

REPRESENTATIVE INSTITUTIONS IN THE PHILIPPINE CONSTITUTION *

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I. HISTORICAL ANTECEDENTS IN PHILIPPINE EXPERIENCE

A. Enactment of Law without Community Participation

1. During the pre-Spanish era, law was laid down by the maharlikas – council of elders, but chosen by the datu, no elections were held to designate them.
2. During the Spanish period of colonization, law emanated from the authorities of the colonial power, namely: the king and his ministers, and later, from the various legislative bodies of Spain. The Filipinos had no elected representatives; their representatives were appointed, but never actually participated. Laws were in Spanish which the natives never fully understood nor spoke.
3. During the American colonial period:
 - a. Under the military government (1877-1901), law was promulgated by the military governor: Gen. Order No. 58 governed criminal procedure up to 1940.
 - b. Under the so-called civil government, appointed by the military commander (the U.S. Presidents), laws were enacted by the Philippine Commission: all Americans and not elected by the Filipinos. A Supreme Court was set up consisting mostly of Americans.
 - c. With the Philippine Legislature, the lower chamber was Filipino: elected by district by property owners; later both chambers were elected by Filipinos with property holdings.

B. Enactment of Law with Community Participation

1. During the Commonwealth:
 - a. Our Constitution was framed by Filipinos elected to the Constitutional Convention, but the Constitution, after ratification, had to be submitted to and approved by the President of the United States.

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- b. The National Assembly, and later, the Congress consisted of Filipinos elected by eligible voters.
 - c. Our Supreme Court were all Filipinos, appointed by the Chief Executive, duly elected nationwide.
2. Basically, the above arrangements continued during the Republic (1946-1972) until martial law was proclaimed.
 3. During the Japanese occupation, law was enacted by the military government of the Japanese Imperial army.

C. The Chief Executive and Popular Elections

1. Executive head of Government without popular election as basis.
 - a. During the pre-Spanish era, datus acquired power without popular elections.
 - b. During the Spanish colonial period, the Governor General was appointed by the King of Spain.
 - c. During the military occupation by the United States, execution of law was in the hands of the military governor, who was designated by the U.S. President, and not elected by the natives.
 - d. During the entire period of American civil colonial rule, the governor general was appointed by the U.S. President and not elected by the natives.
2. During the period of the Commonwealth, the President was elected – except during the war with Japan (1941-46).
3. During the Republic, the President was elected in nationwide elections (1946-1969) for almost a quarter of a century.
4. During the martial law period (1972-1979), for a period of seven years, no popular nationwide elections have been held direct or indirect of the Chief Executive.

II. REPRESENTATIVE INSTITUTIONS AS ORGANIZATION OF GOVERNMENT OF THE PEOPLE, BY THE PEOPLE AND FOR THE PEOPLE.

- A. The government of the People is the government under their control.
1. The basic postulate of democratic system of Government: the individual is the repository of natural God-given rights, for the full enjoyment and protection of which both society and the government are *merely instruments*.
As stated classically by Thomas Jefferson:

"When in the Course of human events, it becomes necessary for a person to dissolve the political bonds which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident that all men are created equal, that they were endowed by their Creator with certain unalienable Rights, that among these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long establish should not be change for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove let Facts be submitted to a candid world."

2. As an instrument of popular rights, the Government must necessarily be under the control of the People, in order that it can *serve* the People and uphold their rights.
 - a. If the People have *effective* control over their Government, then it must obey their will, protect their rights and advance their interests.
 - b. If the People have NO effective control over their Government, then:
 - 1) it need *not* obey their will;
 - 2) it need *not* protect their rights;

3) it need *not* advance their interests.

c. Indeed, if a Government is not under the effective control of the People, then;

1) it can even act *contrary* to their will;

2) it can even *violate* their rights; and

3) it can even *disregard* or even HARM their interests.

B. Popular Control of Government is Effected by the Constitution, through Representative Institutions. These are (1) the system of free elections, by which officials who make and execute the law are chosen by the people for fixed periods of office, and who are therefore responsive to popular rights and interests: (2) the system of free and independent mass media, which provides the public full and accurate knowledge about public affairs, and a vehicle for public opinion on public questions; and (3) an independent and upright Judiciary, which administers a system of accountability under law, with resultant protection of popular rights.

III. A. System of Elections Effectuates Indirect Popular Participation in the Creation of Law, as well as Popular Control of Government.

1. Periodic or regular elections provide the mechanism for popular choice of leaders who will translate their wishes into public policy. Thus, popular demands and popular interests are reflected or embodied in law.

2. Periodic or regular elections provide continuing opportunity for popular participation in the creation of law, by permitting occasions for review and reassessment of existing law and policy, thereby permitting continuing adaptation of law to popular demands or interests.

