct initiative” clauses of the Constitution had been invoked. These clauses allow direct initiative for the following:

¹⁷ Lawyer’s League for a Better Philippines, *supra*.

¹⁸ Proclamation No. 58, Proclaiming the Ratification of the 1987 Constitution of the Republic of the Philippines (February 1987).

¹⁹ *Subic Bay Metropolitan Authority v. Commission on Elections*, 26 September 1996.

²⁰ *Defensor-Santiago v. Commission on Elections*, 19 March 1997 (hereinafter, PIRMA I).

- (a) To propose or repeal national and local laws;²¹
- (b) To recall local government officials, and propose or repeal local laws;²² and
- (c) To propose amendments to the Constitution.²³

The Congress has passed implementing laws, which have been applied, tested and affirmed before the Supreme Court. The Local Government Code²⁴ provided for the recall of local officials by either the direct call of the voters, or through “preparatory recall assembly” consisting of local government officials, which was hailed by the Supreme Court as an “innovative attempt ... to remove impediments to the effective exercise by the people of their sovereign power.”²⁵

The Congress has also enacted the Initiative and Referendum Act (hereinafter, the Initiative Law)²⁶, which provided for three systems of initiative, namely, to amend the Constitution; to propose, revise or reject statutes; and to propose, revise or reject local legislation. In a case involving the creation and scope of a special economic zone created out of Subic Bay, a former U.S. military base²⁷, the Supreme Court hailed the Initiative Law as “actualizing [] direct sovereignty” and “expressly recogniz[ed the people’s] residual and sovereign authority to ordain legislation directly through the concepts and processes of initiative and of referendum.”

IV. A Bogus People’s Initiative to Amend the Constitution

The first wrinkle on this neat constitutional framework appeared in 1997, when then President Fidel Ramos (Cory Aquino’s successor), through willing cohorts, tried to amend

²¹ Const., art. VI, sec. 32. (“a system of initiative and referendum ... whereby the people can directly propose or enact laws or approve or reject any act or law or part thereof [upon] a petition therefor signed by at least ten *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof”).

²² Const., art. X, sec. 3 (“a local government code ... with effective mechanisms of recall, initiative, and referendum”).

²³ Const., art. XVII, sec. 2 (“directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered votes therein ...”).

²⁴ Republic Act No. 7160.

²⁵ Garcia v. Commission on Elections, 5 October 1993.

²⁶ Republic Act No. 6753.

²⁷ Subic Bay Metropolitan Authority v. Commission on Elections, 26 September 1996.

the Constitution to lift term limits which banned him from remaining in office after his term ended in 1998. In what has been called the “acid test of democratic consolidation”²⁸, he was rebuffed by the Supreme Court, following protests by people who saw a dark reminder of a similar maneuver by Marcos which led to the death of Philippine democracy in 1972. Since the proposal was politically unpopular, a shadowy private group called the People’s Initiative for Reforms, Modernization and Action (PIRMA or, literally translated to Filipino, “signature”) instead launched a signature campaign asking for that constitutional amendment, invoking the direct initiative law. That attempt was rejected twice by the Supreme Court²⁹, which went to great lengths to say that the direct initiative clauses of the Constitution were not self-executory; that they thus required congressional implementation; and that Congress’s response, i.e., the Initiative Law, was “inadequate”– notwithstanding that it expressly referred to constitutional amendments – and thus cannot be relied upon by PIRMA.

A dissenting opinion found this “a strained interpretation ... to defeat the intent” of the law. Another dissent stated: “It took only one million people to stage a peaceful revolution at [EDSA 1 but] PIRMA ...claim[s] that they have gathered six million signatures.” The majority, however, pierced through the legalistic arguments and saw the sinister politics lurking behind. Then Justice Davide (now Chief Justice) said that the Court must not “allow itself to be the unwitting villain in the farce surrounding a demand disguised as that of the people [and] to be used as a legitimizing tool for those who wish to perpetuate themselves in power.” Another justice said that PIRMA had “cloak[ed] its adherents in sanctimonious populist garb.”

But if the PIRMA cases showed the limits of direct democracy, EDSA 2 re-affirmed its power.

²⁸ Jose V. Abueva, *Philippine Democratization and the Consolidation of Democracy Since the 1986 Revolution: An Overview of the Main Issues, Trends and Prospects*, in *DEMOCRATIZATION: PHILIPPINE PERSPECTIVES* (Felipe B. Miranda, ed., Univ. of the Philippines Press, 1997), at 22.

²⁹ *Defensor-Santiago v. Commission on Elections*, G.R. No. 127325 (19 March 1997); *People’s Initiative for Reform, Modernization and Action v. Commission on Elections*, G.R. No. 129754 (23 September 1997) (both cases hereinafter cited as the PIRMA cases).

V. Factual Framework of EDSA 2

The next test of People Power came with the barely constitutional ouster in January 2001 of President Joseph Estrada through what we now call EDSA 2.

1. *Erap was unbeatable politically (i.e., through elections) and could only be unseated legally (i.e., by conviction for impeachable offenses).*

In May 1998, Erap , a movie actor, was elected President by direct vote of the people, winning by the largest margin in Philippine history. The poor dearly loved the man for his movies, where he often played the underdog, fighting with his fists to save the downtrodden, hence his campaign mantra “Erap for the Poor.” His vices were openly known: several mistresses and families, gambling and drinking, often way into the morning with buddies with shady reputations. He won despite the understandable revulsion of the Catholic clergy. The business elite, aghast at Erap’s unprofessional working style (e.g., policy reversals during midnight drinking sprees) and favoritism for cronies, couldn’t wait for the next presidential polls in 2004 when Erap, limited to a single six-year term, would step down.

Then in August 2000, a gambling buddy, now fallen from grace, linked Erap to a nationwide network of gambling lords who gave him illegal payoffs laundered through the banking system. How else, it was asked, could he have paid for his mistresses’ lavish lifestyles? However, under the Philippine Constitution, Erap could be replaced only by impeachment, or resignation. It was thought that Erap could not be impeached, because he held the numbers among the congressmen (around 250, one-third of whom had to vote for impeachment) and the senators (24, two-thirds of whom had to vote for removal).

2. *Despite his enduring popularity with the masses, Erap was unseated by a loose coalition of business, Church, student and “civil society” groups, including Cory Aquino’s “pro-democracy” legions. The voice of the people, uttered through elections, was overwhelmed by the voice of the people, spoken through mass protests.*

By mid-November 2000, enough congressmen had deserted Erap due to public protests, and the Congress hastily approved the articles of impeachment. A high profile trial ensued before the Senate. It was to be the showcase for the rule of law, the high and mighty brought to heel before the majesty of law. Yet the Senators (who by law sat as jurors in the trial) and the public were often impatient with technical debates on the admissibility of evidence (“legal gobbledygook”, a Senator said), often due to the hasty drafting of the articles of impeachment. The trial was aborted when certain bank records (to prove illicit payoffs) were suppressed. Within hours, the next EDSA uprising emerged, and in a few days, civil society groups, aided by the military, succeeded in ousting Erap.

The groundswell of public indignation was triggered by the suppression of evidence during the trial (i.e., the sealed envelope of banking records alleged to be Erap’s). That same evening, mass protests erupted in Manila, and the next day, the impeachment trial was aborted. The day after, the military chiefs would “withdraw their support” from the President. On the fifth day of protests, a Saturday, the Supreme Court Chief Justice, who had earned public respect when he chaired the impeachment trial, swore in Vice-President Gloria Arroyo as the new President. Internationally, it was derided as “Rich People’s Power”, referring to the elite and middle-class composition of the protesting groups, a reminder of a venerable statesman’s warning about the perils of “political ventriloquism.” Locally, it was hailed as the triumph of democracy.

3. *The constitutionality of Arroyo’s presidency was challenged before the Supreme Court. Yet the desperate measure, i.e., her oath-taking, was explained by the failure of legal and institutional processes.*

The oath-taking of Arroyo was challenged before the Supreme Court. She, as vice-president, could have assumed the Presidency only in case of the Erap’s death, disability, resignation, or impeachment. None of these conditions had arisen. Erap was still alive and able to perform his functions. He had not been impeached, because precisely his impeachment trial had been aborted. And he had not resigned. Indeed there was no resignation letter, and contemporaneous televised statements by both the Chief Justice and

President Arroyo indicated their own misgivings. In that context, the military's "withdrawal of support" from Erap was in effect a mutiny against the President and Commander-in-Chief, violating the fundamental precepts of "civilian supremacy" and military non-intervention in politics. Finally, the Supreme Court had lent its legitimizing power to Arroyo's presidency when the Chief Justice administered her oath, attended by several Justices, performing an administrative act (as indeed technically it was) and while so properly (and expressly) reserving the option to rule on any subsequent judicial challenge.³⁰

Established interpretations of EDSA 2 portray it as the affirmation of the principle that no man is above the law, not even the President. Yet that was accomplished only by taking constitutional short-cuts, and later asking the Supreme Court to go out on a limb to lend it legitimacy. On the other hand, the "extra-constitutionality" of desperate measures was justified by the failure of legal and institutional processes, and Erap's ouster, though barely satisfying constitutional process, actually upheld the most deeply held norm that public office is a public trust.

VI. Reconciling EDSA 2 with Constitutional Traditions

Should [the Supreme Court] choose a literal and narrow view of the constitution, invoke the rule of strict law, and exercise its characteristic reticence? Or was it propitious for it to itself take a hand? *Paradoxically, the first option would almost certainly imperil the Constitution, the second could save it.* (Vitug, J., separate opinion, *Joseph Estrada v. Gloria Macapagal-Arroyo*³¹) (emphases supplied)

Thus the Court resolved the dilemma first confronted by the hero Apolinario Mabini, legal architect of the first Revolutionary Government which followed our independence from Spain, who, having seen forebodings of the Philippine-American War, said, "Drown

³⁰ A.M. [Administrative Matter] No. 01-1-05-SC, In re: Request of Vice-President Gloria Macapagal-Arroyo to Take her Oath of Office as President of the Republic of the Philippines before the Chief Justice (22 January 2001).

³¹ G.R. Nos. 146738 (2 March 2001); *Joseph E. Estrada v. Aniano Desierto*, G.R. Nos. 146710-15 (2 March 2001).

the Constitution but save the principles.” This was not the first time that the Court confronted the persistent dilemma between popular democracy and the rule of law.

The *first* time was when the Court validated the Marcos Constitution in *Javellana*, saying that a constitution can be ratified by the people on their own, not necessarily through the strict modes expressly laid down in the Constitution.

The *second* time, ironically, was when the Court validated Cory’s presidency in the *Freedom Constitution* cases, recognizing that she had come to power in defiance of the existing Constitution and through the direct mandate of the people.

The *third* time was with the *PIRMA* cases, where the Court abandoned what Justice Vitug would later call its “characteristic reticence” and openly recognized what *viscerally* we knew to be one man’s ambition cloaked in “sanctimonious populist garb”, but were *intellectually* constrained to call a “peoples’ initiative.”

The *fourth* time was with the EDSA 2 case, where the Court truly cast off its “reticence” about what the sociologist Randolph David refers to as “the dark side of people power”, while intellectually maintaining the test of strict legality (in the main opinion) and a virtual “political question” (in many of the concurring opinions).

In *Joseph Estrada v. Gloria Macapagal-Arroyo*³², the Supreme Court declared Arroyo as the legitimate President, taking the path of strict doctrinal interpretation of the text of the Constitution. *One*, the Court could have taken the path of least resistance and declared the matter a political question and outside the scope of judicial review, exactly the way the Court disposed of judicial challenges to the legitimacy of Cory Aquino’s government and, before that, to Marcos’s martial law government. Or, *two*, the Court could have also institutionalized People Power unabashedly as a mode of changing Presidents, and rather elastically interpreted the Constitution to mean that Erap was “incapacited”, not

³² Supra.

by sickness but by induced political paralysis through “withdrawal of support” by various centers of power in government, including the military, and by civil society. Instead, *three*, the Court took the most careful legal path, declared the matter justiceable and found that Arroyo’s oath-taking was squarely covered by the Constitution.

The Court rejected the first path, i.e., the political question doctrine, arguing that Arroyo assumed office under the present Constitution – under which she alone, and none of the other contenders, had the right of presidential succession – in contrast to Cory Aquino who candidly declared the revolutionary and extra-constitutional character of her assumption into power. The legitimacy of Arroyo’s government thus required the resignation of Erap. Neither did the Court take on the second path, which would have thrown the gates wide open to extra-constitutional transitions. Instead, the Court insisted on the disciplined analysis of hard doctrine, as if EDSA 2 was not unusual at all and fit so snugly into the existing constitutional framework, and found that the “totality of prior, contemporaneous and posterior facts and ... evidence” show an intent to resign coupled with actual acts of relinquishing the office.

What is significant is that while all the participating justices upheld the validity of the Arroyo government, almost all of them spoke persistently about the possible excesses flowing from People Power – about opening the “floodgates” of the raw power of the people – while acutely aware of the imperatives of democratic governance. A justice asked: “Where does one draw the line between the rule of law and the rule of the mob, or between People Power and Anarchy?”, calling for “great sobriety and extreme circumspection.” Each Supreme Court justice, in his turn, echoed this concern. One justice cautioned the “hooting throng” that “rights in a democracy” should not be hostage to the “impatient vehemence of the majority.” Another spoke of the “innate perils of people power.” Another asked how many “irate citizens” it takes to constitute People Power, and whether such direct action by the people can oust elected officials in violation of the Constitution. Finally, another justice expressed “disquietude [that] the use of ‘people power’ [“an amorphous ... concept”] to create a vacancy in the presidency” can very well “encourag[e]

People Power Three, People Power Four, and People Power *ad infinitum*.” In that light, the Supreme Court was unanimous only “in the result”, i.e., in the conclusion that Arroyo’s oath-taking was valid, but not in the reasoning, which for the majority resembled that of the political question doctrine.

VII. The State of Philippine Constitutional Discourse

There is a weakening of the ideal of constitutionalism itself. Our original 1935 constitution was a virtual copy of the U.S. constitution, which has been described as “*A Machine That Would Go of Itself*”³³, a self-contained system of checks and balances that would enable government, first, to control the governed, and next, to control itself. That ideal is imperiled in the Philippines.

Erap’s impeachment trial was to be the showcase for the “hardening” of the “soft state” – the “single most salient characteristic” of Philippine governance – as the final act of “democratic consolidation”³⁴. “He who the sword of heaven will bear, Should be as holy as severe.” Yet in the end Erap was removed only by cutting constitutional corners, ratifying in the courts the triumph won in the streets, “anointing power with piety.” All over the country, the rule of law ideal was caricatured as “legal gobbledygook”, constitutional precepts, as a passing inconvenience. What is so sacred about the Constitution anyway, people seemed to ask, why don’t we just hound him out of the Presidential Palace? But constitutionalism says that we must insulate certain claims, certain values, from political bargaining, from the passions of the moment, from the hegemony of popular biases. It places certain things above “ordinary” politics, that is to say, the day-to-day parliamentary give-and-take among elected representatives, deputies we can vote out in three-year cycles

But, in doing so, critics say, constitutionalism takes politics away from the people, it distrusts the raw power of the masses, and would rather channel this energy toward government offices – directly elected representatives and appointed judges – farther and

³³ Michael Kammen, *A Machine That Would Go of Itself* (1993).

³⁴ Abueva, *supra*, at 61-62.

farther away from the people. As Harvard Law Professor Richard Parker says, yes, we have a Constitution but there is no constitutionalism. And he concludes: “Here, the people rule.”³⁵

Finally, “People power” is constitutionally awkward precisely because it is peaceful and relies upon the moral power of an indignant citizenry. As recognized by the *Javellana* court, the political question doctrine may have been more easily applied had the change of constitutions been done by force of arms. “Treason doth never prosper, for if it prosper, none dare call it treason.” Why make it any less acceptable that it was done by a mere show of hands? The People Power cases before the Supreme Court demonstrate amply the full range of constitutional principles to foster non-recourse to violence, without rewarding extra-constitutional temptations.

