SUGGESTED REFORMS IN THE ELECTION LAW

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CHAPTER I

INTRODUCTION

Nearly every year, the Philippine Legislature passes a law amending a section or sections of our present election law. Efforts have been exerted in an attempt to regulate the exercise of the right of suffrage with the end in view of minimizing, or even eliminating all its defects, and to ensure the holding of a clean and peaceful election.

But like all human creations, our election law is far from perfect. This fact must be conceded. Only time can tell the defects after subjecting the law to practical operation. Then when the defects are found out, the corresponding remedy is provided in the form of amendments to the existing law or new enactments. All efforts of our lawmaking body in the past were directed towards the elimination of the causes of election irregularities and frauds for the purpose of preserving the ideals of true democracy upon which our present form of government is founded.

It should never be forgotten, however, that as age advances, the intelligence of man also advances. Newer problems crop up which needs newer laws to regulate them. And the electorate for which the election law has been passed is no exception. The voter has advanced in intelligence and has presented problems which could only be regulated by new and better laws. It must be conceded that what is good law for today, may be totally unfit for the future. The education of the electorate is not, in itself, a sufficient guarantee for the clean exercise of the right of suffrage, because not all educated men conduct themselves properly when excited by the heat of partisan politics. The old law cannot suffer to remain the same. Some newer laws must be passed, amending or repealing the old one.

For while it is true that there are more educated voters today than formerly, it is equally true that the number of election frauds committed during elections has never diminished. On the contrary, it has increased. The writer, cannot, with certainty, point out where the defect particularly lies, but it is his honest belief that if radical changes should be made in our present law, the evils will be minimized to a great extent. Per-

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fection will be our last attempt in this direction, for so long as we are human our work is subject to change. Time is the one that will show us our errors. But in framing up our laws to regulate our form of conduct, we should as much as possible set up rules which would tend to force men to go normal in their acts towards their fellow men and their community.

After every election our courts of justice are called upon to decide election protests. As will be pointed out later in this work, the grounds of the election contests reaching our courts are more or less the same. A close study of the cases that reached our court of last resort disclose some common grounds. These common grounds, which has been set up time and again, are silent indications of the kind of reform which must be adopted. They also indicate that certain provisions of our existing law need amendment or repeal.

Our present Election Law, as amended by Acts 3030, 3210, 3387, 3501 and 3699, is patterned after some of the laws adopted and applied in some of the states of the American Union. But while the states of the American Union from which some of the provisions of our law were patterned have made radical changes in their election laws, our law practically remains unchanged, the amendments to the same being confined mostly to the regulation of the manner of exercising the right of suffrage by the illiterate and incapacitated voters. So far no change has been made in the form of the ballot. The provisions governing and regulating the manner of voting by the illiterate and incapacitated persons still exist, although experience has already pointed out to us that it would be better if said provisions are abrogated or repealed altogether.

The right of suffrage is new to us, considering the length of time during which we stayed under Spanish tutelage. Our lawmakers, in framing our present election law, took American laws for models. The law has been put into operation for almost three decades and it is about time that we make radical reforms. The experiences of other states as well as our own should guide us in undertaking the proposed reforms.

We are about to enter into a new phase of our national life. It will not be long when we will assume a new government under a constitution which is the product of our own hands. It is about time, therefore, that we should undertake the necessary reforms in our laws, particularly our election law. We cannot afford to commit the same mistakes which we have committed under the old law. Our experience in popular government in

the past is a warning that calls our attention to needed reforms. We should take advantage and benefit by our experience and that of other states whose form of government is similar to ours. We must eradicate the source of irregularities and frauds in our elections. Only by doing this could we expect a bright future for our popular form of government.

CHAPTER II

ELIMINATION OF THE ILLITERATE AND INCAPACITATED VOTER

The law on the subject under consideration with respect to the illiterate voters is as follows:

"SEC. 431. QUALIFICATIONS PRESCRIBED FOR VOTERS.—Every male person who is not a citizen or subject of a foreign power, twenty-one years of age or over, who shall have been a resident of the Philippines for one year and of the municipality in which he shall offer to vote for six months next preceding the day of voting is entitled to vote in all elections if comprised within either of the following three classes:

" * * * * * * *

"(b) Those who own real property to the value of five hundred pesos, declared in their names for taxation purposes for a period of not less than one year prior to the date of the election, or who annually pay thirty pesos or more of the established taxes." (Sec. 431 of the Election Law)

The above provision was expressly inserted for the benefit of the property owners and tax payers who could not read and write.

The lawmaker, in order to ensure the clean and free exercise of the right to vote by the illiterate and the incapacitated voter, has promulgated rules for such purpose. Under the original Election Law, the rule is as follows:

"The voter on receiving his ballot shall forthwith retire alone to one of the empty polling booths and shall there prepare his ballot by writing in the proper space for each office the name of the person for whom he desires to vote. A voter otherwise qualified who declares that he can not write, or that from blindness or other physical disability he is unable to prepare his ballot, may make an oath to the effect that he is so disabled and the nature of his disability and that he desires one or two of the inspectors named by him to assist him in the preparation of such ballot. The board shall keep a record of all such oaths taken which shall show the name or names of the inspector or inspectors assisting the voter and file the same with the municipal secretary with the other records of the board after the election. The inspector or inspectors so named as aforesaid shall retire with the voter and prepare his ballot according to his wishes." (Sec. 22 of Act No. 1582.)

