Purifying Our Elections*

By MAGNO S. GATMAITAN**

IN 1934, a defeated candidate for municipal mayor filed a protest against the winner, he alleged as one of his grounds that:

"10.—Que se repartieron tickets numerados con la promesa de que, si el recurrido triunfaba, serian sorteados, en el dia de su toma posesion, y de que se darian un primer premio de ₱1,000.00 al tenedor del numero premiado con dicho primero premio; otro de ₱500.00 'al tenedor del numero premiado con el segundo; otro de ₱200.00 al tenedor del numero premiado con el tercero; diez premios de a ₱20.00 y otros diez de a ₱10.00."

The Supreme Court dismissed the protest, saying:

"The most serious matter as submitted by counsel for both parties had to do with an alleged sweepstakes initiated by Lazatin. The facts regarding it are rather difficult to get at, but according to Dayrit, Lazatin circulated throughout the municipality small pieces of paper with his picture and with a number. After he had taken office in October, the winners of the sweepstakes were to be announced. However, it was considered as an election trick, since no determination of the winners was in reality intended. This on the one hand. On the other hand, Lazatin contends that he never printed or circulated sweepstakes tickets, and that this was an election trick of his opponent conceived after the election in order to injure his chances of winning and to provide a ground for contesting the election. Whichever thesis is correct, and on such a doubtful point we naturally are inclined to sustain the trial judge. it remains true that not a single voter could be found even among the witnesses for the protestant who would admit that he voted for Lazatin because of these sweepstakes tickets. (Dayrit v. Lazatin, IV L. J. 133).

We have given this incident to you, many of whom we presume to be law graduates and undergraduates to show that in this case, the Supreme Court has merely followed the observation it had made four years earlier that:

"Experience has taught certain lessons regarding elections. In these political contentions, passion and partiality run wild, and the contending parties leave no stone unturned in order to win. For this reason, testimony as to alleged schemes of the adversary should be received with caution, and unless strongly corroborated by other evidence, is not sufficient to decide the result of a popular election. (Cruz v. De Guzman, 54: 36).

It is this mental resistance and apathy of the Supreme Court to believe in proofs of election frauds which should make the practising attorney strive forward to the purification of elections.

Now then, in our country, the electoral process is divided into four stages. The Executive first proclaims the holding of the election; then the Boards of Inspectors register the voters in the permanent registry list; since registration is a condition precedent to the right of suffrage; and questions on wrongful or erroneous registration being justiciable before the Justice of the Peace with appeal to the Court of First Instance; then the day of actual voting arrives; and finally, the results of the election are submitted to the Board of Canvassers which proclaims the actual winners. Proclamation, registration, voting and canvass,—these are the four

* Lecture delivered at the Alumni Institute, U. P., April 16, 1941.

** Member of the faculty of the College of Law, U. P.

steps in the Philippine electoral machinery.

Upon the proclamation of the election, there immediately supervenes a period where the law makes determinate prohibitions, looking toward the cleanliness of suffrage. You are acquainted with the prohibition on free transportation, food and drink during electoral meetings, registration, and voting and some hours before and after. Before the present National Assembly adjourns they will have discussed two proposals that intend to kill this prohibition. The reasoning of the author of the bill is that:

"Such an idea is derogatory to the integrity of the Filipino voter. Such a provision of law implies that voters in this country may be bought by free food and free ride. The acts of a candidate of looking after the comfort of his followers during registration and election days is in itself innocent and commendable. The law by branding such act as unlawful gives to it a hideous and false meaning. Consequently it behooves this august body to erase from our statutes a provision of law which throws a shadow of doubt over the integrity and intelligence of the Filipino voter. (Uy, B. No. 2213).

