ASCERTAINING THE *VOX POPULI* WITHIN A DEMOCRATIC AND REPUBLICAN CONTEXT: THE ROLE OF CONGRESS AS A NATIONAL BOARD OF CANVASSERS

Gerard L. Chan

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"The real essence of justice does not emanate from quibblings over patchwork legal technicality. It proceeds from the spirit's gut consciousness of the dynamic role of law as a brick in the ultimate development of the social edifice."

- Obosa v. Court of Appeals
G.R. No. 114350, January 16, 1997

"It must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great degree as the courts."

- Justice Oliver Wendell Holmes
Missouri, K & T.R. Co. v. May (1904)
194 U.S. 267, 240, 48 L ed 971, 973, 24 S Ct 638

INTRODUCTION

Any examination of the role of Congress as a National Board of Canvassers inevitably requires revisiting the concepts of democracy, republicanism, and suffrage and how these ideals serve as the philosophical and conceptual bases of the legislature as a democratic institution. Necessarily, such an examination requires a closer look at Congress in terms of its place in the scheme of governance, its roles, duties and powers, as well as its birth and evolution throughout our history. The contentious and divisive process that characterized the May 2004 presidential canvass requires a deeper look into the constitutionally ordained role of the legislature acting as a board of canvassers beyond the obviously self-serving interpretations of the pertinent constitutional and statutory provisions by adherents from both the administration and the opposition. With the canvass concluded, a winner proclaimed and the swords partly sheathed, a sober assessment is

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demanded. To paraphrase a constitutional principle applied to the function of judicial review, the problem is capable of repetition, yet always evading solution.

I. DEMOCRATIC AND REPUBLICAN STATE

A. REPUBLICANISM

The concept of a democratic and republican state was transplanted to our shores by the American colonial government at the turn of the century. While the Malolos Constitution somewhat reflected the democratic and republican aspirations of the Filipino revolutionaries who fought for independence against Spain, the modern ideal of Republicanism expressed in the 1935 and subsequently in the 1987 Constitutions was largely borrowed from the US Federal Constitution. Article IV, section 4, of the United States Constitution imposes on the Federal Government the duty to guaranty to every state "a Republican Form of Government."

In the Philippines, this bounden duty to guaranty to every state "a Republican Form of Government" found actual expression in specific requirements of the Tydings-McDuffie Law which authorized the Filipino people to draft a constitution in 1934 under a government that shall be "republican in form."[1] The government "republican in form" was understood by the framers of the US Constitution to be the one expressed by James Madison,[2] in the following manner:

> We may define a republic to be a government which derives all its power directly or indirectly from the great body of the 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.

This ideal of a government, "republican in form," therefore, is one in which sovereignty resides in the people and where all government authority emanate from the people themselves.[3] The people are declared supreme, and every citizen (and not the officialdom) is not only an individual repository of sovereignty, but is also fully recognized as the origin, and therefore also the restriction, of all government authority.[4] Finding its way into the 1987 Constitution, section 1 of article II thereof expresses the principle very aptly: "The Philippines is a democratic

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[1] Tydings-McDuffie Act, § 2(a) (1934).

[2] 1 JOSE ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 132 (1936).

[3] JOAQUIN BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 52 (1996 ed.).

[4] ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 48-49 (1991).

and republican State. Sovereignty resides in the people and all government authority emanates from them."

Under this formulation, the essence of republicanism is "representation and renovation," the selection by the people of public officials who derive their mandate from the people and act on their behalf, serving only for a limited time, after which they are replaced or retained at the discretion of the principal.[5]

THE POLITICAL AND PHILOSOPHICAL IDEAL OF REPRESENTATION

The German philosopher George Wilhelm Friedrich Hegel, in a passage in his work *The English Reform Bill*, demonstrates his idea of representation thus:

> It is in this right [to elect Members of Parliament] that there lies the right of the people to participate in public affairs and in the highest interests of the state and government. The exercise of this right is a lofty duty, because there rests on it the constituting of an essential part of the public authority, i.e. the representative assembly, because indeed this right and its exercise is, as the French say, the act, the sole act, of the 'sovereignty of the people.'[6]

In these words, Hegel provides us with an insight into why he regards representation as necessary and desirable. According to him, representation is justified from the standpoint of the nation and the standpoint of public authority itself. For the nation, representation is the guarantee that the government is conducted according to law and that the general will co-operates in the most important affairs concerning the general interest.[7] The formation of a representative constitution, the rule of law and popular influence on legislation[8] are organically bound up with and mutually support one another. Consequently, the existence of representative institutions ensures that law is not merely the will of the monarch, but is also necessarily the general will. The nation thereby shares in the deliberation on, and the determination of, the requirements of the common good.[9]

The idea of "representation" in the American Constitution on the other hand are "not intended to be mere reflectors of public opinion,"[10] rather, the delegation of authority to representative institutions is designed to "refine and enlarge the public views by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and

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[5] *Id.* at 49.

[6] GEORGE HEGEL, *The English Reform Bill*, passage 309, *in* HEGEL'S POLITICAL WRITINGS 71 (T.M. Knox trans., 2nd ed. 1998).

[7] HEGEL, *supra* note 6 at passage 128.

[8] *Id.* at passage 161.

[9] *Id.* at passage 128.

[10] CLAES RYN, DEMOCRACY AND THE ETHICAL LIFE: A PHILOSOPHY OF POLITICS AND COMMUNITY 158 (1978).

whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations."[11]

B. DEMOCRACY

The 1986 Constitutional Commission did what earlier Constitutional Conventions chose not to do: it intercalated a new word to describe the state—"democratic," emphasizing what the state is or ought to be. While prior Constitutions aspired for a democratic state, the significance of this direct reference (which is a tribute to EDSA I) is that the Philippines under the new Constitution is not just a representative government but it also shares some fairly novel aspects of direct democracy such as the concept of "initiative and referendum" under article VI, section 32.[12] Recognizing the impact of the People Power Revolution, the "democratic" state ordained by the 1987 Constitution grafted aspects of a pure democracy, where the people govern themselves directly, into representative (i.e. republican) government, strengthening the ethos of a government run by, of and for the people.[13]

John Dewey sees democracy as not being limited to a method of conducting government, of making laws and carrying on governmental administration by means of popular suffrage and elected officers. It is this and something broader and deeper. Democracy, as used by Dewey is "not an alternative to other principles of associated life. It is the idea of community life itself. It is an ideal in that only intelligible sense of an ideal: namely, the tendency and movement of some thing which exists carried to its final limit, viewed as completed, perfected."[14] He broadens the concept to denote a whole way of life, as he refers to democracy as the sum of conditions which prevail in a society where community has been realized. It implies the active involvement of the whole people as being necessary for the achievement of the goal of community.[15] In this sense, democracy, according to Dewey "is not a fact and never will be."[16]

Dewey's formulation is in consonance with our previous discussion that democratic government derives its shape, strength, and direction from the aspirations of the people it serves. Government should reflect and promote the ultimate goals for life that are held by that people and its leaders. By defining democracy in terms of community, Dewey ascribes to popular rule a definite goal with reference to which its various procedural rules (i.e. suffrage, majority rules, non

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[11] James Madison, *The Federalist No. 10 ("The Union as a Safeguard Against Domestic Faction and Insurrection Continued")* in 43 GREAT BOOKS OF THE WESTERN WORLD 52 (Encyclopedia Britannica, Inc., Maynard Hutchins ed. 1982)

[12] BURNS, *supra* note 3, at 52.

