

CLEAN ELECTIONS AND THE CONSTITUTION *

CESAR BENGZON **

Probably you have heard about the so-called Bar Flunkers Bill—those law graduates (about 700) who attempted to enter the legal profession through the back door by means of a law which is patently unconstitutional. Well, none of those graduates comes from the U. P. College of Law. And tonight's symposium reveals the reason why: the College has maintained the tradition of excellence established in the days of its former Dean, Justice George A. Malcolm. Being a U. P. graduate myself, it is with pride and satisfaction that I offer sincere congratulations for tonight's performance to the Faculty, especially Dean Vicente Sinco, and to the student body of the College of Law.

Do not be surprised, Ladies and Gentlemen, if I admit that forty years ago, when I attended my classes in this College, a symposium of tonight's proportions could not have taken place. Not that the quality of the student population at that time was inferior. Not that our former professors failed to perceive opportunities for investigation and guidance. But in these forty years the materials on the Constitution have so multiplied and developed, that the researcher of today does not encounter much difficulty in tracing to plausible conclusions his line or lines of constitutional thought, what with numerous decisions on Constitutional issues handed down to define boundaries or to erect guideposts.

History-making decisions too, in celebrated controversies. If one were to select thirty famous cases in Philippine annals, ten or fifteen would certainly be litigations involving Constitutional powers and limitations.

I could point out, for instance, to the McCulloch Dick Deportation, when Editor Dick of the Free Press was ordered banished by the Governor-General, the Judicial Lottery case, the Chinese Book-keeping controversy, the Alejandrino incident where an appointive senator assaulted a fellow-senator. I recall the case of Mayor Lukban, that man of action, who in one night rounded up Manila's wo-

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** A.B. (Ateneo de Manila); LL.B. (U.P.); Associate Justice, Supreme Court of the Philippines.

men of ill-repute and shipped them off to Davao. Again, I recall the Board of Control controversy wherein the American Chief Executive wrested from our legislative leaders control over Government corporations.

Of course, law students have read these cases in their respective class assignments. But the reports of such cases do not adequately describe the wide publicity and the popular interest which said juridical battles provoked. Looking back in retrospect and remembering the glitter and the glamour of the distinguished counsels who intervened in those debates, I cannot but urge these honor students of the Order of the Purple Feather to continue to devote their time to the study of constitutional problems and solutions; for I am sure material rewards will be their portion, even as they serve the cause of good government and public welfare.

Before proceeding to this Hall this afternoon, I reflected upon the topic of the conference. Some speakers, I supposed, would merely inform about their researches concerning unexplored corners or newly opened pathways in the field of constitutional jurisprudence. Others, I surmised, in comparing fundamental theories with actual government practices, might take the cue from campaign speeches and recite either a litany of official shortcomings or a catalogue of government achievements, according as the speaker's political preference inclined one way or the other. However, I felt no apprehension, realizing full well that scholarship and partisanship do not generally mix; and that anyway, the select and impartial audience would certainly know how to make proper allowances. My hunch proved to be right. Criticism, if any, of government actuation was subdued and reasonably argued. Moderation prescribed the deliberations, even as diligent scrutiny with careful evaluation showed throughout.

I hesitate, naturally, to pronounce on the validity of some of their challenging conclusions. All I can say is, well done, bright and diligent lawyers-to-be.

The Bible teaches us that the Ten Commandments may be reduced to two—love of God and love of neighbor. The commandments of the Constitution, the standards therein described, may likewise be reduced to two basic Government duties: to promote the welfare of the community and to protect individual happiness. These two lines of conduct, usually running in parallel directions, cross each other at many points; and the success of the Government is determined by the way it handles such crossings in the endeavor to harmonize maximum public benefit with maximum individual well-being. However, one underlying postulate in this arrangement is that the Government should be one really chosen by the majority of the individuals of the

nation. Wherefore the Constitution insists and must insist on free and honest elections. Herein lies the modest contribution I wish to make to this round-table conference.

Juristic philosophy explains that, because individuals move differently to attain their desires which are often conflicting, some mechanism—the state—is necessary to regulate their mass movement; otherwise anarchy and disorder will prevail. Men accept the authority of the state not merely for the sake of order, but also because its operation permits the satisfaction of their individual desires. Hence, the strength of a state, the obedience that it commands, depends upon the total number of satisfactions it has produced. Once it fails to satisfy the majority it has to be replaced, and it is replaced in a democracy when election time comes.