But the prohibition looked toward the development of civic consciousness and individual initiative; it aimed at curing the scandal attendant to electoral feasts; that could be given only at a great sacrifice to the candidate's pocket; the legislator believed that by so doing, he could remove from the victor's mind the idea that having spent so much to get elected, it became his right upon election, to recover his expenses by legalized plunder upon the public treasury, or in the least, by making of his position a weapon of influence which could be used or threatened to be used when necessary to secure economic patronage. The prohibition has stood the test of one election; let us give it some more time, and see what it will do toward the ideal of clean elections.

In line with that same idea, is the prohibition on benefit performances within two months immediately preceding the day of voting. The statute gives this in plain words:

"Sec. 40.—Prohibited collection of funds. It shall be unlawful for any person to hold balls beauty contests, entertainments, or cinematographic, theatrical, or other performances during two months immediately preceding a regular or special election for the purpose of raising funds for benefit purposes or for an election campaign, or for the support of any candidate.

A simple perusal of the law will reveal that any benefit performance is prohibited, devoid though it may be of any political color. This notwithstanding, the Commission on Elections has rendered an opinion that the prohibition refers only to benefit performances with political color; for the simple reason that this is the interpretation of the Executive:

"Furthermore, Proclamation No. 609 of the Chief Executive has fixed the date for carrying out the Boy and Girl Scouts campaign up to 6 days after the deadline established by Section 40. That Proclamation is an executive construction of the extent and scope of Section 40 which the Commission on Elections will accept "as in accordance with the true meaning of the law, unless there are very cogent and persuasive reasons for departing from it." (Res. Oct. 7, 1940.)

The truth however, is that the history of this provision shows that the Legislator intended to have the words "benefit purposes" divorced from political colors. The original draft read:

"Recaudaciones prohibidas de fondos. —Sera ilegal para cualquiera persona celebrar bailes, concursos de belleza, vela-

das, o representaciones cinematograficas, teatrales, o de otra clase durante tres meses inmediatamente anteriores a una eleccion ordinaria o extraordinaria para recaudar fondos, para una campaña electoral o para favorecer a un candidato.

The Law as approved reads:

"40.—Recaudaciones prohibidas de fondos.—Sera ilegal para cualquiera persona celebrar bailes, concursos de belleza, veladas o representaciones cinematograficas, teatrales, o de otra clase durante dos meses inmediatamente anteriores a una eleccion ordinaria o extraordinaria para recaudar fondos *para fines beneficos*, o para una campaña electoral, o para favorecer a un candidato."

What must have been the reason for the addition of the words "benefit purposes"? One need not strain his memory to remember that in the past, upon the announcement of an election, there coincides with the electoral campaigns an extraordinary number of benefit performances; the candidate's lapel is filled with medals, membership cards, benefit tickets. The intention of the lawmaker in prohibiting benefit performances was therefore not so much to protect the electorate as to protect the candidate. By its interpretation, the Commission on Elections has reopened the door to the systematic extortion of the citizen who aspires to an elective position.

We pass over the first stage and go on to the next, id. est., the registration of the voters, this being done by the Board of Inspectors. Sixty two volumes of the Philippine Reports, 38 volumes of the Official Gazette, and twenty volumes of your Phil. Law Journal contain eloquent records of galla fights over the appointment of election inspectors. After the right for inspectors is over, after the election is past, these records of our judicial decisions reveal vehement accusations of frauds, depredations, piracies, and bitter struggles between election inspectors themselves or between election inspectors and watchers. There can then be only one conclusion: and it is, that consistent with his ability to hide his tricks, the election inspector is chosen in order to match his wits with the opposite inspector; he must deceive, but must not allow deception. That is why when in the elections of November, 1940, the school teachers were assigned as supervisors, the result was very salutary; it is gratifying to see that the experiment was hailed by even the bitterest critics of the Administration (the newspaper Union is one of them); it is still more gratifying to see that one of the leading legislators has filed a bill to perpetuate the membership of the teacher in the board of inspectors. (Bill No. 2086, Assemblyman Soliven). If we add to these observations the almost public secret that several inspectors are not possessed of the education necessary to enable them to intelligently perform the duties of their office; and the still further charge probably not untrue, that the post of inspector is sometimes the object of sale; that some leaders go as far as requiring that they should share in the compensation of the inspector's pay, there appears more reason for the Soliven bill; it appears even proper, if rather undemocratic, that this position be made to fall under the requirement of the usual competitive examinations.

