

LAW AND PHILIPPINE NATIONHOOD

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I. LAW AND SOCIETY

Law is but a reflection of the structure of social and economic relationships existing within a national society. Ultimately, in any such society, it is the people who hold political, military and economic power who make the final decisions—the politicians who represent economic interests, the labor leaders, the industrialists, the landlords and others. The legislators who make the laws only represent such centres of power. The laws which they produce are only the result of political compromises reached between and among the interests which they represent, translated into legal and statutory form. Those values and interests that are not near the centres of power are left out in the political equation, as well as in law-making. To the extent that there are shifts in the balance of power, then to that extent, too, will there be corresponding changes in the interests represented in law.

When the broad masses of the people are politically conscious and are able to transform such political awareness into effective political power, then the laws shall advance and protect their interests. Otherwise, they shall not.

If the lawmaker only protects those interests which support him, how can there be change in society through law? The barriers against change are especially present when the different power groups are of equal strength and are equally adamant in the protection of their interests. As a result, the process of reaching political compromises in the making of laws only lead to a sort of paralysis in that laws meant to effect social change are not passed or, if passed at all, are shorn of any real impact.

The lawmaker or political leader cannot repudiate the interests which support him. To do so would only mean his fall from power. His attempt would only be successful if (1) he manages to get the support of a power group that overwhelms or becomes much stronger than all the other power groups or (2) new power groups emerge whose support he enlists.

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Ultimately therefore, meaningful social changes are effected outside of the legal system *as such*. They come about as a result of movements in the structure of power of a national society—in the political, economic and sometimes military arena. A “legal revolution” can only come about and be successful if it is able to garner enough support among the centres of power in a society or if other centres of power antagonistic to it are neutralized.

Law is often talked about with much hyperbole. Lawyers especially are particular to such phrases as “the majesty of the law,” and “law as a dynamic instrument of development and social change.” What can be said about such statements is that, at best, change that is ostensibly legal, i.e., emanating from within the legal system and valid according to the standards of such system, can be successful only if it has again the support of the centres of power within a society. At the least, law only serves a legitimizing purpose.¹ In this respect, there can be two situations. The first situation involves the destruction of an existing legal system, and the emergence of a new one. A revolution may have occurred, or there has been a seizure of political power not through the regular legal and constitutional processes. Through the medium of constituent assemblies and constitutional conventions, the system of social, political and economic relationships that have resulted from the revolution is legitimized in law. The seizure of power is legalized. The second situation does not involve the destruction of the politico-legal system, only its adaptation and response to social and economic changes through the medium of new legislation. The response, however, is limited, and there is a built-in time lag. In this second situation, law can only legitimize protest, but it cannot legitimize revolution or radical social change.²

All these are subject to an exception. In certain instances, the laws that are passed result in changes in the power structure of society, although they were not originally meant to do so by the lawmakers, or were merely meant to be concessions to comparatively weak but emerging power groups. To that extent, and to that extent only, law actually and directly effects social change. It is only in this context that, as some writers have put it, law can serve both as an agent for and against needed social change.³ If the general rule is that law is but a reflection of the power structure, in certain limited instances, the positions are reversed. The image, the reflec-

¹ FERNANDEZ, *PHILIPPINE POLITICAL LAW* 20 (1975).

² Cruse, *The Historical Roots of American Social Change and Social Theory*, in *IS LAW DEAD?* 327 (1971).

³ Bengzon, *Law as a Function of the Social Order*, 43 *PHIL. L.J.* 5, 733 (1968).

tion, takes on a life of its own. Law becomes cause, rather than effect.

For law is both cause and effect, but more effect than cause.

It must also be remembered that laws are meaningful only to the extent that they are enforced and interpreted according to their spirit and purposes. Unenforced, they only remain scraps of paper. Misenforced or misinterpreted, sometimes they are turned into instruments against the very purposes and aims for which they were enacted. Law as a living force in society does not begin and end with the process of law-making. Its real effect as a means of social control or social change takes place only when it is actually applied. Much depends on the people who enforce and interpret them. Again, these people are but representatives of the centres of power within society. Any radical reinterpretation or application of already existing law to be successful must have the support or at least the acceptance of the then existing centres of power. Faced with two different interpretations of law, each buttressed by logical legal reasoning, the choice of the interpreter or enforcer will often be decided by meta-legal factors.⁴

If the law as interpreted and applied effects changes in the social power structure, then again it may be said that law is an agent of social change. The law when applied in the light of contemporaneous circumstances may sometimes take on new meanings that its original authors did not intend it to have.

II. PHILIPPINE NATIONHOOD

A nation has been defined as a people, or aggregation of men, existing in the form of an organized jural society, usually inhabiting a distinct portion of the earth, speaking the same language, using the same customs, possessing historic continuity, and distinguished from other like groups by their racial origin and characteristics, and generally, but not necessarily, living under the same government and sovereignty.⁵ The Philippines, as a nation-state, fulfills all such requisites. This, however, is not enough. When Philippine nationhood is spoken of, the idea that should properly come to mind is not merely that of just another nation. The vision should be that of a strong and stalwart Philippine national community, or at least the endeavor towards such a goal. When we talk therefore of law and Philippine nationhood, what should be discussed is the role and relation of law to the process of building a *strong* Filipino nation.

⁴ DAVIS, *SOCIETY AND THE LAW* 89 (1962); PASCUAL, *INTRODUCTION TO LEGAL PHILOSOPHY* 298-308 (1974).

⁵ *Montoya v. U.S.*, 180 U.S. 261 (1900).

What makes a nation strong? Or viewing it from another perspective, what is important in the process of nation-building?

Ethnic, racial, linguistic and other common cultural ties are not enough to make a nation strong, or to bind it firmly together. It must have strength in all aspects of its national life — cultural, political, economic, even military.

A strong nation must have an economy that is wealthy enough to provide its people with a decent standard of living and the basic necessities of life. Economic strength also means a growing economy. It does not stop at that, however. The wealth of a nation must be equitably distributed. Furthermore, the process of economic growth should be such that it redounds to the benefit of all, and not only of a favored few.

Whether such growth should occur in a capitalistic or socialistic framework is a matter of national self-determination. What counts is the economic welfare of the people. For when the people are well-fed, well-sheltered, and well-educated, when the national wealth is equitably distributed and economic growth is beneficial to all, there will be less cause for discontent, more unity, and less of the divisive influences that pit rich against poor and leave a society fragmented. A contented and a united people is a strong people, and a strong people guarantees the success of national endeavors. Differences, of course, will always exist, but those differences that are the result only of greed, oppression, and colonialism can and should be eliminated.

In the political field, the people should be able to effectively participate in the making of national decisions which affect their lives. This participation should take place in an atmosphere of political stability and continuity. For this to come about, there should be what Huntington calls *political community*. There should be political organizations and procedures which are highly institutionalized and have the support of the great majority of the people.

The scope of support depends upon the segment of the population which is not only politically conscious but also politically organized. Institutionalization on the other hand, is the process by which organizations and procedures acquire value and stability. The level of institutionalization of any political system, is defined by its adaptability and responsiveness, its complexity, its autonomy from mere social groupings, and the coherence and unity of its organizations and procedures.⁶ These organizations and procedures in-

⁶ HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 12 (1974).

clude the political parties, the system of government, the system of laws, the system of courts, the process of constitution-making and legislation.

The participation by the people is made more effective if they are channelled through stable and responsive political institutions. Convulsive and abrupt social change which polarize and weaken national societies, and cause suffering among the people are avoided. The people are united, despite the differences among themselves which can be resolved through the medium of the political institutions extant. Resort to means outside the politico-legal system, as through violence, to effect such change, is reduced to a minimum. For in a society of any complexity, the relative power of the various social groups changes, but if the society is to be a community, the power of each group should be exercised through political institutions which temper, moderate and redirect that power so as to render the dominance of one social force compatible with the community of many.⁷

Thus, political and economic development must occur in a framework of political stability, political continuity and *true* democracy. When the people are able to actively and effectively participate in the political process, national endeavors have more than a fair chance of success. The people are contented because they participate, and their participation results in a more effective and responsive government, which looks after their needs and those of the nation.

There is a strong nation therefore when there is a strong people. The people will be strong only when political and economic power are in their hands, in a politically pluralistic society where such power is equitably and evenly distributed among the different sectors of the national society. For it is only then that the course of political and economic development will redound to their welfare.

All these lead us to only one inevitable conclusion — *A strong people is both the end of true nationhood, and the medium through which it is achieved. The people themselves are the means of their own salvation.*

For true political and economic strength can come only from within, from a people who are united and strong because they are committed to common national goals and ideals, and who are the foremost, if not the only centre of power within a society. When the people are politically conscious of their identity as one nation,

⁷ *Id.*, at 9.

and are able to transform such political consciousness into political and economic power, then the foundations of a strong nation will have been built. The rest will follow. Vis-a-vis other nations, it will be able to resist external political and economic interference. It will have a political leadership and a legislature committed towards the fulfillment of the nationalist endeavor and to the cause of strong nationhood. Otherwise, the nation is a weak nation, susceptible to all kinds of political and economic subversion, unable to withstand stress or adversity.

The goals and the elements of strong nationhood have thus been defined, together with the means through which it may be brought about. The next question to ask is—What part does law play in the struggle to build a strong nation?

Is law an *active* agent in producing political and social consciousness among a people, and in concretizing the political consciousness of a people into political and economic power? Given a legal and political system in which power is not already in the hands of the people, as a *general rule*, law does not foster such a process, but often seeks to obstruct it. It is more to the interest of those already in power to pass legislation to hinder the politicalization of the people. The economic and political power centres who are represented in the legislature, will not want to surrender such power, but will rather seek to consolidate it through legislation. The process of politicalization is therefore essentially a social, extra-legal process. Law is more the product of such a process, rather than its cause.

Do the lawmakers *actively* enact laws designed to secure a more equitable distribution of the national wealth, or so that the benefits of economic growth redound to all? Given the same legal and political situation, the answer is again in the negative. The tendency of power is not to dilute and diffuse itself, but to consolidate and to expand. Economic power usually translates into political power. Political power is needed to protect and preserve economic power. Consequently, economic power in the form of control of the national wealth, will not ordinarily be given up by those who already have it.

The more there are divisive influences within a society, be they economic, political, social, language-related, or otherwise, the weaker is a nation. This situation will tend to continue so long as political and economic power are concentrated only in the hands of a few who are antagonistic to the interests of true nationhood. The more power is concentrated, therefore, the weaker is the nation. As a

result of all these, the broad masses of the people are not a potent political force in society, and the task of nation-building becomes all the more difficult. The existing structure of power is left undisturbed, with the national leaders only paying lip-service to nationhood, and owing their loyalty to other interests.

It is again in this context that law and Philippine nationhood should be spoken of. So long as the people are divided and do not have real political and national consciousness, the broad masses of the people are not a centre of power. If this is the case, then the centres of power will not be committed to nationhood, and so will the national leadership not be committed. The result is that, *as a general rule*, the laws that are enacted are not meant to develop nationhood.

There will be laws consciously enacted with the aim of building a strong nation only when the national leadership is itself committed to the ideal of nationhood. This will be the case only when the people have political and economic power so that the national leadership is representative of their interests; if the people are, in the first place, *already* a true nation, in the sense of having national and political consciousness and being able to translate such consciousness into political power and consequently into law. When political and economic power is concentrated in the hands of a few, then we do not have a true or a strong nation, but a weak one. Consequently, the laws that are enacted are in furtherance only of the interests of these groups, and not for the purpose of building a strong nation.

There will be laws consciously enacted towards the strengthening of a nation, only when there is already a strong nation. Conversely, when we have a weak nation to start with, the laws that will be enacted will be laws that do not have for their purpose the building of a strong nation. The weak nation has a tendency to perpetuate itself, *within the politico-legal system*. The effect is also the cause, the goal also the condition precedent. Thus the vicious circle is complete.

Ultimately, the process of a developing nationhood occurs outside the ambit of law. The attainment of political consciousness and the rise of the masses as a political force is a social, *extra-legal* phenomena. The circle within the legal system can only be broken by a force from without.