[13] CRUZ, *supra* note 4, at 48-49.

[14] John Dewey, *On Democracy*, *at* http://radicalacademy.com/adiphilpolitics15eshtm (last visited July 7, 2004)

[15] RYN, *supra* note 10, at 17.

[16] JOHN DEWEY, THE PUBLIC AND ITS PROBLEMS 148 (1954)

delegation of powers, control of government officials) must be understood and contextualized.[17]

The French philosopher and observer of American life and polity, Alexis de Tocqueville, also shares a broad conception of democracy. For him, equality or democracy - which he uses interchangeably - did not simply mean a political system in which everyone votes, they were constructs that were deeper and more encompassing. Democracy for de Toqueville was a "social state based not only on the premise that all people are equal at birth but also on the principle that they can share in the task of organizing society. For this, according to him, they needed freedom.[18]

C. DEMOCRACY AND REPUBLICANISM: SOME ETHICAL BASES

"People who have no ideals can have no representatives."[19] According to Ryn:

> Representation in the morally significant sense implies a shared understanding of the ultimate goal of life and also an awareness that some men are better equipped for leadership than others. The good representative is able to represent not the lower, partisan selves of his fellow citizens, but their will to community. The willingness to put this kind of trust in elected leaders, to the point of respecting their judgment when it goes contrary to one's own wishes of the moment, is essential to the fulfillment of the higher goal of democracy.[20]

Ryn continues by saying that "the democratic ideal is not to do away with leaders, but to make them as numerous as possible and to create the circumstances in which a commitment to common good is encouraged among them."[21] To deserve the people's trust, a popular representative cannot be just an average, ordinary person. Apart from prudence and skill, he should have in "even greater measure than those who elect him" a deeply ingrained sense of the "moral purpose of politics" i.e., "in a position to lead and not follow only, he should be able to rise above the popular passions of the hour and even of his own period in history."[22]

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[17] *Id.*

[18] THE TOCQUEVILLE READER: A LIFE IN LETTER AND POLITICS 6 (Oliver Zunz & Alan Kahan eds., 2002)

[19] RENE DE VISME WILLIAMSON, INDEPENDENCE AND INVOLVEMENT: A CHRISTIAN REORIENTATION IN POLITICAL SCIENCE 198 (1964).

[20] RYN, *supra* note 10, at 17.

[21] *Id.*

[22] *Id.*

II. SOVEREIGNTY IN THE PEOPLE

A. THE RIGHT OF SUFFRAGE

An election is the act of casting and receiving the ballots, counting them and marking the return.[23] It is the means by which the people choose their officials for a definite time and fixed period and to whom they entrust for the time being, as their representatives, the exercise of the powers of government.[24]

In *Maynard v. Board of District Canvassers*,[25] Justice Chaplin defined suffrage as "a vote, voice, or opinion in some matter which is commonly to be determined by a majority of voters as opinion of persons who are empowered to give them; the wish of an individual in regard to any question, measure or choice, expressed by word of mouth, by ballot, or otherwise; that by which the will preference or opinion of a person is expressed."

Dean Vicente Sinco described suffrage as being "susceptible" of three interpretations:

> One (view) is that it is merely a "privilege to be given or withheld by the Law-making power in the absence of constitutional limitations." (*People vs. Corral*, 62 Phil. 945) Another view considers it as a natural right included among the liberties guaranteed to every citizen in a Republican from of government, and may not therefore be taken away from him except by due process of law. A third view maintains that the right of suffrage is one reserved by the people to a definite portion of the population possessing the qualifications prescribed in the Constitution. Consequently, a person who belongs to the class to whom the Constitution grants this right may not be deprived of it by any legislative act except by due process of law (*State vs. Kohler*). It is in this sense that suffrage may be understood in the Philippines.[26]

B. ELECTIONS AS INSTRUMENTS OF DEMOCRACY

"The right to vote has reference to a constitutional guaranty of utmost significance. It is a right without which the principle of sovereignty residing in the people becomes nugatory. In the traditional terminology, it is a political right enabling every citizen to participate in the process of government to assure that it derives it powers from the consent of the governed."[27]

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[23] Hontiveros v. Altavas, 24 Phil. 632, 636 (1913).
[24] Garchitorena v. Crescini, 39 Phil. 258, 263 (1918).
[25] 84 Mich. 228, 47 N.W. 756 and 759, 2 L.R.A 332 (1890).
[26] VICENTE SINCO, PHILIPPINE POLITICAL LAW 380-381 (1962).
[27] Pungutan v. Abubakar, G.R. No. 33541, Jan. 20, 1972, 43 SCRA 1, 11 (1972).

An election cannot be considered as merely a raw contest for powers or spoils of power, much less a mere periodic changing of guards and their officers.[28] The exercise of the right of suffrage is considered by Hegel as a "lofty duty" because "this right and its exercise is the act, the sole act of the *'sovereignty of the people.'*"[29] The physical, surface, and tangible act of casting a vote is far outweighed by its symbolic, psychic and tantric values. Voting and elections have a legitimizing force that is "transcendental."[30]

In a representative democracy like ours, representation in government is the only practicable method of ensuring the articulation of the interests and opinions of ordinary individuals.[31] The elected representatives of the people are merely projections of the popular conscience.[32] These representatives must secure their mandate through elections. Periodic elections are therefore at the core of every democratic nation, allowing people the opportunity retain or to retire those in authority.[33]

III. ROLE OF CONGRESS

A. CONGRESS AS AN INSTITUTION: THE PHILOSOPHICAL BASES

Article VII, section 1 of the 1987 Constitution provides 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.*" The last clause in this Constitutional provision recognizes the principle, enunciated above, that sovereignty resides in the people by allowing the same to reserve unto themselves the power of initiative and referendum.