Coming now to the actual voting, you will remember that our Election Code commands the elector in his own hand, to write the names of the candidates for whom he votes. The former law

that permitted him to dictate his choice has been repealed, and for good reasons; the abuses and frauds that had been committed on those who could not personally prepare their ballots by those whom they had chosen to write their choices had been so scandalously rampant that the Legislator became convinced that it was far better to disenfranchise those who could not personally prepare their ballots than to permit them further to be the victims and the instruments of fraud. There are two proposals, which unfortunately are now before the National Assembly, that if approved, may lead to the old result. The first is that which will allow the voter to vote only by placing a cross on the ticket that he wishes to vote (Bills Nos. 2338 and 2356, Guysayko and Sotto, requiring the voter merely to place a cross opposite the ticket that he wishes to vote); and the second is that which will eliminate the requirement of the thumb mark (Bill No. 2267, Uy, suppressing the signature and thumb mark in the day of voting). There need not be too much imagination to foresee how easy it would be to falsify a cross; crosses may be added, or erased, without fear of immediate detection; as to the second proposal, let it be remembered that the requirement of the signature and the thumb mark was invented in order to identify the voter, to prevent supplantation of electors, to suppress the pernicious practice formerly in vogue, of shuttling ballots. We therefore believe that the old system of voting should stand in this regard.

In the actual preparation of the ballot, you will remember the warning that appears at the caption reading:

"Fill out this ballot secretly inside the booth. Do not write anything nor make any mark thereon but the name of the candidate you vote for. Any violation of this instruction will invalidate your vote." (Sec. 119, Election Code.)

This part of our law illustrates the feature that we inherited from the Australian system of compulsory secrecy; we prohibit the use of distinguishing marks. The idea is good; it has been said that the secrecy of the ballot should be preserved as a great safeguard to the purity of elections; and that this secrecy, in order to accomplish the purpose intended should accompany the voter through all the steps provided for the preparation of his ballot, for only in this way can he be freed from intimidation, improper influences, reproach, and animadversion, 9 R. C. L. 1047. But when one goes to actual cases, he finds that there is almost hopeless confusion on two points: What are or what are not distinguishing marks; and when can and when can not extrinsic evidence be permitted to impugn a ballot on the ground that it contains a distinguishing mark?

To illustrate the first point: Where a ballot contained the word "Emperador", which surely would serve to identify the ballot, the Supreme Court declared that the vote is good, and that the word "Emperador" merely showed that the voter had indulged in harmless pleasantry. On the other, a ballot, apparently clean, but with a certain group of candidates written with one system of lettering, and another group in another system, was held to be bad because it was marked, when just as plausibly it could have been supposed that the use of the two systems was only a revelation of the artistic sense in the voter. Even an examination of the Election

Code would not be very helpful. As to the next point: When can and when can not, evidence aliunde be admitted to impugn a ballot on the ground that it is marked, the same confusion appears. The rule as you know is that in order for a mark to invalidate, it must be one appearing on the ballot, and not one which is merely proved by evidence *aliunde*. We illustrate the confusion: Under our Code, if a ballot contains the nickname of a candidate, this fact will permit the protestant to present evidence to show that the nickname was used as a distinguishing mark; on the other hand, where a ballot is written partly in ink and partly in pencil, there is apparently no authority in the law to produce extrinsic evidence to prove that the use of ink and pencil was the result of a conspiracy intended to distinguish the ballot from the rest.