Under this old provision, the illiterate as well as the incapacitated voter can take the oath of incapacity or illiteracy, as the case may be, on the very day of the election. Furthermore,

he could select to prepare his ballot persons who are members of the board of election inspectors. After putting the law into practical operation, it was found out that the law was defective, hence the following amendment was passed:

"A voter otherwise qualified who declares that he can not write, or that from blindness or physical disability he is unable to prepare his ballot, may make an oath to the effect that he is so disabled and the nature of his disability and that he desires the inspectors to assist him in the preparation of such ballot. The board shall keep a record of all such oaths taken and file the same with the municipal secretary with the other records of the board after the election. Two of the inspectors, each of whom shall belong to a different political party, shall ascertain the wishes of the voter, and one of them shall prepare the ballot of the voter according to his wishes, in the presence of the other inspector, and out of view of any other person. The information thus obtained shall be regarded as a privileged communication." (Sec. 12, Act No. 2045.)

This provision was incorporated in the Administrative Code of 1916 and in the Revised Administrative Code of 1917 (Act 2711). The amendment consist in the appointment of two inspectors who belong to different parties. The idea behind is that it would ensure the clean exercise of the right to vote. The presence of one inspector belonging to an adverse political party was thought to be enough guarantee for the faithful performance of the trust by the other inspector who will prepare the ballot. But inasmuch as there was no active party opposition in the past, it was found out that the amendment did not work out as expected. Formerly, the only organized party outside of the city of Manila was the Partido Nacionalista. In the provinces, the rivaling parties were factions of the old Nacionalista Party. The activity of the old Democrata Party was mostly centered in the City of Manila and in some thickly populated cities of the southern islands. So that in practical operation, all the election inspectors practically belonged to only one party. The evil sought to be remedied by the amendment was not taken out, by nearly all the inspectors acting during election time were followers of the old Nacionalista Party. Abuses and irregularities did not diminish in number. Hence the following amendment passed in March 9, 1922:

"SEC. 453.—A voter otherwise qualified who declares that he can not write, or that from blindness or other physical disability he is unable to prepare his ballot, may make an oath to this effect, setting forth therein the nature of his disability and that he desires a person of his confidence to assist him in the preparation of such ballot, accompanied by such watcher, present in the polling place as he may designate, and shall also set forth the names of the person and watcher designated. These shall

take an oath to follow the wishes of the elector in the preparation of his ballot. This oath shall be made out in quadruplicate and one copy shall be sent to the provincial board, another to the Executive Bureau, another shall be kept in the ballot box, and another shall be retained by the poll clerk, who shall forward it to the municipal secretary, together with the other records of the board, for filing. In the event of the elector expressing a desire that his ballot be prepared by the elector of his confidence, the latter shall do so in proper form, according to the wishes of the former, in the presence of the watcher designated and out of view of any other person. The information thus obtained shall be regarded as a privileged communication." (Sec. 32, Act No. 3030.)

In the preparation of the ballot for the incapacitated or illiterate voter, a limitation was imposed by Section 453, namely, that persons who are candidates or those mentioned in Sections 449 and 450 of the Election Law cannot prepare the ballot of others. Later Act No. 3501 removed the disability with regards to candidates, leaving only those persons enumerated in Sections 449 and 450 of the Election Law. As the law now stands, even candidates can prepare the ballot of others. The law now grants to the illiterate and incapacitated elector the right to choose an elector of his own confidence to prepare his ballot. The law further requires the person who prepares the ballot of another to subscribe an affidavit to the effect that he will follow the wishes of the person for whom he is preparing the ballot. The law imposes a punishment for the violation of his trust. (U. S. vs. Quita, 38 Phil. 939.)

As we have already pointed in the quotation at the beginning of this chapter, the principal reason for the grant of the privilege to vote to the illiterate and incapacitated voter is that in a popular government, the people as a whole must participate in the selection of those who will occupy positions in the government by election; that it should not be confined to a portion who could read and write.

The reason behind the grant of the privilege is very sound in theory and at the same time very sentimental. But how far has this reasoning gone in practical application?

If we examine the records, only a little more than 10% of the total population of the Philippines are voters. In other words, the so-called "people as a whole" in theory only constitutes a small minority of the actual number of people. Would it not be better, therefore, if we confine the grant of privilege to vote to those who could discharge and exercise the privilege by themselves without help from others? As the law now stands, do

the illiterate and incapacitated voter really exercise his right of suffrage as the law expects and intends him to do?

The ballot was precisely invented or devised to ensure secrecy in voting. The idea behind is to prevent embarrassment to the voter in the exercise of his privilege. But to allow one person to prepare the ballot of another is clearly a violation of the intent and purpose for which the secret ballot is invented or devised. A man is not truly in the full and free exercise of his right to vote unless and until he is left alone with his own conscience as his only guide and companion. For although the person trusted to prepare the ballot of another is under pressure of the law to keep the secrets obtained by him by virtue of the trust, still the fact remains that the voting done is anything but secret.

The law is strict enough with respect to the preparation of the ballot of the unlettered and disabled elector, but in spite of the restrictions, the same nature of irregularities continue to be committed with respect to these kinds of voters. The requirement of the law with respect to the subscribing of an affidavit by the person who prepares the ballot of another to the effect that that person must follow the instructions of the person for whom he prepares the ballot is not enough to discourage unprincipled and unscrupulous politicians from committing election frauds. (Manalo vs. Sevilla, 24 Phil. 626; Gardiner vs. De Leon, G. R. 12382; etc.) The rules promulgated to ensure the clean exercise of the privilege by the illiterate voter are simple enough, but they are often wantonly disregarded and openly violated.