Periodic elections are thus essential to every democratic nation, to afford its people opportunity to express their desires whether to retain or to retire those in authority. As Jefferson said, "the will of the people is the only legitimate foundation of any government and to protect its free expression should be our first object." Freedom at the polls—honest counting of votes.

That subject, I think, does not fall exactly within the range of tonight's meeting, but I chose it purposely to avoid competition with the speakers that preceded me; the obvious reason being that within the area Constitutional Law *as it is*, I might not be familiar with the latest innovations; but when it comes to Constitutional Law *as it should be* one need not be an expert constitutionalist to urge some favorite amendment, just as a plain householder may suggest an addition or alteration to the best drafted architectural plans.

Some might imagine that the matter has lost national significance because the last election was free from taint, and therefore the danger of fraud and terrorism belongs to the past. On the contrary, after the storm is over, that is the time to repair leaky roofs and shaky posts; because the next emergency might be a hurricane.

Just the other day, thumbing the pages of a book on American Constitutions, I was surprised to discover that several of them provide expressly for the purity of the electoral process. The Columbia Constitution, for example, says that "the law shall determine all matters concerning elections and the counting of votes, insuring the independence of both functions." That of Ecuador directs "the public forces (to) guarantee the purity of the electoral function." I would have a similar provision in our Constitution—something like this: "The Government shall insure free elections and honest counting of votes." Such provision would be wider in scope than its counterpart in the two Constitutions mentioned. It would be a command

not only to the Legislature or to the Army, but to all departments of the Government, laying for their observance a basic mandate, direct and immediate.

To be sure, we have the Commission on Elections, constitutionally independent, having exclusive charge of the administration of all laws relative to the conduct of elections, and empowered to call on other law enforcement agencies to act as its deputies to insure "free, orderly and honest elections."

But if any one of such deputies attempts to pervert the popular will, the Commission on Elections has no power to dismiss him from the Government. "And the President," one author says significantly, "has it within his power to refuse to aid the Commission."¹ And most important of all, the Commission has to follow election statutes prescribed by the political department. And you know how tricky politics can be. Indeed, it is of public knowledge that the Election Code has been amended from time to time ostensibly to plug loopholes, but actually to open others to help the majority stay in power. And the Commission on Elections must act according to such Code. No wonder that a leading senator and statesman has exclaimed, with understandable impatience, that "in hardly a decade, . . . we have experienced the dirtiest and most irregular elections ever held."² And a competent and impartial observer has written that "it is more than doubtful" if the Commission has wholly succeeded in its mission to insure purity of suffrage.³ Allow me to state, however, at this juncture, that I hold nothing but respect for the present members of the Commission.

To restate my position, I am battling this evening for comprehensive constitutional assurance of clean suffrage. The duty to procure clean elections should be imposed upon the whole Government—not only on the Commission on Elections.

We understand human nature: When Papa orders George to take charge of cleaning the house, the older brothers might say, "Let George do it" and conveniently forget the paternal injunction. The other Departments of Government might likewise say, "Let the Commission on Elections do it." Although such is not the attitude of the Judiciary, and from all indications, of the present Administration.

Yet, even in times of normalcy, wise men prepare for future contingencies in the light of past experience.

When and if the duty is imposed expressly upon the whole Government, the President, for all his powers, may not, for the benefit

¹ MALCOLM, G. A., *FIRST MALAYAN REPUBLIC* 293 (1951).

² LAUREL, J. P., *BREAD AND FREEDOM* 20 (1953).

³ See note 1 *supra*.

of his partisans, make use of his subordinates, the Army, for example, to exert undue pressure upon the voters. If he does that, he violates the Constitution and he may be impeached therefor. And if the majority in Congress should amend the Election Law to permit all Government officials, like judges, fiscals, treasurers, engineers, to campaign for their party, the amendment may be stricken down as in conflict with their constitutional obligation to preserve the purity of the elections. And, again, if the law be amended so as to award all election inspectors to the party in power, that amendment will be void as violative of the constitutional mandate. Without this basic precept, I very much doubt whether the minority party would have, in the ordinary course of justice, any means of protecting itself against unfair or fraudulent advantage engrafted by the majority in the Election Law.

Let us then make the Constitution provide expressly that the Government shall procure free casting of ballots and fair counting thereof. To the solemn declaration therein that "sovereignty resides in the people and all government authority emanates from them" we will lend substance by adding, "the People's choice of Government officials shall be ascertained under a system insuring clean and free voting, plus honest counting of the ballots."