Conclusion

Democracy is the solved *riddle* of all constitutions. Here not merely *implicitly* and in essence but *existing* in reality, the constitution is constantly brought back to its actual basis, the *actual human being*, the *actual people*, and established as the people’s own work.³⁶

The Philippines’ post-Marcos constitutional order aimed at two competing goals: one, to restore the primacy of the rule of law – “a government of laws and not of men”³⁷ – while two, institutionalizing the gains of “People Power” – the direct but peaceful exercise of democracy that ousted the Marcos regime. Looking at liberal democracy as being more than just free elections but as the search for a common basis of legitimacy for competing interests and values³⁸, I look at the tension between rule-based governance through periodic elections and representative institutions *vis-à-vis* mass-based politics which by-passes formal processes.

³⁵ RICHARD PARKER, *HERE THE PEOPLE RULE: A POPULIST MANIFESTO* (Harvard, 1996).

³⁶ Karl Marx, as cited in SUSAN MARKS, *THE RIDDLE OF ALL CONSTITUTIONS: INTERNATIONAL LAW, DEMOCRACY AND THE CRITIQUE OF IDEOLOGY* 149 (2000) (emphases in the original).

³⁷ Abueva, *supra*, at 21.

³⁸ JOHN RAWLS, *POLITICAL LIBERALISM* (Columbia Univ. Press, 1993).

EDSA 2 presented a stark setting for the counter-majoritarian dilemma. On one hand, the ideal of strict legalism, the separation of powers and the built-in checks-and-balances, the constitution as “A Machine That Would Go of Itself” and, on the other, the rawness of the people’s power, the romanticism of popular democracy, the readiness to look at social outcomes, not constitutional norms; to choose viscerally but speak legalistically, to look at interests and pretend to see only principles. All these, in an Asian setting where liberal constitutionalism is a Western import³⁹, indeed a colonial imposition, and law is several layers estranged from life; where democratic institutions are venerated over feudal alliances; where the state began, not organically from its milieu, but as the creature of the colonial power, and never embodied for the people their communal self. The public sphere commands no fealty, and is seen at best as merely the arena for pursuing private gain, and at worst, as easy prey for private spoliation.

Thus we exalt democracy’s institutions and its rhetoric in grand scale, while we subvert its day-to-day workings in *ad hoc* compromises. The challenge to Philippine constitutionalism is that it can work only by confessing that to be myth yet to do so is destroy itself.

In contrasting Philippine democracy’s rituals from its substance, the debate between democracy and the rule of law must go beyond *formal* institutions, and inquire into our *attitudes* toward rules and institutions. What we *formally* debate (about laws, morals and principles) is rarely the *real* point of dispute (about interests and appetites). We feel no duty to believe our formal arguments, and we lack the institutions and traditions that foster such belief. We are liberals in law, tribal in life. In our grand declarations we are free citizens in a republic but, in day-to-day life, a network of fiefdoms, where the rights-bearing self is so wholly encumbered by allegiances to family and a web of kin-like obligations. On paper, elections are a sacred rite of democracy, but in our hearts we listen elsewhere for the people’s voice. We have debased democracy into ritual, and we are perplexed, now that we have tried it in practice, that it actually works, while our legal rhetoric lags behind.

³⁹ *But see* Inoue Tatsuo, *Liberal Democracy and Asian Orientalism*, The East Asian Challenge for Human Rights (Joanne R. Bauer and Daniel A. Bell, eds., Cambridge Univ. Press, 1999), at 27 (the “inauthenticity of ‘Asian values’”, in the purported clash between a stereotypical individualist West and communitarian Asia).

CHAPTER TWO

DEMOCRATIZATION OF THE LEGISLATIVE EXECUTIVE, AND JUDICIAL DEPARTMENTS OF GOVERNMENT

Carmelo V. Sison *

Introduction

The 1987 Philippine Constitution declares in its Declaration of Principles and State Policies that the Philippines is a democratic and republican state (CONST, art. II, sec. 1). Constitutionally, the Philippines is a state where government is republican in form, in the sense of American constitutionalism. Its meaning is that expressed by James Madison:

We may define a republic to be a government which derives all its power directly or indirectly from the great body of people; and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favorable class of it. It is sufficient for such a government that the person administering it be appointed either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified (J. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 52 [1996]).

Further, the Philippines under the 1987 Constitution is not just a representative government but also shares some aspects of direct democracy, as the “initiative and referendum under Art. VI, Sec. 3. As a representative government is a defining characteristic of the state, the innovations in the 1987 Constitution on the three branches of government as will be discussed in this paper ensure that it remains democratic.

I. The Legislative Department

It is often argued that the existence of democracy is gauged by the presence or

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absence of a legislature. This is so as Congress – among other state agencies – is the most predisposed towards democratic rule. Naturally, it would be the first body that autocratic rulers undermine or dismantle to advance their authoritarian agenda (R. S. Velasco, “Does Philippine Congress Promote Democracy?” in F. Miranda, ed., *Democratization: Philippine Perspectives*, p. 281 [1997]).

In 1972, one of the first acts of then President Marcos after the proclamation of martial law was the dissolution of Congress and the padlocking of the legislative building to prevent members of Congress from convening in session. Even the interim National Assembly, provided for in the 1973 Constitution in its transitory provision (Sec. 1 of Article XVII), was not convened by the President-Prime Minister. It was only in virtue of the 1981 amendments, or 9 years later, that an interim Batasan Pambansa was called into being. And yet even with this transitional legislature, the martial law regime saw to it that the Executive had superior legislative powers, such that it could override enactments made by the Batasan. Operationally, the IBP powers were curtailed such that:

1. it could not pass a vote of no confidence in the government and so bring it down;
2. it could not repeal any of the decrees that the President had promulgated in recent years;
3. except for bills of local application, it could only consider bills that were recommended by the Cabinet; and
4. for any bills that the IBP failed to pass, the President could issue any measures (A. Catilo and P. Tapales, “The Legislature” in R. de Guzman and M. Reforma, (eds.) *Government and Politics of the Philippines*, pp. 151-2 [1988]).

The legislature as a barometer and an enabler of democracy traces its philosophical and rational underpinnings from the anti-absolutist and liberal ideas of Western thinkers, notably Locke, Voltaire and Rousseau. These thinkers assailed the despotic and non-accountable aristocracy as the recurring cause of abuse and unrest in Western Europe. They argued for an alternative structure allowing greater public participation in decision-making

so as to stop decay and restore order. The participatory regime called for an elective legislature or parliament where the citizens would cease to be mere recipients and followers of laws emanating from the king and the aristocracy and they were instead given power to either support or challenge existing laws or policies through their representatives (*Ibid*).

With this in mind, the 1987 Philippine Constitution introduced several changes intended to make Congress a more representative body accountable to the people and to strengthen it *vis-à-vis* the President as a reaction to the abuse of presidential power under former President Marcos. Legislators exercise collective and individual powers as they shape policy, raise revenues to support essential government services and appropriate funds in cooperation, competition and bargaining with the President. They often make use of their investigative power, their access to the media, and their patronage and funds for infrastructure (J. Abueva, “Philippine Democratization and the Consolidation of Democracy Since the 1986 EDSA Revolution: An Overview of the Main Issues, Trends and Prospects” in F. Miranda, ed., *supra*, pp. 1-81 at pp. 33-4).

The 1973 Constitution formally changed the presidential system of government under the 1935 Constitution to a modified parliamentary system. The bicameral Congress became a unicameral parliament in the Batasan Pambansa. In the presidential system before, a two party system, composed of the majority party (the party obtaining the largest number of votes) and the minority party (the party obtaining the second largest number of votes in the last elections) was formerly recognized in the Constitution, particularly in the composition of the Commission on Appointments and the Electoral Tribunals in both Houses. Representation in Congress became a monopoly of the two parties. With the 1973 Constitution introducing a parliamentary system, a multi-party system came into being. During martial rule (1972-1981) however, notwithstanding the formal provisions of the Constitution creating a representative legislature, the operative code was embodied in decrees issued by a dictatorship euphemistically called constitutional authoritarianism.

The 1987 Constitution reintroduced the bicameral body under a presidential system of government akin to the US Congress after the experiment with unicameralism under the

1973 Constitution (CONST. [1973] art. VIII, secs 1 & 2). The Congress is composed of a 250-member (where 20% thereof, or 50 members, shall be elected by means of the party-list system) House of Representatives as the Lower House and the 24-member Senate as the Upper House (CONST, art. VI, secs. 1, 2, 5(1)). Bicameralism was favored because it is believed that (1) an upper house is a body that looks at problems from the national perspective and thus serves as a check on the parochial tendency of a body elected by districts, (2) bicameralism allows for a more careful study of legislation, and (3) bicameralism is less vulnerable to attempts of the executive to control the legislature (The debates over unicameralism and bicameralism are found in II Record of the Constitutional Commission, pp. 47-69 as cited in J. Bernas, *supra*, p. 601).

Congress as the repository of the people's sovereignty and bulwark of representative democracy under the 1987 Constitution is best shown in the fact that Article VI of the Constitution providing for the roles, structures and powers of Congress precedes the two other co-equal government branches – the executive, under Article VII, and the judiciary, under Article VIII. The provisions on Congress also cover the longest portion of the Constitution with 32 sections (R. Velasco, *supra at note 1*, p. 285).

Among the other major changes in the 1987 Constitution on the legislative branch was the introduction of the party-list system so as to encourage the growth of a multi-party system (J. Bernas, *supra*, p. 628). The party-list representatives constitute twenty *per centum* of the total number of representatives including the party-list (CONSTI, art. VI, sec. 5(1)). For the first three consecutive terms after the ratification of the 1987 Constitution (the 1987 Constitution was ratified on February 2, 1987 as held by the Supreme Court in *De Leon vs. Esguerra*, 153 SCRA 602 [1987]), one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector (CONST. art. VI, sec. 5(2)). As provided in Section 2 of the *Party-list System Act* (R.A. 7941, March 3, 1995), the party-list system is to promote proportional representation in the election of representatives

to the House of Representatives which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.

On May 11, 1998, the first election for party-list representation was held simultaneously with the national elections. One hundred twenty-three (123) parties, organizations and coalitions participated. However pursuant to the two percent (2%) rule in Republic Act No. 7941 and Resolution No. 2847, “Rules and Regulations Governing the Election of xxx Party-List Representatives Through the Party-List System” issued by the Commission on Elections (COMELEC) on June 25, 1996, only 14 of the 52 allotted seats for party-list actually won. The COMELEC *en banc* decided that the twenty percent membership of party-list representatives in the House of Representatives should be filled up. This ruling was challenged before the Supreme Court after the COMELEC proclaimed 38 other party-list representatives despite the latter not mustering the required number of votes. The Supreme Court invalidated the proclamation of the 38 party-list representatives, holding that Section 5(2), Article VI of the Constitution is not mandatory but merely provides a ceiling for party-list seats in Congress and that allowing the latter to fill-up the party-list seats would be a glaring violation of the two percent threshold requirement of R.A. No. 7941 (*Veterans Federation Party v. COMELEC*, 342 SCRA 244 [2000]). The Court, noting the low turnout of the first party-list elections, however said:

The low turn-out of the party-list votes during the 1998 elections should not be interpreted as a total failure of the law in fulfilling the object of this new system of representation. It should not be deemed a conclusive indication that the requirements imposed by RA 7941 wholly defeated the implementation of the system. Be it remembered that the party-list system, though already popular in parliamentary democracies, is still quite new in our presidential system. We should allow it some time to take root in the consciousness of our people and in the heart of our tripartite form of republicanism. Indeed, the Comelec and the defeated litigants should not despair.

Quite the contrary, the dismal result of the first election for party-list representatives should serve as a challenge to our sectoral parties and organizations. It should stir them to be more active and vigilant in their campaign for representation in the State's lawmaking body. It should also serve as a clarion call for innovation and creativity in adopting this novel system of popular democracy.

With adequate information dissemination to the public and more active sectoral parties, we are confident our people will be more responsive to future party-list elections. Armed with patience, perseverance and perspicacity, our marginalized sectors, in time, will fulfill the Filipino dream of full representation in Congress under the aegis of the party-list system, Philippine style (*Ibid*).

The multi-party system adopted in the 1987 Constitution would determine the membership of two bodies created by the Constitution, namely the Commission on Appointments, which operates to check the exercise of the appointing power of the President, and the Electoral Tribunals in both Houses which decide election contests involving their respective members. The members of Congress in these bodies shall be elected by each House on the basis of the proportional representation from the political parties and parties or organizations registered under the party-list system represented therein (CONSTI, art. VI, secs. 17 & 18).

Another new provision intended to ensure and maintain the fiduciary nature of the position of member of Congress and their fidelity to the public trust given to them is the requirement of disclosure of financial and business interests (I. Cruz, *Philippine Political Law*, pp. 117-8 [1995]). Section 12 of Article VI provides that:

All Members of the Senate and the House of Representatives shall, upon assumption of office, make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.

This provision requiring the members of Congress to make known at the outset their financial and business connections or investments hopes to reduce the potential for self-aggrandizement by the members of Congress and to prevent them from using their official

positions for ulterior purposes (*Ibid*). However, this does not mean that the legislator cannot file the proposed legislation. It merely enables Congress to examine arguments presented with a sharper eye and in the context of the personal interest involved. The advance disclosure would create a presumption in favor of the legislator concerned should the legislator be later charged by his colleagues with conflict of interest (II RECORD OF THE CONSTITUTIONAL COMMISSION, pp. 165-8 cited in J. Bernas, *supra* at p. 646).

Although the members of Congress are more visible and appreciated by their constituencies for their patronage and pork barrel and “country-wide development fund” (CDF) in support of infrastructure construction (J. Abueva, *supra*, p. 34), these funds appropriated for the legislative districts are supposed to be earmarked for specific public works projects. Moreover, to obviate illegal expenditures of public funds, discretionary funds shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law (CONST. art. VI, sec. 25(6)). This new provision is intended to prevent abuse in the use of discretionary funds (J. Bernas, *supra*, p. 690). This came about because in many cases, discretionary funds were spent for personal purposes, to the prejudice and often without even the knowledge of the public (I. Cruz, *supra*, p. 160). Finally, so that the people may know how members of Congress spent the amounts appropriated for them, the 1987 Constitution requires that the records and books of accounts shall be preserved and be open to the public and the books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each member (CONST, art. VI, sec. 20).

In the 1987 Constitution the electorate now share with the Congress legislative powers. Art. VI, sec. 1 states that:

“The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except **to the extent reserved to the people by the provision on initiative and referendum**” (emphasis supplied).

With the legislative power conferred directly on the people by the provision on initiative and referendum, Section 32 of Article VI mandates Congress, as early as possible, to provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters thereof. To this end, Congress has enacted the implementing law Republic Act No. 6735 (August 4, 1989) entitled “An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor” (otherwise known as “The Initiative and Referendum Act”).

Under the law, an Initiative is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose under three (3) systems:

1. Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
2. Initiative on statutes which refers to a petition proposing to enact a national legislation; and
3. Initiative on local legislation which refers to a petition proposing to enact a regional, provincial, city, municipal, or barangay law, resolution or ordinance (sec. 3(a)).

An indirect initiative is exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action (sec. 3(b)).

On the other hand, a referendum is the power of the electorate to approve or reject a legislation through an election called for the purpose. It may be of two classes, namely:

1. Referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress; and
2. Referendum on local law which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies (sec. 3 (c)).