In spite of the law itself, the undeniable fact stands that the illiterate voter is always at the mercy of the persons who prepare their ballots. Added to this, the fact that the majority of them have really no convictions of their own. They do not understand the import of the privilege which the law has accorded to them. They are always looked upon as easy preys by petty political leaders and bosses. And they, too, look upon the petty politicians and local leaders as their heroes and whatever these types of persons dictate the poor illiterate follow. It is not an uncommon practice, during election that before the illiterate voter goes to the polls, he has already received definite instructions from the local leader or politician. And invariably, the instruction given is followed to the letter. The provision of the law regarding the choice by the illiterate voter of a per-

son of his confidence to prepare his ballot is practically a dead letter. He (illiterate) does not really do his own choosing. On the contrary somebody do the chosing for him.

Could there be any doubt, therefore, that the illiterate voter easily becomes the instrument of unscrupulous and unprincipled politicians in carrying out their nefarious schemes in order to win an election at all cost?

Much of the fraud that has befuddled the purity of our elections have for their causes those which were committed on the illiterates and the disabled. Nearly all election protests instituted after every election set up grounds involving irregularities committed with respect to them.

Our own Supreme Court has observed that during a hotly contested election, "the partisan spirit of ingenious and unscrupulous politicians will lead them beyond the limits of honesty and decency and by the use of bribery, fraud, and intimidation despoil the purity of the ballot and defeat the will of the people at the polls." (Cailles vs. Gomez, 37 Phil. 829) The illiterate is easily out-smarted by those bent on abusing him. Not understanding his responsibility to the community, he is easily induced to bribery. He also easily submits to intimidation because by nature the illiterate, and at the same time uneducated, does not want to get into trouble. He prefers to submit meekly to the demands of others than assert his own right. Not having formed his own opinions regarding matters of chosing candidates for public office, he easily lends to the opinion of petty leaders in his locality. Instead of being an asset, he is in reality a pernicious liability. He has become a social problem which needs an immediate and adequate remedy.

Experience has shown that the law with respect to the class of voters under consideration is often violated but seldom followed. Necessity on the part of some politicians who want to be elevated to public office at any cost is the root cause for the wanton and open disregard for the provision of the law. The illiterate has always proven himself an easy victim, and so long as his name exists in the electoral list, he will continue to be such victim.

It is now time for us to take the past as our guide and profit by our experience. It was clearly shown to us that it would be for the benefit of all if the unlettered and the disabled are barred altogether. For while it is true that popular government is founded on the basic principle that the people as a whole

should be given a right or voice in choosing their public servants, it is equally true that this precept of popular government could only be carried out to full realization by confining the privilege to vote on those who could discharge it without the aid of others. To grant the privilege to a group who could not fully understand the importance the same would only create a menace to popular government. The most important objection of the grant in their favor is their inability to discharge the privilege by themselves but through others. They constitute an open door for the commission of frauds and irregularities.

Furthermore, the existence of the provision in our Election Law permitting property owners and tax payers, although illiterates, to vote furnishes another source of evil. Some rich candidates and party men could easily create an advantage over their poor but deserving opponents. We cannot close our eyes to the fact, that many of the voters in our electoral lists with property qualifications do not really own properties sufficient under the law to qualify them as such. Many rich candidates and party leaders procured the transfer of some of their properties in favor to men whom they could use for their purpose, thus establishing for themselves an undue advantage over their opponents who could not do the same. And these groups of illiterates are usually the instruments of corruption in elections.

The elimination of the illiterate and the incapacitated voter is not only a necessity but a timely remedy. We can not afford to let them continue to exercise their privilege and at the same time continue to have our elections corrupted. At any rate, considering the present conditions obtaining, the number of illiterate and incapacitated voters constitute a small minority. Nearly all our new voters are admitted under educational qualifications, and it will do well for the common good and benefit if we bar them from the polls altogether. The sentimental reason for the grant of the privilege in their favor should give way to the practical solution of this social problem.

With regard to the incapacitated voter, the provision of our law is often abused and used to advantage by politicians. Many an elector, otherwise able and capable, feign incapacity at the demand and instructions of his superior in the party. This is usually resorted to when an elector's political color is doubtful. It is true that any elector may contest his manifestation before the board of election inspectors as an incapacitated voter, but it is seldom done. There is no adequate way of prov-

ing the contrary. Besides, the attempt to contest said manifestations of incapacity before the board of election inspectors is often futile. Usually the majority in the board belongs to the party of the person making the manifestation, and, as we all know, their decisions are everything but against their party. To continue the contest before the courts would be a very costly proposition, and many an aggrieved candidate just abandon the contest for economic reasons. And although, there may be a violation of the law, if the fact is not shown by competent evidence, the mere fact of subscribing an affidavit of incapacity gives rise to the presumption that such incapacity is real. (Demetrio vs. Lopez, 50 Phil. 58).

Examining some of the cases which have reached our court of last resort with respect to the irregularities committed on the illiterate and the incapacitated voter, we can deduce that more good could be attained if these types of voters were barred altogether.