Under such a state of affairs, where a bad ballot may become good and a good ballot may become bad depending on whichever way the Court arrives in its task of divining the prohibition on distinguishing marks, the crafty and skilful inspector may as he often does, be able to insert distinguishing marks on his opponent's ballots before they are deposited in the ballot box, one is almost tempted to raise the question: Why should we annul a ballot simply because it contains a mark, supposing that it may serve to distinguish the ballot? The secrecy of suffrage indeed should be the privilege of the voter; but should it follow from this that that secrecy must become an obligation? The truth is that, far from protecting the voter in the exercise of suffrage, this compulsory secrecy very often in actual experiences, serves to subject him to all sorts of suspicions on his political color; while it may in appearance, permit him freedom of action; it nevertheless develops in him some sort of deceptive hypocrisy, and kills his individual independence and character. But so much for this.

We come to the termination of the voting in the particular polling place. You are acquainted with the circumstance that after the election, the only visible result of the election is the election return prepared by the inspectors; you will remember that the ballots and the tally sheets are hidden within the white box. You are also acquainted with the rule that where the boxes have not been tampered with, the ballots once they are presented in Court, supersede the election return as the best evidence of the result of the election. We shall now give a simple hypothetical case.

Your client is candidate for mayor; his opponent is the actual mayor and is running for re-election. The voting is over; you are confident that your client has won; but that because the inspectors controlled as they had been by the opponent, had been able to falsify the return, they had therefore adjudicated a plurality in favor of your opponent. The election return, speaks against you and it is visible; the ballots and the tally sheet speak for you, but they are hidden. They are in the white box. The boxes are, as you know, sent immediately to the Presidencia; and in the Presidencia, the Municipal Mayor is *de facto* supreme. You are also acquainted with the rule inflexible and cruel, but based on logical reasoning, that where the boxes have been tampered with the ballots lose

their integrity; in other words, the rule that the ballot will prevail over the election return parts from the premise that they must not have been contaminated. Under such circumstances, would you blame the incumbent mayor if tempted as he is, by his present opportunity, he permits the flow of corrosive acid or white ants into the ballot boxes and thus kill the true and real demonstration of the popular will? You know that if he succeeds in doing so, and you later on file an election protest, you will again find the Supreme Court not very helpful to your side; you will find that in such cases, it has said that you must follow certain rules on how and when you can impeach the election return, and if you are so permitted, then by what evidence; and even if you succeed in presenting your evidence it is extremely problematical how you can convince the presiding judge that the true result for each office is what you say it is and not what the document written by the board of inspectors, certifies. The most notable cases on elections in our jurisprudence have uniformly presented replicas of this hypothetical case; upon the opening of the ballot boxes, during the course of the election protest, the boxes have been found, to contain ballots destroyed by corrosive acid, *anay*, or otherwise, the ballots have been substituted by unofficial ballots, —naturally to the chagrin of one part and the happiness of the other.

We suggest in brief, the following remedies:

a.—Immediately after the counting of the ballots, and their deposit in the white box, the election inspectors should merely verify the tally sheets and the result as appearing in the blackboard, and then, certify to the correctness of the tally sheet. That tally sheet should not be deposited in the white box; it should or at least a duplicate duly signed, should be delivered to the authorities. The certificate of result and the election return can be eliminated and should be; in such manner, the work of the inspectors will be simplified; and they will no longer have the temptation to falsify the election return. Naturally far greater recklessness would be needed to falsify a tally sheet than to forge an election return.

b.—The box, containing the ballots, must, immediately after the counting, be not merely locked, but sealed, in a manner that will prevent the entry of foreign materials; and immediately delivered to a delegate of the Commission on Elections who should be present at each polling place.

c.—And finally, that box, and the tally sheet and othr matters that had been used in the election should be delivered by the representative of the Commission on Elections, to the Clerk of Court of First Instance who should for that purpose, be made ex-officio delegate of the Commission on Elections. In this way, the boxes are assured of safe custody and the party interested may in due time determine whether or not to file an election protest, and whether if he should do so, to allege the tampering of the ballot boxes.