However, in spite of this enabling law, the Supreme Court decided in *Santiago v. COMELEC* (270 SCRA 106 [1997]) that R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned (*supra* at p. 153). Thus, while R.A. No. 6735 is the current enabling law for Section 32 of Article VI insofar as both national and local initiative and referendum are concerned, it is not an adequate enabling law for the people's right of initiative to propose amendments to the Constitution as found in Article XVII, Section 2. Said section provides that:

“Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.” (emphasis supplied)

II. The Executive Department

Unlike that for the legislative and judicial branches where the powers are vested in groups of persons: the Congress and the Supreme Court and other inferior courts respectively, Article VII, Section 1 of the 1987 Constitution, in returning to the presidential model of the 1935 Constitution, gives the executive power to just one person, the President of the Philippines (M. Manuel, “Philippine Government and its Separation and Coordination of Powers” in *Politics and Governance: Theory and Practice in the Philippine*

Context, pp. 77-116 at p. 93 [1999]). Executive power is briefly described as the power to enforce and administer the laws, but it is actually more than this. Plenary executive power vested to the President assumes a plenitude of authority, and corresponding awesome responsibility, making the President the most influential person in the land (I. Cruz, *supra* at p. 173). This broad executive power is even enlarged by the ruling of the Supreme Court in the case of *Marcos v. Manglapus* (177 SCRA 668 [1989]), where it declared that President Aquino had authority to prevent the return of the Marcoses even in the absence of a law expressly granting her such authority. It was held that the President has residual powers not specifically mentioned in the Constitution. Speaking through Justice Irene Cortes, the Court said:

It would not be accurate, however, to state that "executive power" is the power to enforce the laws, for the President is head of state as well as head of government and whatever powers inhere in such positions pertain to the office unless the Constitution itself withholds it. Furthermore, the Constitution itself provides that the execution of the laws is only one of the powers of the President. It also grants the President other powers that do not involve the execution of any provision of law, e.g., his power over the country's foreign relations.

On these premises, we hold the view that although the 1987 Constitution imposes limitations on the exercise of specific powers of the President, it maintains intact what is traditionally considered as within the scope of "executive power." Corollarily, the powers of the President cannot be said to be limited only to the specific powers enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated.

It has been advanced that whatever power inherent in the government that is neither legislative nor judicial has to be executive. Thus, in the landmark decision of *Springer v. Government of the Philippine Islands*, 277 U.S. 189 (1928), on the issue of who between the Governor-General of the Philippines and the Legislature may vote the shares of stock held by the Government to elect directors in the National Coal Company and the Philippine National Bank, the U.S. Supreme Court, in upholding the power of the Governor-General to do so, said:

. . . Here the members of the legislature who constitute a majority of the "board" and "committee" respectively, are not charged with the performance of any legislative functions or with the doing of anything which is in aid of performance of any such functions by the legislature. Putting aside for the moment the question whether the duties devolved upon these members are vested by the Organic Act in the Governor-General, it is clear that they are not

legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes logical ground for concluding that they do fall within that of the remaining one among which the powers of government are divided . . . [At 202-203; emphasis supplied.]

The Court even emphasized the above ruling in a *per curiam* resolution on a motion for reconsideration (178 SCRA 760 [1989]):

Contrary to petitioners' view, it cannot be denied that the President, upon whom executive power is vested, has unstated residual powers which are implied from the grant of executive power and which are necessary for her to comply with her duties under the Constitution. The powers of the President are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. This is so, notwithstanding the avowed intent of the members of the Constitutional Commission of 1986 to limit the powers of the President as a reaction to the abuses under the regime of Mr. Marcos, for the result was a limitation of specific powers of the President, particularly those relating to the commander-in-chief clause, but not a diminution of the general grant of executive power.

That the President has powers other than those expressly stated in the Constitution is nothing new. This is recognized under the U.S. Constitution from which we have patterned the distribution of governmental powers among three (3) separate branches.

Nonetheless, owing to the conviction that former President Marcos had exercised the executive power beyond allowable limits, the 1987 Constitution had placed more structural limitations to the specific powers granted to the President – to appoint, to ensure faithful execution of the laws, to be the Commander-in-Chief of the Armed Forces, to grant clemency, and to contract foreign loans (J. Bernas, *supra* at p. 731).

Foremost among the new limitations on the President is the term limit imposed by Section 4 of Article VII. This stemmed from the presidential abuses committed by the Marcos during his 20-year reign. The 1987 Constitution provides that the term of office of the President is six years and that the President is ineligible for any reelection. The Constitutional Commission believed that six years was long enough for a good President to

implement his programs and, rather optimistically, that with the constraints built around the presidency, a bad one would not succeed in accomplishing his evil design. The elimination of the prospect of reelection is believed to make a more independent President capable of making correct even if unpopular decisions (*Ibid* at pp. 742-3).

There was a debate on the applicability of the six-year term limit to President Aquino. One interpretation was that the limit did not apply to her as she became President before the effectivity of the 1987 Constitution. To her credit though, she resisted the chance of seeking another term in 1992, in scrupulous observance of the term limit (J. Abueva, *supra* at p. 30).

A move to amend the Constitution by way of people's initiative resulted in a controversy in 1997 (the PIRMA case) when the People's Initiative for Reforms, Modernization and Action (PIRMA) filed with the Commission on Elections a "Petition to Amend the Constitution, to Lift Term Limits of Elective Officials, by People's Initiative", seeking, among others, to lift the term limit of the presidency. As stated earlier, the Supreme Court ruled that the basis for the people's initiative, R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned (*Santiago v. COMELEC, supra*). Thus, the move to lift the term limit of the President was stalled.

The rules on disclosure of illness in case of incapacity by the President as contained in Sections 11 and 12 of Article VII were originally statutory (Batas Blg. 231 (1982) entitled: "An Act to Implement the Constitutional Provisions on Presidential Succession, Appropriating Funds Therefor, and for Other Purposes") but now transferred to the Constitution (I. Cruz, *supra* at p. 181). The rules provide:

SECTION 11. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session, within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as the President; otherwise, the President shall continue exercising the powers and duties of his office.

SECTION 12. In case of serious illness of the President, the public shall be informed of the state of his health. The Members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

Section 11 deals with incapacity to perform the functions of the Presidency while Section 12 presumably deals with serious illness not incapacitating because access to him is not denied to cabinet members in charge of the national security and foreign relations. The access is to allow the President to make the important decisions in those areas of government suggesting a situation where the President is still able. The purpose of the right of the public to be informed of the state of the health of the President in case of serious illness is to guarantee such people's right, contrary to secretive practice in totalitarian governments (J. Bernas, *supra* at pp. 750-1).

Another limitation on the presidency is provided by Section 13 prohibiting the President, Vice-President, the Members of the Cabinet, and their deputies or assistants from holding any other office or employment during their tenure, unless allowed by the Constitution as when the Secretary of Justice sits as *ex officio* Chairman of the Judicial and Bar Council (CONST, art. VIII, sec. 8(1)) and the Vice-President is appointed as a member of the cabinet (CONST, art. VII, sec. 3, where such appointment needs no confirmation). The said section also prohibits the aforementioned officials from directly or indirectly practicing any other profession, participating in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporations or their subsidiaries. They are also enjoined to strictly avoid conflict of interest in the conduct of their office. The prohibition against participation in a contract with the government extends to a member of family corporation which has dealings with the government (*Doromal v. Sandiganbayan*, 177 SCRA 354 (1989) as cited in J. Bernas, *supra* at p. 756).

These prohibitions are in line with the principle that a public office is a public trust (CONST, art. XI, sec. 1) and should not be abused for personal advantage (I. Cruz, *supra* at p. 184). The purpose of the prohibitions is two-fold: (1) to avoid conflict of interest and (2) to force the officials to devote full time to their official duties (J. Bernas, *supra* at p. 756). The prohibitions also serve to discontinue the lucrative practice of Cabinet members occupying seats in the boards of directors of affluent corporations owned or controlled by the government from which they derived substantial income in addition to their regular salaries (I. Cruz, *supra* at p. 185).

The second paragraph of Section 13 also proscribes the appointment of the spouse and relatives by consanguinity or affinity within the fourth civil degree of the President to be Members of Constitutional Commission, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries. This provision is

intended as an anti-nepotism provision, previously prohibited only by statute (Pres. Decree No. 807, sec. 49 [1975]).

Perhaps the most significant limitation imposed on the President lies in the rewording of Section 18. This section, which contains the military power of the President, reposes tremendous and extraordinary authority in the President. As now worded, it provides:

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or the legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The military power enables the President to: (1) command all the armed forces of the Philippines and call the armed forces to prevent or suppress lawless violence in cases of invasion or rebellion; (2) suspend the privilege of the writ of *habeas corpus*; and (3) declare martial law (I. Cruz, *supra* at p. 205). Under the 1987 Constitution, (1) the grounds for the imposition of martial law and suspension of the privilege of the writ of *habeas corpus* are narrowed, (2) the discretion of the President is limited and it is put under review powers of both Congress and the Supreme Court, and (3) the bulk of the martial law jurisprudence that had developed under President Marcos was rejected (J. Bernas, *supra* at p. 802). More specifically the following significant changes in the original authority of the commander-in-chief has been provided in the new Constitution (*supra* at p. 213):

1. He may call out the armed forces to prevent or suppress *lawless violence, invasion or rebellion* only.
2. The grounds for the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law are now limited only to *invasion or rebellion*.
3. The duration of such suspension or proclamation shall not exceed *sixty days*, following which it shall be automatically lifted.
4. Within *forty-eight hours* after such suspension or proclamation, the President shall personally or in writing report his action to the Congress. If not in session, Congress must convene within 24 hours.
5. The Congress may then, by a *majority vote of all its members voting jointly*, revoke his action. The revocation may not be set aside by the President.
6. By the same vote and in the same manner, the Congress may, upon initiative of the President, extend the suspension or proclamation for a period to be determined by the Congress if the invasion or rebellion shall continue and the public safety requires the extension.
7. The action of the President and the Congress shall be subject to review by the Supreme Court which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political

question and may be raised in an appropriate proceeding by *any* citizen. Moreover, the Supreme Court must decide the challenge within *thirty days* from the time it is filed.

8. Martial law does not automatically suspend the privilege of the writ of *habeas corpus* or the operation of the Constitution. The civil courts and the legislative bodies shall remain open. Military courts and agencies are not conferred jurisdiction over civilians where the civil courts are functioning.

9. The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons facing charges of *rebellion or offenses inherent in or directly connected with invasion*.

10. Any person arrested for such offense must be judicially charged therewith within *three days*. Otherwise, he shall be released.

The rule that military courts do not supplant the civil courts adopts the “open court” rule in *Duncan v. Kahanamoku* (327 U.S. 304 [1946]) and rejects the contrary rule first enunciated in *Aquino, Jr. v. Military Commission No. 2* (63 SCRA 546 [1975]). In the latter case the Supreme Court ruled that Presidential Decree No. 39 issued by President Marcos providing for the "Rules Governing the Creation, Composition, Jurisdiction, Procedure and Other Matters Relevant to Military Tribunals" which in turn vested military tribunals with jurisdiction "exclusive of the civil courts", among others, over crimes against public order, violations of the Anti-Subversion Act, violations of the laws on firearms, and other crimes which, in the face of the emergency, are directly related to the quelling of the rebellion and preservation of the safety and security of the Republic, were within the President's authority to promulgate, since it is recognized that the incumbent President, under paragraphs 1 and 2 of Section 3 of Article XVII of the new Constitution, had the authority to promulgate proclamations, orders and decrees during the period of martial law.

III. The Judicial Department

The role of the judiciary in a democracy is best summed up as follows (I. Cruz, *supra* at p. 228):

“Although holding neither purse nor sword, the judiciary is an indispensable department of every democratic government. It is trite to say that courts of justice are the bastion of the rights and liberties of the people. Nevertheless, it cannot be repeated too often that the lifeblood of every libertarian regime is found in the vitality of its judicial system.

Timid and corrupt judges will sap the vigor of popular government; on the other hand, a free and fearless judiciary will give it strength, endurance and stability. There is no doubt that the success of the Republic will depend, in the last analysis, upon the effectiveness of the courts in upholding the majesty of justice and the principle that ours is a government of laws and not of men.

Lacking this capacity, judges become no more than lackeys of the political departments cowed to do their bidding or instruments of their own interests scheming for self-aggrandizement. Without independence and integrity, courts will lose that popular trust so essential to the maintenance of their vigor as champions of justice.”

Cognizant of the important role of the judiciary in a tripartite system of democratic government, the 1987 Constitution introduced provisions aimed at strengthening the independence of the judiciary *vis-à-vis* the legislative and the executive departments who hold the powers of the purse and the sword, respectively.

Foremost of the changes introduced by the new Constitution in the judicial department is the addition to the judicial power of the determination of grave abuse of discretion. As now worded, Section 1 of Article VIII provides:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to

lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The first part of the definition of judicial power represents the traditional concept of judicial power, involving the settlement of conflicting rights as conferred by law. The second part represents a broadening of judicial power enabling courts of justice to review what previously was forbidden territory, to wit, the discretion of the political departments of the government (*Ibid* at p. 232). Of course, while this addition was introduced due to the frequency the Supreme Court resorts to the *political question* doctrine during the period of martial law this provision does not do away with the doctrine (J. Bernas, *supra* at p. 831). When a case refers to questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government, then it is a political question and the courts will not take cognizance of the case (*Tañada v. Cuenco*, 103 Phil. 1051 [1957]).

Moreover, not every abuse of discretion can be reviewed by the courts. It has to be a grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility (*Sinon v. Civil Service Commission*, 215 SCRA 410 [1992]).

While Section 2 grants the authority to Congress to define, prescribe, and apportion the jurisdiction of various courts, it cannot deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5. This section provides:

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

Corollarily, it cannot pass a law increasing the appellate jurisdiction of the Supreme Court without its advice and concurrence (CONST, art. VI, sec. 30). As the authority to create lower courts also includes the authority to abolish courts, Congress cannot do the latter as a subterfuge for removing unwanted judges. Section 2 also provides that no law shall be passed reorganizing the Judiciary when it undermines the security of tenure of the members of the judiciary.

One of the more important provisions of the 1987 Constitution to ensure the independence of the judiciary is the grant of fiscal autonomy. Section 3 of Article VIII states that “(T)he Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary

may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released. This provision is principally intended to remove the courts from the mercy and caprice, not to say vindictiveness, of the legislature when it considers the general appropriations bill (I. Cruz, *supra* at p. 237). The Supreme Court explained fiscal autonomy in the case of *Bengzon v. Drilon* (208 SCRA 133 [1992]) thus:

“As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

Fiscal autonomy means freedom from outside control. If the Supreme Court says it needs 100 typewriters but DBM rules we need only 10 typewriters and sends its recommendations to Congress without even informing us, the autonomy given by the Constitution becomes an empty and illusory platitude.

The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. In the interest of comity and cooperation, the Supreme Court, Constitutional Commissions, and the Ombudsman have so far limited their objections to constant reminders. We now agree with the petitioners that this grant of autonomy should cease to be a meaningless provision.”

Finally, to remove as much as possible the influence of partisan politics in the matter of judicial appointments owing to the unfortunate experience in the past when persons without credentials except their political affiliation and loyalty were able to infiltrate and deteriorate the judiciary (I. Cruz, *supra* at p. 235), the 1987 Constitution introduced an innovation by the creation of the Judicial and Bar Council, which takes the

place of the Commission on Appointments in matters of judicial appointments. This is a response to the suggestion of practicing lawyers because in the past [when appointment of judges had to be confirmed by the Commission on Appointments] judges had to kowtow to members of the legislative body to get an appointment or at least to see the Chairman of the Committee on the Judiciary in Congress and request support for the confirmation of their appointment (J. Bernas, *supra* at p. 881). The Council recommends to the President appointees to the Judiciary, and from these nominees the President appoints the judges without need for confirmation by a Commission on Appointments (*Ibid*). Article VIII provides:

SECTION 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular Members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

While the judges appointed by the President from those nominated by the Judicial and Bar Council need no confirmation from the Commission on Appointments, it is readily seen that the appointment of the regular members of the Council are still subject to the consent of the Commission on Appointment (CONST, art. VIII, sec. 8(2)). This provision

allows a political check on the President's appointing authority which otherwise would be the sole political influence on judicial appointments (J. Bernas, *supra* at pp. 881-2).