It is not unusual occurrence that some illiterate voters were allowed to vote even if they did not subscribe the required affidavit. This is either due to a willful violation of the provision of the law or to the ignorance of the election inspectors. The Supreme Court believes that the subscribing of an affidavit is mandatory and an essential condition precedent before an illiterate could exercise his right to vote. (Manalo vs. Sevilla, 24 Phil. 626) It has been held that his vote cast without the requisite affidavit will not be counted if it could be identified. (Gardiner vs. De Leon, G. R. 12382) The difficulty however, lies in the means of identifying the vote cast, and the Supreme Court made itself clearer by holding that it would not hold or declare the ballots invalid unless they could be proven clearly to be the same which has been cast by the illiterate voters without first subscribing the necessary affidavit for fear that it may be depriving the honest and innocent voters of their just right in the election. (Paulino vs. Cailles, 39 Phil. 220; Lino Luna vs. Rodriguez, 42 Phil. 438; Cailles vs. Gomez, 42 Phil. 531; Valenzuela vs. Carlos, 42 Phil. 428).

A similar holding has been rendered in the case of an incapacitated voter who has not subscribed an affidavit. (Castueras vs. Barcelo, G. R. 30429; Fernandez vs. Mendoza, O. G. 2666).

With respect to the question as to whether a vote cast by an illiterate or incapacitated person is valid when the person

who prepared the ballot did not subscribe the necessary affidavit is resolved by the Supreme Court in the affirmative. (Icay vs. Diapo, G. R. 30671, citing Luna vs. Rodriguez, supra; Valenzuela vs. Carlos, supra; Cailles vs. Gomez, supra; Angeles vs. Rodriguez, 46 Phil. 595). This holding, on mere glance, seems to encourage irresponsible persons to commit fraud. As we all know, the person who prepared the ballot without subscribing the necessary affidavit is hard to prosecute. But the Supreme Court preferred to hold it that way rather than annul and set aside the votes of innocent and honest voters.

It has even been held that the oath of incapacity is mandatory before the election and merely directory thereafter. (Olano vs. Tibayan, 53 Phil. 168; Gallardo vs. Aldana, 53 Phil. 388; Ignacio vs. Navarro, G. R. No. 37401 and Fernandez vs. Mendoza, supra). This holding has no other reason back of it than the one pointed out already above, that is the court prefers to let the irregularity, much to its regret, rather than annul the votes of those who discharged their privilege in accordance with law. In other words, we are forced to accept their votes, illegal though they may be, for fear that by discounting them we will affect those who are innocent and honest in the discharge of their privilege to vote. It is a case of choosing the lesser evil as between two evils.

All the doctrines laid down will be of no more use once the illiterate and the incapacitated will be barred from the polls. There is no doubt that in the cases cited above, the court itself believes there were irregularities committed, but it preferred to lay down the doctrines cited than annul an election just because a few illiterates did not know what become of them.

Nearly all the questions raised in the cases cited above arose from the intervention of one person in the preparation of the ballot of another. And so long as our law remains the same, such kinds of irregularities will always be raised from time to time. The only feasible remedy to end the commission of such irregularities is to take out the privilege from them.

After all it would be better if we confine the grant of the right to vote to those who can read and write, if we expect to attain a higher degree of the purity of suffrage. And those who can read and write but are disabled should also be barred in order to close all doors for the commission of frauds. We can not afford to tolerate their ignorance to pollute our elections.

CHAPTER III

COMPULSORY SUFFRAGE

It has been proposed by some of the delegates to the Constitutional Convention, convened in Manila, to include in the constitution of the Philippine Commonwealth a precept making suffrage a duty rather than a mere privilege. The idea is laudable and practical. A provision of such import is necessary for the preservation of our true democratic ideals.

Under our present law, suffrage is a privilege accorded to the people. Those who are fortunate enough to be qualified under the law to exercise the privilege, may or may not exercise the same without any responsibility to the community in which they live. In the majority of cases, the privilege to vote is considered as mere giving of favor to those who solicit them. The majority of our electorate do not really understand the real significance of the grant of suffrage to them.

Democracy has heen commonly defined as "a government of the people, by the people and for the people." This is on the understanding and supposition that the "people" will really take and active part in the conduct of the government. The citizens should consider themselves duty bound to exercise the privilege for the good and welfare of the community in which they live.

But how many in our country today hold such a view with regards to suffrage? In actual application no such notion obtains. Many an elector do not even understand his importance to the community. On the contrary, he considers himself as a slave of the office holder to whom he places himself as an inferior.

This is not an indictment against the Filipino voter; it is merely stating the naked truth. Most of our voters, including some educated men at that, consider the privilege to vote as giving favor to those in whom they expect some future reward. They look upon the person to whom they give their vote as their master and job giver, if elected, and not as their public servant.

There are even those who consider their privilege to vote as a source of some material considerations. Their vote is for sale to the highest bidder. It is not an uncommon experience during elections in the past, to see electors loitering around the polls and refusing to cast his vote unless he is offered some monetary consideration in exchange for his vote. He has the idea in mind, that after the elections, he has nothing more to do with the candidate. There are even those, who are bold

enough, who have the courage to ask the candidates and party leaders for money as a compensation for their exercise of the privilege to vote.

It is not an unusual sight, during election campaigns next preceding elections, that candidates are looked upon as untimely Santa Clauses to provide the electors and their families with subsistence from morn till night. Some of our electors even go to the extent of abandoning their usual means of livelihood and follow the candidate wherever he goes, because he feels sure that their meals will be provided three times a day. There are also those who are shameless and put a very high price on their privilege to vote. They even go to the extent of offering their vote for money to all candidates available. This practice is common throughout the archipelago.