Thomas Jefferson, the plebiscitarian, advocated the removal of obstacles to the full and instant implementation of the people's will. But as he recognized that direct popular participation and control is nearly impossible at the national level,[34] Jefferson settled for "the nearest approach to pure republic which is practicable," namely, government through "representatives chosen either *pro hac vice*, or for such short terms as should render secure the duty of expressing the will of their constituents."[35] As might be expected, there was only one body in the national

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[28] Leonardo Quisumbing, *Elections and Suffrage: From Ritual Regicide to Human Rights?*, 58 PHIL. L.J. 28, 31 (1983).

[29] HEGEL, *supra* note 6, passage 309.

[30] G. BINGHAM POWELL JR., ELECTIONS AS INSTRUMENTS OF DEMOCRACY 31 (2000).

[31] Maria Fe Pangilinan, *The Changing Meaning of Suffrage*, 57 PHIL. L. J. 136, 147 (1982).

[32] Pablo Badong, *The Purity of Suffrage and the Presidential Electoral Tribunal*, 32 PHIL. L. J. 539, 539 (1957).

[33] Cesar Bengzon, *Clean Elections and the Constitution*, 30 PHIL. L. J. 910, 910 (1955).

[34] RYN, *supra* note 10, at 185.

[35] THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON 669-670 (Adrienne Koch & William Peden eds. 1944).

government of the United States that Jefferson was prepared to call "mainly republican"[36] -- Congress. The presidency, and the Supreme Court were both criticized by Jefferson for being far too removed from the control of the people either by the length of their terms of office or by the fact that they were chosen or appointed only indirectly by the people.[37]

Hegel advanced the view that monarchy and a representative body are both indispensable parts of the modern supreme public authority. According to him, the state which has a strong executive without a representative body has 'force' but no 'will', an external but not an internal constitution.[38] In his *The Wurtemberg Estates*, he wrote:

> There surely cannot be a greater secular spectacle on earth than that of a monarch's adding to the public authority, which *ab initio* is entirely in his hands, another foundation, indeed *the* foundation, by bringing his people into it as an essentially effective ingredient.[39]

Hegel, according to Pelczynski, is "profoundly convinced that a modern state cannot be based on force alone. The government, as the central point of public authority, is inherently insecure as long as the nation is not associated with its operation. This seems to be the reason why Hegel calls the establishment of a representative system in Wurtemberg the internal creation of the state and why he says that bringing the people in as 'an essentially effective ingredient' of the public authority adds 'another foundation—indeed the foundation' to the monarch's power."[40]

"The legislature," according to Rawls, "has more than advisory capacity." He writes: "Neither is the legislature simply a forum of delegates from various sectors of society consulted by the executive. All sane adults, of course with given exceptions, have a right to take part in political affairs. All citizens have equal access, in the formal sense, to public office. The authority to determine basic social policies resides in a representative body chosen periodically by and accountable ultimately to the electorate."[41]

B. THEORIES OF CONGRESS

Given these premises, throughout history, several contending theories have emerged concerning the precise role of Congress in government and politics. Davidson, Kovenok and O'Leary capsulize these roles in the three major theories

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[36] RYN, *supra* note 10, at 17.

[37] *Id.*

[38] KNOX, *supra* note 6, at 70.

[39] GEORGE HEGEL, *Proceedings of the Estates Assembly in the Kingdom of Wurtemburg, 1815-1816*, § 163, *in* KNOX, *supra* note 6, at 71.

[40] *Id.* at 72.

[41] JOHN RAWLS, A THEORY OF JUSTICE 222-224 (1971).

of Congress that they posit. Their theories differ in terms of the functions of the legislature they choose to emphasize, and are categorized as follows: (a) literary, (b) executive force; and (c) party government. We shall be discuss each theory below:

1. The Literary Theory

The literary theory is essentially a restatement of the constitutional formulation of blended and coordinate powers -- "the institutionalized mutual responsibility of co-equals."[42] According to advocates of the literary theory, Congress must assert its right to exercise "all legislative powers." Policies should be initiated by Congress at least as often as by the executive, for "the primary business of the legislature in a democratic republic is to answer the big questions of policy."[43] Officials of the Executive Branch would be consulted on technical aspects of policymaking, but they should be prohibited from lobbying or pressuring. When the executive, by necessity, initiates legislative proposals, it should do so in an advisory capacity, fully respectful of congressional supremacy in lawmaking.[44] For defenders of the literary theory, the legislator's legitimacy as the ultimate policymaker rests on his near-monopoly of the channels of communication to the sovereign electorate creating direct linkages with them, linkages which are normally not available to the Executive or Judicial Branches.

However, since the President is also elected by and responsible to the electorate, this monopoly is not total for the Executive likewise has linkages that directly reach the people. In any event, the President is the only elected official in the Executive Branch: his constituency is diffuse, his mandate imprecise. On the other hand, members of the legislature are specific and precise representatives who "necessarily and properly reflect the attitudes and needs of their individual districts."[45]

The legislative process, therefore, cannot be reduced into a body providing simple "yea" or "nay" votes on policy alternatives but ought to be seen as constituting a complex and evolving combinatorial process through which numerous and shifting minority claims are acknowledged. As one scholar observes "Congress resembles the social system it serves; it reflects the diversity of the country. There is much to be said for a system in which almost every interest can find some spokesman, in which every cause can strike a blow, how feeble, in its own behalf."[46] Given this process the functions of Congress are less ministerial than they are by nature discretionary.

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[42] ERNEST GRIFFITH, CONGRESS: ITS CONTEMPORARY ROLE 7 (1951)

[43] JAMES BURNHAM, CONGRESS AND THE AMERICAN TRADITION 349 (1959).

[44] ROGER DAVIDSON ET AL., CONGRESS IN CRISIS 47 (1966).

[45] GRIFFITH, *supra* note 42, at 3.

[46] RALPH HUITT, *Congressional Organization in the Field of Money and Credit, in* FISCAL AND DEBT MANAGEMENT POLICIES 494 (1963).