The appointment of judges should also be in consonance with Section 12, providing that "(T)he Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions." Judges may not be appointed in an acting or temporary capacity as this undermines the independence of the judiciary, as temporary appointments are essentially revocable at will (I. Cruz, *supra* at p. 237).

Summary

As a reaction to the abuse of executive power by the former President Marcos, the 1987 Constitution added new provisions to both the Legislative and Judicial Departments as checks to executive power, knowing fully well the vastness of the plenary executive power reposed in only one person, the President, in contrast to the collegial bodies in the two other departments. Thus, the 1987 Constitution recognized once more Congress as the repository of democracy and has expanded the scope of judicial power to check on any governmental act as to grave abuse of discretion. Moreover, the 1987 Constitution has also limited the powers of the President by imposing express constitutional limitations, as for instance on the martial law powers in Sec. 18 of Article VII.

But perhaps the more significant additions in the 1987 Constitution in terms of democratizing governmental powers are the provisions allowing for direct people participation. While the structure of government in the Philippines is that of representative democracy, still, the people, from which all governmental authority emanate, must be able to exercise direct participation in governance to emphasize their significance in the country's development. The people have been given the power to amend the Constitution or any statutory enactment for that matter, question the sufficiency of the factual basis of the declaration of martial law or the suspension of the writ of habeas corpus, or form party-list groups to run for Congress in the case of sectoral groups.

However, while the 1987 Constitution has expressly placed new provisions aimed at democratization, it remains to be seen how the intent to democratize by the framers of the 1987 Constitution will be carried out. Congress has to pass the essential adequate enabling law to allow the people to amend the Constitution and the people have to be conscious of their increasing role in expressing their collective will, including participation through voting of party-list representatives. Only then can it be said that the 1987 Constitution has successfully democratized governmental powers.

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CHAPTER THREE

THE REVOLUTION AFTER EDSA: ISSUES OF RECONSTRUCTION AND PEOPLE EMPOWERMENT

*Florin T. Hilbay*¹

Introduction

In the Philippines, the struggle—if it may be called such—for a more responsive and accountable government is associated with the name of a freeway, the Epifaño delos Santos Avenue or EDSA. It is there that in 1986 a great number of Filipinos belonging to all levels of society gathered en masse for several days to protest against a corrupt and inefficient government and, in the process, popularize the term People Power Revolution and show the world a rare political and social occurrence—the non-violent overthrow by the people themselves of a long standing administration whose powers were so deeply rooted in the society.

In the language of the “whereas clauses” of the Provisional (Freedom) Constitution of the revolutionary government, the event was characterized as “a direct exercise of the power of the Filipino people” and having been “done in defiance of the 1973 Constitution.” Consequently, it resulted in the nullification of the existing order. President Corazon Aquino, exercising legislative powers as the head of the revolutionary government, initiated the drafting of a new constitution and the reorganization of the executive and the judiciary.²

Amidst these expected changes in institutions and roles of the political actors was the recognition of the important role of the vast majority of Filipinos who participated in the four-day exercise. That the new government claimed to have derived its mandate directly from the people only highlighted the obvious truth that institutions are mere

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² See IN RE: JUSTICE REYNATO S. PUNO, A.M. No. 90-11-2697 – CA, June 29, 1992.

instrumentalities and political leaders mere agents, and with the demise of the old political institutions it became indispensable for the new ones to establish closer ties with those whom they sought to represent. At the same time, the lessons derived by the people from past experience and the scar of mistrust that they carried gave birth to the idea that, for the new institutions to not only survive but be truly representative of the will of the sovereign, politics and its processes must be democratized.

Thus, apart from the predictable political realignment after the revolution, the new government, aware of the important role played by the masses in the uprising, decided on a course that still continues up to this day—the idea of democratization of the political process.

This paper focuses on the constitution as a document embodying this idea of democratization and points out that this was conscious attempt on the part of those who drafted it. It analyzes, from a policy perspective, the changes made in the basic law and concludes that the net policy effects were as follows:

- a) The strengthening of institutions of accountability;
- b) The establishment of institutions that allow for a greater participation of the masses;
- c) The reconstruction of the powers of government with the aim of safeguarding against the abuse of public powers.

This paper also discusses the role of Congress as the repository of the powers of the state and how it has carried out the constitutional mandate to widen the base for decision-making and guard against abuse.

Finally, decisions of the Supreme Court are discussed to ascertain how the Court, in actual cases and controversies, has treated the interesting interplay among the various political actors—the national government, local government, and the citizens—in the light of changed circumstances.

I. The People Power Constitution

One of the great lessons of the EDSA Revolution is that a tyrannical government faces the risk of losing sight of the crystallization of the silent dissent among its people; and in a country mired in poverty, the sources of discontent are quite easily identifiable.

One of the first issues to be addressed was that of accountability. Doubtless, the political mind-set of the nation demanded for greater public accountability as an important ingredient in a reconstructed society and this required a re-scaling of the balance of power between the people and their representatives.

The opportunity to formalize this mind-set came immediately after the popular uprising when the president, using her revolutionary powers, decided to form a constitutional commission to draft a new constitution.

The result is the 1987 Constitution which, at the horizontal level, is a tripartite system of government with a bicameral legislature, the president, and the judiciary sharing co-equal powers very much similar to the structure followed in the United States. This is a departure from the 1973 Constitution which allowed what former President Marcos termed Constitutional Authoritarianism.³ Under the former regime, while the theoretical tripartite structure was maintained, one of the distinguishing characteristics of such system, the separation of powers among the three branches of the government, most especially between

³ Under the 1973 Constitution, the President, in derogation of the traditional separation of powers, exercised legislative powers and retained the residual powers of the government. Art. VII, §18 of the 1973 Constitution provides:

All powers vested in the President of the Philippines under the 1935 Constitution and the laws of the land which are not herein provided for or conferred upon any official shall be deemed and are hereby vested in the President unless the Batasang Pambansa (National Assembly) provides otherwise.

Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions, which shall form part of the law of the land.

the executive and the legislature, was practically non-apparent as the Constitution itself allowed the president to legislate and thus override the acts of the legislature.

In essence, under the 1987 Constitution, the realignment of the powers of the three departments of the national government had the effect of producing a “weaker” president. Provisions in the constitution had been placed in order to prevent the president from overpowering the other departments: he is now ineligible for any reelection⁴; his appointing power is now, in some cases, subject to the concurrence of the Commission on Appointments⁵; and his powers as Commander-in-Chief are substantially limited.⁶

On the other hand, the judiciary was strengthened by expressly giving it the power “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.”⁷ This provision seeks to prevent the Court from avoiding the decision in some cases on the ground that the question posed was political in nature, as opposed to a legal one, which the Court did in many cases during the Marcos regime.

What is more interesting, however, were the changes made at the vertical level of power structure for it resulted in two clearly identifiable themes:

First, the constitution allowed for greater opportunities for the substantive exercise of the sovereign powers; these powers are what one may term collectively as the people power provisions of the constitution. These provisions have two aspects, the first of which refers to those provisions favoring the direct exercise of people power, while the second refers to those provisions aimed at decentralizing the powers of the national government.

Second, the constitution heightened the bar for the representatives by strengthening the provisions on public accountability.

⁴CONST., Art. VII, §4

⁵CONST., Art. VII, §16

⁶CONST., Art. VII, §18

⁷CONST., Art. VIII, §1

A. Proportional Representation in the House of Representatives

The 1987 Constitution introduced the system of party-list representation in the House of Representatives. It is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional, and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections.⁸ The party-list system allows sectoral parties or organizations or coalitions thereof belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.⁹

Under Article VI, §5(1)-(2) of the Constitution—

The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

The party-list representatives shall constitute twenty *per* centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

⁸R.A. No. 7941, §3

One of the vestiges of the American colonial rule is the majoritarian system of election or the winner-take-all system of electing public officers. Under the present electoral laws, a voter who wishes to exercise his right to vote is called to determine who among different individual candidates he wishes to elect. Except for the election of members of the upper house of the Congress, all national elective offices require that the candidate obtain the highest number of votes.

While this type of system has the advantage of ensuring, in a fair electoral exercise, that those who win have the mandate of the most number of electors, it has been criticized for effectively denying representation to a large number of voters, producing legislation that fail to reflect the views of the public, discriminating against third parties, and discouraging voter turnout.¹⁰ Also, this system has the fundamental drawback of overly concentrating on personalities and therefore tends to encourage patronage politics in a culture where paying one's debt of gratitude is so important.

Under the partial proportional representation scheme adopted in the constitution, people who have strong ideological bonds or those who share similar political interests are given the opportunity to group themselves together and, if they are numerous enough, represent themselves in the lower house. It therefore does away with the need for these groups to engage in incessant lobbying. Also, since it is not a winner-take-all system, the parties, so long as they are able to obtain the minimum number of votes required by law, are guaranteed representation in the legislature notwithstanding that they did not obtain the highest number of votes for the party-list.

In a way, it is also an incentive to some groups who claim a large following yet do not have their constituency concentrated in one district to become stakeholders in policy-making instead of resorting to the streets or following an armed struggle in order to seek

⁹R.A. No. 7941, §2

¹⁰See DOUGLAS J. AMY, WHAT IS PROPORTIONAL REPRESENTATION AND WHY DO WE NEED THIS REFORM? <<http://www.mtholyoke.edu/acad/polit/damy/howprwor.htm>>

redress for their grievances. Finally, it produces legislators who are voted upon at a national level and who have a clearly defined and disclosed ideology.

Verily, the idea behind this system is to open up the legislative system, at least a part of it, to groups that have a national following and who otherwise would not be able to elect members of legislature both in the upper and lower houses of the Congress because of the personality-based system of electing these representatives.¹¹ This is consistent with the aim of widening the base for policy-making by allowing non-traditional groups the opportunity to take a direct part in the legislative process as legislators themselves.

The Party-list Cases

After the first elections for party-list representatives, two important questions were brought before the Supreme Court in *Veterans Federation Party v. Commission on Elections*.¹² The first was whether the provision of the Constitution providing that the party-list shall constitute twenty percent of the members of the House of Representatives was a mandatory or a directory provision, that is, whether the Commission on Elections was duty-bound to proclaim as many parties as were required to make them constitute twenty percent of the entire membership of the House of Representatives.

On the other hand, the second issue centered the proper interpretation of §§11 and 12 of Republic Act No. 7941, the implementing law for the party-list, which provides in part—

In determining the allocation of seats for the second vote, the following procedure shall be observed:

- (a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
- (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled

¹²2 RECORDS OF THE CONSTITUTIONAL COMMISSION 256 (1986).

to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

Procedure in Allocating Seats for Party-List Representatives. — The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system.

With respect to the first issue, the Court held that there was no need to fill up twenty percent of the seats in the House of Representatives and that the Constitution merely sets up a maximum limit for members of the party-list. According to the Court, the Constitution merely provides for the total percentage reserved for the party-list. Thus, only those who are able to satisfy the two percent requirement of Sec.11 (b) are entitled to seats in the House of Representatives.

As regards the manner of allocating seats for the party-list, the Court decided to invent a formula for what it called “Filipino-style” proportional representation which in effect simply means that the highest ranking party-list group is entitled to one seat for every two percent of the total number of votes cast for the entire system while all the others that are able to hurdle the two percent bar will be entitled to one seat regardless of the number of votes they obtain.

Several points may be raised regarding the Court’s decision on these issues, foremost of which is that to declare the twenty percent requirement of the Constitution as a mere maximum number is to effectively limit the participation of party-list representatives

¹²G.R. Nos. 136781, 136786 & 136795, October 6, 2000

which is opposed to the avowed policy of opening up the system. Following the ruling of the Court, it becomes clear that the ratio established by the Constitution between party-list representatives and regular district representatives is likewise eliminated.

It should not also be forgotten that under the Constitution, the House of Representatives, under certain conditions, may increase its own number through a reapportionment law. But, considering the fixed rule adopted by the Court in this case, any increase in the number of district representatives (which will have the effect of increasing the maximum number of party-list representatives) will not increase the number of party-list representatives who may occupy the seats simply because the rule of one seat per two percent is not a rule of proportions.

Also, to say that the twenty percent rule in the Constitution is only the maximum number of seats reserved for qualified members is to assume that it is possible that the twenty percent of the seats reserved can be filled up. It is clear, however, that the simplistic formula adopted by the Court will prevent the reserved seats from ever being completed, thus negating the assumption made by the Court.

Policy-wise, the *Veterans Federation* case has a disincentive effect on parties and organizations of similar leanings to group themselves together, a known practice in other countries using proportional representation systems, in order to have a greater participation in the system because only the highest ranking party-list has the chance of obtaining more than one seat. Also, it discourages party-list groups to participate in the process because of the slim chance of winning more than one seat. It should be noted that, unlike regular district representatives whose constituency is limited to a single legislative district, party-list groups have the entire country as their constituency and all other party-list groups as their competitors.

All in all, *Veterans Federation* fails to appreciate the context in which the provisions of the Constitution were drafted and serves as a dampener to organizations that

are interested in participating in the system. Likewise, it veers away from the nature of a proportional representation system in that while the proportional representation system from which the Philippine model was copied (the German system in the Bundestag) treats all seats available as a pie which can be shared by qualifying party-list groups, the one adopted by the Court simply applies a one-seat per two percent rule which is patently not a system of proportions.

The second case decided by the Supreme Court, *Ang Bagong Bayani-OFW Labor Party, Et. Al. v. COMELEC*,¹³ held that it was not enough that a party-list organization be able to get the required threshold number of votes, and that it was equally important that it be able to establish its status as a marginalized group.

According to the Court, that political parties may participate in the party-list elections does not mean, however, that any political party – or *any* organization or group for that matter – may do so. The requisite character of these parties or organizations must be consistent with the purpose of the party-list system, as laid down in the Constitution and in the implementing law. It held that it would not suffice for the candidate to claim representation of the marginalized and underrepresented, because representation is easy to claim and to feign. The party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies.

To be sure, one may argue that the decision favors marginalized groups in the sense that only those that are truly marginalized may now participate in the system. The ruling, however, makes two very important assumptions. First, it assumes that the only way to participate in the system is by claiming to be part of the marginalized sector. Second, it assumes that those who are marginalized can easily be identified. The first assumption is susceptible of easy circumvention while the second is impossible to operationalize.

¹³G.R. Nos. 147580 & 147613, June 26, 2001

Under the party-list system, the Constitution itself allows political parties to participate and there is no requirement that these political parties be marginalized. In the implementing law, a political party “refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office.”¹⁴ The implication is clear—that a party disqualified on the ground that it does not belong to a marginalized sector can simply file its candidacy as a political party and thus obviate the need of proof that it represents a marginalized group.

With respect to the requirement that a group be truly representative of a marginalized and underrepresented sector, the problem is that it is a complex question of fact, so much so that in this case, the Court remanded the case to the Commission on Elections for the purpose of determining whether the winning parties indeed were marginalized parties. The truth is, there are no fixed standards for ascertaining whether a group is indeed representative of the marginalized and the under-represented.

More important, it cannot be denied that an organization’s status as a marginalized and under-represented group is dynamic. The question may be asked, what standards can be used for determining whether a gay rights group or an association of obese persons belong to the marginalized?

Finally, there is the practical issue that already hounds participants in the most recent party-list elections, which is that winning party-list groups can be barred from occupying the seats they have already won pending proof that they are truly marginalized, and so their term can waste way pending the determination of their real status.

B. Initiative and Referendum

Under the Constitutional set-up, the power to legislate is lodged with the Congress which is composed of an upper chamber, called the Senate, and a lower chamber, called the House of Representatives. The nature of the power of Congress to legislate is considered

¹⁴R.A. No. 7941, §3(c).

plenary, that is, it has the discretion to determine for itself the necessity for the exercise of its own powers, subject only to the limitations imposed by the Constitution itself.