These practices of some of our electors put a very high price for an elective office. This is giving a very slim chance to the poor but deserving candidates for public offices. And if the practice continues unabated, the time will come when no poor man's son could aspire for a public office because the price is too high and beyond his reach. There will come a time when only the rich could occupy elective positions in the government and the poor man will be relegated to the background. Public offices will then be considered as for sale to the highest bidder.

And if such practices are not put to a stop, it will not be surprising to see, in the future, when democracy will be considered a mockery and the people themselves will lose respect for popular government. The time will also come when men elevated to public positions will consider their office as their own and place their personal interests over and above those of the people. We can not blame them but ourselves if they do this, because they practically buy the offices which they occupy. If this time will come, democracy will only be a catchword without any meaning or significance at all.

In order, therefore, to curve the trend of mind which is fast forming in the minds of our electorate and to prevent the same abuses being committed in the future, the law should be amended or rather a new law should be passed making suffrage compulsory.

The voter should be impressed with the idea that he has a voice in the government to whose support he is compelled to give his share; that with the proper use of his vote, he could punish an irresponsible public official; that in the community

where he lives, he has as much right as the richest even if he is the poorest. His mind should be imbued with the belief that his right to vote is priceless and the sale to such a right for monetary or other material considerations is equivalent to treason.

Suffrage must be made a compulsory duty and not a mere privilege; that the voter, in going to the polls, must perform his duty not only to himself but to the community at large. The voter must be compelled to interest himself with the current issues of the day. He should take an active part in the proper choice of those who will guide the policies of the government.

The law should also impose a penalty to the voter who neglects his duty to vote. It is only by doing so could we expect a full compliance of the law on compulsory suffrage.

If this reform will be carried out, we have nothing to fear for the future of democracy in our country. Candidates will no longer be faced with the problem of buying themselves into public office. The poor aspirants to a public office will have just as much chance of getting elected as the wealthiest in his community.

CHAPTER IV

RAISING OF THE QUALIFICATIONS OF ELECTION INSPECTORS

No group of men are entrusted with the conduct of clean and orderly elections than those who constitute the board of election inspectors. The law assigns to them the duty of properly conducting the exercise of suffrage.

Our Election Law provides the following with respect to the qualifications of election inspectors and poll clerks:

"SEC. 419.—QUALIFICATIONS OF INSPECTORS AND POLL CLERKS.—All persons appointed inspectors of election or poll clerks shall be qualified electors of their respective municipality, of good character, not convicted of any offense involving moral turpitude and able to read and write, and speak either English, Spanish or the local dialect understandingly. The persons so appointed shall be notified and shall each take and subscribe before any person authorized to administer oath the following oath of office within twenty days after the date of notice of appointment: * * *

This provision practically qualifies all voters, with the exception of the illiterates and incapacitated persons. In practice, the character is seldom taken into consideration. Those who constitute the board of election inspectors are usually selected from the rank and file of party men regardless of their

ability, character, integrity and fitness to perform the trust which the law expects them to do. The great majority of them do not even know or understand that they are performing a a sacred trust; that they are entrusted with an important duty by their community. They are mostly the blind instruments of political bosses and candidates for whom they perform anything requested of them. The position of an election inspector and poll clerk, it is today, is considered by the majority of our electorate as a political plum to be given and distributed to loyal and obedient followers of certain influential persons in a party. They are usually men who have no convictions of their own and have no high estimate of personal honor. They could easily be influenced to accept money or other material considerations. In short, they are practically slaves of others.

After every election, we see in the newspapers items about election inspectors sent to jail for irregularities committed in the conduct of the election. This simply shows that instead of being the means of conducting a clean election, they often become the instruments of corruption and fraud. We are not unmindful of the existence of certain candidates who promise material support for the family of the election inspectors who will be convicted for committing irregularities provided that they would follow the instructions of said candidate or political leader in time of election. Our present law is an opening for the commission of frauds through the appointment of men to the board of election inspectors who are at the mercy of those who are responsible for their appointment.

The law on the subject should be amended in such a way that the qualifications of elections inspectors should be raised higher from that of the ordinary voter. The provision should be modified in such a way as to require that persons who shall be appointed by the municipal council to act as election inspectors should be men with sufficient standing in the community and who have a high sense of honor in order to minimize the irregularities committed in the past.

The men that should be appointed to the board of elections inspectors should be, besides the requirement as to character, integrity, honesty morality, of maturer age than the ordinary voter. As it is practiced today, most of the members of the board of election inspectors are young men recruited from the group of new voters.

The law should be amended substantially containing the following requirements, besides those already provided by the existing law:

1. Election inspectors should be at least thirty years of age.

2. Election inspectors should be chosen from among the responsible businessmen and professional group in the community.

3. The duty of accepting the office of an election inspector should be made compulsory.

4. The office should be gratuitous and honorary.

The practice of appointing young men to the office of election inspector has given rise sometimes to the commission of irregularities. As a rule young men are easier to induce, they being still inexperienced with the ways of life. Maturer men, on the other hand, especially those who are rearing families, are less susceptible to inducement by unscrupulous politicians. They are more responsible in their behavior than the younger men. This is not throwing aspersion to the youth. It is merely stating the general rule. By nature, the young is more aggressive and less calculating as to the consequences of his acts. Passion is more dominant in their nature because this feelings are not yet well seasoned by the experiences of age.