3. If the creation or modification of the constitution or fundamental law, through a constitutional convention, popular participation in such creation or modification is assured: first, indirectly, by electing the delegates who will propose the amendments directly, by plebiscite in which the constitution or amendments thereto are submitted for approval.

4. Periodic and regular elections provide for popular control of government, by subjecting elective officials to continuing review of their fitness for office. Periodic and regular elections presuppose fixed or determinate terms or

periods for holding public office, forcing officials who wish to continue in office to stand for re-election, and thereby seek a new mandate.

5. Periodic and regular elections compel public officials who seek re-election, to build a record of achievement and responsibility during their incumbency, thereby compelling adherence to the standards of public service, and ensuring greater responsiveness and espousal, if not protection and promotion of, popular interests.
- B. A System of Free and Independent mass media, is an Instrument of Popular Participation in the Creation of Law, and in the Popular Control of Government.
1. A free and independent mass media provides the information, data, and opinion which is the culture base of popular decisions in the election of public officials and in the ratification of proposed constitutions or amendments.
 2. Free and independent media, by opinion, comment and information on crucial issues affecting public affairs or popular interests, mobilize Public Opinion, which in turn generates corresponding changes or modifications in public policy and law, with resultant accommodation of the popular demands or interests.
 3. Positively, free and independent mass media are an instrument of popular control of government, by affording the incentive of good and favorable publicity to public officials, who exert their best in the service of popular interests.
 4. Negatively, free and independent mass media are an instrument of popular control of Government, by operating as a check and deterrent to abuses, corruption, and other types of wrong-doing, through the threat of unfavorable publicity following exposure of official non-feasance, misfeasance or malfeasance, with adverse effect on tenure of office.
- C. A System of Independent Judiciary is an Instrument of Popular Participation in the Creation of Law, and in Popular Control of Government.
1. An independent judiciary, by reason of its expertise and impartiality, will effectuate the Will of the People as reflected in Law, by its fidelity to the Law in the process of administra-

tion and application. What is mandated by Popular Will through Law will receive application and enforcement in particular cases.

2. An independent judiciary is an instrument of popular control of Government, by providing a check to constitutional violations, abuses and usurpations on the part of officials, through its power of Judicial Review, Acts of Government and officials in violation of the Constitution, or in disregard of popular rights and liberties, are declared invalid and without the force and effect of law.
3. An independent judiciary is an instrument of popular control of Government, by enforcing the system of accountability under law of erring officials, in the form of criminal, civil or administrative sanctions for their misdeeds.

IV. IMPACT OF MARTIAL LAW ON REPRESENTATIVE INSTITUTIONS: THE PHILIPPINE EXPERIENCE

A. Discordance between what the Constitution declares and the prevailing social reality.

1. The major institutions of representative government are all expressly provided for in the Constitution, but by reason of countervailing institutions generated by martial law, as reflected in the interim provisions, these institutions are not operative in reality. This is so, because what the Constitution delineates through the complex of representative institutions provided for in its various articles, is basically a *limited* Government, that is, a Government limited by the popular powers and the popular liberties likewise therein recognized. The constitutional authoritarianism generated by martial law, however, is not, in actual operation, subject to these constitutional limitations and restraining institutions, hence, basically, it is not the Government described in the Constitution.
2. Periodic or regular elections are mandated in Constitution, but (1) for the past seven years, the country has not held elections conformable to the Constitution and the Election Law, and (2) the referenda held during the martial law period have not conformed to the legal requirements of elections.
 - a) In the various referenda that purportedly renewed the mandate of the President, his office was not actually at

- stake and conformably, there were no other candidates.
- b) In the so-called regional elections for members of the Interim National Assembly, the established political parties did not take part, and in many regions, only one set of candidates was fielded.
3. The fundamental liberties of the people, including the guaranty of press freedom, are suppressed.
- a) Gen. Order No. 5 prohibits mass actions of all kinds, including public assemblies, strikes and mass rallies or demonstrations.
 - b) P.D. 823, as amended, prohibits strikes in all vital industries.
 - c) P.D. 597 institutes a licensing and permit system for print media.
4. An independent Judiciary is the cornerstone for maintaining the principle of Limited Government through the Rule of Law, for upholding and protecting the Civil Liberties of the people, and for enforcing the doctrine of Official Accountability under the Law.

There are two presuppositions for effective discharge of such Judicial role. First is the effective functioning of the tripartite system of Representative Government, which is the structural underpinning of the principle of limited Government. This system must exist and must be effective, otherwise the System of Checks and Balances will not be in operation. Second is Judicial independence in terms of compensation, and tenure. The cold neutrality of an impartial judge precludes control by the political branches over his means of livelihood.

