THE CONSTITUTION OF THE PHILIPPINES AND THE PROPOSED AMENDMENTS THERETO *

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For the last few years, the advisability of amending our Fundamental Law has been debated repeatedly and intensively. The discussions thereon have been gaining momentum and are, perhaps, reaching the point of saturation. The matter may come to a head any time and the people may soon have to make their decision. An appraisal of the salient features of the issues to be submitted to their consideration is, therefore, necessary.

The main proposals for amendments to the Constitution revolve around four (4) points, namely: (a) the prohibition of immediate reelection of the President; (b) the allocation of specific duties to the Office of the Vice-President; (c) the abolition of biennial elections; and (d) the revival of senatorial districts.

There appears to be a discernible sentiment in favor of the disqualification of the President of the Philippines as candidate for immediate reelection. This sentiment seems to be predicated mainly upon two (2) grounds:

First—A president who contemplates reelection is under a relentless pressure to compromise with his principles. He is incesantly placed in a precarious positions, which may eventually compel him to submit to the demands of political expediency, even at the cost of deferring—if not giving up entirely—the execution of some measures required by public welfare.

Second—There is a great, if not irresistible, temptation to use —sometimes unwittingly—the vastly tremendous powers of the Office of the Executive, to crush opposition.

Those in favor of the *status quo,* in turn, assert that: (1) a four-year term is rather too short for a good President to fully carry out his plan of government; (2) the country ought not to be deprived of the services of those deserving reelection; and (3) the United States is as strong as ever, although the reelection of its President is not limited by law.

The experience of the United States, on this point, is bound to have a misleading effect. From a legal viewpoint, the President of the United States is not vested with as much power as the President of the Philippines. The United States is a composite state, with a federal government. It has a national government with specific, and, hence, limited powers, which are enumerated in the Federal Constitution. The general powers of government are held by the States of the Union, each of which has its own Constitution, from which it derives its authority, which is not dependent upon the national

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government. As a consequence, the states are endowed with internal sovereignty, subject only to the limitations set forth in the Federal Constitution. As provided in Article X of the amendments thereto—

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Moreover, the President of the United States is chosen, not by the direct vote of the people, but by electors whom—in the language of the Federal Constitution (Art. II, Sec. 1, par. 2)—"each state shall appoint, in such manner as the legislature thereof may direct" —although at present, the electors are, pursuant to state laws, chosen by popular vote. The Federal Constitution further ordains that "the electors shall meet in their respective States," and cast therein their ballots for President and Vice-President (Art. XII of the Amendments, par. 1). Thus, the Federal Government of the United States has no control over the proceedings, either for the selection of electors, or for the voting by the electors themselves.

Upon the other hand, the Republic of the Philippines is a simple state, of the unitary type. Its municipal and provincial governments are mere creatures of the national government, which may, at any time, increase or reduce the powers of any local subdivision and even do away with the same. Although established by law, regular municipalities may, in effect, be abolished by the President, under Section 68 of our Revised Administrative Code, as construed in two (2) early decisions of the Supreme Court (Gov't. of the Phil. v. Municipality of Binangonan, 34 Phil., 619; and Municipality of Cardona v. Binangonan, 36 Phil., 547). Besides, local officials are removable by the President, who, likewise, fills, by appointment, and may make, or direct the assignment to, key positions in provinces and municipalities, such as those of the Provincial Commander of the Constabulary, the District Engineer, the District Superintendent of Schools, the District Health Officer, the Provincial Auditor, the Provincial Treasurer, the Provincial Fiscal, and the Provincial Assessor. In the last analysis, practically all functions material to the administration of local governments are subject to the authority of some of these officers, who act under the direction and control of the Head of State.

For this reason, the preferences of the highest magistrate of the land carry a terrific, oftentimes decisive, weight in the election of local officials, whose cooperation and support is, likewise, important in the election of members of the House of Representatives. Accordingly, congressmen who wish to seek reelection must earn the goodwill—preferably the support—of the President. At least, he must not be antagonized.