This is not to advocate the adoption of communism, or a dictatorship of the proletariat, or the tyrannistic authoritarianism of ideology, in which individual freedom, initiative, expression, dissent

and enterprise are sacrificed at the altar of social goals. All that is being said is that given an existing political and economic structure where political and economic power are in the hands of a few, the task of nation-building is a difficult one. This is the case even if a Western-style government characterized by a parliament and periodic elections is present. Legislatures and periodic elections only serve to perpetuate the inequity of an inequitable *status quo*.

The tests therefore of law's relation to nationhood are as follows: (1) Does the law in its operation result in the diminution or elimination of the divisive influences within a national society, or reinforce the bonds already binding together such a national society? (2) Does it bring about *political community*, result in the politicalization of the masses, and their emergence as a potent and active political force in society? (3) Does it result in the upliftment of the people's standard of living, the elimination of the worst forms of poverty, and the reduction of disproportionate income inequalities?

If it does one or all of these, then it can be said to be a positive factor towards the realization of nationhood.

A. Before 1898

In Philippine society, what were the ties that bound the nation and the people together? In 1898 two of these were as follows—(1) common racial origins and (2) a common heritage consisting of a revolutionary struggle against colonialist oppression.

Some divisive influences were:

(1) loyalty of the power centres in society to class and economic interests. After the elite of Negros Occidental for example, took control of their province from the Spaniards, scarcely a week after, on November 12, 1898, the Negros Provisional Government was already asking that the province be made a protectorate of the United States.⁸

(2) loyalty of some other interests to the former colonial master Spain, or to the expected colonial master, the United States of America. People who held high positions in the Malolos government conveniently and quickly shifted their allegiance to the Americans. Some of these were Cayetano Arellano, Gregorio Araneta, Benito Legarda and Pardo de Tavera.⁹

⁸ CONSTANTINO, THE PHILIPPINES: A PAST REVISITED 271 (1975).

⁹ *Id.*, at 232-237.

(3) socio-economic inequalities resulting in the alienation of farmers, the workers, and the lower classes from the landed and merchant class, and the lack of unity, if not enmity between them.

(4) language differences and regionalistic attitudes

(5) inadequate and inefficient means of transportation and communication.

Socio-economic inequalities were and are the most divisive influence in Philippine national society. Laws, therefore, which promote social justice, contribute to the upliftment of the living standard of the masses, alter the income structure towards a more equitable distribution, and eradicate economic exploitation in both agriculture and industry in order that the workers will be given a fair share in the fruits of their labor contribute the most towards Philippine nationhood.

B. 1898—the Revolution and the Malolos Constitution

The Malolos Constitution, promulgated on January 21, 1899, was a concrete product of the awakening of the national consciousness of the people in their struggle against the colonial master, Spain. In their desire to set up an independent republic, it was so provided that the government shall be popular, representative, and responsible.¹⁰ The ilustrados and members of the landed elite were however still the primary centres of power within society. Consequently, they held pre-eminent positions in the revolutionary government.¹¹ As a result, the Malolos Constitution was a document that spoke of political independence, but not of social justice and emancipation.

The Malolos Constitution was never really given a chance to work, however, for the Americans soon took over.

C. The Americans

When the Americans came into power in the Philippines, the laws that were enacted were naturally those that were in the pursuit of their own interests. Their economic and military designs were legitimized as law.

The Spooner Amendment was an example. It did establish civilian rule in the Philippines, *but for American purposes*. A civilian government was established primarily to facilitate American investment in the Philippines.¹²

¹⁰ CONST. (Malolos), title II, art. 4.

¹¹ CONSTANTINO, *op. cit.*, *supra*, note 6 at 210-211.

¹² *Id.*, at 290-291.

The laws that were passed under the American aegis had both positive and negative effects on Philippine nationhood.

The Americans, through a series of laws,¹³ strengthened the structure of government in the Philippines. In the sense that Filipinos were ostensibly given the right to rule themselves, Philippine nationhood was strengthened. Municipal¹⁴ and provincial¹⁵ government were re-organized and streamlined.

One obstacle to nationhood which we mentioned was the lack of adequate means of transportation and communication. This, too, the Americans tackled. They had railways built,¹⁶ ports improved,¹⁷ roads and bridges built.¹⁸ Again however, the compelling reason for these programs was not the welfare of the Filipinos but the development of investment in extractive industries, and the pacification of the country.¹⁹

A need was also felt to detach the Filipino from the revolutionary, anti-colonialist spirit that had united the nation. Hence, Rizal as a hero was developed in lieu of Bonifacio. One of the earliest laws passed was "An act granting the right to use public land upon the Luneta . . . upon which to erect a statue of Jose Rizal".²⁰ Act No. 137 organized the politico-military district of Morong and named it the province of Rizal. Act No. 345 set aside the anniversary of his death as a day of observance. The right to use the Philippine flag was even prohibited.²¹

A comprehensive educational system was established starting with the establishment of a highly centralized public school system.²² Numerous laws were passed appropriating money for school buildings.²³ The educational system was continually improved.

In the sense that education was made available to the masses and not only to the privileged classes, social differences were diminished and thus the cause of nationhood was advanced. The harm was, however, more than the benefits. The educational system under the Americans resulted in the Filipino's loss of his own national

¹³ PHILIPPINE BILL OF 1902, U.S. Public Law No. 235, 57th Congress (1902); PHILIPPINE AUTONOMY ACT, U.S. Public Law No. 240, 64th Congress (1916).

¹⁴ Act No. 82 (1901).

¹⁵ Act No. 83 (1901).

¹⁶ Act No. 554 (1902), Act No. 555 (1902), Act No. 703 (1903), Act No. 704 (1903).

¹⁷ Act No. 640 (1903), Act No. 641 (1903).

¹⁸ Act No. 1301 (1905).

¹⁹ CONSTANTINO, *op. cit.*, *supra*, note 8 at 295-296.

²⁰ Act No. 243 (1901).

²¹ Act No. 1696 (1907).

²² Act No. 74 (1901).

²³ For example Acts No. 904 (1903), 1057 (1904), 1199 (1904).

identity, and the birth of his colonial mentality. English was used as a medium of instruction. Young Filipinos were taught American songs, American ideals, the lives of American heroes and great men in complete indifference to Filipino patriots, ideals and culture.²⁴

How can you build a Filipino nation on a mass base of brown Americans?

In the field of labor and social legislation, the American record was equally dismal. No effort at all was made to alter the inequitable socio-economic structure. The Americans wanted to protect their sources of raw materials and Philippine export crops. To do this they had to reinforce and strengthen the landed classes who supplied them with such.²⁵

Laws passed to implement these policies included the Tariff Act of 1901 and of 1902, the Payne Aldrich Act, and the Underwood-Simmons Act.

What developed was a Philippine export economy dependent on the American market, and an elite with a colonial mentality, one whose loyalties were to its own class and economic interests, and not to the Filipino nation. These would prove to be very formidable obstacles to the attainment of Philippine nationhood.

Thus,

American investment in, and free trade with, the Philippines stimulated the colony's dependence on the export of a few agricultural products—sugar, coconut and abaca—and led to an increase in the number of absentee landlords. The percentage of Filipino farmers who were tenants doubled between 1900 and 1935... In general it may be said that economic development under American influence merely reinforced the economic and political power of wealthy businessmen and hereditary landlords, whose interests in preserving their privileged position was hardly compatible with the democratization of Filipino society. Yet it was to this class that political power was increasingly transferred to from the 1930's, onwards and the results were what one might be expected. "Political bosses" effectively controlled the votes of those who were enfranchised...²⁶

Laws were passed to alleviate the conditions of workers and agricultural tenants, but these did not effect any meaningful changes in the socio-economic structure. In the field of agrarian relations, there was the Rice Share Tenancy Act,²⁷ and an act governing

²⁴ AGONCILLO, AND GUERRERO, HISTORY OF THE FILIPINO PEOPLE 339-340 (1976).

²⁵ CONSTANTINO, *op. cit.*, *supra*, note 8 at 299-300.

²⁶ MYRDAL, ASIAN DRAMA: AN INQUIRY INTO THE POVERTY OF NATIONS 148 (1968).

²⁷ Act No. 4054 (1933).

tenancy relations on sugar lands.²⁸ In the field of labor, laws were passed extending and regulating the responsibility of employers for personal injuries and death suffered by employees while at work,²⁹ prescribing compensation for employees for personal injuries and deaths suffered by employees while at work,³⁰ and requiring contractors to furnish a bond guaranteeing the payment of laborers.³¹

The contributions of the Americans in the legal and political field were more substantial. The institutions and ideals which they left us in these areas were their best legacy. These institutions included a system of courts,³² a tripartite system of government, political checks and balances, a civil service,³³ political parties,³⁴ and periodic elections through which elected officials are held to account by the people and removed from office when they so desired. Intertwined with the system of laws and courts was the concept of the rule of law.³⁵ Ideals of Western liberal democracy were imparted to us—the protection of human rights, due process, the idea of limited government and judicial review,³⁶ and the importance of the enjoyment by the people of civil and political liberties.

This political and legal system was enshrined in the 1935 Constitution.³⁷

D. *The 1935 Constitution and the Commonwealth*

The 1935 Constitution which was overwhelmingly ratified on May 14, 1935, was a product of the Filipino people's desire for independence and nationhood. As a document, it reflected the thinking of some of our leaders that true nationhood could be built only on the basis of social justice. Thus, it provided that the promotion of social justice to insure the well-being and economic security of the people should be the concern of the state,³⁸ and that the State shall

²⁸ Act No. 4113 (1933).

²⁹ Act No. 1874 (1908).

³⁰ Act No. 3428 (1928).

³¹ Act No. 3959 (1932).

³² The Supreme Court was first organized by order of the American military governor in 1899, AGONCILLO & ALFONSO, *HISTORY OF THE FILIPINO PEOPLE* 317 (1967). The system of courts was later reorganized and systematized in the *ADMINISTRATIVE CODE*, Act No. 2711 (1917).

³³ Act No. 5 (1900).

³⁴ The most important among the early political parties were the *Partido Nacionalista* and the *Frente Popular*, AGONCILLO & ALFONSO, *op. cit.*, *supra*, note 32 at 413-414.

³⁵ See *Villavicencio v. Lukban*, 13 Phil. 778 (1919).

³⁶ See *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

³⁷ Bill of Rights, CONST. (1935), Art. III; Suffrage, CONST. (1935), Art. 7; Legislative, Executive & Judicial Depts., CONST. (1935), Arts. VI, VII & VIII; Commission on Elections, CONST. (1935), Art. X; Civil Service, CONST. (1935), Art. XII.

³⁸ CONST. (1935), art. II, sec. 5.

afford protection to labor and shall regulate the relations between landowners and tenant, and between labor and capital.³⁹ Recognizing that the development of a national language was a necessary uniting force, it provided that steps should be taken towards the development and adoption of a common national language.⁴⁰ Also recognizing that the strength of a nation is dependent upon its wealth, it sought to conserve our natural resources for our own people.⁴¹

Labor and social legislation were again passed. To the end that social injustice and its divisive influences were diminished, so was the cause of nationhood advanced. Among these laws passed, were the Eight Hour Labor Law,⁴² the Court of Industrial Relations Act,⁴³ heralding an era of active governmental intervention in the affairs of labor, and a law recognizing and protecting the concept of security of tenure of tenants.⁴⁴

These measures, however, were mere palliatives which did not bring about the social changes that were needed, especially with respect to landlord-tenant relationships. At this time, the average tenant did not enjoy his civil and political rights and was unable to join associations for his own betterment without running the risk of losing the land he tilled.⁴⁵

A national anthem was adopted⁴⁶ and was mandated to be sung at school rituals.⁴⁷ In the field of language, Tagalog was made an official language beginning July 4, 1949,⁴⁸ and a National Language Institute was created.⁴⁹

When vital economic resources and sectors of the economy are in the hands of aliens who do not owe their loyalties to the Philippines, the nation cannot be strong. Consequently, the legislature passed laws nationalizing Philippine vessels and shipping,⁵⁰ public lands⁵¹ and public services.⁵²

Summarizing, what was the substantial result of legal developments during the American era? Borrowing some words from

³⁹ CONST. (1935), art. IV, sec. 6.