Every election inspector should be upright who considers the sacredness of the trust of his office higher than any material consideration. In the past, men appointed to the position of election inspector are instruments of party leaders and candidates. The irregularities committed in the past were found out to be partly through the failure of election inspectors to perform their duties. (Quiamson vs. Pujeda, supra; Macandog vs. Pelayo, G. R. 36370).

For although the courts of justice are slow to pronounce an election illegal, this alone should not be the reason why the necessary amendment should not be made. On the contrary, the findings of the courts of justice to the existence of certain irregularities committed should be an inducement for the enactment of amendments or newer laws. The courts prefer to protect the will of the majority of the people at the polls than declare an election illegal because of the acts of an unprincipled few. If we take into account, however, the number of cases reaching our court of last resort alleging grounds of fraud committed during elections, we cannot let our minds rest without thinking that the irregularities committed were partly, if not

mostly, due to the failure of the election inspectors to perform their duties as required by law. (Cailles vs. Gomez; supra; Gardiner vs. Romulo, G. R. 26522; Garchitorena vs. Crisini and Imperial, G. R. No. 3926; Demetrio vs. Lopez, 50 Phil. 60; Bulan vs. Gaffud, 49 Phil. 912; Reyes vs. Beting, XXXI, O. G. 3462).

The only feasible remedy, therefore, is to appoint men of standing in the community. A business man or a professional, for example, would make an ideal election inspector. These types of men value their honor higher than money. Furthermore, their standing and education is a challenge to those who intend to corrupt them. Those who are thinking of offering them something in consideration of committing some irregularities would not dare to make such offer to these types of men. The glitter of gold cannot dissuade them from the performance of their duties in accordance with the law.

But these types of men, referred to above, cannot be made to accept the position unless the law makes it compulsory for them to do so. Election days are always declared official holidays, and there could be no valid reason why any voter could not be made to accept the post of election inspector. Furthermore, personal interest should give way to the general interest of the community wherein they live. The citizens should be compelled to do their bit in promoting the common good. If compulsory military service could be imposed effectively in some countries, and may be in the Philippines during the Commonwealth government, there could not be any reason why compulsory service as an election inspector could not be imposed.

The persons chosen to act as such election inspectors should not be allowed to give excuses on grounds which are personal to themselves. In the end it would be for the common benefit of all concerned if elections are conducted in the proper manner.

And in order to discourage the appointment of men without sufficient qualifications, the office should be made gratuitous. It cannot be denied that most of the election inspectors appointed in the past have the pay uppermost in their minds in accepting the office. That is the very reason why, before the appointment of election inspectors is made by the local councils, there are more applicants than posts to be offered. Some of them do not even know the duties of the office they are daringly accepting. These men would not have applied for the position were it made gratuitous.

The only apparent objection to this proposed reform, is the fact that there may not be sufficient number of men available to fill the position. Such objection, however, would have no merit if we take into account the fact that there are today, in our country, sufficient number of mature men in every community who are responsible for their acts. It is only by placing responsible citizens to the post of election inspector could we expect to minimize the number of election irregularities and attain a higher degree of purity of suffrage.

And in order to carry this reform effectively, it is also necessary to provide adequate remedies in case the officials concerned do not perform their duty in appointing men according to standard. Every interested elector should be given the right to contest the appointment of men who falls below the requirement of the law. And in case of refusal or failure to appoint, the law should provide the extraordinary legal remedy of mandamus. The regular periods of presenting pleadings should be shortened and the incidental fees for the institution of said cases should be lowered as low as possible in order to encourage rather discourage citizens to contest wrong appointments made. And it is further necessary to provide an adequate punishment of those who fail to comply with their duty to make the appointments in accordance with law.

The appointment of men with higher educational qualifications to the post of election inspectors would do away with the confusion which we see today regarding the preparation of the necessary papers to be submitted to the proper authorities after the election. It is not uncommon sight that many of our election inspectors in the past do not know what to do with the papers and forms which they ought to fill up and submit to the authorities. It is not a seldom experience that election inspectors call the help of others in the preparation of the necessary papers. And very often, gross mistakes are committed not because the inspectors intended to do them, but because they do not know or understand what they did. Most of them only know how to read and write, and it is not surprising if their work is unsatisfactory.

We cannot tolerate the continuance of the practice, knowing that it is working us more harm than good. The government is spending money uselessly in the form of the salaries of election inspectors who cannot properly discharge their duties. This advocated reform is not only practical but ab-

solutely necessary if we want to eliminate some of the principal causes of irregularities and frauds in our elections.

CHAPTER V

CHANGE OF THE FORM OF BALLOT

In the beginning, elections were conducted by viva voce. (Jones, Readings on Parties and Elections, p. 216). After some years of experiment, it was found out that this means of expressing popular will was not satisfactory. The people were found out to be under pressure and their choice was not free and voluntary. But the method continued until after the secret ballot was adopted in the Commonwealth of Australia.

Vigorous objections were set up by the Lords of England when the secret ballot was first advocated. The reason behind the objection was that these Lords would lose control of their men. But when it was found out that the experiment in the Commonwealth of Australia was successful, England and the United States has also adopted the same. (Jones, Readings on Parties and Elections, p. 216).