"All advocates of the literary theory view executive power with suspicion, but they differ on the extent to which they think the Executive Branch should be cut down. The theory requires merely a semblance of balance among the branches of government. What Congress proposes, the executive should dispose. The executive branch should engage in the detailed implementation of laws that are as specific and detailed as possible, leaving bureaucrats little leeway for interpretation."[47]

2. The Executive-Force Theory

The executive-force theory reverses the formulation of the literary theory: the executive initiates and implements; the legislature modifies and ratifies. Advocates of this theory either (a) concur with the constitutionalist's thesis that the balance of power has shifted radically toward the Executive Branch but propose that reforms should be instituted to ensure this new executive hegemony or; (b) disagree entirely with that assessment and hold that legislative intimidation of the executive is now more extreme than ever before.[48]

Referring to Thomas Jefferson's active intervention in legislation, Congressman Richard Bolling explains that the early House of Representatives was "the organ of ratification of the decisions presented to it by those members...who...sat as agents of the President and his advisors,"[49] within Congress itself. Rossiter writes that "the cause of the opponents of a strong Presidency is ill-started because they cannot win a war against history. A strong Presidency is the product of events that cannot be undone and of forces that continue to roll."[50] The demands of the national emergency have repeatedly strengthened the executive branch.

The executive-force theory clearly seeks to blunt Congress' "historic role of obstructionism,"[51] emphasizing oversight. But to prevent this watchfulness from degrading into meddling, executive theorists usually specify that congressional review be in terms of generalized policy considerations rather than details.[52] As Franklin Roosevelt succinctly observed: "The letter of the Constitution wisely declared a separation, but the impulse of common purpose declares a union."[53]

In the Philippine setting, although the 1987 Constitution ostensibly cut down on the powers of the President in an obvious reaction to the tyranny and excesses of the Marcos regime, upon closer inspection, it can be observed that the 1987 Constitution merely clipped the military and commander-in-chief powers of

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[47] DAVIDSON, *supra* note 44, at 47.
[48] *Id.*
[49] RICHARD BOLLING, HOUSE OUT OF ORDERS 27 (1965).
[50] CLINTON ROSSITER, THE AMERICAN PRESIDENCY 151 (1960).
[51] JOSEPH CLARK, CONGRESS: THE SAPLESS BRANCH 30 (1964).
[52] ROBERT DAHL, CONGRESS AND FOREIGN POLICY 143 (1950).
[53] EDWARD CORWIN, THE PRESIDENT, OFFICE, AND POWERS 272 (1957).

the President, the other powers, however, remain intact, if not even greater. This fact can be seen in the ruling of the Supreme Court in the case of *Marcos v. Manglapus*[54] where the Supreme Court "assigned" the "residual powers" not to the Legislative or to the Judiciary but rather to the Executive. The dominance of the executive can also be seen in the recently concluded Congressional canvass.

3. Party-Government Theory

Party government theory comes as a logical extension, and perhaps the end result, of the executive-force theory discussed above. However, its focus and roots are sufficiently distinct and distinguishable to warrant separate consideration. In actuality, Party-Government theory is not a theory about Congress at all but is rather a proposal to reconstruct the American-type party system in such a way that a party would formulate a clear-cut and specific policy (platform) that would be responsibly effectuated when that party enjoyed a national majority.[55] The Philippines adopted its version of the American-type party system during the heyday of the Liberal-Nacionalista party hegemony, but the system was short-lived, felled by the unavoidable need for a one-party system that acted as a rubber-stamp for the Marcos regime.

Nonetheless, the empirical foundation of party-government theory is the all-too-familiar observation that American type political parties are unwieldy coalitions of parochial interests, so much like the constantly shifting parties and interests that vie for the people's attention in the Philippines, following the anarchic multiparty system that emerged from EDSA I. Under the post-EDSA I multi-party scheme, the party elected into power is largely incapable of coherently organizing its members in the Legislative and Executive Branches into an energetic, and effective government because the party—or rather coalition—from our experience, simply puts together loose, non-ideological aggrupations representing selfish personal, family and business interests. This built-in confusion leads to the disorganization and parochialism that debilitates and corrupts the political system

Upon the other hand, the Jeffersonian notion of popular majorities organized in national blocs or parties form the bulwark of the party-government system. Such a system would have a tidiness unknown to the modern Philippine multi-party coalition concept that emerged after EDSA I.

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[54] GR No. 88211, September 15, 1989, 177 SCRA 668, 691 (1989)

[55] DAVIDSON, *supra* note 44, at 47.

IV. CONGRESS AS A NATIONAL BOARD OF CANVASSERS

This last framework of a distorted non-ideological multi-party coalition provides the proper setting within which one may correctly situate the role of Congress as a National Board of Canvassers in the 2004 presidential elections. The ideal framework of a democratic and republican system able to correctly ascertain the sovereign will ineluctably loses shape in a multi-party coalition held together not by commonly held principles but by parochial interests.

A. THE CONSTITUTIONAL PROVISIONS

The provisions of our 1935,[56] 1973,[57] and even the US Constitutions,[58] from which the existing provision of the 1987 Constitution arose, enumerate two steps in the canvassing process. First, the opening of all the certificates of canvass by the Senate President. In this step, the Constitution provided the details as to when, where and who opens the certificates. That it is the President of the Senate, who shall open *all* the certificates, that he shall do so not later than thirty days after the day of the election and that he shall do so in the presence of the Senate and the House of Representatives in joint public session. In the next step, the Constitution suddenly turns remarkably cryptic. It merely provided for the *counting* of the votes. No declaration, it is to be observed, is made as to who shall make the count and

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[56] "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 persons 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." (emphasis added) CONST. (1935), art. VII, § 2.

[57] "The returns of every election for President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Speaker at the Batasang Pambansa, who shall not later than thirty days after the day of the election, and in the presence of the Batasang Pambansa, open all the certificates, *and the votes shall then be counted.*

"The person having the highest number of votes shall be proclaimed elected; but in case two or more shall have an equal and the highest number of votes, one of them shall forthwith be chosen by a vote of a majority of all the Members of the Batasang Pambansa in session assembled." (emphasis added) CONST. (1973), art. VII, § 5.

[58] "The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign, and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, *and the votes shall then be counted*; the person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of Electors appointed; and if no person have such a majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President." (emphasis added) U.S. CONST. amend. XII, § 1.

afterwards declare the results thereof. That it is Congress which is so empowered, seems to be beyond question however. But what if a certificate is perfectly inauthentic, impeccably altered and cleanly erased? Can Congress go behind the election returns? What is the role of Congress as a national board of canvassers?

A look at both our electoral history as well as that of the United States will reveal that this Constitutional provision has sparked not a few controversies. Then as now, there exists a wide divergence of opinion as to whether or not Congress, as a National Board of Canvassers, under the foregoing provisions, performs a ministerial or a discretionary function.

B. THE AMERICAN EXPERIENCE

1. The Hayes-Tilden Election Dispute of 1876

The question of the scope of the power of Congress acting as Board of Canvassers in the presidential elections of the United States was posed before the US Congress as early as 1876. In the presidential elections of that year, Messrs. Rutherford B. Hayes and Samuel J. Tilden were candidates for the presidency in one of the most hotly contested elections in American history.

