TURNCOATISM: THE TAMING OF A POLITICAL VIRUS

By

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> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.
>
> —CHIEF JUSTICE EARL WARREN

Introduction

Stability in the constitutional order depends to a large extent on its worthiness of belief and confidence. Aside from the sanctions that inevitably accompany all legal norms, it is the delicate cultivation of that fealty to the rule of law, to that confidence in the legal fiction, that preserve the pre-eminence of the Constitution in the legal hierarchy of norms as well as encourage meaningful obedience among those encompassed by its mandates.

Both the governed and the governors contribute to strengthen the foundations of a stable constitutional order. Claro M. Recto, in his inaugural address to the framers of the 1935 Constitution, understood this acutely when he said, "in order that the people may consider it a duty to love and defend it the Constitution should be the work of the people, their legitimate creation, moulded by their hands, like a germ from the hands of the artificer, like the universe from those of God."[1] However, once begotten by the people's duly chosen representatives, the burden of constantly arousing unwavering confidence in the fundamental covenant shifts to the organs of government created and empowered by the same covenant, more particularly, to those performing judicial and quasi-judicial functions they being the final arbiters of what the law is.

Turncoatism cases arising out of the 1978 and 1980 elections provided excellent occasions for the Supreme Court and the Commission on Elections to play their appointed roles in enhancing the credibility of the constitutional order by manifesting complete devotion to the people's sovereign will enshrined in the fundamental law, and that, from time to time, emphatically declared by the ballot. To what extent these delegated organs of govern-

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1 Translation by Jose Aruego and cited in LAUREL & LAUREL (eds.), 1 CONSTITUTIONAL CONVENTION 1934-1935.

ment have faithfully interpreted popular aspirations to strengthen the constitutional order is the main problem sought to be discussed in this paper.

I. *GENESIS OF THE TURNCOATISM PROVISION*

A. *Philippine politics and the imperative to "purify" the party system*

The introduction of the American-inspired democratic processes in the Philippines at the turn of the century gave impetus to the growth of political parties as "necessary organs of democracy."[2] Playing an active role in the electoral process political parties as vehicles for the articulation of community aspirations brought the people face to face with the reality of a truly "popular, representative, alternative and responsible" government earlier intimated in the Malolos Constitution.[3] Political parties having been classically defined as an organized group of persons who preserve the same political ideals in a government,[4] generally perform six (6) functions, namely: (1) provide candidates for public office and work for their election, (2) arouse and maintain enthusiasm among voters at the time of election, (3) offer political education to the people by enlightening them on the issues involved, (4) serve to harmonize and unify the various organs of government, (5) become the catalyst for the unification of a people occupying a vast extent of territory, having at times various antagonistic and sectional interests, and (6) promote harmony and prevent dissension among its members.[5] Ideally, since the community of political principles and interests bind the members of a party in the pursuit of their political goals, the same principles and interests command loyalty from each member to stick and maintain allegiance toward the group. Furthermore, in a situation where freedom allows the easy coalition of citizens of like interests and political pursuits, parties of distinctive political ideals and programs of action naturally arise rendering it difficult for a party member to move from one party to another without the concommittant abandonment of personally treasured ideals and the relearning of another.

This is not to say, however, that political parties can legally curtail a person's right to leave and join another party. Being voluntary organizations made up of persons acting together for party and community goals, a member can freely decide to repudiate his membership in favor of another party without fear of legal consequences except those sanctions effective within the party machinery. Otherwise, the right of free association guaranteed by the Constitution may be rendered nugatory.[6]

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2 J. P. LAUREL, THE ELECTION LAW 96 (1931).
3 *Id.*, p. 121.
4 *Id.*, pp. 91-93.
5 *Ibid.*
6 *Id.*, p. 87. CONST. (1973), art. IV, sec. 7.