⁴⁰ CONST. (1935), art. XIV, sec. 3.

⁴¹ CONST. (1935), art. XIII.

⁴² Com. Act No. 444 (1939).

⁴³ Com. Act No. 103 (1936).

⁴⁴ Com. Act No. 461 (1939).

⁴⁵ CONSTANTINO, *op. cit.*, *supra*, note 6 at 374.

⁴⁶ Com. Act No. 382 (1938).

⁴⁷ Com. Act No. 589 (1940).

⁴⁸ Com. Act No. 570 (1940).

⁴⁹ Com. Act No. 184 (1936).

⁵⁰ Com. Act No. 606 (1940).

⁵¹ Com. Act No. 141 (1936), sec. 22.

⁵² Com. Act No. 146 (1936), sec. 16 (a).

Gunnar Myrdal, "What the Americans did was to reinforce and legitimize in a modern democratic framework the hierarchical power structure created under the aegis of Spain."⁵³

E. *The Independent Republic*

How did the cause of Philippine nationhood stand when the Philippines become independent in 1946? Most of the problems that had existed in 1898 were still present. New elements, moreover, had come into the picture.

The Americans had left us with a system of government enshrined in a written Constitution. However, *political community* was far from achieved. Political and economic power was still in the hands of a few. The broad masses of the people, as a general rule, were not sufficiently politicalized and organized so as to be able to take an active and effective part in the political decision-making involved in nation-building.⁵⁴

The dominant political parties and organizations then existing were representative of vested economic interests, not of the people.

To compound the problem, almost five decades of American-oriented education had produced Filipinos with misguided political and cultural loyalties. Since independence had been given and was not the result of the people's struggle, there was no sharp break with the past. No deep-seated frustrations awaited release and there was no intention to repudiate and reject the colonial heritage. If anything, the Filipino people — or rather the articulate upper-strata — became even more emotionally attached to all things American. The widespread conviction was that political and economic development could only occur under the tutelage of the Americans, and that Filipino and American interests were one and the same.

As President Manuel Roxas put it in his inaugural speech, "Our safest course . . . is in the glistening wake of America whose sure advance with mighty prow breaks for smaller craft the waves of fear."⁵⁵

The task in the economic sector was even more formidable. The national wealth and income, or what remained of it after the

⁵³ 1 MYRDAL, *op. cit.*, *supra*, note 26 at 386.

⁵⁴ Notable exceptions, according to Constantino, included the peasants of Central Luzon, the urban workers in the labor unions of the Committee on Labor Organizations, and the Democratic Alliance, CONSTANTINO & CONSTANTINO, *THE CONTINUING PAST* 194 (1978.)

⁵⁵ Inaugural Address of President Manuel Roxas, in AGONCILLO & GUERRERO, *op. cit.*, *supra*, note 22 at 504.

destruction wrought by the Second World War, was maldistributed. In addition to rehabilitating the economy, its productivity had to be raised so that the living standards of the people, would also be uplifted. American rule had resulted in an economic structure that was inherently weak, and not suited to the economic needs of the greater majority of the Filipino people. What existed was basically still an agricultural economy, where efforts were concentrated in the production of a few agricultural export crops and raw material exports, and importing most of the industrial and manufactured consumer and capital goods that it needed. Most of this foreign trade was carried on with only one country — the United States of America. There was little industry to speak of.⁵⁶

All of these considerations entailed that a program of industrialization, agricultural development, and diversification on a nationwide scale should be carried out. The need was for a program of balanced agricultural and industrial development in order to produce an economic structure that was strong because it relied on the inherent strengths and potentials of the Philippine economy and its natural and human resources, not on its weaknesses; that was strong and just because the form and structure it would take would be one dictated by the needs of the Filipino nation and the Filipino masses, and not by foreign economic exploitative interests.

The need for political and economic change was therefore very evident. But could change be brought about through law in a now independent republic? The centres of power were still in the hands of the political and economic elite whose interests lay in the preservation of the existing *status quo* — the producers of agricultural export crops, the extractors of raw materials, those who had grown wealthy because of Philippine importation of manufactured goods, all those who were to be benefited by the continuation of Philippine economic dependence on the United States, and the perpetuation of her agricultural economy.

This economic elite, blinded by the prospect of losing some of their economic power and privileges in the short term, could not see that in the long run, a policy of economic nationalism and industrialization would redound to the benefit of all economic sectors. Ultimately, the Philippine economy would emerge stronger. For those with the capital and the initiative, the economic opportunities would be better. In this respect, however, they were not forward looking enough to see the economic prospects on the horizon. As

⁵⁶ ESTANISLAO, PHILIPPINE ECONOMIC STRUCTURE FROM THE 30'S TO THE 70'S 9-10, 21-22, 44-51.

such, they were impediments to, rather than dynamic elements of change.

Loyalty to class and economic interests among certain sectors of Philippine society, is not enough, however, to completely explain what one might almost call an aversion to forging ahead independently to build a strong nation, and the tendency to cling to the apron strings of America at this stage of national development. The fact is that the masses at this time were enamoured with the United States and visions of the American way of life. They lacked political consciousness, but were full of a political naivete which made it easy for them to believe American propaganda and to follow her pronouncements as to how we should chart our own national course. Of course, all this was unfortunate. American policy was for American interests, but the Filipino people believed otherwise. If things were the way they were, a large part of the blame cannot but fall on the masses themselves for their political lethargy.

Nor was the United States a mere passive factor in this process of neo-colonization. Her interests lay in keeping the Philippines agricultural, economically dependent,⁵⁷ and conveniently subservient in foreign policy matters. To this end, she had her allies in the economic and agricultural elite. But this was not all. She intervened actively in Philippine domestic politics. In that sense, she was also a centre of power in Philippine society.⁵⁸

Many were the political mercenaries who succumbed to American money and the prospect of political power. Supported by American money and propaganda, several came to be powerful domestic political leaders, who as legislators or members of the executive branch of the government followed the dictates of their American employers, and did not work for the interest of the people who had voted for them on the basis of their false promises.

The Americans were also involved in the domestic policy-making process. Numerous American policy-advisers were present in the government, especially the executive branch.⁵⁹

Consequently, the legislative record and the laws passed during the years immediately following independence were, at best, disappointing and did little to further Philippine nationhood.

The nation was further weakened by impositions of the United States seeking to preserve the colonial character of our economy,

⁵⁷ CONSTANTINO & CONSTANTINO, *op. cit.*, *supra*, note 54 at 193.

⁵⁸ *Id.*, at 176-177, 186-187, 234-236, 238, 243, 245-262.

⁵⁹ *Id.*, at 229-231, 238, 265.

and to transform the Philippines into a military base for the United States Armed Forces. This took the form of treaties and agreements which were authorized or ratified by the Philippine Congress despite their implications for Philippine nationhood.

The first such agreement was the Bell Trade Act or the Philippine Trade Act of 1946.⁶⁰ It provided for duty-free trade between the Philippines and the United States up to 1946. Philippine sugar, cordage, tobacco and coconut oil that were exported to the United States were subjected to quotas.⁶¹ American goods, however, had unlimited entry into the Philippines. The Philippine peso was pegged to the U.S. dollar at two pesos to one dollar. This exchange rate could not be changed without U.S. approval.⁶²

The most onerous provision, however, was that granting American citizens and business enterprises the right to exploit Philippine natural resources and operate public utilities.⁶³ To this, there was considerable opposition by nationalist sectors. As one writer put it,⁶⁴

In the hands of aliens over whom the Philippine Government does not have complete control, they (the natural resources) may be wasted or misused.

The principle that land and other natural resources should belong exclusively to the nation and its citizens is based upon considerations that transcend sentimental reasons. It is based on the necessities of self-defense. If aliens are entitled to the ownership and exploitation in the same measure as citizens, it is conceivable that aliens may eventually own or exploit most of those natural resources and acquire tremendous financial power. *Such a condition of things is bound to give the foreigner decisive influence over the government.* (Underscoring ours)

An amendment of the Constitution was needed, however, for the 1935 Constitution expressly reserved the exploitation of Philippine natural resources to Filipino citizens.⁶⁵ To this effect, the amendment had to be approved by 3/4 vote of Congress. Realizing that this would be difficult, Roxas got the Liberal majorities in both houses to refuse to permit three oppositionist senators and eight

⁶⁰ U.S. Public Law 371, 79th Congress (1946). The President of the Philippines was authorized by Com. Act No. 733 (1946) to enter into an executive agreement concerning trade relations with the U.S. The Executive Agreement embodying the Bell Trade Agreement was entered into on July 4, 1946 by Pres. Roxas.

⁶¹ BELL TRADE ACT, secs. 311-216.

⁶² *Id.*, sec. 342.

⁶³ *Id.*, sec. 341.

⁶⁴ Sinco, *Alien Sovereignty in the Philippine Republic*, in AGONCILLO & ALFONSO, *op. cit.*, *supra.*, note 32 at 514.

⁶⁵ CONST. (1935), Art. XIII, sec. 1.

congressmen to take their seats pending investigation of charges of alleged frauds and terrorism in their election.⁶⁶ When a suit was filed in the Supreme Court to contest such an action, the Court upheld its validity, characterizing it as essentially a political question over which it had no jurisdiction.⁶⁷ Justice Perfecto registered a strong dissent.

Despite this political machination, the parity amendment was only able to pass with a bare 3/4 majority of the Senators and Congressmen voting.⁶⁸ An attempt was made to enjoin the holding of the plebiscite on the ground that the 3/4 majority had not been attained because the Senators and Congressmen who had previously been excluded from their seats should have been included in computing the 3/4 vote. The Supreme Court, however, again taking refuge behind the political question theory, refused to intervene, with Justice Perfecto again strongly dissenting.⁶⁹ Parity was ratified by the people in a plebiscite held in 1947, and became the Second Ordinance appended to the 1935 Constitution.

The parity amendment was the first damaging setback to the cause of Philippine nationhood. It was a basic change that would alter the course of Philippine national development. Foreign economic sectors were now centres of power in Philippine society, exerting a subverting influence on the political process. At this early stage in our history as an independent republic, foreign interests would be in control of vital economic sectors, and would distort the pattern of Philippine economic development to their own needs. The cause of Philippine nationhood had been stabbed in the back even before it had a chance to assert itself.

Philippine sovereignty was further surrendered with the signing of the Military Bases Agreement with the United States in 1947 where the United States was given the free use of 23 base sites for 99 years, renewable on expiration.⁷⁰ For some years after the signing of such an agreement, the U.S. even claimed that it owned the vast tracts of land on which the bases stand.⁷¹

In 1954, the Bell Trade Agreement was revised. This took the form of the Laurel-Langley Agreement.⁷² Although American con-

⁶⁶ CONSTANTINO & CONSTANTINO, *op. cit.*, *supra.*, note 54 at 203; AGONCILLO & ALFONSO, *op. cit.*, *supra.*, note 32 at 507-509.

⁶⁷ *Vera v. Avelino*, 77 Phil. 192 (1946).

⁶⁸ In the Senate, it garnered only the minimum three-fourths vote, and a one-vote margin in the House. CONSTANTINO & CONSTANTINO, *op. cit.*, *supra.*, note 54 at 204.

⁶⁹ *Mabanag vs. Lopez Vito*, 78 Phil. 1 (1947).

⁷⁰ CONSTANTINO & CONSTANTINO, *op. cit.*, *supra.*, note 54 at 205.

⁷¹ AGONCILLO & ALFONSO, *op. cit.*, *supra.*, note 32 at 634.

⁷² R.A. No. 1355 (1954) authorized the Pres. to enter into negotiations for the revision of the Bell Trade Act.

trol over the Philippine currency was relinquished, parity rights were expanded to cover all business activities. The American motives were clear. They wanted a safe place for the investment of their surplus capital,⁷³ and the Filipino legislators and national leadership were, by and large, cooperative in the signing away of the Philippine national patrimony.