In several States the Hayes and the Tilden electors were sharply divided, and the question was critical as to which set of electoral returns in each of these states should be counted. Because of the closeness of the over-all electoral count, disputed states held enough votes to tip the scales in favor of one or the other candidate. At the start of the conflict however, Mr. Tilden, the Democratic candidate, had 184 votes of the 185 required for his election. On the other hand, Mr. Hayes, the Republican candidate, had all but 165 votes. With these totals, on the night of the election, both Tilden and Hayes as well as most of the national media assumed that the former had won.

However, some Republicans were not willing to give up so easily. After the dust had settled, Hayes was president. Republican canvassers forcefully contested twenty of the electoral votes including four from Florida, eight from Louisiana, seven from South Carolina, and one from Oregon. Out of these twenty, Tilden only needed one more vote to win the election. On the other hand, Hayes needed all of the twenty votes. Tilden was not to get any one of the twenty.

Eventually, *all four States submitted dual electoral returns to Congress.* Unfortunately, no provision in the US Constitution covered such a situation, and neither was there any clear precedent for solving the problem. After much wrangling and confusion, Congress decided to look into the returns and inquire and investigate as to which of the dual returns submitted to it by rival returning boards were entitled to be counted. For this purpose, the US Congress *created an Electoral Commission.*

Without any precedents to guide them, both parties agreed to set up a fifteen-person commission to study the contested votes and to impartially decide to whom each vote should go to. The commission was made up of five Senators, five members of Congress, and five Supreme Court Justices. It was originally set up to include seven Democrats, seven Republicans, and one independent member who was expected to be unbiased and nonpartisan. At this time there was parity between the two parties: the Republicans controlled the Senate while the Democrats controlled the House. Both parties agreed that the findings of the commission would be upheld unless overruled by a vote of both the House and the Senate. However, when the independent who was supposed to serve on the commission was elected as a Senator, he resigned his position on the commission and was replaced by a Republican. The commission now had eight Republicans and seven Democrats.

Over a series of heated discussions, the commission, as expected voted along party lines. Consequently, the majority (8-7) awarded all twenty votes to Samuel Hayes, the Republican candidate. Every decision of the commission, in which the Republicans had the numbers, albeit slim, was vigorously contested by the Democratic House but was upheld by the Republican Senate. The Democrats threatened a filibuster. To resolve the stalemate, however, the Democrats eventually agreed to a Hayes presidency if Hayes would withdraw federal troops from the South, ending reconstruction and the enforcement of equal voting rights for blacks.[59]

2. Hayes-Tilden Redux: Bush v. Gore

The 2000 presidential elections between Albert Gore Jr. and George W Bush was the closest race for the US presidency in modern times. In the elections for the Chief Executive in that year, Gore's margin over Bush in the popular votes was 0.51 percent. However, the electoral vote margin was four votes in favor of Bush.[60]

Since the "margin of error exceeded the margin of victory", under Florida law, an automatic machine recount became mandatory, reducing Bush's lead to an even slimmer 300 votes. Because of this, Gore then convinced the Florida Supreme Court to order a manual recount in several counties, a count which, according to observers, would have easily erased Bush's 300-vote margin. The Florida count was crucial and deciding. Without the Florida vote, neither candidate carried enough states to be declared winner. Bush elevated the case to the United States Supreme Court praying that the manual count be stopped.

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[59] Center for Voting and Democracy, *Controversial Elections*, ¶27-38 *at* http://www.fairvote.org/e_college/controversial.htm (Jul. 8, 2004) *See also* 3 WESTEL WOODBURY WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES 1457-62 (2nd ed. 1929); EDWARD CORWIN, THE PRESIDENT: OFFICE AND POWERS 54-58 (3rd ed. 1948).

[60] Raul Pangalangan, *Passion for Reason: Bush vs. Gore, Philippine Version?*, PHIL. DAILY INQUIRER, Jun 4, 2004, *at* http://www.inq7.net/opi/2004/jun/04/text/opi_rpangalangan-1-p.htm.

The US Supreme Court, by a vote of 5-4, blocked the manual recount, saying that with a fixed statutory deadline for counting votes, it was impossible to do a recount that met all the constitutional safeguards. The decision allowed the questioned Florida returns to stand, paving the way for a George W. Bush presidency. With this, Bush's inauguration on January 20, 2001 earned him the distinction of being the first president since Benjamin Harrison in 1888 to win the electoral vote but lose the popular vote.[61]

C. THE PHILIPPINE EXPERIENCE

1. The Laurel-Quirino Elections of 1949

The Presidential elections of 1949 saw how far the electoral process can be perverted "to serve the ends of power in the thin veneer of democracy."[62] As one keen observer put it, "The campaign was the dirtiest and bloodiest in all Philippine history. Even then, there were assertions that democracy, Philippine style, was a snare and a delusion."[63]

In the 1949 elections, Congress was likewise faced with the question on whether or not it can go behind election returns in the exercise of its function as a National Board of Canvassers. Because of the conduct of the elections of that year and the manner in which the pivotal issue of the canvass was decided, many writers consider the elections as that time in our history when "Philippine democracy was ruthlessly raped."[64]

The conflict in 1949 arose when leaders of the Nacionalista Party directed a petition to the President of the Senate seeking to defer the canvassing of the election returns to a subsequent date. They asserted that the election of Messrs. Elpidio Quirino and Fernando Lopez were tainted by fraud and terrorism. The party was of the opinion that the power of canvassing election returns and declaring the results thereof carried with it the power of determining the validity or illegality of such returns. They believed that the power of Congress in this regard was not ministerial and that the legislature could, in the exercise of its powers, go behind the returns.

On the other hand, the Liberal Party maintained that such a power could not be implied from the power to canvass election returns and declare the results thereof under the 1935 Constitution. Liberal Party Senator Emiliano Tirona, justifying this stand argued that when the Constitution provides the scope of the authority of Congress and defines the power of the Congress, any other power

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[61] Jeffrey Yates & Andrew Whitford, *The Presidency and the Supreme Court After Bush v. Gore: Implications for Institutional Legitimacy and Effectiveness*, STAN. L. & POL'Y REV. 1, 1 (2002)

[62] Badong, *supra* note 32, at 539.

[63] GEORGE MALCOLM, FIRST MALAYAN REPUBLIC 293 (1951).