The Senators, in turn, are "chosen at large by the qualified electors of the Philippines" (Phil. Const., Art. VI, Section 2). Candidates for the Senate are nominated in national conventions usually held, for such purpose, by the main political parties. Inasmuch as the President is the titular head of the party in power, the delegates to its convention cannot escape his influence, and few can resist it.

Without presidential approval, it is extremely difficult to be nominated by the majority party as one of its candidates for the Senate. Unless he belongs to the opposition, therefore, a member of Congress —particularly, one inclined to run for reelection—is not likely to oppose that of the incumbent President, except in extreme cases. In relation to the Head of State, our legislative department and local officials are thus in a more critical position than their counterparts in the United States. In short, the reelection of the President of the United States is not as fraught with possibilities as that of the Republic of the Philippines.

With respect to the insufficiency of one term to carry out the plans of a good Executive, those who oppose immediate reelection allege that four (4) years is long enough for a bad President. It would still be worse, they maintain, if he succeeded in being reelected, or in appearing to be reelected, through the use of his official prerogatives. And, this, they add, would not be unlikely, in the hypothesis given.

It is further averred that those who defend the *status quo* overlook the inherently corrosive influenced of the legal possibility of reelection upon one who, by reason of his official station, has effective means at his command to affect the result of the voting. Such possibility, it is claimed, has undermined the loyalty to principles of many men who, before their first term, were generally believed to be upright. Evidently—the conclusion has, consequently, been drawn—the desire to be reelected is deleterious to the moral fiber of the incumbent.

At any rate, it is argued, if his services have been satisfactory, he may still be returned to office, after the expiration of the term of his successor. What is more, the election of his successor, as well as his own subsequent reelection, would obviously be the free expression of the will of the constituents, devoid as it would be of any color of undue influence, and this fact would, unquestionably strengthen the hands of both, as leaders of the community, and place them in a better position to command general cooperation in the implementation of their policies.

The case of Mexico is often cited to illustrate the salutary ef-effects of the policy of no-immediate-reelection. Mexico is one of the most stable countries in the Western Hemisphere, next only to the United States and Canada. Unlike other Latin-American states, Mexico enjoys complete peace and order. It has a democratic way of life and its people are happy and contented. Yet, not long ago, Mexico was a land of revolutions. Its name used to evoke the fearful picture of Pancho Villa and his cohorts spreading terror and destruction in their wake. It used to be regarded as the antithesis of law and order. What was responsible for this amazing change? In 1917, Mexico adopted a new Constitution. One of its main features is that "any citizen who has discharged the office of President of the Republic, popularly elected or in the character of interim, provisional or substitute, may *in no case* and *for no reason* again hold this office." (Art. 83.) All other elective officers, from the Members of Congress down to the most humble local official, "may

not be reelected for the immediately succeeding term." (Arts. 59 and 115.) The consolidation of the rule of law in Mexico is attributed, largely, to these simple limitations to the reelection of all officers of the Republic.

The theory is that the prospect of reelection induces a public officer to give more attention to the task of mending his political fences, than to the administration of the affairs of the government and the advancement of the interest of the community. To put it differently, reelection promotes more politics and less government, which, it is claimed, account for the most of the evils in society. The remedy proposed therefor is the prohibition of immediate reelection, so that we may have "less politics and more government." These words of Manuel L. Quezon were backed up by his extensive and ample experience in the art of government, and by the extraordinary sagacity that characterized him as the ablest politician we have ever produred. Indeed, it was Quezon who extolled the virtues and sang the excellence of our original Constitution, in providing a presidential term of six (6) years, without reelection. Speaking before the Constitutional Convention, three (3) days prior to the final passage of our Charter, he said: "x x x And once again this Convention shows its vision and wisdom when it provided that there shall be no reelection for the position of a Chief Executive. This clause in the Constitution guarantees for the Filipino people an impossibility or at least the improbability of ever having here a Chief Executive that will try to perpetuate himself in power. Any one x x x familiar with the history of some of the Central and South American Republics" cannot help but "come to the conclusion that to a large extent the revolutions that have taken place" in that part of the world "had been due to the fact that their Chief Executive were permitted to present themselves as candidates for reelection."