While the party-list system dealt with the nature of the composition of the legislature, another one of those people power provisions in the Constitution is in the arena of legislation itself. Art. VI, §1 gives to the Congress the general power to legislate with the significant addition of the phrase “except to the extent reserved to the people by the provision on initiative and referendum.” The theory of our government is one wherein the powers exercised by legislature, as a body of representatives, are derived from those delegated by its citizens and the latter reserves to themselves, insofar as legislation is concerned, what is known as the constituent power or the power to alter the constitution. With the present constitution, while there is not alteration of the scope of the powers of the legislature, the plenary powers of congress is now subject to the exercise by the people of their right to directly enact an ordinary law.

The system of initiative was unknown to the people of this country before the 1987 Constitution. It is an innovative system as under the 1935 and 1973 Constitutions, only two methods of proposing amendments to the Constitution were recognized: (1) by Congress upon a vote of three-fourths of all its members and (2) by a constitutional convention.¹⁵

Thus, under Art. VI, §32 of the Constitution

The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition signed by at least ten *per centum* of the total number of registered voters, or which every legislative district must be represented by at least three *per centum* of the registered voters thereof.

¹⁵*Defensor-Santiago v. Commission on Elections*, G.R. No. 127325, March 19, 1997.

In addition to the power reserved to the people to enact national legislation, the Constitution also reserved to the people the right to propose amendments to the constitution itself. Art. XVII, §2 provides—

Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.

This power, however is not self-executory, and the right of the people to directly propose amendments to the Constitution through the system of initiative and referendum would remain entombed in the cold niche of the Constitution until Congress provides for its implementation.¹⁶

To implement the provisions of the Constitution on initiative and referendum, Congress passed Republic Act No. 6735 or the Initiative and Referendum Act. Under the law, initiative is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. It recognized three systems of initiative, namely that on the Constitution, on the statutes and on local legislation. Referendum, which may refer to statutes or to local law, is defined as the power of the electorate to approve or reject a legislation through an election called for the purpose.¹⁷

¹⁶*Id.*

¹⁷R. A. No.6735, §3

It is interesting to note, however, that despite the implementing law passed by the Congress, the Supreme Court, in *Defensor-Santiago v. Commission on Elections*, held that the law was inadequate for the purpose of exercising the right of the people to propose amendments to the Constitution. In dismissing the petition of several citizens to amend the Constitution to allow then President Fidel V. Ramos to seek a second term by lifting the term limits in the Constitution, it held that while the law intended to cover initiative to propose amendments to the Constitution, the law as worded and passed by Congress failed to fully operationalize the constitutional mandate. Thus, the Commission on Elections could not cure the defect in the implementing legislation as Congress failed to provide sufficient standards for subordinate legislation. As Congress has yet to enact another legislation to implement the right to propose an amendment to the Constitution, the constitutional provision is thus still inoperative.

C. The Ombudsman

The people power provisions of the Constitution are not limited to the grant of direct powers to the people to participate in the legislative process through the party-list system and in the provisions on initiative and referendum. Another dimension of the effect of the people power is the need to protect the people from those who exercise the powers of the sovereign.

The principle enshrined in the Constitution is that public office is a public trust; public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.¹⁸ This statement sets the tone for the multitude of changes leaning towards the protection of the people from those sworn to serve them.

The most potent institution created under the 1987 Constitution is the office of the Ombudsman. Given the scope of its extensive powers, it is no doubt the Constitution's answer to the public clamor for greater public accountability, so much so that it has been

¹⁸CONST., Art. XI, §1

dubbed as the protector of the people, a champion of the citizens, the eyes and ears of the people, and the super lawyer-for-free of the opposed and the downtrodden.¹⁹

The Ombudsman's mandate, as protectors of the people, is to act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action and the result thereof.²⁰

Under Art. XI, §13, the office of the Ombudsman have the following powers, functions, and duties—

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of public duties.
- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

¹⁹2 RECORDS OF THE CONSTITUTIONAL COMMISSION 265, 267 (1986).

²⁰CONST., Article XI, §12

- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

It is noteworthy that the 1973 Constitution mandated the creation of an Ombudsman, then known as the *Tanodbayan* (now known as the Special Prosecutor).²¹ The present Ombudsman, however, is different from the Ombudsman of the 1973 Constitution in several respects. First, the present Ombudsman is a creation of the Constitution itself, whereas its predecessor was mandated by the 1973 Constitution to be created by the national legislature. The implication in this is that the structure of the present Ombudsman, as well as its powers enumerated in the Constitution cannot be altered by the legislature. Second, the office of the Ombudsman is an independent constitutional body whose office holder is removable only by impeachment; on the other hand, the 1973 Ombudsman is a statutory creation and was not endowed with the guaranty of independence and tenure. Third, present Ombudsman was not meant to be a prosecutory body, as the intention was to follow the European model of an Ombudsman whose effectiveness was derived from his power to use moral suasion and his power to publicize matters under his jurisdiction; on the contrary, the *Tanodbayan* of the 1973 Constitution was a prosecutor.

²¹1973 CONST., Art. XIII §6. The Batasang Pambansa (National Assembly) shall create an Office of the Ombudsman, to be known as the *Tanodbayan*, which shall receive and investigate complaint relative to public office, including those in government-owned and controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

The favorable grant of powers to the Ombudsman does not end with the Constitution. With the passage of Republic Act No. 6770 or the Ombudsman Act of 1989, the Ombudsman has indeed become a powerful institution; in fact, more powerful than intended by the Constitution Commission.

The most important addition to the Ombudsman's power under the law is the power to prosecute. During the deliberations of the Constitution Commission that drafted the 1987 Constitution, it was made clear by the sponsors of the ombudsman provisions that they did not intend to give the office of the ombudsman prosecutory powers, the other powers of the ombudsman being sufficient enough. Also, they were really angling for the European model of an ombudsman whose powers rested more on his power to persuade and publicize.²²

However, despite the opposition from some of the members of the Commission that the lack of prosecutory powers of the Ombudsman would reduce the office to a paper tiger, the proposal of the committee sponsors was sustained; nonetheless, in order not to tie the hands of congress—if ever it saw the need to arm the office with the power to prosecute, the Constitution itself provided that the ombudsman may “exercise such other powers or perform such functions or duties as may be provided by law.”

The scope of the disciplinary authority of the Ombudsman is just as far-reaching; its powers affect all elective and appointive officials of the government, local government, government-owned or controlled corporations and their subsidiaries, with the exception of officers removable only by impeachment or over members of congress and the judiciary.²³

Just as important and threatening is the power of the Ombudsman to impose preventive suspensions. Under the law, the Ombudsman or his deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charges against such officer or

²²2 RECORDS OF THE CONSTITUTIONAL COMMISSION 268-271(1986)

employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty, (b) the charges would warrant removal from the service; or (c) the respondents' continued stay in office may prejudice the case filed against him. The preventive suspension shall continue until the case is terminated by the office of the ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the office of the ombudsman is due to the fault, negligence, or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.²⁴

The Supreme Court has also sustained the vast powers of the Ombudsman and interpreted them liberally. In *Zaldivar v. Sandiganbayan*,²⁵ the Court held that the general power of investigation of the Ombudsman covers the lesser power to conduct a preliminary investigation; thus, the office of the special prosecutor (formerly the *Tanodbayan*) may no longer conduct such preliminary investigation unless duly authorized by the Ombudsman.

In another case, the Court held that the Ombudsman has primary jurisdiction over cases cognizable the anti-graft court known as the *Sandiganbayan*, so that it may take over at any stage from any investigatory agency of the government the investigation of such cases.²⁶

With respect to the authority of the Ombudsman to investigate any illegal act or omission of public officials, it was held that the law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate; nor does it require that the act or omission be related to or be connected with or arise from the performance of official duty.²⁷ In deference to the investigatory and prosecutory powers of the ombudsman, the Court has also adopted a hands-off policy with respect to the exercise of the former's discretion to dismiss a complaint or proceed with an

²³R.A. No. 6770, §21

²⁴R.A. No. 6770, §24.

²⁵G. R. Nos. L-79690-707, April 27, 1988.

²⁶*Cojuangco v. Presidential Commission on Good Government*, G.R. Nos. 92319-20, October 2, 1990

²⁷*Deloso v. Sandiganbayan*, G.R. No. 90951, November 21, 1990

investigation.²⁸ The Court also held that notwithstanding the passage of the Local Government Code, the Ombudsman retained the power to conduct administrative investigations against erring local government officials and impose sanctions based on its findings.²⁹

II. People Power Legislation

A. The Local Government Code

The vertical reconstruction of power relations was by no means limited only to the relation of the national government directly with the people; it likewise affected the dynamics between the national government and the local governments.³⁰ Under Article X, §3—

The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualification, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

The mandate of the Constitution is for the territorial and political subdivisions to enjoy local autonomy.³¹ For the first time, local government units were granted the power to create and exclusively enjoy their own sources of revenue and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent

²⁸*Young v. Office of the Ombudsman*, G.R. No. 110736, December 27, 1993; *Ocampo v. Ombudsman*, G.R. No. 103446-47, August 30, 1993; *Jao v. Court of Appeals*, G.R. Nos. 104604 & 111223, October 6, 1995.

²⁹*Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995.

³⁰CONST., Art. X, §1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

³¹CONST., Art. X, §2

with the basic policy of local autonomy.³² The guarantees extend to a just share in the national taxes,³³ in an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas,³⁴ and in sectoral representation in local legislative bodies.³⁵

Pursuant to these commands, Congress enacted R.A. No. 7160 or the Local Government Code of 1991. From that moment on, the operative term for local governments has been autonomy. Implementing the provisions of the Constitution, the local government code devolved from the government many areas of concern traditionally handled by the national government alone.

On the political level, two areas governed by the local government code stand out; the first is the nature of autonomy and the second refers to the power of the people to recall local elective officials.

Local Autonomy

That the Constitution devotes one entire article on local government is a clear indication of the significance of the matter to those who framed it. Indeed, autonomy for the local governments has been the aim ever since the United States, through President McKinley's instruction of April 7, 1900, urged the colonial government to "devote [its] attention...to the establishment of municipal governments [which] shall be afforded the opportunity to manage their own local affairs to the fullest extent of which they are capable and subject to the least degree of supervision and control...."

In a case decided before the enactment of the Local Government Code, the Court held that decentralization meant devolution of national administration—but not of power—to the local governments. It pointed out that autonomy was either decentralization of

³²CONST., Art. X,§5

³³CONST., Art. X,§6

³⁴CONST., Art. X,§7

³⁵CONST., Art. X,§9

administration or decentralization of power. The former occurs when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process make local governments more responsive and accountable, while at the same time relieving the central government of the burden of managing local affairs and enabling it to concentrate on national concerns; the latter, on the other hand, involves an abdication of political power in favor of the local government units declared to be autonomous in which case the local government is free to chart its own destiny and shape its future with minimum intervention from central authorities.³⁶

In another case, the Court resolved the “tug of war” between the national government and the local government in favor of the latter, holding that where a law is capable of two interpretations, one in favor of centralized power in Malacanang and the other beneficial to local autonomy, the scales must be weighed in favor of local autonomy.³⁷ That case involved the appointing power of the then Minister of Budget and Management over provincial budget officers which provided that “All budget officers...shall be appointed henceforth by the Minister of Budget and management upon recommendation of the local chief executive concerned....”

The facts show that the recommendee of the local chief executive was not qualified and thus the Minister of Budget and Management decided to fill up the vacancy pursuant to its own circular reserving to itself such power in cases where the local chief executive failed to recommend a qualified nominee.

In reversing the decision of the Civil Service Commission and nullifying the circular, the Court ruled that when the Civil Service Commission interpreted the recommending power of the local chief executive as purely directory, it went against the letter and spirit of the constitutional provisions on local autonomy. It therefore nullified the appointment made by the Ministry of Budget and Management and ordered it to ask for the submission by the local chief executive of qualified recommendees.

³⁶*Limbona v. Mangelin*, G.R. No. 80391, February 28, 1989.

The Court has also used the policy of local autonomy to favor the local government in order to broaden its powers. In a case,³⁸ the Municipality of Santiago in Isabela province was converted into an Independent Component City through Republic Act 7720. Under the Local Government Code, the conversion of a local government unit should be based on verifiable indicators of viability and projected capacity to provide services such as income, population, and land area.

The petitioners claimed that the municipality had not met the minimum income required for an independent component city as the Internal Revenue Allotments³⁹ (IRAs) should not have been considered part of the income of the municipality.

In ruling against the petitioners, the Court stated that the resolution of the controversy hinged on the correlative and contextual explication of the meaning of internal revenue allotments vis-à-vis the notion of income of a local government unit and the principles of local autonomy and decentralization. It explained that with the broadened powers and responsibilities, local governments must now operate on a much wider scale. These expanded duties, all necessary consequences of its autonomy, are accompanied with a provision for reasonably adequate resources, one of which is the right of a local government unit to be allocated a just share in national taxes in the form of internal revenue allotments. It follows that since these allotments accrue to the general fund of the local government and are used to finance its operations, then they should be considered income of the local government for purposes of determining whether it has satisfied the requirement of the local government code for upgrading the municipality into an independent component city.

Curiously enough, the Court had the occasion to apply the same principle of local autonomy when Congress decided to downgrade the status of the now independent

³⁷*San Juan v. Civil Service Commission*, G.R. No. 92299, April 19, 1991.

³⁸*Alvarez v. Guingona, Jr.*, G.R. No. 11803, January 31, 1996.

³⁹Under the Local Government Code, Internal Revenue Allotments refer to the share of local government units from the national internal revenue taxes collected by the government. *See* R.A. No. 7160, §§284-288.

component city of Santiago to a municipality. The issue, this time, was the proper interpretation of Article X, Sec. 10 of the Constitution which provides—

No province, city, municipality, or barangay, may be created, divided, merged, abolished, or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

The case turned on whether the downgrading of the City of Santiago required that a plebiscite be conducted to ascertain the will of the people in the community. The petitioners argued in the affirmative while the respondents argued otherwise, claiming that the downgrading of the City of Santiago is not an act of creation, division, merger, abolition, or substantial alteration of the boundaries of the local government unit concerned.

In holding that a plebiscite was needed to reject or accept the act of Congress, the court stated that “a close analysis of the constitutional provision will reveal that the creation, division, merger, abolition, or substantial alteration of boundaries of local government units involve a common denominator—material change in the political and economic rights of the local government units directly affected as well as the people therein.”

The Court ruled that it was precisely for that reason that the Constitution requires the approval of the people “in the political units directly affected.” It stressed that the rationale behind the provision of the constitution was to address the undesirable practice in the past whereby local government units were created, abolished, merged, or divided on the basis of vagaries of politics and not of the welfare of the people. It therefore served as a checking mechanism to the exercise of legislative power and an instance where the people in their sovereign capacity were able to decide on a matter directly affecting them or direct democracy as opposed to democracy through people’s representatives. Finally, it held that such ruling was in accord with the philosophy granting local governments greater autonomy in the determining their future.

Recall

Recall is a mode of removal of a public officer by the people before the end of his term of office.⁴⁰ In a real sense, it is local equivalent of EDSA with the sanction of law and a specific procedure for its exercise. By analogy, one may liken it to what civilists term as a tacit resolatory condition or the power to rescind an agreement for failure of one party to comply with his contractual obligations. The same is true in recall, the contract being the agreement between the elector and the elected that the latter will serve his constituency with competence and integrity. This can be inferred from the statement of the Court in *Garcia v. Commission on Elections* when it characterized the people's prerogative to remove a public officer as an "incident of their sovereign power."

Recall is a novelty of the 1973 Constitution.⁴¹ Pursuant to the 1973 Constitution, the national assembly enacted a local government code providing for the procedure for the exercise of the people of the right to recall.⁴² Under the Local Government Code of 1991, the provision on recall was retained with the added feature that the process can be initiated by a Preparatory Recall Assembly or a group of elected representatives. In *Garcia v. Commission on Elections*, the petitioner questioned the constitutionality of this procedure arguing that only the people, by direct action, can initiate the removal of a local chief executive. In dismissing the petition, the Court ruled that what the Constitution required what for the Congress to enact an "effective mechanism" for the exercise of the power of recall. The legislature was not straightjacketed to one particular mechanism of initiating recall elections, and the power given was to select which among the means and methods of initiating recall elections are effective to carry out the judgment.