[64] JOSE P. LAUREL, BREAD AND FREEDOM 31 (1953)

cannot be assumed, because by the inclusion of one power there inevitably excludes another power, invoking the principle of "*expressio unius est exclusio alterius.*"

Unfortunately the issue was not decided squarely. The Liberals controlled the House. A last ditch effort by the Nacionalista Party acting in concert and the Avelino supporters in the Liberal Party to wrest control of the Senate failed when Senator Avelino, on promise of reinstatement and of being elected Senate President, urged his men to reunite with the Quirino Liberal Senators. There ended the Nationalista plan to urge Congress to go beyond the Certificates of Canvass The question, therefore, remained unsettled.[65]

2. Laurel-Quirino Redux: GMA v. FPJ

The failure of Congress to resolve the issue of the exact scope of its powers in acting as a National Board of Canvassers came to haunt the legislature five and a half decades after the Nationalista- Liberal Party Debacle. By the time the question was resurrected in one of the most closely contested elections in our history, the political terrain had changed: the two-party system had withered, replaced by loose coalitions of parties united by nothing that remotely resembles ideology or coherent platform.

In the May 2004 Presidential elections, action-movie actor Fernando Poe Jr. battled incumbent president Ms. Gloria Macapagal-Arroyo. Arroyo, who replaced the hugely popular President Joseph Estrada, came into office three years earlier through another "People Power" revolt. She clearly needed her own mandate. However, surveys early in the campaign predicted victory by another movie actor, setting the stage for one of the most acrimonious and costly elections in the country.

The 1986 Constitutional Commissioners did not foresee the possibility of an *actual* mid-term presidential succession and could not have thereby imposed safeguards against the likely temptation facing an incumbent of using the presidency's awesome powers in marshalling government money and resources for an election campaign under the guise of governance. After all, the 1987 Constitution mandated a one term limit for the president as the general rule.

As the May 2004 elections drew closer, the seemingly insurmountable lead of the main opposition standard bearer gradually eroded allowing Arroyo's campaign handlers to see possible election victory a few weeks before elections. Not surprisingly, surveys outright predicted the incumbent's victory.

3. The 2004 Presidential Canvass

When the election returns and certificates of canvass reached a legislature predominantly composed of lawmakers allied with the incumbent administration

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[65] Feliciano Tumale, *The Role of Congress as a Board of Canvassers in Presidential Elections*, 27 PHIL. L. J. 750, 756-758 (1952).

the ghosts of the 1949 elections were resurrected. Congress, acting as a whole decided not to canvass the results directly but through a Joint Committee overwhelmingly packed on both sides with supporters of President Arroyo. The opposition resisted. According to them, the 1987 Constitution provided for Congress itself to sit as a National Board of Canvassers and creating of a joint committee constituted an undue delegation of its powers. As in most contentious political battles, the matter reached the Supreme Court. The Court, almost predictably, in the case of *Lopez vs. Senate of the Philippines*[66] decided by a 14-0 vote to dismiss the petition, declaring that "the petitioner failed to show that Congress gravely abused its discretion in creating the Joint Committee."[67]

With the dismissal of the petition and the canvassing rules finally approved, the counting of the votes for the 2004 presidential elections finally proceeded with the joint committee at the helm. Faced with a number of questionable certificates of canvass (COCs), the members of the opposition in the joint committee argued all too forcefully and repeatedly that Congress should look beyond the Certificates of Canvass into the Election Returns. Under Congress' rules, the canvassers could look into the election returns only when "it appears that any certificate of canvass bears erasures or alterations." However, the question as to whether or not a COC contained "erasures or alterations" was subject to vote and the minority opposition clearly did not have the numbers. The opposition's requests that the committee look beyond certain questionable COCs with alterations and erasures were swept under the rug, duly "noted" by the committee chair and eventually vetoed by the majority.

Outside Congress the other battle was fought for the hearts and minds of the people in the media. Following the old but derided tactic of "grab the proclamation" the predominant theme that got across was that the opposition's protests undermined and destabilized the country by delaying a timely proclamation. After much media pressure Congress finally showed a final tally consisting of 12,905,808 votes for the incumbent or about 40% of the ballots cast; 11,782,232, or 37% for Mr. Poe; and 11 % for Senator Panfilo Lacson.[68] Thus, in the end, Ms. Arroyo emerged winner.

D. THE ROLE OF CONGRESS AS A NATIONAL BOARD OF CANVASSERS

Given our country's experience in 1949 and 2004, what, then is the true role of Congress as a National Board of Canvassers? Otherwise stated, given our earlier discussion on the role of the legislature in a democratic and republican government what *should* its role be?

1. Supreme Court Decisions

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[66] G.R. No. 163556, Jun. 8, 2004

[67] *Id.*

[68] Hookway, *Final Vote Tally In Philippines Gives Arroyo Win*, ASIAN WALL ST. J., Jun. 21, 2004, at A1, A9.

Court decisions on the issue are not as sparse as they may seem to be, in fact, the Supreme Court has on numerous occasions been called upon to rule upon the nature of the legislature's power in the canvassing of votes.

In the 1919 case of *Cordero v. Judge of First Instance of Rizal*,[69] the High Tribunal ruled that while the Board of Canvassers is made up of legislators, it does not act in its capacity as a maker of laws but as *an entirely different and distinct entity organized for a specific purpose*. The Board of Canvassers exists for a specific function, that is, to canvass the results of the election as shown in the election returns and to proclaim the winning candidates.

Admittedly, the specific purpose for which Congress is being convened acting as a National Board of Canvassers, is to canvass the results of the election. When it does act as a board of canvassers, is Congress tasked with merely performing the physical or "administrative" act of canvassing? Is Congress' power simply that of counting and tabulating?

The answer must lie somewhere in the discussions introduced in the first part of this paper. First, our representatives in Congress as agents of the people must reflect the sentiment and will of the people. If there exists doubt as to what those sentiments are, the members of Congress, it is submitted, are tasked with diligently ascertaining those sentiments, absent which they cannot perform their mandate properly. After all, the general rule in statutory construction is to construe election laws liberally, to give effect to the people's voice. Carried into the problem that continues to confront the canvass of elections, on a philosophical as well as on a logical plane, if irregularities on COCs exist and are apparent, it is plainly Congress' duty to look behind them.

Moreover, in a presidential election, Congress acts a board of canvassers not just of any official, but of the President. The President is considered the embodiment of the nation. Where legislators represent partial and minority interests; the President represents the "general will" of the community.[70] "He is the representative of no constituency, but of the whole people."[71] The fact that it is the votes for the President, the highest position in our government, that is being ascertained, imposes upon Congress a heavier burden to determine who exactly is the genuine representative of the people. The gravity of this task brings to mind the observations of Dean Sinco, thus:

> No other single official in the Philippine government represents such concentration of powers as does the President. "Being the executive department itself, the President is not inferior to but coordinate with the

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[69] 40 Phil 246, 251 (1919).

