

BOOK REVIEW:

THE 1973 PHILIPPINE CONSTITUTION; NOTES AND CASES;
PART I, THE STRUCTURE AND POWERS OF GOVERNMENT.

By Joaquin G. Bernas, S. J. Manila: Rex Book Store, 1974. 756 p.

CONSTITUTIONAL LAW CASES AND OTHER MATERIALS;
PART II, THE RIGHTS OF THE PERSON. WITH 1973 SUPPLEMENT

By Joaquin G. Bernas, S. J. Manila: College of Law,
Ateneo de Manila University, 1974. 788 p.

“There is no further judicial obstacle to the new Constitution being considered in force and effect.” Thus spoke the Supreme Court in the landmark case of *Javellana v. Executive Secretary* and thus the 1973 Constitution was stamped with the imprimatur of the judiciary. Amidst all the furor and controversy surrounding the Ratification Cases, Fr. Bernas completed these two volumes, primarily intended not only as textbooks for his students in Constitutional Law but also for, in his words, “believers and infidels alike who for varying reasons, perhaps, may wish to gain some understanding of what the 1973 Constitution means.”

The author divides his work into two segments; the first, entitled “The Structure and Powers of Government”, is the more interesting as it is in this field that the new Constitution markedly differs from the old. This part deals with the provision concerning the framework of the new parliamentary system as well as the articles on National Territory, Declaration of Principles, and Amendments. Fr. Bernas approaches his subject matter by using the 1935 Constitution and existing jurisprudence as a starting point, and from there analyzes the changes and effects of the revised provisions. In case of entirely new articles, the author makes good use of excerpts from the records of the Constitutional Convention in attempting to ascertain their proper interpretation.

Fr. Bernas does not confine his book entirely to the task of instructing the reader on the basic concepts of Constitutional Law, but he also offers some interesting comments and critiques on the new fundamental law of the land. After an extensive discussion of the provision on National Territory, he attacks it as being “a security blanket, a rhetorical

assertion of historic identity, decolonialization on paper, and an embarrassing muddling of the Philippine position towards the Treaty of Paris."

In analyzing the functions of the President as the symbolic Head of State, he describes the office as having "the vibrancy of a dead coconut tree." With respect to the martial law provision which is a verbatim reproduction of the provision in the old Constitution, the author "hazard(s) the surmise that . . . the Prime Minister has far vaster martial law powers than the President of the 1935 Constitution" because of the change from a presidential to a parliamentary system of government.

Perhaps the most interesting part of the two volumes is the author's discussion of the 1973 Ratification Cases. Fr. Bernas states that a constitution may be changed not only by revision, which implies adherence to constitutional procedure, but also by revolution, which is a change effected by the sovereign people in violation of the existing constitution. Therefore, change by revolution, a superior expression of the people's sovereignty, cannot be unconstitutional but merely extra-constitutional. The author submits that this is the case with the 1973 Constitution which he admits was not ratified in accordance with the 1935 Constitution. Furthermore, he argues that since the Supreme Court cannot but rule in favor of the Constitution under which it is presently exercising its powers, the question of which Constitution is valid cannot be the proper subject of judicial determination.

The second volume, entitled "The Rights of the Person", contains commentaries and cases on the Bill of Rights provisions as well as the acquisition and loss of citizenship. This volume is actually an earlier work of Fr. Bernas which has been updated, with a supplement containing discussions of the pertinent provisions of the 1973 Constitution and more recent jurisprudence. Obviously, this is less effective than the first volume in linking together the jurisprudence under the old Constitution with the 1973 Constitution. However, this does not quite detract from the text as the Bill of Rights provisions were not drastically altered. Hopefully, this problem will be remedied in the forthcoming revised edition.

In this volume, Fr. Bernas continues his interesting commentaries on the 1973 Constitution. He allays the fear of many concerning the amendment which allows the issuance of search warrants and warrants of arrest by "other responsible officers as may authorized by law". He states that the due process clause will prevent the authorization of prosecuting officers, such as a fiscal, to issue such warrants.

As a whole, in spite of the omission of a discussion of the important

provision on the National Economy and Patrimony, these two volumes serve as valuable tools for the student of Constitutional Law in the understanding of the 1973 Constitution. But more than this, they are also both enlightening and stimulating as they provide food for thought for all: laymen, students, learned constitutionalists, "believers" or "infidels."

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