It is not surprising, therefore, that the immediate reelection of the Head of State is prohibited in fourteen (14) states of Central and South America and the West Indies (Brazil, Chile, Columbia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Uruguay and Venezuela), apart from Lebanon and Liberia.

The status of the Vice-President of the Philippines is as unique as it is pathetic. While he is supposed to be a public officer, his functions hardly meet the orthodox concept of a public office ("x x x the right, authority or duty, created or conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised for the benefit of the public." Mechem on Public Officers, Sec. 1). Until and unless appointed as head of an executive department or as a member of the cabinet, our Vice-President has no right or authority whatsoever, except to collect his compensation on pay days, and no other duty than to wait—if not hope—for the office of the President to become vacant, by the removal, death, resignation or inability of the incumbent, before the expiration of his term. The unusual predicament in which the Vice-President of the Philippines is thus placed by the Constitution is but the product of circumstances sur-

rounding the adoption of our Fundamental Law, which need not be elucidated now. This abnormal situation should not be allowed to continue indefinitely. To this end, it has been suggested that the Vice-President be made ex-officio President of the Senate, or member of the cabinet, presumably with or without portfolio, in the discretion of the President. It seems obvious that the Vice-President should have, at least, some vestige of responsibility and authority in the administration of the government. He should, at all times, be kept well posted on the state of the nation, on its problems and policies, and on the background thereof. Otherwise, he may have to assume the duties of the President, if and when the occasion should arise, without then being fully equipped therefor, from an administrative viewpoint.

Coming to the question of the abolition of biennial elections, there appears to be no appreciable opposition thereto. Whenever elections are held, our public treasury disburses, through the Commission on Elections, from 8 to 15-million pesos—excluding the expenses incurred by other offices of the government, such as the armed forces, the law enforcing agencies and the Bureau of Posts—which could be used profitably for some other public purpose. Only God knows how much each election costs to the political parties, and its candidates and supporters. In all probability, their expenditures are just as big, if not bigger. Then, also, there are the measures adopted for vote-getting purposes—such as the back pay for the period of the Japanese occupation, to mention one, the aggregate amount of which is over 450 millions. The annual appropriations for public works, during the last few years, is around 300 millions. Hence, the consensus of opinion is that the interregum between each election should be more than two (2) years.

Unfortunately, the implementation of the idea has been hampered by several factors. The problem stems from the need of synchronizing the presidential elections with the elections for members of Congress. It is felt that the term of the President should be increased to six (6) years, if his immediate relection will be prohibited. In such event, elections for the Senate and the House of Representatives would have to be held, either every three (3) years, or every six (6) years. There is, however, vigorous opposition to the reduction of the term of members of the House of Representatives to three (3) years. It is claimed that the interval between each election should be made longer, in order that more money could be saved and greater attention given to the promotion of public interest, and less time be taken up by, and less energy consumed, in, purely partisan political activities.

Upon the other hand, the present four-year-term of members of the House of Representatives could not be maintained without increasing the term of the President to eight (8) years, which is believed too long, or unless no change were made in his present term of four (4) years, which would be considered too short, if immediate reelection were no longer to be sanctioned.

Some quarters advocate a uniform term of six (6) years for all elective officials and the holding of elections every six (6) years.

But, there are those who feel that a 6-year term for members of the House of Representatives is too long. Besides, at present, only one-third of the Senators cease every two (2) years. Each new set of eight Senators could profit, therefore, by the experience and advice of the remaining 16 Senators—eight (8) of whom have already served for two-years, and the rest for four (4) years—thus insuring, it is said, continuity in the policies of the Senate. Such continuity, it is alleged, would be impaired if all seats in the Senate became vacant and were filled at the same time.