It is generally accepted that political parties may be organized subject to general laws affecting similar associations or groups banded together for purposes not contrary to law. Parties then were at best indirectly affected by government regulation. And usually these regulations have reference to the party's participation in the electoral process. Thus, the Revised Administrative Code of 1917[7] only considers the role of parties insofar as they are allowed to recommend persons to compose the Board of Election Inspectors, with the party polling the highest number of votes in the preceding general election given the right to recommend two members while the party gaining the second highest number of votes in the same election given the right to recommend one member.[8] Those subsequently appointed were paid by the government[9] and considered municipal employees.[10]

The commonwealth period saw the enactment of an election code[11] continuing the practice of allowing political parties to nominate members to the Board of Election Inspectors.[12] Additionally, controls were provided as regards solicitation of political contributions[13] and other prohibited acts,[14] and, a definition of what constitutes a political party was included for the first time.[15] Indirect regulation can be found also in the 1935 Constitution as it allocated the membership of the House and Senate Electoral Tribunals to parties polling the first- and second-highest number of votes in the preceding election[16] and in the Commission on Appointments on the basis of proportional representation of parties elected in both houses of the legislature.[17]

Actual political conditions were, however, far from satisfactory even as several factors were considered to have greatly contributed to the growing phenomenon termed as "turncoatism".

First, with the leading political parties well-entrenched in the electoral boards, receiving monetary assistance from the government to support their board representatives, winning elections became a matter of party membership and support. Increasingly, while party presence in the electoral boards was thought to preserve and protect party organization[18] and "insure the

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[7] Act No. 2711 (1917) which is a revision of Act No. 2657 (1916) otherwise known as the Administrative Code of 1916 which embodied all amendments and modifications of the Election Law of 1907.

[8] Act No. 2711 (1917), sec. 417.

[9] Act No. 2711 (1917), sec. 424, provides that the compensation will be taken from municipal funds.

[10] Opinion of the Attorney-General, May 4, 1916, cited in 7 ARANETA, ADMINISTRATIVE CODE 687 (1927).

[11] Commonwealth Act No. 357 (1938) later incorporated in the Revised Administratives Code of 1938.

[12] Commonwealth Act No. 357 (1938), sec. 70.

[13] Commonwealth Act No. 357 (1938), art. III, secs. 33, 34, 35, 36, 37, 38 and 39.

[14] Commonwealth Act No. 357 (1938).

[15] Commonwealth Act No. 357 (1938), sec. 76.

[16] CONST. (1935), sec. 11.

[17] CONST. (1935), sec. 12.

[18] Papa v. Municipal Board of Manila, 47 Phil. 694 (1925).

purity of elections, by providing means to minimize, if not check, the perpetration of election frauds,"[19] it also turned out to be the best means of assuring victory at the polls. The growth of a multi-party system was stifled with the avenues to political leadership monopolized by two parties in control of the boards.

Second, the desire to share in the spoils of the office made the changing of party allegiance necessary. As one political observer noted, "to be with the party in power means pork funds, fat concessions, jobs for protégés, aid and support during elections, relative immunity from political vendetta, and, of course, opportunities for making money."[20] With the dominant party having "virtual monopoly of governmental power, funds, privileges and patronage," turncoatism was justified as the only way to political self-preservation.[21]

Third, and more importantly, the lack of fundamental differences in the party platforms of the two major parties and the absence of a high degree of party loyalty combined to breed political turncoats in the country. It is often said that a Filipino joins a party because of what "he expects to get from it or because he likes the leaders or is related to them."[22] That is to say, political survival depends upon the criterion of accessibility. Says a prominent student of history, Philippine political culture is "populist, personalized and individualized."[23] The politician who can solve the day-to-day problems brought before him personally by the greater number of his constituents is judged better than those whose energies may have been directed to the planning and implementation of strategies and programs designed to meet the long-term needs of the community. Party switching can be rationalized by a faithful constituency, but an inaccessible, detached and seemingly unconcerned attitude spell doom to would-be politicians.

Added to this, of course, is the recurrent observation that postwar politics was dominated by two political parties closely aligned in their platforms. In the early sixties, for instance, it was observed that,

> "A reading of both LP and NP platform shows no fundamental disagreement on the great national issues or policies. Both platforms are for decontrol, better relations with Asian neighbors, agro-industrial development, upliftment of the rural population, social reforms, etc.
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> "If he flipped over to the LP, a Nacionalista could justify by saying that he was merely changing parties, not platforms, for both NP and LP subscribes substantially to the same party planks.
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> "He could not be accused of, say, reneging on the Filipino-first policy on the NP. The LP upholds the Filipino-first policy. Or he could fend off the

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[19] Tirona v. Municipal Council of Dagupan, 65 Phil. 155 (1937).
[20] Napoleon Rama, *A History of Political Infidelity*, 55 PHIL. FREE PRESS 3, (October 20, 1962).
[21] *Ibid.*, See MARCOS, TODAY'S REVOLUTION: DEMOCRACY, pp. 35-50.
[22] Marcos, *Ibid.*
[23] *Id.*, p. 40.