In the United States, the Australian ballot has taken many forms. The different states of the union adopted various forms for their use. In the Philippines, the secret ballot was also adopted when the right of suffrage was extended to us.

The form of our ballot is very familiar to us. It requires every elector to write the names of his candidates. If he cannot write, some other person may do the writing for him. This requirement of writing the names of candidates on the ballot has given rise to many rules laid down by our Supreme Court for the appreciation of ballots during elections.

Some voters can read very well but they can not write their letters well. And this deficiency on the part of some of our electors gave rise to many rules of appreciation. A ballot, for example, bearing the initial letter of the Christian name and the surname of the candidate was considered valid. (Cailles vs. Gomez, 42 Phil. 496; Aviado vs. Talens, 52 Phil. 665). But ballots containing the Christian name of the candidate only was declared invalid as being insufficient to identify the person voted for by the elector. (Cailles vs. Gomez, supra; Valenzuela vs. Carlos, 42 Phil. 470; Ignacio vs. Navarro, G. R. No. 37401; Icay vs. Diapo, G. R. No. 30671.) A similar holding was laid down with respect to a ballot bearing the Christian name and the initial of the surname. (Lucero vs. Guzman, 45 Phil. 852). But

this holding was modified later holding that when it appears that there are no other candidates for the office or any other office bearing the same surname as the name of the candidate claiming the vote as his, even the ballot bears only the Christian name and the initial of the surname of the candidate, the ballot can be considered valid for such candidate. (Namocatcat vs. Adag, 52 Phil. 792).

A ballot which bears an initial of the middle name of the person voted for but which is different from the initial of the candidate was declared to be invalid for such candidate. (Deles vs. Alkinga, 53 Phil. 95.) But the wrong initial of the middle name does not annul the ballot. (Ignacio vs. Navarro, supra.) Ballots however, bearing the initials only were declared invalid. (Dejarme vs. Castañeda, G. R. No. 30611; Ignacio vs. Navarro, supra). But where the names of the candidate appearing on the ballots were abbreviated, said ballots were considered valid and could be counted.

It has also been held, that ballots in which the names appear to be incorrectly written, but could be understood are declared valid under the rule of idem sonans (Lucero vs. Guzman, supra; Valenzuela vs. Carlos, supra; Cailles vs. Gomez, supra; Penson vs. Parungao, 52 Phil. 721; Ditching vs. Jalandoni, 52 Phil. 800; Adeser vs. Tago, 52 Phil. 661; Pimentel vs. Cabrera, G. R. No. 30675; Bulan vs. Gaffud, supra; Abiera vs. Abiera, 54 Phil. 799.) The holding on names appearing on the ballot spelled differently from the name of the candidates was likewise held valid under this rule.

Due to the inability of some voters to write well, it often happens that they place the name of one candidate more than once in the ballot. The Supreme Court held that the ballot is valid with respect to the office for which such candidate is aspiring for. (Valenzuela vs. Carlos, supra). But ballots in which two persons were voted for one office to which only one can be elected was declared by the Supreme Court as invalid for both. (Valenzuela vs. Carlos, supra).

There were also ballots which, due to poor writing and many erasures were made by the voters. Sometimes, the voter even crosses one name and places the name of another. Such ballots were declared valid for the candidate whose name appears legibly and not crossed. (Cailles vs. Gomez, supra.)

There are even voters who write the names of persons who are not candidates in their ballots. Such ballots are declared in-

valid. (Cailles vs. Gomez, supra; Valenzuela vs. Carlos, supra.) There are some candidates whose names appearing on the ballot are their nicknames, and these ballots are considered valid. (Adeser vs. Adag, supra). But there are times, when the nickname is used as a means for identifying the ballots and in those cases, the ballots are declared invalid. (Medina vs. Noble, G. R. No. 36018.) Likewise ballots containing the generic name of the candidate were declared invalid. (Aure Alegre vs. Aure Perey, G. R. 31017). In the case of ambiguous ballots, the Supreme Court laid down the rule, that in case the ambiguity is such that the intent of the voter could not be determined, such ballot will be declared invalid; otherwise it will be counted. (Wimmer vs. Eaton, 72 Iowa 374, 2 Am. St. Rep. 250).

There are really voters who can not write clearly or whose sight are too dim, and consequently their ballots are illegible. These ballots are, of course, invalid because the intention of the voter cannot be ascertained. To illustrate, further, some of the inconveniences which our present form of ballot is giving us, we cite the case of Cleto Mastrilli vs. Eusebio, (G. R. 36478). In that case, Cleto Mastrilli was the candidate of the Democrata Party for the office of President of Taguig, Rizal. In filing his certificate of candidacy, he stated that he is also known by the name "C. Mastrilli". Bent on securing the defeat of Cleto Mastrilli, however, the opposite party in Taguig put up a candidate by the name of Canuto Mastrilli. In filing his certificate of candidacy, he also stated that he is known by the name "C. Mastrilli." It happened that the majority in the board of election inspectors belonged to the party of Canuto Mastrilli, and during the counting of the ballots after the election, all ballots bearing the name "C. Mastrilli" were counted in favor of Canuto Mastrilli. The defeated candidate instituted an election protest. The lower court found out that Canuto Mastrilli was illiterate, and does not know how to read and write; that he did not campaign for the office for which he was elected, and he is practically unknown except those persons who induced him to present his certificate of candidacy; and that he has not shown any interest in his candidacy. The lower court arrived at the conclusion that the ballots bearing the name "C. Mastrilli" were really intended for the protestant, Cleto Mastrilli.