Not all however were blind to the dangers and the evils inherent in the emerging economic pattern of development. Claro M. Recto, for example, saw all of these and urged that instead of encouraging foreign direct investments, the government should instead obtain foreign loans for Filipino capitalists, and import the needed technical know-how from foreign countries.⁷⁴ He foresaw that the indiscriminate and uncontrolled entry of foreign direct investments would in the long run strangle us economically.

For how could there be meaningful social changes, or income redistribution, or structural changes in the economy, when a substantial part of the Philippine economy and the means of production were in the hands of foreigners who did not have any interest in strengthening Filipino nationhood, but whose interests lay, rather in the preservation of the economic status quo? After all, cheap labor and abundant natural resources were what attracted them to this country. And why would they be interested in promoting true industrialization, when to do so would be to develop future competitors, and mean the loss of markets for their products?

The forces of nationalism may be set back. They cannot however be stilled. Faced with a deteriorating balance of payments position, import and exchange controls were adopted.⁷⁵ Luxury and non-essential imports were regulated.⁷⁶ New industries were encouraged through laws granting tax incentives and exemptions.⁷⁷

Under President Carlos Garcia, economic nationalism was made an official policy. On August 28, 1958, the National Economic Council passed Resolution No. 204 officially promulgating the *Filipino First* policy.⁷⁸ Economic growth and industrialization were set up as major goals. President Garcia set in motion an economic strategy of import substitution. Import and exchange controls, and the pro-

⁷³ *The Agreement For The Revision of the Bell Trade Act* in RECTO, MY CRUSADE 73, 82-97.

⁷⁴ *Id.*, at 86; "Economic Nationalism," by Claro M. Recto, March 28, 1967, CONSTANTINO (ed.), RECTO READER 161 (1965).

⁷⁵ Implemented by Rep. Act No. 330 (1948), Rep. Act No. 423 (1950); Rep. Act No. 426 (1950), Rep. Act No. 572 (1950).

⁷⁶ Rep. Act No. 650 (1951).

⁷⁷ Rep. Act No. 35 (1946), Rep. Act No. 901 (1953).

⁷⁸ CONSTANTINO & CONSTANTINO, *op. cit.*, *supra.*, note 54 at 303.

tection of the Philippine manufacturing industry were made the order of the day. In the allocation of foreign exchange, preference was also accorded to Filipinos.⁷⁹ These measures stimulated the growth of domestic industries and the emergence of Filipino entrepreneurs. From a total of 14 in 1949, product lines increased to 909 in 1959.⁸⁰ The value of imports declined, due to the increasing capacity of the new enterprises to supply the needs of the domestic market for consumer products.⁸¹ Manufacturing had a higher percentage share in the total national income. By 1961 the share of domestic capital in investments in new enterprises reached 88 per cent.⁸²

This attempt at economic emancipation, however was only a partial success, due to, among other things, faulty implementation. There were balance of payments problems, inefficient industries were being protected, and *real* industrialization through a hoped for process of backward linkages between the tertiary and primary stage of production did not fully come about. What resulted instead were packaging and assembly industries in the tertiary stage of production, heavily dependent on imported raw materials and inputs.⁸³ This was because incentives were accorded only to production at the finishing stage.⁸⁴

Again, this was due in a large part to the influence of American "experts" who were in all the key offices of the government—the Central Bank, the National Economic Council, the various executive departments.⁸⁵ These experts distorted the operation of import controls to undercut the infant Filipino industrial group. Foreign exchange allocations went to American and Chinese corporations who used their allocations for "essential imports" to buy American capital goods in order to put up "packaging and assembly" plants.⁸⁶

The forces against Filipino nationhood struck back. There were protests from American business interests and intervention by the C.I.A. in the 1959 elections.⁸⁷ This culminated in the election of Diosdado Macapagal as President, replacing Garcia.

⁷⁹ *Id.*, at 304.

⁸⁰ Jurado, *Industrialization & Trade*, in PHILIPPINE ECONOMIC PROBLEMS IN PERSPECTIVE 300, 315, 319-320 (1976).

⁸¹ Jurado, *Foreign Trade & External Debt*, in PHILIPPINE ECONOMIC PROBLEMS IN PERSPECTIVE 262, 266 (1976).

⁸² CONSTANTINO & CONSTANTINO, *op. cit.*, *supra*, note 54 at 312.

⁸³ Power, *Import Substitution as Strategy*, in MEIER, LEADING ISSUES IN ECONOMIC DEVELOPMENT 520-527 (1970).

⁸⁴ Bautista, *Inflation in the Philippines, 1955-1974*, in PHILIPPINE ECONOMIC PROBLEMS IN PERSPECTIVE 178, 202.

⁸⁵ LAUREL, THINKING FOR OURSELVES 5-6 (1958).

⁸⁶ CONSTANTINO & CONSTANTINO, *op. cit.*, *supra*, note 54 at 230.

⁸⁷ *Id.*, at 306-307.

On January 21, 1962, President Macapagal lifted exchange and import controls. Profits could now be freely remitted abroad by foreign investors. The peso was devalued.⁸⁸ These developments stimulated the traditional exports in agriculture, depressed the new industries, and enhanced the position of foreign capital.⁸⁹ There was a transfer of production from the domestic to foreign markets, raising prices of food at home. The lifting of controls marked the beginning of "trade liberalization", the first step, after the Philippine Trade Act of 1946, in opening up the economy to foreign penetration and control. It also signalled the triumph of the traditional export sectors and foreign investments, and the subordination of the interest of the emerging Philippine industries.⁹⁰ Nationalism was now a minor factor in the formulation of economic policy.⁹¹

Statutes were passed to foster different industries, not in manufacturing, but mostly in the agricultural and mining sector.⁹² Development authorities were created for various regions in the country.⁹³

Measures like the Retail Trade Nationalization Law,⁹⁴ the Anti-Dummy Law,⁹⁵ and the nationalization of the rice and corn industry⁹⁶ had little or no effect on the emerging economic situation.

Economic growth was still, however, a priority. To finance such growth, laws were passed authorizing the President to obtain foreign loans.⁹⁷ Taxes were imposed to raise revenue for economic projects.⁹⁸ Special funds for such projects were created.⁹⁹ The Development Bank of the Philippines was established to provide credit facilities for the development and expansion of agriculture and industry.¹⁰⁰

Foreign investment and export industries were encouraged, in line with the new economic policies of the government. In 1967, the

⁸⁸ *Id.*, at 311.

⁸⁹ Jurado, *op. cit.*, *supra.*, note 81 at 320.

⁹⁰ Jurado, *op. cit.*, *supra.*, note 82 at 274.

⁹¹ CONSTANTINO & CONSTANTINO, *op. cit.*, *supra.*, note 54 at 317.

⁹² Rep. Act No. 3127 (1961), Rep. Act No. 4086 (1964), Rep. Act No. 4155 (1964), Rep. Act No. 3089 (1961), Rep. Act No. 4724 (1966), Rep. Act No. 4721 (1966), Rep. Act No. 3470 (1962).

⁹³ Rep. Act No. 3034 (1961), Rep. Act No. 3856 (1964), Rep. Act No. 4071 (1964), Rep. Act No. 4132 (1964), Rep. Act No. 4850 (1966), Rep. Act No. 3655 (1963), Rep. Act No. 4412 (1965).

⁹⁴ Rep. Act No. 1180 (1964).

⁹⁵ Rep. Act No. 134 (1947) amending Com. Act No. 108 (1936); Rep. Act No. 1130 (1954).

⁹⁶ Rep. Act No. 3018 (1960).

⁹⁷ Rep. Act No. 4853 (1966), Rep. Act No. 4860 (1966).

⁹⁸ Rep. Act No. 5447, 5448 (1968).

⁹⁹ Rep. Act No. 4693 (1966).

¹⁰⁰ Rep. Act No. 2081 (1958).

Investment Incentives Act¹⁰¹ was passed. It declared it to be "the policy of the state to welcome and encourage foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available."¹⁰² In 1970, the Export Incentives Act¹⁰³ was enacted into law.

In the field of labor and agrarian reform, the legal record is much better.

In response to the insistent social clamor of the tenant and peasant, sometimes translated into violence as in the Hukbalahap movement, a series of laws were passed. Among them were Republic Act No. 34¹⁰⁴ providing for a 70-30 crop sharing arrangement and regulating share tenancy contracts; Republic Act No. 1160¹⁰⁵ establishing the National Resettlement and Rehabilitation Administration to resettle dissidents and other landless farmers; Republic No. 1199¹⁰⁶ improving further the share-tenancy system and introducing leasehold as a new form of relationship as well as strengthening the security of tenure for tenants.

This finally culminated in the passage of the *Agricultural Land Reform Code*,¹⁰⁷ which put into effect the new state policy establishing owner-cultivatorship and the economic family-size farm as the foundation of Philippine agriculture. Thru a three-stage program, involving acquisition by the government of private agricultural land, it was ultimately envisioned that the tenant would be the owner of the land he tilled. At last, a positive step, in law, was being taken to eradicate a form of social injustice and inequality that was a divisive influence working against Filipino nationhood.

Eight years after the passage of the Agricultural Land Reform Code, the state policy to establish owner cultivatorship had barely scratched the surface. The first phase—the conversion of the share-crop tenants into leaseholders—was encountering such roadblocks, both legal and procedural, that the program could hardly be pushed at a satisfactory phase.¹⁰⁸ The Land Reform Code itself was full of legal loopholes. Although the landlord interests had failed to block the law, as a power centre it emasculated the law and frustrated its implementation.

¹⁰¹ Rep. Act No. 5186 (1967).

¹⁰² *Id.*, sec. 1.

¹⁰³ Rep. Act No. 6135 (1970).

¹⁰⁴ Rep. Act No. 34 (1946).

¹⁰⁵ Rep. Act No. 1160 (1954).

¹⁰⁶ Rep. Act No. 1199 (1954).

¹⁰⁷ Rep. Act No. 3844 (1965).

¹⁰⁸ ESTRELLA, *AGRARIAN REFORM IN THE NEW SOCIETY* (1975).

In the field of labor, again because of social agitation influencing the law-making process, the most significant development was the further recognition and strengthening of the workers' rights to self-organization, to join organizations of their own choosing for the protection of their mutual interests, to collective bargaining, and to concerted action in protection and furtherance of their interests. The worker was emerging into his own, and through collective mass action, labor was also emerging as a *legally legitimate* power centre in society. The most important piece of legislation in this regard was the *Industrial Peace Act* of 1953 or the *Magna Carta of Labor*.¹⁰⁹ Other laws strengthening labor were the *Peaceful Picketing Act*¹¹⁰ and the *Anti-Scab Act*.¹¹¹

To alleviate the conditions of the workers and to raise labor standards the *Women and Child Labor Law*,¹¹² the *Blue Sunday Law*,¹¹³ and the *Minimum Wage Law*,¹¹⁴ were passed.

Why the persistent resistance to social reform and economic change?

There was still gross inequality. Economic power was in the hands of a few. In 1965, for example, almost 70% of Filipino families had an income of less than ₱1,500 a year. On the other hand, only 2.6% of Filipino families received over ₱10,000.00.¹¹⁵ In 1962, the picture was the same. 25% of the total family income was in the hands of a meagre four percent of all families, 76.1% earned only 39% of total family income.¹¹⁶

Consequently, the lawmaking body was also in the hands of these power groups. A study¹¹⁷ in 1963 showed that as many as 26.3% of the fathers of senators and 13.8% of the fathers of representatives belonged to the "upper class", while 47.4% and 41.4% of them respectively, fell within the "upper-middle class". Thus

¹⁰⁹ Rep. Act No. 875 (1953).

¹¹⁰ Rep. Act No. 1167 (1954).

¹¹¹ Rep. Act No. 3600 (1963).

¹¹² Rep. Act No. 679 (1952).

¹¹³ Rep. Act No. 946 (1953).

¹¹⁴ Rep. Act No. 602 (1951).

¹¹⁵ BUREAU OF CENSUS & STATISTICS, FAMILY INCOME DISTRIBUTION IN THE PHILIPPINES, Special Release No. 65 (1965).