[70] DAVIDSON, *supra* note 44, at 47.

[71] WOODROW WILSON, CONSTITUTIONAL GOVERNMENT IN THE UNITED STATES 68 (1908)

> other two departments of the government and independent of them. His acts, decisions, and orders, made within the scope of his constitutional powers, may not be questioned by either the legislative or judicial department. His discretion in the exercise of his political and executive powers is subject to no limitations by any other agency of the government. In the exercise of that discretion he is responsible to no one. He is accountable to no one. He is accountable only to his country and to his own conscience.[72]

Given this, the role then of Congress as a National Board of Canvassers acquires even greater significance. In such a role, Congressmen are not mere tabulators or accountants. They represent the people. Necessarily, they must assume a sense of curious investigation that would satisfy them about who their principals, the people, exactly chose in an election. According to Justice Reynato Puno:

> [Canvassing] is an important part of the process of determining the choice of our sovereign people on who ought to be our President and Vice-President....Thus, in making canvass, *our lawmakers should act more as representatives of the people and less as partisans of political parties...lawmakers when canvassing votes, should keep their eyes open but should shut them off to any political light.* It is a travesty of democracy for the people to be governed by people without a mandate. *The nation can endure a slow but trustworthy tally. It may not survive an indefensible count, however speedy it may be.* (emphasis added)

2. The 1987 Constitution

a. New framework old paradigm?

The previous documents (the 1935 and 1973 as well as the U.S. Constitution) which inspired the current Constitution were vague when they dealt with the provision on the counting of the votes. However, the 1987 Constitution, leaves little room for debate. One recalls what the Supreme Court said in the 1966 case of *Lopez v. Roxas,*[73] decided under the 1935 Constitution:

> Congress merely acts as a national board of canvassers, charged with the *ministerial and executive duty* to make such declaration, on the basis of the election returns duly certified by provincial and city board of canvassers.... [Congress does not have the power] to determine whether or not said duly certified election returns have been irregularly made or tampered with, *or reflect the true result of the elections....* (emphasis added)

The 1973 Constitution had a similar provision. It was under this provision that Marcos was declared winner in the controversial Snap Elections of February 1986.

The 1987 Constitution departed from the old framework in an apparent response to the old controversies. Recalling what transpired during the 1986 canvass then Commissioner Sumulong, during the deliberations of the 1986

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[72] VICENTE SINCO, PHILIPPINE POLITICAL LAW 139 (1954)

[73] G.R. No. 25716, 17 SCRA 756, 769, July 28, 1966.

Commission, narrated: "It will be remembered that many of the certificates of canvass received from each province and city by the Batasang Pambansa were objected to by the supporters of Aquino and Laurel. But based on this provision of the 1973 Constitution, after the certificates of canvass had been opened, the Speaker immediately announced the results of the canvass and proclaimed President Marcos and Mr. Tolentino as elected President and Vice President, respectively."

The 1987 Constitution thus introduced two innovations which are absent in the previous Constitutions: first, it used the word "canvass" instead of retaining the word "count" favored in the older Constitutions; and second, it provided for the determination, by Congress, in the manner provided by law, of the authenticity and due execution of the certificates of canvass.

b. To Count vs. To Canvass: Real Canvass vs. Legal Canvass

Under the present Constitution, it must be observed that the word used in the previous Constitutions was "count" while the present Constitution replaces the word with "canvass." Is this significant? What does it mean to "canvass"?

It is posited that "canvass" cannot be equated with the mere tabulation or addition of election results. Cardinal in constitutional construction is the rule that words should as much as possible be understood in the sense they have in common use and given their ordinary meaning, except when technical terms are employed, in which case the significance thus attached to them prevails.[74] In other words, the plain, clear and unambiguous language of the constitution should be construed in that sense, and should not be given any construction that changes its meaning."[75] "As the Constitution is not primarily a lawyer's document, its language should be understood in the sense that it may have in common. Its words should be given their ordinary meaning except where technical terms are employed."[76]

"The word "canvass"[77] is clearly not a new word. Its conventional meaning—to examine or to scrutinize—is therefore being silenced in favor of a previously unfamiliar usage, i.e. a quick mechanical tallying of election returns, convenient for those who would opt for the latter. The stubborn refusal of the majority of the members of the joint congressional canvassing committee to open

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[74] J.M. Tuason & Co., Inc. v. Land Tenure Administration, G.R. No. 21064, Feb. 18, 1970, 31 SCRA 413 (1970)

[75] RUBEN AGPALO, STATUTORY CONSTRUCTION 441 (1998).

[76] Occena vs. Commission on Elections, G.R. No. 52265, Jan. 28, 1980, 95 SCRA 755 (1970)

[77] Webster's 1913 Dictionary has the following entries for this word: "(can'vass) v.t. 1. to sift, to strain, to examine thoroughly; to scrutinize; as to canvass the votes cast at an election. 2. To examine by discussion, to debate. 3. To go through, with personal solicitation or public addresses; as to canvass a district for votes, to canvass for subscriptions. n. 1. Close inspection; careful review for verification; as a canvass of votes. 2. Examination in the way of discussion or debate. 3. Search; exploration, solicitation, systematic effort to obtain votes, subscribers, etc."

Webster's New World Dictionary Third College Edition, 1994, contains basically the same meanings: "v.t. 1. To examine or discuss in detail; look over carefully. 2. To go through (places) or among (people) asking for (votes, opinions, orders, etc.)—v.i. To try to get votes, orders, etc., solicit.—n. The act of canvassing, esp. in an attempt to estimate the outcome of an election, sales campaign etc."

source documents flies in the face of all known meanings of the word "canvass." More importantly, it puts to peril the very thing on which the claim to authority of our highest officials is anchored—a clear electoral mandate."[78]

c. Piercing the Veil: Looking Behind the COCs

Another innovation introduced under the present Constitution is the grant to Congress, in the manner provided by law, of the power to make a "determination of the authenticity and due execution" of the certificates.[79] Unlike the 1935 and the 1973 Constitution which left Congress powerless to look into defects in the certificates of canvass, the present provision now authorizes congress to determine "the authenticity and due execution of the certificates." Under the 1987 Constitution, there are thus three steps in the canvassing process. First, the opening of the certificates of canvass. Second, the determination of the authenticity and due execution of the certificates. Third, the canvassing or the actual counting of the votes.[80]

"Notably, however, the Constitution does not give to Congress as a canvassing body a free hand in determining what defects in the certificates affect "authenticity and due execution." According to the Constitution, this is to be done "in the manner provided by law." Congress, therefore, acting as a legislative body and in accordance with the procedures for the enactment of laws, may specify what defects may be considered. The pertinent law on the subject now is section 30 of Republic Act 7166 of 1991."[81] The law clearly provides for:

(1) the scope of what Congress may do in its act of verification;

(2) what Congress may do when Congress finds that the certificate of canvass is incomplete; and

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[78] Randy David, *Public Lives: The Original Meaning of 'Canvass'*, PHIL. DAILY INQUIRER, Jun. 20, 2004, at A13.