> charge by saying that the LP believes in the Filipino-first policy and shows it with deeds, not words like the NP."[24]

All in all, political survival and the personalistic figure-centered political exercises conspired to encourage indiscriminate political defections.[25] Grave alarm was sounded over this development since indiscriminate changes in political affiliations undermine precisely the democratic processes sought to be guarded by the party system even as it allows political irresponsibility long regarded to be the harbinger of graft and corruption.[26]

In a democracy, the free interplay of distinct forces, distinct and different ideas, variety in the approaches to problem solving, when supported by the majority of the populace, theoretically, usher in a government of men guided by the best solution, by the best program of action and the best means to achieve the agreed aims of such a democratic society. In the same manner, it builds an opposition which can responsibly fiscalize with less reliance on personal vilification and dirty attacks to reputation. These processes are disrupted by the phenomenon of turncoatism because political differences are artificially created without realistic and actual ideological moorings. For the turncoat, the platform and election issues assume a secondary significance compared with winning the election. He assumes all the benefits gained by the winning and dominant party without the corresponding responsibility of shouldering a repudiation at the polls. By merely changing parties prior to election he is able to capitalize on the structural advantages of the leading party in the electoral boards and on the assurance of a share in the "spoils" naturally gained by the winner. For the winning elective officials from the opposition, transfer to the dominant party allows them to gain support for their pet projects which too often die a natural death without governmental patronage. At the same time the turncoat can avail of the wide resources of the dominant party

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[24] Rama, *supra,* note 20.

[25] Prominent among the turncoats cited by Napoleon Rama were six (6) Presidents: Roxas, Quirino, Magsaysay, Garcia, Macapagal and Marcos; *Ibid.*

[26] Jose P. Laurel, Jr., *The Anatomy of a Turncoat,* PHIL. HERALD MAG. 6 (March 2, 1963), where he commented:

> "There is, however, one adverse consequence of their (turncoats) desertion, and it is the debilitation of the two party system as envisioned no less than our Constitution iself. It is axiomatic that the form of government we have established in this country depends for its continuing validity and vitality on the presence not only of the party in power that (sic) also of a fiscalizing minority to insure a more circumspect and thoughtful approach to public issue and a deeper respect for public opinion.
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> "Without the constant scrutiny of the Opposition, the party in power should surely tend to abuse its prerogatives and deceive the people with extravagant delusions that nobody would bother to investigate, much less expose.
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> "Naturally, the result would be the increasing irresponsibility of the majority party and a growing apathy on the part of the people themselves toward the reform in government."

to meet the personal needs of his constituency which later becomes his ticket to re-election under whatever party. In the end the electoral process is emasculated of its function to control abuses in government with the periodic changes in leadership due to its inability to pin responsibility at the polls. Turncoatism then is evil and must be extirpated for it renders the election process a farce.

Faced with this virus in the political system the then existing Constitution and statutes proved no equal. The political milieu was ready for a thorough overhauling.

B. *The 1971 Constitutional Convention responds*

The voices of reform found an eager partner in the 1971 Constitutional Convention which enacted several measures to remedy the perceived weaknesses of the electoral system, which included, among others:

a. the registration and accreditation of political parties (Section 8, Article XII-C);
b. the removal of partisan representation in the boards of registration and election inspectors (Section 9(2), Article XII-C); and
c. the prohibition against changing party affiliation within specified periods (Section 10, Article XII-C).

The rationale for requiring registration is to allow the State to regulate political parties directly. It is intended to inform the community of the party's existence, its goals and party platforms, its organization and leaders, and its operation as a political entity. Accreditation, on the other hand, is intended to prevent the formation of groupings which do no have popular support or respectable following, and to minimize factors inimical to the growth of political parties. In the unamended version of the 1973 Constitution, at least three major parties had a chance to be accredited in order to do away with the adverse effects of a principally two-party system.