⁴⁰*Garcia v. Commission on Elections*, G.R. No. 111511, October 5, 1993

⁴¹1973 CONST., Art. XI, §2 provides: The Batasang Pambansa shall enact a local government code which may not thereafter be amended except by a majority vote of all its members, defining a more responsive and accountable local government structure with an effective system of recall, allocating among the different local government units their powers, responsibilities, and resources....

⁴²Batas Pambansa Bldg. 337, §54 provides: *By whom exercised; Requisites.* – (1) The power of recall shall be exercised by the registered voters of the unit to which the local elective official subject to such recall belongs. (2) Recall shall be validly initiated only upon the petition of at least twenty-five percent of the total number of registered voters in the local government unit concerned based on the election in which the local official sought to be recalled was elected.

The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs.⁴³ §70 of R.A. No. 7160 provides in part—

Initiation of the Recall Process. – (a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.

- (b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:
 - (1) Provincial Level. – All mayors, vice mayors, and sanggunian members of the municipalities and component cities.
 - (2) City Level. – All punong barangay and sangguniang barangay members in the city;
 - (3) Legislative District Level. – In cases where sangguniang panlalawigan members are elected by district, all elective municipal officials in the district; and in cases where the sangguniang panglungsod members are elected by district, all elective barangay officials in the district; and
 - (4) Municipal Level. – All punong barangay and sangguniang barangay members in the municipality.
- (c) A majority of all the preparatory recall assembly members may convene in session in a public place and initiate a recall proceeding against any elective official in the local government unit concerned. Recall of provincial, city, or municipal officials shall be validly initiated through a resolution adopted by a majority of all the members of the preparatory recall assembly concerned during its session called for the purpose.
- (d) Recall of any elective provincial, city, municipal, or barangay official may also be validly initiated upon petition of at least twenty-five percent (25%)

⁴³R.A. No. 7160, §69

of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected.

The recall of an elective official shall be effective only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall; should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office.⁴⁴

The case of *Claudio v. Commission on Elections*⁴⁵ focused on the proper interpretation of Sec.74 of the Local Government Code which provides—

Limitations on Recall.—(a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

(b) No recall shall take place within one (1) year from the date of the officials' assumption to office or one (1) year immediately preceding a regular local election.

In this case, the Preparatory Recall Assembly of the local government unit initiated a petition for recall of the local chief executive in his first year of office. Arguing that he was protected by the one-year bar of Sec.74(b), petitioner asked the Court to nullify the recall proceedings.

Against the theory that Sec. 74(b) provides for a period of repose to protect against disturbances created by partisan politics, the Court ruled the recall refers to the recall election itself and not to the process initiated by the Preparatory Recall Assembly. It justified the ruling on the ground that what makes the recall effective is the vote of the people on the day of the election itself that the local elective official must be removed. It

⁴⁴R.A. No. 7160, §72

added that from the day an elective official assumes office, his acts become subject to scrutiny and criticism; that it is not always easy to determine when criticism of his performance is politically motivated or not.

Claudio v. Commission on Elections posed a difficult legal issue of when an elective official may be recalled; more difficult, however, was the policy issue involved as it required the balancing of two equally important considerations. On the part of the elective official, one may say that his term is a protective shield against needless politicking and that the period is for his benefit in the sense that between the power of the people to recall him (which is speculative until after he is effectively recalled) and the theory that a regularly elected official is deemed to have the support of the entire constituency, then the latter consideration should prevail.

In the end, the Court tilted the scale in favor of the electorate and thus added another pro-people power decision. What clinched the case for the people is the idea that in politics, there is really no such thing as a honeymoon period between the public officer and his constituents and that to rule otherwise would limit the constitutional right of the people to seek redress for their grievances.

In fact, the financial and political expense of recalling public officers is not a recognition of the right of the people to be fickle-minded but a recognition that in this jurisdiction, the people are better off knowing they have the power to release a Damocles' Sword hanging over the head of their local officials.

B. The Code of Conduct and Ethical Standards Law

Another aspect of the people power mindset of the legislature is rooted on the need to lower the threshold for making public officers accountable. Prior to 1986, the statutes governing the liability of public officers take the form of criminal, civil, and administrative

⁴⁵G.R. Nos. 140560 & 140714, May 4, 2000

actions. Criminal proceedings are governed by the Revised Penal Code⁴⁶ and special laws⁴⁷; civil proceedings are governed by the Civil Code⁴⁸; administrative proceedings are governed by various special laws, especially the civil service law.⁴⁹

As a reaction to the magnitude of the corruption committed during the Marcos regime, the legislature passed Republic Act No.7080 or the Plunder Law. Under the law, any public officer who acquires ill-gotten wealth through a combination or series of overt or criminal acts in the aggregate amount of P75,000,000.00 shall be punished by *reclusion perpetua* to death. Just recently, the constitutionality of the statute was sustained by the Supreme Court after a challenge thereto was lodged by former President Joseph Estrada who is now preventively incarcerated for this crime.⁵⁰

The legislature also passed Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. The declared policy of this law is to promote a high standard of ethics in public service pursuant to the mandate of the Constitution.⁵¹ It adds on to the growing number of statutes aimed to curb corruption in the government. Aside from the mandatory provisions of the law, it also enumerates hortatory provisions or so-called norms of conduct such as commitment to public interest, professionalism, justness and sincerity, political neutrality, responsiveness to the public, nationalism and patriotism, commitment to democracy, and simple living.⁵²

The highlight, however, of the statute is the fact that it addresses not only the obvious violations committed by public servants like conflict of interest and solicitation of gifts, but also the more common problems encountered by the people in dealing with public servants. The Code, under pain of sanction, obligates public officers to act promptly on

⁴⁶Act No. 3815, Arts. 204-244.

⁴⁷R.A. No. 3019 or the Anti-graft and Corrupt Practices Act & R.A. No.1379 or the Law on Forfeiture of Unexplained Wealth are the main statutes enacted to curb corruption in the government.

⁴⁸R.A. No. 386, Art.32

⁴⁹P.D. No. 807

⁵⁰See *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001

⁵¹R.A. No.6713, §2

⁵²R.A. No.6713, §4

letters and requests, submit annual performance reports, process documents and papers expeditiously, act immediately on public's personal transactions, and make documents accessible to the public.⁵³

Conclusion

The mass uprising in 1986 gave the Philippine society an answer to the question of what is to be done when the political institutions fail, in an outrageous and unacceptable manner, to respond to the popular will. It also gave an opportunity for Filipinos to restructure the institutions that influence public life. The result is a constitution pregnant with the ideals of good governance, public accountability, and democratization of public power.

As a normative document, the constitution serves its purpose of not only setting down the rules by which everyone is to be governed but also of prescribing particular norms that should guide most especially those who participate in the affairs of the nation. But that is all that the constitution can achieve as a reconstructive document.

Ultimately, the issue lies in whether the policies in the organic law has seeped into the consciousness of the people. For, as Rudolf Steiner argued, consciousness determines events, and the events chronicled by historians are a mode of expression of the consciousness characteristic of an age.

It may therefore not be amiss to point out that anyone interested in analyzing attempts in the Philippines at empowering the people should never lose sight of the broader historical context involved. The historical fact is that the Philippine society is a stranger to the notion of public accountability and responsibility, owing mainly to the more than three and a half centuries of foreign domination. It is in this context that one should understand attempts at reconstruction and see that it is a continuing process of calibrating and re-calibrating institutions in order that they may match the political mind-set of the nation.

⁵³R.A. No.6713, §5

For the long view of reconstruction is not simply to make institutional changes whenever there is a need for them, but ultimately to aid the political maturation of the nation. This is as it should be, especially in a time of greater interaction among nations and increased complexity of domestic life that requires peoples and institutions to exhibit greater ability to balance competing values and norms.

CHAPTER FOUR

HUMAN RIGHTS IN THE PHILIPPINES: RESTORATION, RECOGNITION AND INSTITUTIONALIZATION

*Ibarra M. Gutierrez III*¹

Introduction

The *widespread* recognition of human rights by the international community is perhaps one of the most significant historical developments of the last century. The adoption of the United Nations General Assembly of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, followed by the introduction and subsequent ratification of the International Covenant on Civil and Political Rights (CCPR)² and the International Covenant on Economic, Social and Cultural Rights (CESCR)³, were major steps towards achieving a broad, world-wide consensus on the fundamental freedoms and rights intrinsic to every human person.

But even in the face of these developments in the international arena, legal recognition, support, and, perhaps most importantly, enforcement, of human rights within the jurisdiction of individual states remained largely inadequate, particularly when measured against the standards and objectives of the UDHR and the two covenants. Many years after the adoption of these instruments, allegations of human rights violations committed in various States continued to be reported.⁴

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² Entered into force on 23 March 1976

³ Entered into force on 3 January 1976

⁴ See Report of the World Conference on Human Rights, Vienna, 14-25 June 1993

In the Philippines, during the presidency of Ferdinand E. Marcos, State-sanctioned violation of human rights was one of the most prominent issues raised against the government. It is alleged that some 70,000 people were arbitrarily thrown into jail, tortured, vanished without a trace ("disappeared"), or killed ("salvaged") in the fourteen years since President Marcos imposed military rule in 1972.⁵

The horrifying extent of the human rights abuses perpetrated during the Marcos regime was perhaps most clearly established when, in 1992, 10,000 alleged victims of human rights violations won a class action suit in a Hawaii court against the estate of the former president.⁶ Alleging that during the course of his dictatorship President Marcos had directed and controlled torture, summary execution and disappearance in order to maintain himself in power and gain great wealth, the plaintiffs in this suit were awarded nearly \$2 billion in damages. This judgement was subsequently affirmed on appeal by the US 9th Circuit Federal Court.⁷

Given the deplorable human rights record of the Philippine government during the Marcos years, it is perhaps not surprising that after the ouster of Marcos in February 1986, the issue of human rights was one of the principal issues the new administration attempted to address. In fact, many of the significant legal reforms relating to human rights, particularly those enshrined in the "post-Marcos" Constitution, which was ratified in February 1987, were adopted during the immediate aftermath of the popular revolt that toppled Marcos or what is now popularly known as the "People Power" Revolution.

This chapter will discuss the various legal and institutional reforms relating to human rights which arose in response to and as a consequence of the experience under the Marcos regime and the popular uprising that ended that era.

⁵ TASK FORCE DETAINEES OF THE PHILIPPINES (TFDP), VIOLATIONS IN DETAIL (2001)

⁶ The suit was brought under the provisions of the US Alien Tort Claims Act which gives US Federal Courts jurisdiction over "any civil action by an alien for a tort committed in violation of the law of nations or a treaty of the United States." The class action suit alleged that former President Marcos was responsible for acts of torture, an international crime.

I. Recognition and Reform

One of the earliest acts of the post-Marcos administration of President Corazon C. Aquino was to ratify two key international covenants on human rights – the CCPR, which the Philippines signed on 23 October 1986, and the Convention Against Torture (CAT), which the Philippines signed on 18 June 1986.⁸ Although both instruments had been passed years earlier, with the CCPR having taken effect fully a decade before, the Marcos government, perhaps understandably, had ratified neither.

This commitment to human rights, at least insofar as the ratification of international covenants was concerned, would continue throughout President Aquino’s term, and even to succeeding administrations.⁹ In fact, the Philippines is currently a signatory of virtually all major human rights covenants, with the notable exception of the Second Optional Protocol of the CCPR which calls for abolition capital punishment.¹⁰

But despite the indisputable significance of the Philippines’ ratification of these international human rights instruments, the most important legal development concerning human rights in the post-Marcos era would have to relate to the provisions of the 1987 Constitution on human rights.

Drafted by a Constitutional Commission composed of persons directly appointed by President Aquino, the 1987 Constitution contains numerous “innovations” intended to uphold and safeguard the human rights of individual citizens. From an Article which set forth a “Bill of Rights,”¹¹ as was contained in the previous Constitution, the 1987

⁷ Hilao v. Estate of Marcos, 103 F. 3d 767 (9th Circuit 1996)

⁸ Record of Ratifications, UN Commission on Human Rights

⁹ The Philippines ratified the First Optional Protocol to the CCPR on 22 August 1989, the Convention on the Rights of the Child (CRC) on 21 August 1990, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 21 March 2001.

¹⁰ Record of Ratifications, UN Commission on Human Rights

¹¹ CONST., ARTICLE III

Constitution went further by adding a completely new Article on “Social Justice and Human Rights.”¹²

While the Bill of Rights established constitutional protection for the human rights traditionally designated as “civil and political” in nature, such as the freedom of speech and the rights of the accused, the Article on Social Justice and Human Rights imposed upon the State the obligation to uphold, protect and promote rights traditionally deemed to be “economic, social and cultural” in nature.¹³ Hence the Article discussed State obligations with respect to the rights of labor¹⁴, farmers and agrarian workers¹⁵, the urban poor¹⁶, women¹⁷, and other sectors.

But perhaps more significantly, the same Article created a new body, an independent office to investigate human rights violations – the Commission on Human Rights (CHR).¹⁸

II. Institutionalized Protection

The creation of the CHR under the 1987 Constitution, an independent office tasked “to investigate all forms of human rights violations involving civil and political rights” was a direct response to the prior experience of massive human rights violations during the Marcos era. As Commissioner Sarmiento stated in his sponsorship speech during the deliberations of the Constitutional Commission –

My fellow Commissioners, the creation of a Human Rights Commission is a timely innovation in our Constitution. It has come at a time when the recognition of the need to protect and promote human rights is at its height. Fifteen years of abuses of

¹² CONST., ARTICLE XIII

¹³ Many authors assail the delineation as artificial and emphasize instead the *interdependence* of all human rights. *See* A. EIDE AND A. ROSAS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS 15 (1995)

¹⁴ CONST., ARTICLE XIII, SEC. 3

¹⁵ CONST., ARTICLE XIII, SECS. 4-6

¹⁶ CONST., ARTICLE XIII, SECS. 9-10

¹⁷ CONST., ARTICLE XIII, SEC. 14

¹⁸ CONST., ARTICLE XIII, SECS. 17-19

fundamental rights and freedoms have awakened us to the need for a comprehensive program for the promotion, protection and respect for human rights. Such a program can best be formulated and undertaken by a specialized agency which is independent from the three main branches of government and equipped with the necessary powers and functions to carry out its programs.¹⁹

This sentiment was echoed in the remarks of Commissioner Nolleto who declared that –

Madam President, for many years during the Marcos regime, human rights were abundantly violated. Even in the present regime, we still have these violations. Commissioners Rodrigo, Rama and I were victims of the violations of human rights when, without previous charges, we were sent to jail. The concern for the protection of human rights is worldwide as indicated by Commissioner Rama. The provisions on the constitutional authority known as the Human Rights Commission underscore the need to strengthen a mechanism that will truly protect human rights and vindicate victims of violations thereof.²⁰

To curtail the possibility of further abuses by the government – similar to what happened during the Marcos regime – investigation of human rights violations was made the principal task of the CHR. It was, however, not limited to this role. Under Section 18 of Article XIII, the CHR was further mandated to “provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection,”²¹ to “[r]ecommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights,”²² and to “[m]onitor the Philippine Government’s compliance with international treaty obligations on human rights.”²³ All of these were intended to prevent the massive human rights violations in the past from recurring.

But beyond the issue of human rights protection, the CHR was also assigned to undertake efforts at human rights promotion through education and information

¹⁹ See Record of the 1986 Constitutional Commission

²⁰ Ibid.