In the present situation, the System of Checks and Balances cannot operate, because the Tripartite System simply is not in existence. The Executive dominates both the Legislature and the Judiciary. In the case of the Legislature, its field of authority is in fact pre-empted by the President/Prime Minister. Under the 1976 amendments, he will continue to exercise legislative power until martial law is lifted. Unquestionably, martial law is still with us and has not been lifted. In terms of the premise of the Interim Article as amended in 1976, this means that the Interim Batasan Pambansa does not have legislative power. This raises the question of what it is doing when it is sitting in session, as I understand it is doing. It could of course be engaged in a

training session, or practice session for the real thing, when martial law will be finally lifted. In the meantime, it is the signature of the President/Prime Minister which is the operative act in rendering the measures passed, both legal and legislative. Since the President/Prime Minister has legislative power, when he signs the measure, it becomes law.

In regard to the Judiciary, it is dominated by the Executive, first because the Executive combines both legislative and executive powers, hence, control over Judicial compensation and prerequisites is completely with the Executive. Second is that the President/Prime Minister is vested with constitutional authority to terminate or dismiss all Judges from office without any finding of cause. This may be done directly by decree, or by naming the successor of the Judge.

This dominance of the Executive over the two other branches is in fact reinforced by the indefinite character of his tenure in office. Probably, our Prime Minister is about the only Prime Minister in the world who cannot be dismissed by Parliament, which is the Interim National Assembly. The reason for this is that the President was designated to his present position of Prime Minister by national referendum. He was not elected to his office by the Interim Batasan Pambansa, hence, the Interim Batasan Pambansa cannot fire him. Indeed, the shoe is on the other foot. Since prior to the lifting of martial law, the Prime Minister has legislative power, he can dismiss the entire Interim Batasan Pambansa by calling for national elections to the regular National Assembly. This would have the effect of terminating the Interim Batasan Pambansa.

V. PROBLEMS AND OBSTACLES IN RESTORING REPRESENTATIVE INSTITUTIONS OF GOVERNMENT

- A. Martial Law was, as it remains, a necessary condition for integrating the economy as part of the world market system.
 1. As a capitalist economy, the Philippine economy was stagnating, principally because —
 - a. investment was directed to import substitution, rather than export development;
 - b. foreign loans and foreign investments were not coming in, due to unfavorable constraints and conditions, particular-

- ly, the nationalization of natural resources and key sectors of the economy; and
 - c. investment uncertainties, due to prevailing political climate.
2. Martial Law brought about more favorable conditions, namely:
- a. Government and policy were removed from popular control, and pressures:
 - 1) Elections were suspended
 - 2) The legislative body was suppressed
 - 3) The Judiciary was placed under executive control
 - 4) The mass media were placed under government control and restrictions
 - 5) Public assemblies, demonstrations, rallies and other mass actions were banned
 - 6) Trade unions and workers were subjected to government control, through the strike ban and other measures.
 - b. Through certain provisions of the 1973 constitution, natural resources were available for exploitation by foreign investors and companies through government and management contracts.
 - c. Many restrictions on foreign investments were eliminated or greatly liberalized, and key sectors of the economy, principally banking and finance, manufacture, mining and agriculture were opened to foreign investments.
 - d. A policy of cheap labor and wage stability was instituted.
 - e. A policy of free convertibility of the peso and its stability was pursued through appropriate government guarantees to foreign investors.
3. As a consequence, there was considerable increase of assistance to the country, in comparison with pre-martial levels of:
- a. foreign military aid by the U.S.
 - b. foreign loans, which now approximate by \$9 billion.
 - c. inflow of foreign investments
 - d. opening up of foreign markets to Philippine products
4. The present conditions generated by martial law and concomitant developments are:
- a. Increase in the gross national product, accompanied by unemployment, underemployment, falling real wages of workers and mass poverty

- b. Expansion of export products, which are threatened by recession abroad
- c. Huge imports brought about by the "open economy" policy, with rising costs due to imported inflation and fall in the value of the peso;
- d. Dependence on foreign loans to meet current import bills.

B. Can representative Institutions respond adequately to conditions of crisis, or near crisis?

1. The principle of Limited Government will prevail, maintained by:
 - a. Tripartite system of representative government
 - b. Judicial review by an independent Judiciary
 - c. Vigorous Public Opinion, generated and maintained by a free and independent press
 - d. Public pressures, through fundamental rights of public assembly, association and petition for redress of grievances.
2. Decisions will have to be subjected to the processes of deliberation and debate.
3. Will the Citizenry give a full support and cooperation to the Government?
 - a. Payment of taxes
 - b. Self-restraint in consumption
 - c. Curtailment of expenditures
 - d. Acceptance of austerity