¹¹⁶ BUREAU OF CENSUS & STATISTICS, FAMILY INCOME & EXPENDITURE; Apr., 1962, in PHIL. STATISTICAL SURVEY OF HOUSEHOLDS BULLETIN, Series No. 14 (January 1964).

¹¹⁷ Abueva, *Social Backgrounds and Recruitments of Legislators & Administrators*, in FOUNDATIONS AND DYNAMICS OF FILIPINO GOVERNMENT AND POLITICS 268-269 (1969).

some 74% of the senators and about 55% of the representatives clearly belonged to the two highest social classes.

F. *Martial Law and the New Society, The New Constitution*

1. The Present Situation

On September 21, 1972, martial law was declared.¹¹⁸ In the context of our analysis, what was the situation before such declaration?

The traditional power centres still controlled the legislature and the law-making process. New and emerging power groups, however, —nationalist in *inspiration*—were gaining added strength outside the lawmaking process, and were exerting pressure on the lawmakers and the government to effect needed social changes. They had discovered the weapon of the demonstration, the protest rally, and other forms of political collective mass action as an instrument of pressure. Others chose the way of revolution and violence, convinced that change was impossible through the normal legal and constitutional processes. After all the political “establishment” and the political “opposition” were only two sides of the same political and economic coin. They represented, ultimately, the same interests.

The political and economic elite involved in politics publicly cried for reforms which could not be achieved because of their own obstruction and opposition in private.¹¹⁹

This development, in one sense, was a welcome one because it signalled a rise in the political consciousness of certain sectors in society, especially the studentry, and the eventual politicalization of other sectors. What was wrong was the purposeless and self-destructive violence that accompanied it. Political community would be the eventual result of such a process. In the course of political evolution, the clamor for change outside the legal system would be translated into political and economic power, and into laws for social and economic reform. Already this clamor was making its impact felt in the deliberations of the 1971 Constitutional Convention. In the long term, the emerging shifts in the social power structure would cause corresponding changes in the legal and law-making structure.

¹¹⁸ See Statement of Pres. Ferdinand E. Marcos on the Proclamation of Martial Law in the Philippines, in a Nationwide Radio and Television Broadcast, in PINPIN (ed.) *THE FIRST 107 PRESIDENTIAL DECREES xxxi* (1973).

¹¹⁹ MARCOS, *NOTES OF THE NEW SOCIETY OF THE PHILIPPINES* 14 (1973).

The question was, however, whether such a process could occur without the destruction of the then existing legal and constitutional system, and in violent and convulsive change. Urgent changes were demanded. Given a time lag, would the legal and constitutional system be able to respond *in time*? Or would the forces of violence overtake its response, and result in its destruction? Would the polarization of society result in the eventual collapse of the Republic?

Some indications were that it would not. One study concludes that the political system, still had good chances of becoming modernized and politically developed even without resorting to revolution, coup d'etat or martial law, because most of the people were allegiant. All the national polls conducted by scholars before martial law showed that the main bulk of people were not alienated against either the political elite or the regime.¹²⁰

Those in charge of the Republic, primarily the President of the Philippines, believed otherwise. Thus, martial law was declared to suppress the insurrection or rebellion, to remove the root cause of such rebellion, and to stop a conspiracy to overthrow the Republic by "a strange alliance of leftist revolutionary elements and rightist reactionaries."¹²¹

The social changes that were so urgently demanded were to be immediately implemented, the potentially revolutionary power groups to be integrated into the politico-legal system.¹²²

But does this not put our thesis into doubt that ultimately and in most cases, social change occurs outside of the ambit of law? That law is the effect, and not the cause of social change? Was not law used in this case as an *active* instrument in reordering society? It has been vigorously contended that martial law, constitutional authoritarianism and the New Society are products of a revolution from the center (the government), undertaken through constitutional, legal and peaceful means.¹²³ The argument for legality is anchored on Article VII, Section 10 of the 1935 Constitution which empowers the President to declare martial law in case of invasion, insurrection, rebellion or imminent danger thereof.¹²⁴

It must be remembered, however, that the purpose of the martial law regime is to bring about fundamental changes in Philippine

¹²⁰ AGPALO, *THE FILIPINO POLITY: HISTORICAL PERSPECTIVE AND NEW GOALS IN THE 1980'S* 7 (1976).

¹²¹ Proc. No. 1081 (1972); MARCOS, *op. cit.*, *supra*, note 119 at 13-16.

¹²² MARCOS, *op. cit.*, *supra*, note 120 at 40; MARCOS, *TODAY'S REVOLUTION: DEMOCRACY* 3 (1972).

¹²³ MARCOS, *op. cit.*, *supra*, note 120 at 42.

¹²⁴ CONST. (1935), art. VII, sec. 10.

society,¹²⁵ and not merely to suppress the *visible* and *immediate* armed uprising or rebellion by force of arms. It may be true that a reordering of Philippine society is necessary to eliminate the *root* causes of the rebellion, but nevertheless, this is a *very radical* re-interpretation of the nature of martial law, the *traditional* rationale of which is the law of necessity.¹²⁶ In other words, martial law should *ipso facto* terminate upon the cessation of hostilities. Traditionally and historically, that has been its only purpose.

As Chief Justice Castro has put it,²⁷

Philippine martial law differs from the purely Western model both in purpose and in character...

As to purpose, martial law is known in the West as the drastic solution to a violent situation—to quell riot, to suppress anarchy, to overcome rebellion.

Here in the Philippines, this primary purpose remains, but it has been enlarged to embrace also the extirpation of the ills and conditions which spawned the riot, the anarchy, and the rebellion.

The only conclusion that can be gathered is that the martial law regime has succeeded because it has the support of the *effective* power centres in Philippine society — the Filipino people, by virtue of their acquiescence, consent and support as expressed in the various referendums conducted since the declaration of martial law; the business community; the local governments; and the Armed Forces of the Philippines. *The validity of martial law and the New Society does not rest on its constitutional legality per the 1935 Constitution, but on the consent of the Filipino people, which in the final analysis, makes all things legal.* Its validity is extra-legal, and as has been emphasized outside the ambit of law.

The reference to the 1935 Constitutional provision only made the declaration of martial law and the resulting social changes *easier* to undertake. With the support of the previously mentioned power groups, the martial law regime was able to eliminate the traditional power centres it considered obstacles to change.

In 1973, the new Constitution went into force and effect.¹²⁸ Basically, it is a restatement of the principles enunciated in the 1935 Constitution.

Its orientation however, is more socialistic and welfare-state oriented. Private property and private rights are subject to more

¹²⁵ MARCOS, *op. cit.*, *supra.*, note 120 at 49.

¹²⁶ *Duncan v. Kahanamoku*, 327 U.S. 304, 90 L.Ed. 688 (1946); *Ex Parte Milligan*, 4 Wallace 2, 18 L.Ed. 281 (1866).

¹²⁷ CASTRO, THE CHIEF JUSTICE ON HUMAN RIGHTS IN THE PHILIPPINES 3 (1977).

¹²⁸ Proc. No. 1102 (1973).

restrictions. The concepts of limited government and private enterprise are not given primary importance. Instead the government and the State is assigned a more active role in society, its two primary tasks being economic development and social justice. The provisions on social justice are more explicit than in the 1935 Constitution.

Thus the Preamble speaks of a regime of equality. The acquisition of, ownership, use, enjoyment and disposition of private property is to be regulated by the State, and it is enjoined that property ownership and profits shall be equitably diffused.¹²⁹ Adequate social services shall be provided so as to guarantee the enjoyment by the people of a decent standard of living.¹³⁰

The state shall afford protection to labor, promote full employment, and equality in employment. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.¹³¹ The State shall formulate and implement an agrarian reform program aimed at emancipating the tenant from the bondage of the soil.¹³²

National, social and economic planning has been adopted as a policy with the creation of the National Economic and Development Authority,¹³³ with the view in mind of guiding economic growth along certain lines to effect the greatest possible social and national benefits. Duties and obligations are imposed on the citizen, among them the duty to be loyal to the Republic and to contribute to its development and welfare.¹³⁴

In language and culture, it is provided that the National Assembly shall take steps towards the development and formal adoption of a common national language to be known as Pilipino. Pilipino is also made an official language.¹³⁵ Filipino culture shall be preserved and developed for national identity.¹³⁶

The most important change, however, has been the shift from the presidential to the parliamentary system of government.¹³⁷

Is the answer to the ills of the Philippine nation to be found in the 1973 Constitution, which has been highly touted by many as

¹²⁹ CONST., Art. 11, sec. 6.

¹³⁰ *Id.*, Art. II, sec. 7.

¹³¹ *Id.*, Art. II, sec. 9.

¹³² *Id.*, Art. XIV, sec. 12.

¹³³ *Id.*, art. XIV, sec. 1.

¹³⁴ *Id.*, Art. V.

¹³⁵ *Id.*, Art. XV, sec. 3.

¹³⁶ *Id.*, Art. XV, sec. 5.

¹³⁷ *Id.*, Arts. VII, VIII, IX.

such a significant improvement over the 1935 Constitution? Can needed social change be brought about by a mere change in the nation's fundamental law? Is the shift from the presidential to the parliamentary form of government, which is essentially merely a change in *form*, but not in substance, significant for Philippine nationhood? Some words uttered long ago by Claro M. Recto, that great nationalist, come into mind—¹³⁸

I believe, in all humility, that the Constitution of 1935 was a good Constitution, that it was as perfect as any human institution can hope to be perfect. Enforced, obeyed, and interpreted, in the pristine spirit in which it was adopted and promulgated, by a people dedicated to the ideal of self-government and human freedom which they had so long pursued and saw at last within their grasp, the able Constitution of 1935 could be an inviolable sanctuary for our rights and liberties.

But it has not been so enforced, obeyed, and interpreted. Its best intentions have been perverted, its balanced machinery upset, its mandates defied and ignored, its most basic guarantees violated by men who have interpreted it in the false light of their own political convenience.

We could not reasonably foresee that the very men charged with upholding and defending the Constitution would be the very first to violate and prostitute it.

Under the 1973 Constitution, the government and the State have been given a more active role, in the belief that in this way the principles and policies embodied in the Constitution will be better implemented. With the declaration of martial law, power was concentrated in the hands of the Executive and Congress was abolished, the rationale being that a restructuring of society could be brought about faster and more effectively. Indeed what many developing countries need is an *effective* government that can mobilize limited national resources for equitable national economic and social development, eliminate poverty, and uplift the economic condition of the masses.¹³⁹

The 1973 Constitution, martial law, and the New Society are all politically intertwined. The New Constitution was approved under the aegis and sponsorship of the present political regime. The former, in turn, gives legal legitimacy to the present political set-up. They all remain because they have the support of the power centres in our society, and the acquiescence, if not the active support of the people. In the final analysis, this explains the series of Supreme Court decisions upholding the validity of martial law and the new Constitution, together with other recent political developments.

¹³⁸ "Our Constitutional Crisis", Address by Claro M. Recto, February 16, 1952, in CONSTANTINO (ED.), RECTO READER 16 (1965).

¹³⁹ ROSTOW, POLITICS AND THE STAGES OF GROWTH 270, 300. (1971).

In the landmark case of *Javellana v. Executive Secretary*,¹⁴⁰ although a majority of the court concluded that the 1973 Constitution had not been validly ratified in accordance with the procedure prescribed in the 1935 Constitution, it proceeded to hold that "there is no further judicial obstacle to the new Constitution being considered in force and effect." Many members of the Court used extra-legal arguments to support their opinions.

In *Aquino, Jr. v. Enrile*,¹⁴¹ the Court recognized the validity of martial law, the restructuring of society under it, and rejected the traditional tests used to decide whether martial law was still necessary because "of the universally recognized insidious nature of Communist subversion and its operations".

In *Aquino Jr. v. Commission on Elections*,¹⁴² it held that during martial law, the President had the power to issue decrees having the force and effect of law.

In *Sanidad v. Comelec*,¹⁴³ it recognized the power of the incumbent President to propose amendments to the 1973 Constitution.

The cumulative effect of all these developments, was a *legally* institutionalized one-man rule. By virtue of the 1976 Amendments,¹⁴⁴ the interim National Assembly envisaged in the Transitory Provisions of the 1973 Constitution passed into oblivion.