²¹ CONST., ART. XIII, SEC. 17 PAR. 3

²² CONST., ART. XIII, SEC. 17 PAR. 6

²³ CONST., ART. XIII, SEC. 17 PAR. 7

campaigns.²⁴ As Commissioner Garcia explained in his sponsorship speech of this Section

—

I think an outstanding feature of this probable Commission on Human Rights is the fact that it will help establish a program of education and information to propagate human rights. In other words, we envision the prevention of human rights violations in the future where we have a citizenry that is convinced that it must uphold its basic rights; that it must defend its basic rights because it knows what its rights are, in the first place. Also, for those who must uphold the law, they will be educated in a sense; for example, regarding the treatment of prisoners and detainees and the proper procedures according to the due process of law. So this responsibility that will be given to the Human Rights Commission will, in a way, resolve and prevent, rather than cure what is unjust after it has been committed. Secondly, I believe it is also a very important fact that because we have now won our basic rights as a people, we must also, in a sense, realize that there are many other peoples in other parts of the world who have not yet won their rights. One of the other areas of education is precisely to show the different forms and ways of how the human rights of other peoples are violated in other parts of the world. And we can also have a people who will be conscious of these violations and perhaps contribute to the protection of human rights wherever they are violated, because human rights have no color, no creed, no nationality and no boundaries.²⁵

In the performance of its functions, the CHR was granted authority adopt its own rules of procedure and to cite persons in contempt for violations thereof.²⁶ It was likewise vested with visitorial powers over jails²⁷, and given the capacity to request assistance in its functions from any department, bureau, agency or office in government.²⁸

With the creation of the CHR, the Constitutional Commission hoped that it had an institution ready and able to face the challenge of promoting and protecting human rights in the post-Marcos era. More importantly, they had instituted a mechanism for fostering human rights consciousness both within government and in society. As Commissioner Ople stated while explaining his vote affirming the creation of the CHR –

²⁴ ART. XIII, SEC. 17 PAR. 5 provides that the CHR shall “Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights.”

²⁵ See Record of the 1986 Constitutional Commission

²⁶ CONST., ART. XIII, SEC. 17 PAR. 2

²⁷ CONST., ART. XIII, SEC. 17 PAR. 4

²⁸ CONST., ART. XIII, SEC. 17 PAR. 9

I think this is a historic milestone in the entire history of the struggle for civil liberties and human rights in our country. Some of us had initial reservations about setting up a constitutional body that would act with reasonable independence of the government itself in the pursuit of the crusade for human rights, but I think a consensus grew that nothing short of a constitutional sanction and mandate would be required in order to make human rights or the concern for human rights second nature to our countrymen.²⁹

III. The Limits of Hope

It would be difficult to dispute that the creation of the CHR – an independent body tasked to protect and promote human rights and sanctioned by the organic law itself – was, and is, a worthy achievement, a milestone in the development of human rights advocacy in the Philippines. Its very existence is testament to the gains of the democratic struggle in the Philippines, and a clear indicator of the progress Philippine legal institutions have achieved since the fall of the Marcos regime.

But despite this, it is similarly difficult to dispute that the CHR has, as of yet, failed to live up fully to the grand expectations and bright hopes that heralded its birth as an institution.

Part of this failure can perhaps be attributed to the diminution in the scope of the CHR's authority brought about by a series of Supreme Court decisions which dealt with the interpretation of the constitutional provisions creating the CHR.

The first of these judicial declarations was the case of *Cariño v. Commission on Human Rights*³⁰ This case involved a complaint filed by striking public school teachers before the CHR, wherein they alleged that they had been engaged in peaceful mass actions when they were suddenly and without notice or explanation replaced as teachers. The respondent in the CHR case, Education Secretary Isidro Cariño, sought to have the

²⁹ See Record of the 1986 Constitutional Commission

³⁰ G.R. No. 96681, 2 December 1991, 204 SCRA 483

complaint dismissed on the ground of lack of jurisdiction. The CHR declined to dismiss and the case was brought before the high court.

In its decision, the Court declared that –

The threshold question is whether or not the Commission on Human Rights has the power under the Constitution to do so; whether or not, like a court of justice, or even a quasi-judicial agency, it has jurisdiction or adjudicatory powers over, or the power to try and decide, or hear and determine, certain specific type of cases, like alleged human rights violations involving civil or political rights. The Court declares the Commission on Human Rights to have no such power; and that it was not meant by the fundamental law to be another court or quasi-judicial agency in this country, or duplicate much less take over the functions of the latter.³¹

The Court went on to rule that the CHR had only *investigative* powers. It could not *adjudicate* cases involving human rights violations. It then concluded by ordering the dismissal of the complaint against Secretary Cariño.

The 1992 decision in *Export Processing Zone Authority v. Commission on Human Rights*³² continued the trend in limiting the authority of the CHR. In this case, the issue presented before the Court was whether the CHR had the power to issue injunctive writs and temporary restraining orders under the grant of authority in Article XIII, Section 17 of the Constitution. Ruling in the negative, the Supreme Court declared –

The constitutional provision directing the CHR to “provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection” may not be construed to confer jurisdiction in the Commission to issue a restraining order or writ of injunction for, if that were the intention, the Constitution would have expressly said so. “Jurisdiction is conferred only by the Constitution or by law” (Oroso, Jr. v. Court of Appeals, G.R. Nos. 76828-32, 28 January 1991; Bacalso v. Ramolete, G.R. No. L-22488, 26 October 1967, 21 SCRA 519). It is never derived by implication. (Garcia, et al v. De Jesus, et al., G.R. No. 88158; Tobon Uy v. Commission on Elections, et al., G.R. Nos. 97108-09, 4 March 1992)³³

³¹ Ibid. at 491

³² G.R. No. 101476, 14 April 1992, 208 SCRA 125

³³ Ibid. at 131

With the rulings in these two cases, the CHR had been effectively denied both adjudicatory functions and the authority to issue restraining orders. It had been confined to resorting to the standard judicial process in order to carry out its mandate.

The third, and perhaps the crippling, judicial blow came in 1994 in the case of *Simon, Jr. v. Commission on Human Rights*.³⁴ This case arose after the local government of Quezon City served an eviction notice to a group of small-scale entrepreneurs from an area along North Edsa, Quezon City, to give way to the establishment of a “People’s Park.” In response to the eviction notice, the vendors’ association filed a complaint before the CHR alleging violation of their “business rights.” The CHR subsequently issued a “cease and desist” order against the local government. When the demolition of stalls nonetheless proceeded, the CHR cited the city government in contempt, thus prompting it to file a petition before the Supreme Court.

In its ruling, the high court reiterated its prior judgement in *Cariño*, which held the CHR to be without any adjudicatory function or authority. But it went further by declaring that insofar as the investigatory functions of the CHR were concerned, it could only exercise the same in cases involving violations of civil and political rights. According to the Court –

Recalling the deliberations of the Constitutional Commission, aforementioned, it is readily apparent that the delegates envisioned a Commission on Human Rights that would focus its attention to the more severe cases of human rights violations. Delegate Garcia, for instance, mentioned such areas as the “(1) protection of rights of political detainees, (2) treatment of prisoners and the prevention of tortures, (3) fair and public trials, (4) cases of disappearances, (5) salvagings and hamletting, and (6) other crimes committed against the religious.” While the enumeration has not likely been meant to have any preclusive effect, more than just expressing a statement of priority, it is, nonetheless, significant for the tone it has set. In any event, the delegates did not apparently take comfort in peremptorily making a conclusive delineation of the CHR’s scope of investigative jurisdiction. They have thus seen fit to resolve, instead, that “Congress may provide for other cases of

³⁴ G.R. No. 100150, 5 January 1994, 229 SCRA 117

violations of human rights that should fall within the authority of the Commission, taking into account its recommendation.”³⁵

The Court continued by declaring that –

... looking at the standards hereinabove discoursed *vis-a-vis* the circumstances obtaining in this instance, we are not prepared to conclude that the order for the demolition of the stalls, *sari-sari* stores and *carinderia* of the private respondents can fall within the compartment of “human rights violations involving civil and political rights” intended by the Constitution.³⁶

Thus with this case, even the investigative authority of the CHR was limited to only violations of civil and political rights.³⁷ While the Court did point out that Congress could expand the scope of the CHR’s investigative authority, at present it has not chosen to do so. In fact, outside of Article XIII, the only other government issuance that concerns itself with the authority of the CHR is Executive Order No. 163 issued by President Aquino³⁸ which merely implemented the same constitutional provision.

But despite the limitation on the CHR to confine itself only to “human rights violations involving civil and political rights”, nonetheless “economic, social and cultural” rights have still found a place in the post-Marcos constitutional order. As previously mentioned, the same Article on Social Justice and Human Rights which created the CHR, also provided recognition for economic, social and cultural rights.

IV. Broader Guarantees

In the Declaration of Principles and State Policies of the 1987 Constitution, State commitment to “[value] the dignity of every human person and [guarantee] full respect for human rights” is expressly and unequivocally declared.³⁹ This provision is concretized principally through the Bill of Rights⁴⁰ and the newly introduced Article XIII, which deals with Social Justice and Human Rights.

³⁵ Ibid. at 133. The provision quoted by the Court is Art. XIII, Sec. 19

³⁶ Ibid. at 134

³⁷ But *see* footnote 13

³⁸ Dated 5 May 1987

³⁹ CONST., ART. II, SEC. 11

⁴⁰ CONST., ART. III

This commitment to recognize and promote human rights can be further discerned in Sections 9 and 10 of Article II, which deal with the promotion of a “just and dynamic social order” and “social justice in all phases of national development.” In contrast to the two earlier constitutions of 1935 and 1973, the present Constitution does not simply impose upon the State the duty to address economic inequities but the full range of socio-economic, political, and cultural inequalities, “in all phases of national development.”⁴¹ This broadening of emphasis also provides an explanation for the introduction of the entirely separate Article on Social Justice and Human Rights.

In fact, Article XIII begins with a declaration that “Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.”⁴² This indicates the clear intent to give constitutional recognition to “economic, social and cultural” rights side by side with the recognition already firmly extended to “civil and political” rights in Article III.

Thus the “human rights” the State is mandated to guarantee under the 1987 Constitution appears to include all types of rights – whether civil, political, economic, social, or cultural.

V. Defending the Marginalized

One major significance of Article XIII is its imposition of obligations to the State for the benefit of specific sectors, such as labor, farmers, and the urban poor. The Marcos era saw more than its fair share of abuses perpetrated against this marginalized, and hence vulnerable, social groups, and, perhaps more significantly, much of the social unrest during those years arose out of the economic difficulties experienced by these sectors. Hence these new guarantees.

⁴¹ BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 73 (1988)

Section 4, for instance, addresses the question of land ownership and distribution – a problem of long-standing that lay at the heart of nearly a century of peasant revolts. In an effort to remedy this dilemma, this provision mandates the implementation of an agrarian reform program to allow farmers to “own the land” they till or in the case of farmworkers “to receive a just share” in the fruits of the land.⁴³

This provision, in turn, was implemented through the enactment of The Comprehensive Agrarian Reform Law (CARL)⁴⁴ Soon after the law’s passage, its validity was challenged before the Supreme Court in the case of *Association of Small Landowners v. Secretary of Agrarian Reform*.⁴⁵ The high court upheld the law, and had occasion to explain that the process of land reform mandated in the law was an exercise of both police power and eminent domain.

Agricultural lands, however, were not the only lands made subject to reform under the 1987 Constitution. Natural resources, including lands of the public domain, were made subject to the “principles of agrarian reform,”⁴⁶ as were urban lands.⁴⁷ This was a significant expansion of the concept of land reform as embodied in the previous, Marcos era constitution.⁴⁸

Urban land reform, in particular, was a new constitutional concept. Although during the Marcos years, a decree “declaring” urban land reform had in fact been enacted,

⁴² CONST., ART. XIII, SEC. 1

⁴³ ART. XIII, SEC. 4 The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share in the fruits thereof. To this end the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits the State shall respect the rights of small landowners. The State shall further provide incentives for voluntary land-sharing.

⁴⁴ Republic Act No. 6657

⁴⁵ G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343

⁴⁶ CONST., ART. XIII, SEC. 6

⁴⁷ CONST., ART. XIII, SEC. 9

the truth of the matter was it merely granted legitimate tenants who had resided 10 years or more in designated “urban land reform zones” a right of first refusal to purchase the lands they occupied.⁴⁹ In contrast, urban land reform as established in the 1987 Constitution had a broader concept. As explained by Commissioner Foz during the deliberations, its purpose was –

First, to liberate human communities from blight, congestions, and hazards and to promote their development and modernization; second, to bring about the optimum use of land as a national resource for the public welfare rather than as a community [sic] of trade subject to price speculation and indiscriminate use; third, to provide equitable access to and opportunity for the use and enjoyment of the fruits of the land; fourth, to acquire such lands as are necessary to prevent speculative buying of land for public welfare; and finally, to maintain and support a vigorous private enterprise system responsive to community requirements in the use and development of urban lands.⁵⁰

Section 9, which dealt with urban land reform, was the first of two provisions that sought to safeguard the rights of the rapidly increasing urban poor population in the Philippines. The second, Section 10, dealt more specifically with the right of “urban and rural poor dwellers” to be evicted only in accordance with law and in a just and humane manner.⁵¹ These provisions were enacted partly in response to the violent evictions and demolitions that took place during the Marcos regime. The intent, clearly, was to afford sufficient protection to the urban poor and, in doing so, prevent the massive violations of human rights that were committed under the past administration. In the eloquent words of Commissioner Brocka –

This particular section [Sec 10] is premised on the fact that squatters, whether they are illegal or not, whether they are professionals or not, are human beings. It is not

⁴⁸ BERNAS at 1066

⁴⁹ Presidential Decree No. 1517 enacted in 1978

⁵⁰ See Record of the 1986 Constitutional Commission

⁵¹ ART. 9 The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to the underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

ART. 10 Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

their fault that they are poor. Under the law, they should be protected. That particular protection is what we are asking under this section on social justice.⁵²

Both these sections were implemented through the passage of the Urban Development and Housing Act (UDHA)⁵³ in 1992. The UDHA mandated local governments, in coordination with several national housing agencies, to pursue a comprehensive program for housing for “underprivileged and homeless citizens.” In addition, it prescribed strict requirements for evictions involving the same group.⁵⁴

Like the CARL before it, the validity of the UDHA was challenged before the Supreme Court, this time in the case of *Macasiano v. National Housing Authority*⁵⁵

⁵² See Record of the 1986 Constitutional Commission

⁵³ Republic Act No. 7279

⁵⁴ Sec. 28 Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds.
- b) When government infrastructure projects with available funding are about to be implemented; or
- c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent; Provided, however, that in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgement by the court, after which period the said order shall be executed; Provided, further, that should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

⁵⁵ 224 SCRA 236 (1993)

However, the high court in this instance refused to rule squarely on the issue, and instead dismissed the case on the ground of lack of standing of the petitioner.

Borne from the bitter experience of the Marcos martial law years, numerous provisions aiming to safeguard and to promote human rights and fundamental freedoms, particularly of the most vulnerable sectors in society, have been made part of the 1987 Constitution. Addressing both civil and political as well as economic, social and cultural rights, these provisions represent a broader recognition, and extend a greater degree of protection than that found in the previous legal regime.

Conclusion

The popular democratic uprising that finally put an end to the tyranny of the Marcos regime brought about many changes in the Philippine constitution and legal system. Perhaps not surprisingly, most of these changes were prompted by the oftentimes dire experiences under martial rule.

Human rights, which were unfortunately characterized more by their violation than either their protection or recognition during the Marcos Era, was one field in which many developments took place after the revolt.

From the creation of an independent Commission of Human Rights, to the formal, constitutional recognition of a wider range of human rights, the post-Marcos era has seen tremendous progress towards a fuller and firmer institutionalization of human rights in the Philippine legal system.

APPENDIX
RELEVANT EXCERPTS FROM
THE PRESENT AND PAST CONSTITUTIONS OF THE PHILIPPINES

The 1935 Constitution

Preamble

The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution.