These abuses would be done away with if we adopt the Massachusetts ballot. And all the rules on the appreciation of ballots laid down by the Supreme Court would also become ob-

solete and cease to confuse our courts of justice. Verily, nearly every question raised with regards to the appreciation of ballots, a new rule is laid down. Our courts cannot do otherwise. They are forced to ascertain the voter's intent as much as possible, in accordance with justice.

In the election of the members of the Board of Regents of the University of the Philippines from among the alumni, printed ballots bearing the names of the candidates were sent to the alumni. That form of ballot is what is known as the Massachusetts ballot.

This form of ballot is more or less like the following:

(Reverse)

Seal of the Gov't. of P.I.	OFFICIAL BALLOT First Precinct of Manila (Date of election)

(Obverse)

OFFICIAL BALLOT

Do not write anything on this ballot nor make any mark on it. Indicate your choice by putting a cross on the square opposite the name of your candidate. Any violation of this instruction will invalidate the ballot.

SENATOR: (Vote for one only)

Juan Alfonso ..... ☐

Pedro de la Cruz ..... ☐

FOR REPRESENTATIVE: (Vote for one only)

John Doe ..... ☐

Richard Roe ..... ☐

FOR GOVERNOR: (Vote for one only)

Etc., Etc.

The names of the candidates should be written in the alphabetical order.

The adoption of this form of ballot would do away with the many inconveniences of the present form of our ballot. The voters who could read well but could not write their letters legibly can indicate their choice without fear of their ballots being declared invalid. There will be no more scattering of votes, by placing the name of one candidate in the space for other offices. The problem of illegibility will not arise because all the names of the candidates will be written on the ballot clearly in bold print.

This form of ballot has been successfully adopted in the state of Massachusetts. The objections raised with respect to this kind of ballot were that it takes too long to mark the ballot; that must cause delay in large precincts especially; that the less educated must be discouraged and stay away from the polls, or, if they come, they make mistakes; that the system must favor independence to the extent of breaking up the parties; that there is a general falling off from the head of the ticket because, persons get tired in marking, and that the names appearing at the head of the alphabet have an advantage over those coming lower down.

These objections have been answered by the result of the experiment in Massachusetts. Professor Jones says:

"Of all these points (referring to the objections) it happens that we have a good deal of accurate information. The average city precinct has from 400 to 700 or 800 registered male voters, a few have over 1000; and some of those are in manufacturing districts where most of the voters have to vote early in the morning or at the noon hour. There are eleven polling places in the state in which there are from 2000 to 3000 registered voters in each, and yet there has been no difficulty in their voting without delay or inconvenience. The actual time in marking a single ballot is well under two minutes, while many people mark their ballots, in less than one minute."

In the Philippines, our precincts have a maximum capacity of 250 voters. Sometimes it is more, but it does not exceed 500. Comparing this with the number cited above, we will readily see that if it succeeded in Massachusetts, we do not see any reason why it should fail here. Furthermore, in the states they elect besides their mayor and councilmen, their district and assistant district attorney, sheriff, judge, and many other officers which we do not elect here.

In anwer to the argument that the Massachusetts ballot will keep many people from the polls, Professor Jones has this much to say:

"As to the claim that people are kept away from the polls, exactly the opposite is the case. In the first four years it was found that more people by twenty per cent voted for Governor than in the last four years under the old system, and there was an increase in population of only 11 per cent." (Readings on Parties and Elections, p. 222.)

Answering the argument that this form of ballot breaks up parties, he said:

"While the system undoubtedly favors independent voting it has by no means broken up parties. That it does, however, secure the voters a free chance to express their views has been markedly shown." (Id.)

As to the argument that there is a falling off from the head of the ticket, the same author said:

"As to the claim that there is a falling off from the head of the ticket because the voters got tired and stop from sheer fatigue, it is, to be sure, generally true that there is a falling off from the head of the ticket, but this is by no means universally true. A careful analysis of the votes will disclose the fact that voters voted for those offices that interested them, and over which there had been some canvass, no matter where located on the ballot. It also clearly shows a popular vote against the long ballot, which we still have in our state elections in Massachusetts." (Id.)

And as to the argument that those whose surname begins with "A" have an advantage over those that follow down, the following was the experience in Massachusetts:

"As to the claim that the one whose surname begins with "A" has an advantage over the one whose name begins with "W" in the same group on the ballot, there is just a slight basis of fact for this contention. In some minor offices, over which there is no contest, especially where four or five vacancies of the same kind in the same group are to be filled, such as members of school committees, assessors of taxes and the like, and especially where the candidates have been nominated on non-partisan or citizens ticket, an initial letter early in the alphabet has been an advantage. But even in these minor offices this has not been true where there has been a public contest, as has been proved over and over again." (Id.)

This reform needs also a modification of the provision relative to the filing of certificates of candidacy. It should be required that candidates for public offices must file their certificates of candidacy six months before the day of the election. This is necessary in order to give enough time for the printing bureau of the government to print the needed ballots. At any rate, it is the practice of candidates for public offices to begin

campaigning early, and the requirement that they will have to file their certificates of candidacy will not bother them much.

If this advocated reform will be carried out, many of the problems which have arisen out of the present form of ballot will be solved. Our courts will no longer be burdened with ascertaining the intention of the voter. Such intention could easily be indicated in this form of ballot.