What about the legislative record?

Land reform has been the outstanding landmark of the New Society. The transformation of the tenant to the owner of the land he tills has made him one of the pillars upon which a strong Filipino nation can be built. On September 27, 1972, President Marcos declared the entire country as a land reform area.¹⁴⁵ On October 21, 1972 he mandated the emancipation of tenants from their bondage and transferred to them the ownership of the land they tilled.¹⁴⁶ In support of agrarian reform and to help the emancipated tenant, a cooperative movement was also set up.¹⁴⁷ By September, 1975, 204, 184 tenants had received land transfer certificates, covering 289, 299 hectares of land, or 29.6% of the total hectarage of rice and corn land.¹⁴⁸

¹⁴⁰ G.R. No. L-36142, March 31, 1973, 50 SCRA 30 (1973).

¹⁴¹ G.R. No. L-35538, September 17, 1974, 59 SCRA 183 (1974).

¹⁴² G.R. No. L-40004, January 31, 1975, 62 SCRA 275 (1975).

¹⁴³ G.R. No. L-44640, October 12, 1976, 73 SCRA 333 (1976).

¹⁴⁴ See Pres. Decree No. 1033 (1976) for text of amendments.

¹⁴⁵ Pres. Decree No. 2 (1972).

¹⁴⁶ Pres. Decree No. 27 (1972).

¹⁴⁷ Pres. Decree No. 175 (1973).

¹⁴⁸ ESTRELLA, *op. cit.*, *supra*, note 109 at 118-119.

This was the most meaningful change in the social power structure effected through martial law.

To afford more protection to the worker and to improve his economic condition, a new Labor Code¹⁴⁹ was promulgated. The minimum wage was increased.¹⁵⁰ All employers were required to pay their employees a 13th month pay,¹⁵¹ and the payment of emergency allowances was made mandatory.¹⁵²

In the field of economic development, economic planning has been adopted as a priority with the formal creation of the National Economic Development Authority in 1973.¹⁵³ The main thrust of economic policies has been in (1) the discovery and increased exploitation of our natural resources — minerals, sources of energy, oil, gas, guano, coal, methane, and fishery resources;¹⁵⁴ (2) export promotion¹⁵⁵ and industrial estates like the Export Processing Zone Authority in Bataan;¹⁵⁶ (3) the increase of agricultural output¹⁵⁷ by an intensive irrigation program¹⁵⁸ and increased production of fertilizer;¹⁵⁹ (4) the increased production of agricultural export crops like abaca and coconut products;¹⁶⁰ (5) the creation of regional development authorities¹⁶¹; (6) a vigorous tourism program¹⁶²; and (7) a policy of attracting foreign investments. Incentives have been prescribed to induce multinational companies to establish their regional or area headquarters in the Philippines.¹⁶³ Aliens and foreign corporations have been authorized to engage in the rice and corn industry.¹⁶⁴ The Anti-Dummy Law has been amended so as to allow aliens stockholders representation in the Board of Directors.¹⁶⁵ Tariff rates have been reduced.¹⁶⁶ Strikes have almost been totally banned.¹⁶⁷ Other rules, have lengthened the period of transition during which a 100 percent foreign owned enterprise must convert its status into that of a Philippine corporation,¹⁶⁸ liberalized the repatriation of

¹⁴⁹ Pres. Decree No. 422 (1974).

¹⁵⁰ Pres. Decree No. 928 (1976).

¹⁵¹ Pres. Decree No. 851 (1975).

¹⁵² Pres. Decree No. 525 (1974).

¹⁵³ Pres. Decree No. 107 (1973).

¹⁵⁴ Pres. Decree No. 511 (1974), 512 (1974), 87 (1972), 958 (1976), 972 (1976), 704 (1975), 508 (1974), 463 (1974).

¹⁵⁵ Pres. Decree No. 1074 (1977), 750 (1975), 252 (1973).

¹⁵⁶ Pres. Decree No. 66 (1972).

¹⁵⁷ Pres. Decree No. 517 (1974), 1159 (1977), 4 (1972).

¹⁵⁸ Pres. Decree No. 552 (1974).

¹⁵⁹ Pres. Decree No. 669 (1975).

¹⁶⁰ Pres. Decree No. 1208 (1977), 232 (1973).

¹⁶¹ Pres. Decree No. 1048 (1976), 1189 (1977), 813 (1975).

¹⁶² Pres. Decree No. 535 (1974), 189 (1973).

¹⁶³ Pres. Decree No. 218 (1973).

¹⁶⁴ Pres. Decree No. 194 (1973).

¹⁶⁵ Pres. Decree No. 715 (1975).

¹⁶⁶ Pres. Decree No. 34 (1972).

¹⁶⁷ Pres. Decree No. 823 (1975).

¹⁶⁸ Pres. Decree No. 92 (1975).

profits by foreign firms, and relaxed the immigration policy for potential investors.¹⁶⁹ Since early 1973, the Central Bank has allowed unrestricted remittance of profits and repatriation of foreign capital invested after March 1973.¹⁷⁰

Under martial law, the barangay as the basic political unit of government was strengthened. Citizens assemblies in the barangays were first created by Pres. Decree No. 86 (1972). In 1974, all barrios in the Philippines were converted into barangays.¹⁷¹ The barangay units were also given allotments from government revenues.¹⁷² Barangay members were required to register themselves with their respective barangays.¹⁷³

2. *Political Developments—An Evaluation*

Martial law and the present political set-up is ostensibly a product of law. If so, what has its effects been on the quest for Philippine nationhood?

In the first place, when martial law was declared, it already had its negative and positive effects. The Republic was saved from destruction. Due to the concentration of power in the hands of the President, he was able to make a start in effectively carrying out a needed program of social and political restructuring,¹⁷⁴ the landmark features of which were agrarian land reform, and the strengthening of the barangay. Especially during the first days of martial rule, the atmosphere of discipline, sense of duty to society, and cultural nationalism was conducive to strong nationhood. As the old political oligarchies and private armies were destroyed, so also was the cause of nationhood advanced.

The declaration of martial law, however, also had its political costs. In that the Congress was abolished, an established political institution was destroyed. In that resort had to be made to a referendum rather than a regularly conducted plebiscite with the safeguards prescribed by the 1935 Constitution and it was approved under an atmosphere of martial law, the birth of the 1973 Constitution was attended with much controversy. In that military tribunals existed side by side with civilian courts, thus the court system was weakened. In that political and civil liberties were suppressed, the newspapers censored, and many among the militant

¹⁶⁹ Jurado, *op. cit.*, *supra*, note 81 at 321.

¹⁷⁰ Marten, *The Philippines: A New Role in Southeast Asia*, NEDA DEVELOPMENT DIGEST, Aug. 18, 1976, p. 19, 25.

¹⁷¹ Pres. Decree No. 557 (1974).

¹⁷² Pres. Decree No. 559 (1974); Pres. Decree No. 558 (1974).

¹⁷³ Pres. Decree No. 629 (1974).

¹⁷⁴ MARCOS, FIVE YEARS OF THE NEW SOCIETY 160 (1978).

studentry were detained, thus an emerging political consciousness was nipped in the bud. In that the Supreme Court, despite holding that the 1973 Constitution was not validly ratified, held that there was no judicial obstacle to its being in force and effect, the rule of law and the constitutional order were undermined.

But one may say that any needed social change has also to have its social costs. Whether the benefits out-weighed the costs, only time and history will tell.

It has now, however, been more than six years since martial law was declared. The Republic has not collapsed. The rebellion has not succeeded. Martial law has served its purpose.

What we have now is essentially a legally institutionalized one-man rule. The cause of nationhood will not be served by its continuation. Unduly prolonged, a regime of martial law soon become counter-productive.¹⁷⁵ Normalization should therefore be the order of the day. That is why such developments as the *Interim Batasang Pambansa* and the prospect of local elections should be welcomed. There should now be an immediate return to the normal democratic processes and government. As the President himself has said, we should be now on the road to political normalization, for martial law is only temporary.¹⁷⁶

For under an authoritarian regime of martial law, the masses of the people can not take an active and effective part in the political process. There is no substitute for a true democracy —

From Plato on, political scientists have recognized that men may not understand their own best interest, and, in particular, that they may be short-sighted and swayed by urgent emotions in their definition of that interest. As between the individual's limitation in defining wisely his own long-run interest and his inability wisely to exercise power over others, without check, democratic societies have broadly chosen to risk the former rather than the latter danger in the organization of society, and to diminish the former danger by popular education, the inculcation of habits of individual responsibilities, and by devices of government which temper the less thoughtful political reactions of men. Aware of the abiding weaknesses of man as a social animal, the democrat leans, nevertheless, to the doctrine of Trust the People rather than Father Knows Best. And he is committed to refine and develop the degree of democracy within his society rather than seek refuge in one form or another of philosopher kings. Articulate politicians of the developing world tend to fashion their speeches from rhetoric out of the past: clerical, anti-clerical;

¹⁷⁵ "No Substitute for Democratic Form of Government—Justice Teehankee," in *The Liberal Party Newsletter*, August 21, 1978, p. 1, col. 1; AGPALO, *op. cit.*, *supra*, note 12 at 14.

¹⁷⁶ MARCOS, *op. cit.*, *supra*, note 174 at 1, 16.

government versus private ownership; free trade versus protection; the Second versus the Third Internationale; the struggle against colonialism; etc. But the real issue of life in developing nations now centers about the best way for that nation to modernize in its own fashion. And to this question the old slogans and battle cries are largely irrelevant.

For the fundamental fact about modernization is that it is a great national venture. It is not carried forward successfully by unrestrained class struggle, but by restraining compromises in terms of perceived larger national and human interests.

In the end, of course, democracy must be more than a tactical agreement among some political leaders to temper factionalism within the framework of a consensus centered on modernization. Democracy must, finally, embrace all the people and reflect the faith that the people know best.

Just as the healing role of modernization as an ideology makes democracy more possible, modernization, in its most technical sense, is assisted by the spread of democratic process and responsibilities to the people — when done in the right way.

The modernization of a society requires strong leadership and, even a measure of planning at the center, but it will not succeed unless it engages the energies and the commitment of the citizens themselves. Pope John XXIII once said this: 'Special effort . . . must be made to see to it that workers in underdeveloped areas are conscious of playing a key role in the promotion of their personal socio-economic and cultural betterment. For it is a mark of good citizenship to shoulder a major share of the burden connected with one's own development.'

There is, then, a double truth here: first, the engagement of the people as a whole in responsibility and effort is required for rapid, efficient modernization—the job cannot be done by edict or political cadres or cops. Second, this kind of participation—including but going beyond participation in free elections—is required if the movement towards democracy in the developing world is to advance from its present narrow base.¹⁷⁷

A strong nation cannot be built on the acquiescence of the people. They must play an *active* role in nation-building. In this respect, the move to strengthen the barangay and to make the people involved is therefore a welcome development.¹⁷⁸

The free and full exercise of civil and political liberties in an unauthoritarian atmosphere is necessary if there is to be meaningful democratic mass participation. Some writers¹⁷⁹ have advanced the thesis that historically, these rights were adopted in Constitutions in the West by the upper and middle classes in order to protect themselves against the excesses of potentially oppressive

¹⁷⁷ ROSTOW, *op. cit.*, *supra*, note 140 at 270, 298-299.

¹⁷⁸ See MARCOS, *op. cit.*, *supra*, note 166 at 162-167.

¹⁷⁹ CORPUZ, LIBERTY & GOVERNMENT IN THE NEW SOCIETY.

governments. They then proceed to argue that in developing countries, the need is not for a limited government, but for an effective and active government that will look after what they term "more basic" rights of the impoverished masses such as the right to a decent standard of living, and to food, clothing and shelter. As such, these civil and political rights may be suspended or even set aside in favor of a more effective government which brings about concrete "results" and not merely rhetoric.

What these writers forget, however, is that these civil and political liberties are the necessary means toward achieving such a decent standard of living for the people. Through them, the people chart the course of political and economic development towards this end. Freedom of assembly, freedom of speech, freedom of the press are essential if the people are to effectively participate in the political process. The people and the government should not be dichotomized as two separate entities. Ideally, they should be one and the same.