ARTICLE II
Declaration of Principles

Section 1. The Philippines, is a republican state. Sovereignty resides in the people and all government authority emanates from them.

ARTICLE VII
Executive Department

Section 1. The executive power shall be vested in a President of the Philippines.

Section 2. The President shall hold his office during a term of four years and together with the Vice-President chosen for the same term, shall be elected by direct vote of the people. The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the seat of the National Government, directed to the President of the Senate, who shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted. The person respectively having the highest number of votes for President and Vice-President shall be declared elected, but in case two or more shall have an equal and the highest number of votes for their office, one of them shall be chosen President or Vice-President, as the case may be, by a majority vote of the Members of the Congress in joint session assembled.

Section 5. No person shall serve as President for more than eight consecutive years. The period of such service shall be counted from the date he shall have commenced to act as President. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service of the incumbent for the full term for which he was elected.

Section 6. If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term or if the President shall have failed to qualify, then the Vice-President shall act

as President until a President shall have qualified, and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

Section 8. In the event of the removal of the President from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress shall by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Section 10. (1) The President shall have control of all executive departments, bureaus or offices, exercise general provision over all local governments as may be provided by law, and take care that the laws be faithfully executed.

(2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under Martial Law.

Section 11. (2) The heads of the departments and chiefs of bureaus or offices and their assistants shall not, during their continuance in office, engage in the practice of any profession, or intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of their office; nor shall they, directly or indirectly, be financially interested in any contract with the Government, or any subdivision or instrumentality thereof. executive department.

ARTICLE IX

Impeachment

Section 1. The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for any conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes.

Section 2. The House of Representatives by a vote of two-thirds of all its Members, shall have the sole power of impeachment.

Section 3. The Senate shall have the sole power to try all impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of three-fourths of all the Members of the Senate.

Section 4. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

1973 CONSTITUTION

Preamble

We, the sovereign Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody our ideals, promote the general welfare, conserve and develop the patrimony of our Nation, and secure to ourselves and our posterity the blessings of democracy under a regime of justice, peace, liberty, and equality, do ordain and promulgate this Constitution.

ARTICLE II

Declaration of Principles and State Policies

Section 1. The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them.

ARTICLE VII

The President and Vice-President

Section 1. The President shall be the head of state and chief executive of the Republic of the Philippines.

Section 2. There shall be a Vice-President who shall have the same qualifications and term of office as the President and may be removed from office in the same manner as the President as provided in Article XIII, Section 2 of this Constitution.

The Vice-President may be appointed as a member of the Cabinet and may be nominated and elected as Prime Minister.

The Vice-President shall be elected with and in the same manner as the President.

The President shall be elected from among the Members of the National Assembly by a majority vote of all its Members for a term of six years from the date he takes his oath of office, which shall not be later than three days after the proclamation of the National Assembly, nor in any case earlier than the expiration of the term of his predecessor. Upon taking his oath of office, the President shall cease to be a Member of the National Assembly and of any political party. He shall be ineligible to hold any other elective office during his term.

Section 3. No person may be elected President unless he is at least fifty years of age at the day of his election as President, and a resident of the Philippines for at least ten years immediately preceding his election. However, if no Member of the

National Assembly is qualified or none of those qualified is a candidate for President, any Member thereof may be elected President.

Section 5. In case of permanent disability, death, removal from office, or resignation of the President, the Speaker of the National Assembly shall act as President until a successor has been elected for the unexpired portion of the term of the President.

Section 6. The President shall have the following duties and functions:

- (1) Address the National Assembly at the opening of its regular session.
- (2) Proclaim the election of the Prime Minister.
- (3) Dissolve the National Assembly and call for a general election as provided herein.
- (4) Accept the resignation of the Cabinet as provided herein.
- (5) Attest to the appointment or cessation from office of Members of the Cabinet, and of other officers as may be provided by law.
- (6) Appoint all officers and employees in his office in accordance with the Civil Service Law.
- (7) Perform such other duties and functions of State as may be provided by law.

Section 7. The President shall be immune from suit during his tenure.

ARTICLE VIII

The National Assembly

Section 1. The Legislative power shall be vested in a National Assembly.

Section 2. The National Assembly shall be composed of as many Members as may be provided by law to be appointed among the provinces, representative districts, and cities in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio. Each district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. Representative districts or provinces already created or existing at the time of the ratification of this Constitution shall have at least one Member each.

Section 3. (1) The Members of the National Assembly shall be elected by the qualified electors in their respective districts for a term of six years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

(2) In case the National Assembly is dissolved, the newly elected Members shall serve the unexpired portion of the term from the time the Prime Minister convenes the Assembly, which shall not be later than thirty days immediately following the elections.

Section 7. (1) The National Assembly, shall, by a majority vote of all its Members, elect its Speaker from the Members thereof. It shall choose such other officers as it may deem necessary.

The election of the President and the Prime Minister shall precede all other business following the election of the Speaker.

(2) A majority of the National Assembly shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties, as the National Assembly may provide.

Section 13. (1) The National Assembly may withdraw its confidence from the Prime Minister only by electing a successor by a majority vote of all its Members. No motion for the election of such successor shall be debated and voted upon until after the lapse of three days from the submittal of such motion.

(2) The Prime Minister may advise the President in writing to dissolve the National Assembly whenever the need arises for a popular vote of confidence on fundamental issues, but not on a matter involving his own personal integrity. Whereupon, the President shall dissolve the National Assembly not earlier than five days nor later than ten days from his receipt of the advice, and call for an election on a date set by the Prime Minister which shall not be earlier than forty-five days nor later than sixty days from the date of such dissolution. However, no dissolution of the National Assembly shall take place within nine months immediately preceding a regular election or within nine months immediately following any general election.

(3) In case of dissolution of the National Assembly or the termination of its regular term, the incumbent Prime Minister and the Cabinet shall continue to conduct the affairs of government until the new National Assembly is convoked and a Prime Minister is elected and has qualified.

Section 15. In times of war or other national emergency, the National Assembly may by law authorize the Prime Minister, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the National Assembly, such powers shall cease upon its next adjournment.

ARTICLE IX

The Prime Minister and the Cabinet

Section 1. The Executive power shall be exercised by the Prime Minister with the assistance of the Cabinet. The Cabinet, headed by the Prime Minister, shall consist of the heads of ministries as provided by law. The Prime Minister shall be the head of the government.

Section 2. The Prime Minister and the cabinet shall be responsible to the National Assembly for the program of government and shall determine the guidelines of national policy.

Section 3. The Prime Minister shall be elected by a majority of all the Members of the National Assembly from among themselves.

Section 4. The Prime Minister shall appoint the members of the Cabinet who shall be the heads of ministries at least a majority of whom shall come from the National Assembly. Members of the Cabinet may be removed at the discretion of the Prime Minister.

Section 5. (1) The Prime Minister shall appoint the Deputy Prime Minister from among the Members of the National Assembly. The Deputy Prime Minister shall head a ministry and shall perform such other functions as may be assigned to him by the Prime Minister.

(2) The Prime Minister shall also appoint the Deputy Ministers who shall perform such functions as may be assigned to them by law or by the respective heads of ministries.

Section 6. The Prime Ministers and the Members of the Cabinet, on assuming office, shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as (name of position) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man and consecrate myself to the service of the Nation. So help me God."

(In case of affirmation, the last sentence will be omitted)

Section 8. The Prime Minister and the Members of the cabinet shall be subject to the provisions of sections ten and eleven of Article Eight hereof and may not appear as counsel before any court or administrative body, or participate in the management of any business, or practice any profession.

Section 9. The Prime Minister or any Member of the Cabinet may resign for any cause without vacating his seat in the National Assembly.

Section 10. The Prime Minister shall, at the beginning of each regular session of the National Assembly, and from time to time thereafter, present the program of government and recommend for the consideration of the National Assembly such measures as he may deem necessary and proper.

Section 11. The Prime Minister shall have control of all ministries.

Section 12. The Prime Minister shall be commander-in-chief of all armed forces of the Philippines, and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, or rebellion, or imminent danger thereof when the public safety requires, it he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

Section 13. The Prime Minister shall appoint the heads of bureaus and offices, the officers of the armed forces of the Philippines from the rank of brigadier general or commodore, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint. However, the National Assembly may by law vest in members of the cabinet,

courts, heads of agencies, commissions, and boards the power to appoint inferior officers in their respective offices.

Section 14. The Prime Minister may, except in cases of impeachment grant reprieves, commutations, and pardons, remit fines and forfeitures after final conviction, and with the concurrence of the National Assembly, grant amnesty.

Section 15. The Prime Minister may contract and guarantee foreign and domestic loans on behalf of the Republic of the Philippines, subject to such limitations as may be provided by law.

Section 16. All powers vested in the President of the Philippines under nineteen hundred and thirty-five Constitution and the laws of the land which are not herein provided for or conferred upon any official shall be deemed, and are hereby, vested in the Prime Minister, unless the National Assembly provides otherwise.

ARTICLE XIII

Accountability of Public Officers

Section 1. Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people.

Section 2. The President, the Justices of the Supreme Court, and the Members of the Constitutional Commissions shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, other high crimes, or graft and corruption.

Section 3. The National Assembly shall have the exclusive power to initiate, try, decide all cases of impeachment. Upon the filing of a verified complaint, the National Assembly may initiate impeachment by a vote of at least one-fifth of all its Members. No official shall be convicted without the concurrence of at least two-thirds of all the members thereof. When the National Assembly sits in impeachment cases, its Members shall be on oath or affirmation.

Section 4. Judgment in cases of impeachment shall be limited to removal from office and disqualification to hold any office of honor, trust, or profit under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, in accordance with law.

Section 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

Section 6. The National Assembly shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file

and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

ARTICLE XVI **Amendments**

Section 1. (1) Any amendment to, or revision of, this Constitution may be proposed by the National Assembly upon a vote of three-fourths of all its Members, or by a constitutional convention.

(2) The National Assembly may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit the question of calling such a convention to the electorate in an election.

Section 2. Any amendment to or revision of this Constitution shall be valid when ratified by a majority of the votes cast in the plebiscite which shall be held not later than three months after the approval of such amendment or revision.

ARTICLE XVII **Transitory Provisions**

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

Section 2. The Members of the Interim National Assembly shall be the incumbent President and Vice-President of the Philippines, those who served as President of the nineteen hundred and seventy-one Constitutional Convention, those Members of the Senate and the House of Representatives who shall express in writing to the Commission on Elections within thirty days after the ratification of this Constitution their option to serve therein, and those Delegates to the nineteen hundred and seventy-one Constitutional Convention who have opted to serve therein by voting affirmatively for this Article. They may take their oath of office before any officer authorized to administer oaths and who qualify thereto, after the ratification of this Constitution.

Section 3. (1) The incumbent President of the Philippines shall initially convene the Interim National Assembly and shall preside over its sessions until the interim Speaker shall have been elected. He shall continue to exercise his powers and prerogatives under the nineteen hundred and thirty-five Constitution and the powers vested in the President and the Prime Minister under this Constitution until he calls upon the Interim National Assembly to elect the interim President and interim Prime Minister who shall then exercise their respective powers vested by this Constitution.

(2) All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after the lifting of the Martial Law or the ratification of this Constitution unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or unless expressly or implicitly modified or repealed by the regular National Assembly.

Section 4. The interim Prime Minister and his Cabinet shall exercise all the powers and functions, and discharge the responsibilities of the regular Prime Minister and his Cabinet, and shall be subject to the same disqualifications provided in this Constitution.

Section 5. The Interim National Assembly shall give priority to measures for the orderly transition from the Presidential to the Parliamentary system, the reorganization of the government, the eradication of graft and corruption, programs for the effective maintenance of peace and order, the implementation of declared agrarian reforms, the standardization of compensation of government employees, and such other measures as shall bridge the gap between the rich and the poor.

Section 15. The Interim National Assembly, upon special call by the interim Prime Minister may, by a majority vote of all its Members propose amendments to this Constitution. Such amendment shall take effect when ratified in accordance with Article Sixteen hereof.

Section 16. This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite called for the purpose and, except as herein provided, shall supersede the Constitution of nineteen hundred and thirty-five and all amendments thereto.

1976 AMENDMENTS TO THE 1973 CONSTITUTION

1. There shall be, in lieu of the interim National Assembly, an interim Batasang Pambansa. Members of the interim Batasang Pambansa which shall not be more than 120, unless otherwise provided by law, shall include the incumbent President of the Philippines, representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by the incumbent President from the Members of the Cabinet.

...

3. The incumbent President of the Philippines shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions, and likewise he shall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers and prerogatives under the 1935 Constitution and the powers vested in the President and the Prime Minister under this Constitution.

4. The President (Prime Minister) and his Cabinet shall exercise all the powers and functions, and discharge the responsibilities of the regular President (Prime Minister) and his Cabinet, and shall be subject only to such disqualifications as the President (Prime Minister) may prescribe. The President (Prime Minister), if he so

desires, may appoint a Deputy Prime Minister or as many Deputy Prime Ministers as he may deem necessary.

5. The incumbent President shall continue to exercise legislative powers until martial law shall have been lifted.

6. Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions, which shall form part of the law of the land.

7. The barangays and sanggunians shall continue as presently constituted but their functions, powers, and composition may be altered by law.

Referenda conducted through the barangays and under the supervision of the Commission on Elections may be called at any time the Government deems it necessary to ascertain the will of the people regarding any important matter, whether of national or local interest.

The 1987 Constitution

PREAMBLE

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

ARTICLE II

Declaration of Principles and State Policies Principles

SEC. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

SEC. 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

ARTICLE III

Bill of Rights

SEC. 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

ARTICLE VI
Legislative Department

SEC. 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

SEC. 32. The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters thereof.

Article VII
Executive Department

SEC. 1. The executive power shall be vested in the President of the Philippines.

SEC. 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice- President, and may promulgate its rules for the purpose.

SEC. 7. The President-elect and the Vice-President-elect shall assume office at the beginning of their terms.

If the President-elect fails to qualify, the Vice-President-elect shall act as President until the President-elect shall have qualified.

If a President shall not have been chosen, the Vice-President-elect shall act as President until a President shall have been chosen and qualified.

If at the beginning of the term of the President, the President-elect shall have died or have become permanently disabled, the Vice-President-elect shall become President.

Where no President and Vice-President shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives shall act as President until a President or a Vice-President shall have been chosen and qualified.

The Congress shall provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph.

SEC. 8. In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.

The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.

SEC. 10. The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call and within seven days enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall

law upon its approval on third reading by the Congress. Appropriations for the special elections shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed.

No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

SEC. 11. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session, within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as the President; otherwise, the President shall continue exercising the powers and duties of his office.

SEC. 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

SEC. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or

rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or the legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with the invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

SEC. 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

ARTICLE VIII

Judicial Department

SEC. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

ARTICLE XI
Accountability of Public Officers

SEC. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

SEC. 2. The President, Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

SEC. 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt hereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.

(8) The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section.

SEC. 15. The right of the State to recover properties unlawfully acquired by public officials and employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

SEC. 16. No loan, guaranty, or other form of financial accommodation for any business purpose may be granted, directly or indirectly, by any government-owned or controlled bank or financial institution to the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, and the Constitutional Commissions, the Ombudsman, or to any firm or entity in which they have controlling interest, during their tenure.

SEC. 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

ARTICLE XVII

Amendments or Revisions

SEC. 1. Any amendment to, or revision of, this Constitution may be proposed by:

- (1) The Congress, upon a vote of three-fourths of all its Members; or
- (2) A constitutional convention.

SEC. 2. Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.

The Congress shall provide for the implementation of the exercise of this right.

ARTICLE XVIII

Transitory Provisions

SEC. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

SEC. 6. The incumbent President shall continue to exercise legislative powers until the first Congress is convened.

SEC. 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this

Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof. The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

SEC. 27. This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite held for the purpose and shall supersede all previous Constitutions.

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