To my mind, the objections to the plan of holding elections, either every three (3) years, or every six (6) years, are not fundamental. They are not strong enough to warrant the rejection of either alternative, much less the abandonment or the indefinite deferment of the move to amend the Constitution. An interval of three (3) years between each election would improve the present system of biennial elections by fifty (50%) per cent. The rate of such improvement, measured by the time gained and the money saved, would be 200%, if the members of both Houses of Congress had identical 6-year terms. Furthermore, the benefits obtained thereby would not be offset necessarily by the possible impairment of the continuity in the policies of the Senate. Indeed, ours is, in fact, a two-party government. If the party in power, at a given time, retains the majority in the next election, the policies of the former Senate would, in general, be adhered to by the new Senate. Conveniently, if the former minority party should win in said elections, it would certainly be justified in discarding the policies of the former Senate, such policies having been repudiated by the electorate. Precisely, in such case, if part only of the membership of the Senate were changed in each election, the remaining Senators, belonging to the former majority party, would, most likely, oppose, if not block effectively, the policies of the new majority, despite the popular indorsement in the polls. Then, also, the 2-year increase in the term of members of the House of Representatives would promote the continuity of its policies for that period of time, thus compensating for such impairment as may have taken place in the continuity of the policies of the Senate.

As regards the proposal to revive the senatorial districts, the objections thereto may, I presume, be deduced from the very arguments advanced in favor of the election at large of senators, which were (1) the elimination of the special attachment to the district represented by each senator; (2) the development of a national outlook; and (3) the preparation of national leaders.

Let us test the validity of this view. Under the Jones Law, we had a Senate, with members mostly elected by senatorial districts. Among those who graced the halls of that Senate were Senators Laurel, Recto, Cuenco, Mabanag and Osias, who, likewise, were chosen, at large, to the present Senate, after the war in the Pacific. I do not think we could honestly say that, as such senators chosen at large, these distinguished gentlemen had a broader outlook and a greater concern for the interest of the Philippines, as a nation, and were less sentimentally and politically attached to their respective regions, than when they were in the old Senate, by the vote of the

qualified electors of those regions. Neither do I dare say that more national leaders have emerged from senators-at-large than from the old Senate, which had given us men of the stature of Quezon, Osmeña, Palma, Juan Sumulong, Montincla, Laurel, Quirino, Recto, Cuenco, Hontiveros, Tirona, Osias and Soliven, to mention some only.

It may not be amiss to note that the present Senate is *not* a creature of the Philippine Constitutional Convention, whose members *refused* to adopt a bicameral system and vested the legislature powers in a unicameral national assembly. The Senate composed of senators elected at large was the idea of President Quezon, the undisputed political boss in the Philippines, when our original Constitution was amended to establish the Congress of the Philippines. This amendment was, of course, ratified by the people in a plebiscite called for such purpose. But, under present conditions, any proposed amendment to the Constitution, if approved by Congress, would always obtain a majority of the votes cast in said plebiscite, which is all that the Constitution requires for the amendment to become effective. The reason is that the proposal would not have been passed by Congress if the majority party were not in its favor, and this is the party that can avail of the resources and machinery of the government to campaign for the amendment and to bring the voters to the polling places. Apart from not having similar resources and machinery, the minority party has no candidates who would spend their private fortunes to meet the cost of a campaign against the amendment and of the transportation of the voters. As a consequence, the overwhelming majority of the votes cast in the corresponding plebiscite have always been favorable to the amendment. The bulk of those who opposed it had stayed at home. This is one of the major flaws in the present set up. It bespeaks poorly of the civic conscience of our citizenry. It reveals a grave deficiency in their politicalization.

Other proposed amendments are, likewise, noteworthy. They refer to: (a) the independence of the judiciary; (b) the Presidential Electoral Tribunal; (c) the independence of the General Auditing Office and the Bureau of Civil Service; and (d) the suspension of the privilege of the writ of *habeas corpus*.

The Committee on Constitutional Amendments for the House of Representatives has included, in its draft of resolution for proposed amendments to the Constitution, a provision seeking to strengthen the independence of the judiciary, by providing that "the Chief Justice shall be considered the department head of the Supreme Court and *all other courts*," and that "no inferior court shall be reorganized except upon the recommendation of the Supreme Court." The effect of the first part of this proposal, if adopted, would be to transfer to the Chief Justice of the Supreme Court the administrative supervision over inferior courts, which is now exercised by the Secretary of Justice. Some would, also, require the recommendation of the Supreme Court for all appointments to the bench, whereas others are in favor of vesting the power to make such appointments, either in the highest court of the land, or in the Chief Justice. It is encouraging to observe the unanimous feeling in favor of greater

independence in the administration of justice. The inquiry is limited to the determination of the best means to attain this purpose.