Removing partisan representation in the boards of registration and election inspectors was a carryover of the successful experiment employed during the election of delegates to the Constitutional Convention. It abolished the built-in advantage that leading parties used to enjoy in the past particularly over independent candidates. With the greater impartiality of the boards, all candidates can hope for a fair chance of winning without need of scrambling for support from the major parties, which support in the past usually supplied the difference between success and failure at the polling booths.

The third major change is the subject of this paper. The 1973 Constitution provides,

> "No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective office may change . . .

his political party affiliation within six months immediately preceding or following an election."[27]

Simply and immediately clear from the provision are the following basic parameters of defining a turncoat:

a. Common limitation
   1. It must be a change of party affiliation;
b. Distinct limitations
   1. For an elective officer it must transpire during his term of office; and
   2. For a candidate to an elective office, it must transpire either within six (6) months immediately preceding or following an election.

This provision is invariably called mandatory, innovative and novel by commentors. Chief Justice Fernando, however, reminds us that disqualification *per se* from an elective office is hardly new in the Philippine experience.[28] He says,

> "While disqualification based on what is popularly known as turncoatism is a novel feature of the Constitution, it cannot escape attention that even under the previous election statutes there were provisions on ineligibility to hold an elective office. It cannot be accurately said, therefore, that there has been a violent break with the past. In the first Election Code that took effect on January 9, 1907, there was a specific section on disqualifications. In the chapter on the election law in the Revised Administrative Code of 1917, again there was a limitation on the number of times an official may be reelected, and on ecclesiastics, soldiers in the active service, persons receiving salaries or compensation from provincial or national funds and contractors for public works of the municipality being elected as well as appointed to a municipal office. In a statute revising and compiling the chapter on election law of the Revised Administrative Code, the third reelection of provincial governor and municipal president, now municipal mayor, was prohibited. Another section in the same act provided that a person 'delinquent in the payment of taxes cannot assume office to which he has been elected without first paying said taxes.' The Election Code enacted during the Commonwealth reiterated the ban on a third consecutive reelection to the offices of provincial governor and mayor. There was likewise provisions on disqualification on account of excessive election expenditures as well as disloyalty to the government. After the establishment of the Republic of the Philippines, a new election code was passed. There were provisions therein declaring a final decision of a competent court finding a candidate guilty of having spent in his election campaign more than the total emoluments allowed to the office for one year, or having solicited or received any contribution or of spending more than that allowed by law, or having violated the restrictions on electioneering and the prohibitions regarding transportation, food and drinks as grounds for disqualification. Disloyalty to the government likewise suffice to cause ineligibility.

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27 CONST., art. XII-C, sec. 10. The 1981 amendment adds the phrase "unless otherwise provided by law."

> A year before martial law, the Election Code of 1971 was approved. There was a reiteration of the disqualifications based on the above acts, While this court had occasion to rule on the question of eligibility to elective municipal positions in *United States v. Neri Abejeula* and *United States v. Madamba*, it was not until *Topacio v. Paredes*, a 1912 decision, that there was an exhaustive and scholarly disquisition on the subject. There have been since then many more cases on disqualification.
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> "It is quite obvious, therefore, that from the standpoint of the juridical concept of disqualification, there is no departure from what has been and continues to be. There has been no break with the past, much less a sharp one. x x x"[29]

With the above-mentioned changes firmly entrenched in the Constitution the electorate prepared to observe the application of the reforms in the elections of 1978 and 1980.

II. *TAMING A POLITICAL VIRUS*

A. *1978 National Assembly election: A case of "legal interruptus"*

The ax failed to fall in the election of representatives to the interim *Batasang Pambansa*. In the test case of *Peralta v. COMELEC*[30] the Supreme Court was confronted with the issue of whether the members of political parties registered with the Commission on Elections in the election of 1971 may run under a ticket sponsored by another party, group or aggrupation, considering the prohibition against candidates for any elective public office from changing party affiliation within six months immediately preceding or following an election. Justice Felix Antonio, speaking for the Court, ruled that without an implementing and supplementary legislation, the constitutional mandate cannot be effected for many questions of policy properly determinable by the legislative department will require the high court to encroach upon a duty belonging to the lawmaking branch of the government.[31] He cites the problem of an incumbent who votes in favor of another political party without formally changing his party affiliation. Can he be considered a turncoat? If so, what sanctions should be imposed against him? Similarly, a turncoatism charge against a candidate will require a clear-cut rule as to the procedures for determining infringements and the sanctions to be visited upon the culprit. Lastly, the overriding constitutional purpose is "to remove the dominant hold of the major political parties and the formation of new political parties." Prohibiting the candidates to run under the banner of the merging groups such as the *Kilusang Bagong Lipunan* (KBL) and the *Lakas ng Bayan* (LABAN) would only rebuild the old party coalitions and prevent the definition of "new political

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[28] Reyes v. Commission on Elections, G.R. No. 52699, 97 SCRA 503, 507 (1980).