Even in a government with the best of intentions, mistakes can and will be made. What the technocrats perceive to be in the best interests of the people, may not be in their best interests at all. Furthermore, in any government, there will always be those who are corrupt and abusive, and work against the interests of the people. Without civil and political liberties, how can the people point out the mistakes, correct the adoption of incorrect policies, punish those who are corrupt, and check those who are abusive? Those who hold the reins of power of government will become increasingly removed from the people whom they have pledged to serve, unable to hear what the people are saying, only what they want to hear from those close to them who are naturally only too willing to say that everything is well and according to plan. The people will forget how to rule themselves, increasingly tending to look towards authoritarian father-figures for national leadership and sustenance.

In the same manner can we not attempt to separate economic development from political development. The two are closely intertwined, and an attempt to concentrate on economic development at the expense of the other will only lead ultimately to political and economic chaos and instability.¹⁸⁰

A strong political party system also needs to develop. Again, this is not possible under an authoritarian regime. Political parties are the institutions through which the people are mobilized and participate actively in the political process. The political parties that should emerge, however, should not be the same political parties

¹⁸⁰ HUNTINGTON, *op. cit.*, *supra*, note 6 at 198.

of the past which were representative essentially only of oligarchic interests and political patronage. Political parties representative of the workers, the farmers, the professionals, the intellectuals and their interests should emerge *parties of the people*.

The strengthening of the barangay system is not enough. In the final analysis, the barangay is only the smallest unit in the existing bureaucratic structure, and it is therefore an integral part of the *status quo* government. As a source of needed feedback from the people, and as a forum for meaningful *adversary* political interaction, its importance as an institution is doubtful. The barangay officials owe their positions to the present administration. Politically, we do not need mere sounding-boards for government policy, forums for mere "democratic consultation". We need institutions where we can have free discussion, where ideas contrary to those of the existing government, but not subversive of it may be nurtured and developed.

Some would say that the political party system as a relevant institution has been discredited by the Philippine experience. It has been accused of diverting the nation's resources and the people's energies from more important national endeavors, of dissipating such resources and energies, of producing inefficiency and corruption in government, of causing the division of national society when unity was needed to meet the nation's problems, of obstructing the process of economic development, of not being responsive to the people's needs, among other things. But was the fault in the system or in the people constituting such a system? What use is efficiency, when it is efficiency towards achieving the wrong goals? What use is an enforced unity, when the people merely acquiesce, and do not actively participate in national endeavors. Even with technocratic efficiency, without the people's participation, will national endeavors succeed? The national planning experience of many countries answers in the negative.

Professor Huntington points out—

The arguments against parties betray the circumstances of their historical origin in the early phases of political modernization. They are, in fact, less arguments against parties than they are arguments against weak parties. Corruption, division, instability, and susceptibility to outside influence all characterize weak party systems rather than strong ones. They are, indeed, features of weak political systems generally, which lack stable and effective institutions of rule. Parties may indeed furnish incentives to corruption, but the development of a strong party substitutes an institutionalized public interest for fragmented private ones. In their early stages of development, parties appear as factions and seemingly exacerbate

conflict and disunion, but as they develop strength, parties become the buckle which binds one social force to another and which creates a basis for loyalty and identity transcending mere parochial groupings. Similarly, by regularizing the procedures for leadership succession and for the assimilation of new groups into the political system, parties provide the basis for stability and orderly change rather than for instability. Finally, while weak parties may indeed become the instruments of foreign powers, strong parties provide in large measure the institutional mechanisms and defenses for insulating the political system against such external influence. The evils attributed to party are, in reality, the attributes of a disorganized and fragmented politics of clique and faction which prevails when parties are nonexistent or still very weak. Their cure lies in political organizations; and in a modernizing state political organization means party organization.¹⁸¹

Can political institutionalization be brought about by one man alone?

Where traditional political institutions are weak, or collapse or are overthrown, authority frequently comes to rest with such charismatic leaders who attempt to bridge the gap between tradition and modernity by a highly personal appeal. To the extent that these leaders are able to concentrate power in themselves, it might be supposed that they would be in a position to push institutional development and to perform the role of "Great Legislators" or "Founding Father". The reform of corrupt states or the creation of new ones, Machiavelli argued, must be the work of one man alone. A conflict exists, however, between the interests of the individual and the interests of institutionalization. Institutionalization of power means the limitation of power which the charismatic leader might otherwise wield personally and arbitrarily. The would-be-institution-builder needs personal power to create institutions, but he cannot create institutions without relinquishing personal power.¹⁸²

If therefore the concentration of power was necessary to bring about needed socio-economic reform, the need now is to democratize and let the people really participate in political and economic development. Martial law should be lifted. Full civil and political liberties should be restored. Political parties which are truly representative of the people should be encouraged and developed. Regular elections should be held for a legislative assembly.

The existence of national crises in our midst cannot be used as an excuse to delay normalization. For crises will always exist in the life of a nation. The instrument that is martial law was meant to meet only one such particular crisis—the rebellion or insurrection. That crisis has passed. If martial law was needed in order to save the nation, then what is now necessary is a true democracy in order

¹⁸¹ *Id.*, at 405-406.

¹⁸² *Id.*, at 238.

that we may reshape it. Martial law and constitutional authoritarianism are not the proper means to achieve the goal or the end of true nationhood. They are only provisional solutions to provisional problems. A true democracy where the people really participate is the long-run solution to the continuing quest for Philippine nationhood. To continue using a provisional solution to meet a continuing problem, will be like fitting a square peg in a round hole. Unduly prolonged, the short-term solution becomes counterproductive, and will make the long-term solution all the more harder to implement.

3. *Economic Developments*

Today's economic policy is based on export-promotion,¹⁸³ the attraction of foreign investments,¹⁸⁴ and obtaining loans from foreign sources to finance economic projects.¹⁸⁵ It is but a continuation of the unfortunate pattern of economic development and foreign domination of our economy that began with the Bell Trade Agreement, was briefly interrupted by the "Filipino First" experiment of the 1950's and was continued with decontrol, and the devaluations of the 1960's and the 1970's under the tutelage of the World Bank and the International Monetary Fund.

What has been the result of the export-promotion policy? Foreign trade, previously following the lead of the domestic sector, has now itself taken that lead, exposing the rest of the economy to externally created fluctuations, restraining it from developing with consistency and stability.¹⁸⁶ To a substantial extent, postwar inflation is due to the vulnerability of our economy to foreign trade.¹⁸⁷ Our fortunes as a nation depend on economic developments and economic policies formulated by foreign governments in foreign countries. This is true to a certain extent for all countries, but to a great extent in the Philippines. To compound the problem, we have adopted economic policies whose effect is not to minimize our economy's susceptibility to foreign developments, but rather to intensify it. We cannot effectively plan our economy under such a situation. If our domestic economy had a sound internal agro-industrial base, not dependent on the vicissitudes of foreign trade, our nation would be in a better position to weather international economic storms.

¹⁸³ Sicat, *The Development Plan of the New Society*, in *FOOKIEN TIMES YRBK.* 80, 82 (1973). See also Marcos, *The Four-Year Development Plan of the New Society*, in *FOOKIEN TIMES YRBK.* 24, 25, (1973).

¹⁸⁴ By Sept. 1978, foreign equity investment inflow stood at \$771 million as against the 1972 level of \$176 million, MARCOS, *op. cit.*, *supra.*, note 166 at 45.

¹⁸⁵ From 1970-1976, we have borrowed from abroad over \$5 billion. Marten, *op. cit.*, *supra.*, note 170 at 25.

¹⁸⁶ Jurado, *op. cit.*, *supra.*, note 81 at 322.

¹⁸⁷ Bautista, *op. cit.*, *supra.*, note 85 at 203.

Tourism, for that matter, is one such industry which is almost wholly dependent on foreign patronage. In a country with limited financial resources, it is questionable whether we should spend so much on such an industry.

Due to foreign investments in almost all sectors of the economy, foreigners, especially foreign multinational corporations now dominate our economy.¹⁸⁸ As has been previously pointed out, their presence subverts the political process and distorts the structural pattern of economic development.

In addition, multinationals corner scarce domestic credit resources, to the detriment of local enterprises.¹⁸⁹ The profit remittances which they make to their parent companies, when contrasted with the investment capital that they bring in, constitute a net drain on our foreign exchange resources.¹⁹⁰ Through transfer pricing and price manipulation, they exploit the poor people in developing countries.¹⁹¹ They retard, if not destroy, the growth of domestic enterprises, entrepreneurship, and indigenous technology.

What about the benefits that are supposedly brought about by the inflow of foreign investment of capital? The transfer of technology from developed to developing countries has remained largely an illusion.¹⁹² Foreign investment has had a minimal impact on our employment problem.¹⁹³

Of course, efforts have been made to regulate these foreign investments and to delimit their activities to certain economic areas,¹⁹⁴ in order to see to it that they are engines of growth for economic development. Theoretically, this is possible. It is an economic truism that capital generates growth, and that foreign capital can be used to fill in the gap between the capital requirements of a developing country and its supply of domestic capital. It is also true that we must guard against chauvinistic nationalism.¹⁹⁵ The Philippine historical experience since 1946, however, shows us that *in practice* such attempts at regulating foreign investments so that they redound to national interests have failed and are bound to fail.

¹⁸⁸ Magallona, *Transnational Corporations: Towards a Definition of a National Security Problem and Its Resolution*, in PHILIPPINE PERSPECTIVES ON MULTINATIONAL CORPORATIONS 98, 108-112 (1978).

¹⁸⁹ *Id.*, 112-113.

¹⁹⁰ *Id.*, 114-118.

¹⁹¹ *Id.*, 118-120.

¹⁹² *Id.*, 120-121.

¹⁹³ Espiritu, *A Filipino Looks at Multinational Corporations*, in PHILIPPINE PERSPECTIVES ON MULTINATIONAL CORPORATIONS 1, 10-13.

¹⁹⁴ The Foreign Business Regulations Act, Rep. Act No. 5455 (1968); R.A. 5186 (1967).

¹⁹⁵ MARCOS, *op. cit.*, *supra*, note 166 at 37.

Indeed, this has been the experience of many developing countries—

The principal limitation of private foreign capital, as it was invested in economically underdeveloped countries in the past, was that it has not aimed directly at the economic transformation of these countries, but has chiefly been interested in the utilization of the minerals, raw materials, and cheap unskilled labor of pre-industrial societies for supplying foreign markets. Transport and communications, and other forms of public utilities, such as have developed under the auspices of private foreign capital, have mostly been subservient to this major preoccupation with foreign markets. As a result, in those countries where the forces making for development from within have been weak, private foreign capital has never succeeded in, since it has never aimed at, bringing into existence a sufficiently diversified economic structure, or carrying the people concerned far along the road to economic development. *In those countries, however, where forces making for growth from within have been strong, private foreign investment has been an additional helpful factor in promoting development.*¹⁹⁶

The need therefore is to strengthen and restructure the domestic economy first before the entry of foreign investments.

And as an increasing body of literature now suggests, not only are foreign investments not contributing to development by as much as is commonly supposed, they are also in many instances creating and perpetuating underdevelopment.¹⁹⁷

The investment program has even often failed to meet the limited industrial objectives set for it by the government. As one high-ranking government official put it,

... the industrial linkages resulting from this pattern of investment were few and weak. Total employment generated by firms with foreign equity amounted to only 398,900 workers or merely 3% of the aggregate employment of 11.8 million.

As assessment of the contribution of foreign investment to the development of our foreign trade also showed that the higher level of imports of foreign firms comparable to the level of their exports contributed substantially to the deficit incurred in the country's merchandise account during the period.¹⁹⁸

The increase in our foreign debt¹⁹⁹ should also be viewed with concern. As funds are diverted to service this debt, we will increasing-

¹⁹⁶ INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS, FOREIGN INVESTMENT IN ECONOMICALLY UNDERDEVELOPED COUNTRIES 69 (1959).

¹⁹⁷ Jurado, *op. cit.*, *supra*, note 81 at 323.