Now, we come to the final stage; that is the canvass of the votes as they appear in the election return furnished by the municipal or provincial treasurer to the respective board of canvassers. Last December, a peculiar case happened which will serve to il-

lustrate what we desire to say in this regard. Upon the conclusion of the elections in San Mateo, but before the canvass by the Board of Canvassers, it was known that each candidate for mayor obtained 954 votes each. The deciding vote was cast by a leper confined in the San Lazaro Leprosarium. Under the Election Code, provisions appear by which lepers confined in leprosaria are permitted to vote, their votes being counted in the municipalities where they were resident previous to their confinement. On December 14, 1940, the Board of Canvassers met for the purpose of canvass. Well then, the vote of this leper was accredited before tre Board of Canvassers; instead of counting that vote, the Board declared a tie; and pursuant to the law on tie votes, notified the candiates concerned that the drawing of lots would take place at 4:00 o'clock of Christmas Day. So far so good. But it also appears that two days after that meeting of Dec. 14. i.e., on December 16, 1941, and without the knowledge of the candidate for whom the leper's vote had been cast, the Board of Canvassers celebrated another meeting, held a drawing of lots, at which the other candidate won, and immediately thereafter, he was proclaimed elected. That case was elevated to the Supreme Court and was decided only last February; the Supreme Court with one dissenting, annulled the drawing of lots, and proclaimed the one voted by the leper to be the real winner.

The facts of this case show that the Election Law as we have it now deserves at least one more amendment; and that is that the Board of Canvassers must not be political; We venture to say that if the Board of Canvassers in the case set forth had been impartial, it would not have done what it did, especially, it would not have hidden the drawing of lots from the opponent, and thus cause the litigation. In view of the fact that not only by statute (O. A. 607) but also by constitutional amendment we have a Commission on Elections, it is time that we eliminate political composition of the Board of Canvassers. We can and we should entrust the canvass to an officer who can be ex-officio delegate of the Commission on Elections, let us say, the Clerk of Court, or the Provincial Fiscal.

As we close, we can not help but consider two other points: 1—The penal sanctions in the present election law are not clear, e.g. there is no law that expressly penalizes double voting; 2.—we must also consider the accusation so often repeated that most probably it is the truth,—the interference of those in the civil service. There appears to be some conflict between the Election Law and the Administrative Code in this regard; persons in the unclassified civil service apparently can engage in partisan activities under the Election Law, nevertheless, only those holding elective positions are so authorized by the Administrative Code. Thus a professor in the University of the Philippines is not prohibited under the Election Code to engage in political activities; but he is so prohibited under the Administrative Code. (Sec. 687, Ad. Code, as amended by Act 177, November 13, 1936; Sec. 47, Act 357, passed August 22, 1938: Under the doctrines of implied repeal, when a later law covers a definite ground, covered by the earlier, the second must be considered to repeal the first.)

But that situation obtains only with the unclassified civil service. With the classified civil service, there is no question at all; they can not engage in politics. The law is correct, respectable, and just; and it has its sanctions, administrative and criminal. The explanation therefore, why there are so many publicised accusations but so few convictions can not be found in any defect of the law, but in the difficulty of proving the crime. In this regard therefore, we sincerely believe that the remedy lies not in amending the law; the remedy lies in developing the character and integrity and independence of the voter. What Rizal said fifty years ago must still hold true now: There can be no oppressor if there is no slave. I thank you.

Intelligence Versus Force

THE real tragedy is not that so many men in the world believe in force as a method of social organization as that so many who reject force as an ideal, surrender to it in practice because there seems to be nothing else to do. But force in the end always defeats itself. In the long run it solves nothing and answers nothing. It brings us no step nearer the prospect of the "great society" which science and culture has revealed. If the world of the future is a more promising habitation for mankind it will be only as a result of the persistent application not of force but of intelligence against the things that now thwart our hopes.—DR. RAYMOND B. FOSDICK, *President of the Rockefeller Foundation.*