[79] "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 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 the 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.

The Congress shall promulgate its rules for the canvassing of the certificates." (emphasis added) CONST. art. VII, § 4

[80] Joaqum Bernas, S.J., *Sounding Board: Jointly or Separately?*, TODAY (Philippines), May 26, 2004, at 11

[81] Joaqum Bernas. S.J., *Sounding Board: Canvassing: Then and Now*, in Sounding Board, TODAY (Philippines), May 30, 2004, at 11.

(3) what Congress may do when it finds erasures or alterations on the face of the certificate of canvass.[82]

"It is thus not correct to say that the canvassers may not look into the returns. Looking into the returns, however, may only be done by way of exception. While the canvassers have the duty to determine the "authenticity and due execution" of the certificates of canvass and for this purpose it may be necessary to look into the returns, the law limits the circumstances when looking into the returns may be done. The canvassers may consult the return only "when it appears that any certificate of canvass or supporting statement of votes by precinct bears erasures or alterations which may cast doubt as to the veracity of the number of votes stated therein and may affect the result of the election."[83]

What if a certificate of canvass is perfectly inauthentic, impeccably altered and cleanly erased? What if the wrong totals were entered right at the very start by the city board of canvassers? The COC will not bear any erasure or alteration on its face.

Who decides whether the "erasures or alterations may cast doubt on the veracity of the numbers stated therein"? Since the canvassing body decides by majority vote, the requests of the minority to look at the supporting documents which from recent experience were simply "noted" and subsequently vetoed. The losing minority can have no recourse but to yield to the majority. The constitutional remedy is an election contest which can drag on for years while an impostor yields power.

One is led to ask: Does the law really countenance the concealment of fraud? Does the law deliberately set out to prevent the discovery of fraud? What is the purpose of the law? What really is the role of Congress as a national board of canvassers?

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[82] Section 30 limits the scope of what Congress may do to verifying whether 1) each certificate of canvass was executed, signed and thumbmarked by the chairman and members of the board of canvassers and transmitted or caused to be transmitted to Congress by them; 2) each certificate of canvass contains the names of all of the candidates for President and Vice President and their corresponding votes in words and in figures; and 3) there exists no discrepancy in other authentic copies of the certificate of canvass or discrepancy in the votes of any candidates in words and figures in the certificate.

When Congress finds that the certificate of canvass is incomplete, "the Senate President shall require the board of canvassers concerned to transmit by personal delivery the election returns from polling places that were not included in the certificate of canvass and supporting statements. Said election returns shall be submitted by personal delivery within two days from receipt of notice.

On the other hand, Congress may find erasures or alterations on the face of the certificates. When this happens and such defects "cast doubts as to the veracity of the number of votes stated therein and may affect the result of the election, upon request of the presidential or vice-presidential candidate concerned or his party, Congress shall, for the sole purpose of verifying the actual number of votes cast for President and Vice President, count the votes as they appear in the copies of the election returns submitted to it."

[83] Joaquin Bernas, S.J., *Sounding Board: Must Congress be in Session?* in Sounding Board, TODAY (Philippines), Jun. 20, 2004, at 11.

In times like these, we look to the words of Justice Puno in his separate opinion in the aforecited case for guidance and enlightenment:

> The determination of the authenticity and due execution of the certificates of canvass cannot be done in a *robotic manner*....the law and the rules require that *due consideration* be given not only to the certificates of canvass *but also* to the election returns and the statement of votes. In other words, *the search for the truth about the true will of the electorate should not be confined to the four corners of the certificate of canvass.* The truth, if blocked by the opaque face of the certificates of canvass, must be extracted from the election returns and statement of votes. It is self-evident that discovering and distilling the truth of who were really elected by our people for the positions of President and Vice-President *deserve more than a mechanical effort* ....The determination of the authenticity and due execution of the certificates of canvass calls for the exercise of *discretion*....The *primary consideration* in determining the authenticity and due execution of the certificates of canvass is *accuracy*—accuracy in *determining the sovereign will of the people.* The need to fast track the determination of the will of the people pales in comparison with this consideration....The debate contemplated is one that will *elicit the truth as to the choice of the people*... The canvassing must be transparent. Lawmakers must conduct the canvassing *without a taint of arbitrariness* The worst type of arbitrariness is arbitrariness that runs roughshod over the *sovereign will of the people* (emphasis added) [84]

CONCLUSION

In ending, it is appropriate to be reminded of the words of Karl Jaspers, Ardent's mentor and friend. Jaspers distinguishes between the "mere politician" and the "statesman." "Mere politicians," he says, seem like tigers in their unshakable presence of mind, inhibited only by the self-discipline imposed by their goal, which is power as such. To them, the people are a mass to be manipulated so that it will obey, work and keep quiet. The statesman, on the other hand, is guided by moral-political ideas in the framework of a historical situation."[85]

Every statesman must embody the ethos of his community. In carrying out its roles, the member of the legislature cannot act in a moral vacuum isolating himself from the realities on the ground and totally ignoring the sentiments of those from whom he derives his powers. By insisting on an interpretation of the constitutional provision on canvass that absolutely forecloses inquiry into the sovereign will the legislator demeans himself and defames his institution.

As the 12th Congress took its last bow to make way for the entry of the newly elected members of the 13th Congress, a new set of representatives with a fresh mandate from the people inherited the reigns of the legislature to perform the sacred office of law making which is said to partake of the divine[86] One fervently

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[84] Lopez v. Senate of the Philippines, G.R. No. 163556, Jun. 8, 2004 (Puno, J., *separate opinion*)

[85] Nono Alfonso, S.J., *Wanted: A Few Good Statesmen*, PHIL. DAILY INQUIRER, Jun. 12, 2004, at A12.

[86] Elizabeth Mensch, *The History of Mainstream Legal Thought*, *in* THE POLITICS OF LAW 14 (David Kairys ed. 1990).

hopes that our politicians take guidance from Jasper's words, facing up to their moral task of serving the greater good, the ethos of our democratic society, reflecting the people's will rather than the limited and parochial interests that for decades have impoverished and brutalized us.

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