¹⁹⁸ Paterno, *The Role of Foreign Investments in the New Society*, FOOKIEN TIMES YRBK. 84 (1973).

¹⁹⁹ The foreign debt stood at \$7.7 billion at the end of 1978, *Bulletin Today*, Dec. 31, 1978, p. 15, col. 6. In 1950 it was \$117.1 million, in 1965 it was only \$2.7 billion, Jurado, *op. cit.*, *supra*, note 82 at 277.

ly have to divert domestic resources from development projects to previously accumulated external obligations. The country, increasingly becoming a debtor, will have to accept the dictates of its foreign creditors and their foreign investor allies.

That the pattern of development that the Philippine economy has taken is detrimental to nationhood is therefore evident. Economic growth has indeed occurred,²⁰⁰ but what matters when we talk about Philippine nationhood is the structure of the Philippine economy.

There would at least be some consolation if this economic growth has resulted in the upliftment of the living standards of the people. It has not done so, however.

The question to ask is, if economic growth came about as a result of law, to whose benefit did it redound? Setting growth targets for the Gross National Product and citing increases in per capita income are meaningless exercises, unless we analyze the concrete impact of such developments on eradicating poverty and bettering living standards. Given a very lopsided national income distribution as in the Philippines,²⁰¹ an increase in gross national product only redounds mostly to the benefit of the upper classes, an increase in per capita income only serves to disguise ever-present poverty. Per capita income is, after all, merely an average. The increase in this average income would be meaningful if it were accompanied by changes in income distribution. The record through the years, however, shows that minimal progress has been made towards a more equitable distribution of the national income, although the inequality of incomes in the Philippines is, comparatively speaking, already one of the highest in the world.²⁰²

Taking the record as a whole, true economic development has not been attained in the sense of an improvement in the *quality of life* for most of our countrymen, or the upliftment of the *modal* standard of living. Neither was there a major transformation in the national social and economic structure which is what development implies for developing countries, and not merely an increase in productive capacity.

²⁰⁰ Our Gross National Product has risen from 5.95 billion in 1949 to 153.253 billion in 1977. The percentage share of manufacturing in Net Domestic Product has risen from 14.9% in 1949 to 20.8% in 1974. See Virata, *Philippine Economy in the Last 25 Years*, FOOKIEN TIMES YEARBOOK 74, 76 (1973); Marcos, *op. cit.*, *supra*, note 166 at 53; Jurado, *op. cit.*, *supra*, note 81 at 302-303.

²⁰¹ 1978 figures show that today the top ten percent in the economy own 38.8% of the nation's wealth, with the lower 50% owning only 20.5%, Bulletin Today, July 21, 1978.

²⁰² From 1957 to 1971, the distribution of family income in the Philippines has remained practically constant. See Tan, *op. cit.*, *supra*, note 199 at 215-222.

To put it more concretely, we may be producing more shrimp, but if all these shrimp is exported to foreign countries, are the Filipino poor less hungry? Why are we inordinately emphasizing production for export, when we should be producing for the needs of our people? It is true that we need to export in order to finance our imports. These imports, however, should be limited to those really essential for the needs of our people and for national development.

It is true of course that we have attained self-sufficiency in rice production under martial law.²⁰³ But the real wages of labor have been decreasing since 1951.²⁰⁴ Although taken as an *average*, daily food consumption is enough for the minimum dietary requirement of Filipinos, because of unequal income distribution (what statisticians call a skewed distribution), many Filipinos are not able to eat this minimum dietary requirement. All in all, the number of person in families with expenditures below the food threshold grew from 11.6 million in 1965 to 16.6 million in 1971, in comparison with a total Philippine population of 31.8 million in 1965, and 37.1 million in 1971.²⁰⁵ A 1974 study concluded that 82% of the population in 1961, 76% in 1965, and 78% in 1971 were below the poverty food line.²⁰⁶

In the Philippine setting therefore, the traditional economic growth process has resulted in the gradual but consistent decrease in the real value of the income of the workers and others who receive fixed salaries, who are the great majority of our people. The increase in their money wages always tends to lag behind the increase in prices. Economic growth has tended primarily to favor only the capitalist, and those who speculate on the inflationary trend of our economy, and to thereby make a profit out of the misery of the people.

For economic growth for economic growth's sake alone is meaningless, without the concomittant structural developments that ensure to the people a better quality of life. Urgently felt needs of today are put off for economic growth and the promise of income redistribution and social benefits for tomorrow. The needs of the people are however, immediate and ever-present.

²⁰³ MARCOS, *op. cit.*, *supra*, note 166 at 73.

²⁰⁴ See Bautista, *op. cit.*, *supra*, note 85 at 184; also David & Angangco, *ASIAN STUDIES*, Apr. 1975, p. 17, 22. Real wages have also steadily decreased from 1972 to 1977. Using 1972 as a baseline with 100 index points, it dropped to 95.4 in 1973, 77.4 in 1974, and to 71.2 in 1976 for skilled labor, and from 92.9 in 1973 to 72.2 in 1976 for unskilled labor. See Tasker, *The five-year itch*, *Far Eastern Economic Review*, September 30, 1977, p. 13, 15 (1977).

²⁰⁵ Mangahas & Rimando, *The Philippine Food Problem*, in *PHILIPPINE ECONOMIC PROBLEMS IN PERSPECTIVE* 95, 100 (1976).

²⁰⁶ Tan, *op. cit.*, *supra*, note 199 at 224-225.

It has often been said that these domestic developments are substantially the result of unfavorable economic developments which have occurred abroad, i.e., worldwide inflation, the increase in oil prices, the energy crisis, the economic depression in the West, developments, it is stressed, over which we do not have any control. Present national economic policies however, serve to accentuate, rather than to diminish the effects of such unfavorable foreign economic developments. A policy of more exports, more foreign investments, and more foreign loans, means that the Philippine economy is increasingly becoming more linked to the international world economy, and subject to its unfavorable economic trends and developments. There is no denying that in today's world a nation cannot afford to isolate herself, and that international trade and dealings with foreign business interests are an essential part of any nation's life. In the Philippines, however, there is too much reliance on these forces as a means for sustaining not only the growth, but the very vitality and health of the economy. The ultimate result will be a Philippine economy which has become so much a part of the world economy, that it can no longer be distinguished from the latter, an economic system which has lost its autonomy and identity as system. Increasingly, therefore, the policies it will implement and the interests it will serve will be those of the economic giants of the world capitalist and socialist systems, and not those which are in answer to the needs of its own people, or of its own interests as an independent nation.

As a result of the economic policies that have been adopted since 1946, with the notable exception of the import-substitution policy of President Garcia, we have the present state of our economy. It is characterized by (1) an increased vulnerability to foreign economic developments and exogenous economic forces; (2) an increased inability to refuse the dictates of foreign economic interests although they may be detrimental to our own national interest; (3) control of many of its vital sectors by foreigners; (4) economic policies which accentuate its weaknesses rather than its inherent strengths; (5) the lack of a sound domestic industrial base, built on indigenous natural resources; (6) an increased dependence on foreign trade and foreign loans to keep the economy going; (7) the dearth of an indigenous technology which is particularly suited to our own needs, and the lack of domestic entrepreneurship, because of competition from foreign technology and multinationals; (8) the lack of heavy industry, put up to serve our own needs and interests, and not those of foreign investors, which is a precondition to any economic take-off; (9) the increased exploitation of our natural resources; (10) the inefficacy of national economic planning and (11) in general,

lack of responsiveness to the economic needs of our people, and the lack of economic independence. It is definitely not the economy of a strong nation.

CONCLUSION:

For those who continue to believe that the nation's ills can be legislated out of existence, and in law as a dynamic instrument of development and social change, then the overall record of law and Philippine nationhood since 1898 up to the present cannot but be, at best, disappointing. There were many obstacles to true nationhood that faced the Filipino people when the first Republic was first inaugurated in 1898. Today, to a great extent, they still exist, particularly in the political and economic spheres of our national life. They have only been reinforced by, and have taken new forms in the light of, contemporary developments.

In the political field, the need is for the more active and effective participation by the people in the political process and in national endeavors — be they political or economic.

In the economic field, the most pressing of these contemporary problems are the upliftment of the living standards of the great majority of our people, the breaking of the stranglehold which foreign and domestic anti-national interests have on the Philippine economy, and the rethinking and reformulation of economic policies which weaken, rather than strengthen the Philippine economy. These policies have resulted in the increased distortion of the already distorted structure of the Philippine economy, the result of the continuing pattern of developments which began with the fateful decision to accept the Bell Trade Agreement in 1946, and which was interrupted only by the brief experiment in economic nationalism during the 1950's — the *Filipino First policy*.

If one is to be realistic, however, casting aside romantic illusions about law, what has happened is but to be expected. As has been pointed out, law is primarily the result of social change, and not its cause. The process of a developing nationhood essentially is a social process, which occurs outside the ambit of law. Oftentimes law even tends to obstruct such a process.

The high and low water marks of the relationship between law and Philippine nationhood can easily be pinpointed. Some of the high points include the birth of the Republic in 1898, the 1935 Constitution, the grant of independence in 1946, the *Filipino First* policy of Garcia during the 1950's, and the successful implementation of the land reform program during martial law. The low water marks

include the Parity Amendment of 1946, the Bases Agreement, the abrogation of the *Filipino First* program under Macapagal, and the continuing economic policies with their stress on export-promotion and foreign investment.

With regard to the proclamation of martial law, only the passage of time will tell whether its positive outweighed its negative effects on Philippine nationhood. To a high degree, this will depend on the political and economic policies which the martial law government will take at the present time with regard to the need for, and the pace of normalization, with the concomitant return to the ordinary democratic processes.

It must be emphasized, however, that national historical developments, both political and economic, but more especially economic, have a tendency to accumulate, reinforce and feed on each other, such that later developments in a continuing pattern of similar developments have a more intense and magnified effect than those which occurred in the past. The trend of economic developments, for example, which started with the Bell Trade Agreement, has solidified and consolidated itself, such that it has become an integral part of our present national life. Any reformer, therefore, who seeks to undo the effect of political and economic developments faces a very difficult task, because he has to overcome the inertia of past mistakes, and the opposition of reactionary forces which have been spawned by these developments. He can succeed only if he has the *real* support of the masses of the people who have realized the importance of the national struggle, and their stake in the success of such an endeavor.

Effecting needed social change in 1946, for example, was easier than it is at present. Due to the devastation of the Second World War, the Philippines was again starting from the beginning, starting so to speak, with a "clean slate." The pre-war economic and political structure was in ruins. Today, the task is much harder. To effect the necessary reforms in the economy would entail severe economic hardship and dislocation *in the short term*, due in a large part to the fact that the Philippine economy is too closely linked to the international world economy. The Filipino masses would have to suffer. The prospect of social convulsion, even including violence would always loom on the national horizon. Additionally, there would be opposition from those who are benefited because of the present state of things. Any national leader, therefore, who would want to reform Philippine society could be overthrown by the very people he had wanted to serve, because they did not understand what he

was trying to do. The task of the reformer is hard, but more especially so for the reformer who thinks he can do it all alone. There is no substitute for an active, well-informed and politicalized people, who because they understand, can withstand adversity and suffering in the name of true nationhood.

What lessons can be gleaned from the Philippine experience? First of all, that law should not be sanctified or defied, as providing the answer to the nation's problems, but should be put in its proper place in the scheme of a developing society. It is primarily a method of social control by which those who are in power in a society protect their interests and guide political and economic developments in furtherance of their own perceived ends. Second, that law is only as good as it is implemented, and effective only insofar as a society is vigilant in seeing to it that its letter is enforced. Third, that political and economic development are intertwined, and must go hand in hand. Fourth, that in the interests of true nationhood, there is no substitute for a true democracy where political and economic power are in the hands of the people. Fifth, that lawyers should stop talking of law in the hyperbole, and should stop thinking so highly of themselves, and should stop magnifying the importance of the role which they play in bringing about social justice and development. After all, when lawyers act out their traditional roles as practising attorneys, judges, or government officials, they are merely technicians implementing and interpreting the legal system, which after all, is just another system among so many others.

Ultimately, the people will have to find the answers within themselves.