The present Presidential Electoral Tribunal has been established by an act of Congress, which may, consequently, be repealed at any time. This possibility is sought to be forestalled by the proposal to, in effect, incorporate the provisions of said act of Congress into the Constitution. This step would, in addition, raise, in point a status, the position of the Presidential Electoral Tribunal to the level of the electoral tribunals for the two houses of Congress, which are creatures of the Constitution.

The independence of the General Auditing Office is meant to be enhanced by providing that its internal organization and personnel shall be under the exclusive direction and control of the Auditor General, who shall, also, have exclusive authority to appoint said personnel, and that decisions of the Auditor General affecting the President and/or his office shall be appealable, not to the President, but to the Supreme Court. Similar independence and exclusive authority are sought to be given to the Bureau of Civil Service and the Commissioner and Deputy Commissioner of Civil Service. I have not heard of any valid objection to these plans, which are basically sound and should have the wholehearted support of all.

With respect to the power of the President to suspend the privilege of the writ of *habeas corpus*, the proposal is to require therefor the concurrence of Congress or, at least, to vest in Congress the power to terminate, by resolution, the suspension of the privilege, when decreased without its previous concurrence. Indeed, in the Constitution of some states—including the U.S.—the power to suspend the privilege of the writ is vested in the legislative department, on the theory that human liberty is too previous and its suspension so pregnant with danger that the authority should not be held by any single individual. Consistently with this view, other states have given the prerogative to the Head of State, subject to congressional approval. Whether the power is in the legislature, alone, or is shared by the latter with the Executive, several constitutions fix a maximum period of suspension, ranging generally from 30 to 90 days. Only one State (Liberia) permits a suspension for as long as 12 months. In another State (Bolivia), persons arrested during the effectivity of the order of suspension "must be brought within 48 hours before the courts" (Art. 35 [3 & 4]).

At this juncture, we must bear in mind that the technical excellence of a legal provision is not sufficient to reasonably assure the accomplishment of its objectives. A law, particularly in a democratic society, is but an instrumentality of the people's welfare. This goal cannot be achieved unless the instruments designed therefor are placed in competent hands. The moral is that the success of failure of a Republican State, like ours, depends, not only upon the wisdom of its laws, but, also, upon the devotion to duty of the officers charged with the administration and enforcement of such laws, and the civic conscience of the people called upon to choose or elect those officers.

Public officers are public servants. As such, it is their special privilege to work for and advance the common weal. As agents of

the community, public officers are consecrated to the service of the nation. We must not make it difficult for the officers of the government to stay loyal to their public trust. And a public servant is placed in such predicament when he has to spend from ₱100,000 to ₱300,000 for an office the emolument of which, for the full term provided by law, is only from ₱30,000 to ₱50,000. He will, of necessity, have to make up for the difference somewhere. If the people desire an honest and clean government, they must, therefore, be honest and clean themselves. They must have the interest of the community at heart. They must be willing to sacrifice their personal interest and convenience, when public welfare demands it. Are the people of the Philippines ready and willing to pay this price?

As we ponder upon the answer, let us remember that a government of, by and for the people is necessarily as weak and vacillating as the people governed; that a weak and vacillating government breeds discontent; that unless the causes of weakness and vacillation are removed, democracy is destined to fall into disrepute, and the government will, sooner or later, lose the support of the people; and that where democracy is thus discredited, and a popular government collapses, or is about to collapse, an autocracy of some sort invariably assumes the powers of government. The object lesson given to us by Germany and Italy after the first World War, by Spain, by China and lately by France, is as clear as it is ominous: where democracy fails, dictatorship takes over. If and when such time should come, the only question would be: What kind of dictatorship? Shall it be fascistic in nature? Or will it be of the socialist or communist type?

Let us pray and hope, and do our best, that we may never have to answer these questions.