[29] *Ibid.*

[30] G.R. No. 47771, 82 SCRA 30 (1978).

[31] *Ibid.*

means and instruments, within the parties or beyond them, that will allow the Filipino people to express their deeper concerns and aspirations through popular government."[32]

It is surprising to note that Justice Antonio should be burdened by a situation which lies clearly beyond the confines of the turncoatism provision in the Constitution. The case of an incumbent voting for another party belongs to the disciplinary board of his own party. A turncoatism charge cannot prosper for it is submitted that the phrase "may change his political party affiliation" must be interpreted to mean an act, express or implied, of formally revoking one's previous party membership in favor of a new party. To call simple breaches of discipline as falling within the prohibition will draw the Commission on Elections and the courts to become arbiters of the disciplinary fate of party members rather than as regulators of political parties. It will embroil governmental agencies in matters best left to the judgment of their fellow partymembers. Besides, the harm done affects the political party directly rather than the public interest, the latter being the rationale for the prohibition against indiscriminate party defections.

Also, the absence of an implementing legislation is not an insuperable obstacle had the court chosen to recognize the full effectivity of the law. For the general law considers void all acts done against a mandatory law,[33] and, the COMELEC can easily promulgate rules to deny a turncoat's candidacy pursuant to its constitutional duty to "enforce and administer all laws relative to the conduct of elections"[34] through its rule-making authority in deference to the high court's ruling.

Nevertheless, the Supreme Court, seized with its own vision of assisting the birth of a "new political order" closed the first opportunity to manifest obedience to the constitutional will by raising the technicality that it cannot rule on cases where no substantial controversy is involved. While justifiable, the passive stance taken by the Court certainly put to rest, albeit temporarily, the full use of a novel and innovative electoral reform.

Justice Barredo, in concurring with the main opinion, contended that the ban on turncoatism cannot be effected against the KBL or LABAN mainly because both groups are not political parties, and secondarily, because a transfer from the old political parties to the new and emerging groups is not at all turncoatism to be disdained but in fact "a patriotic endeavor." In a view later explained fully in the case of *LABAN v. COMELEC*[35] Justice Barredo opines, thus,

> "The nation is now precisely in that stage of its political life when the citizens who have the general welfare and the country's freedom, happiness

[32] *Ibid.* The *Kilusang Bagong Lipunan* is hereinafter also referred to as the KBL.
[33] CIVIL CODE, art. 5.
[34] CONST. (1973), art. XII-C, sec. 2(1).
[35] G.R. No. L-47883, 82 SCRA 196 (1978).

> and prosperity in their heart, are trying to look for their respective rightful places where they can be of maximum utility in reform movement that has endulged everyone and every human activity in this part of the world. To leave any of the old political parties now and join another is not turncoatism to be disdained; it is a patriotic endeavor that is in keeping with the paramount objective of helping the Philippines to be the great again."[36]

This exhortation to patriotism recalls to mind a similar description that the former President Diosdado Macapagal used to entice Nationalista Party members to the fold of the Liberal Party[37] while lamenting publicly that "it is a sad commentary on the character of public men and the people themselves that a premium has been put on opportunism which consists in abandoning the weakened opposition and joining the bandwagon of the majority party. There are a good number of politicians in the country who always manage to be with the party in power."[38]

Truly, the thin line that separates patriotism and opportunism is as fragile and tragic as that distinction which calls a mandatory provision "in force" without effect, or, "in effect" without force.

B. *1980 Local Election: Chaos in Jurisprudence*

1. *Conditions affecting the proper application of the constitutional prohibition*

Several factors may be considered to have contributed to the abnormal conditions during the 1980 local elections. *First,* the decision to hold a local election was announced very late. *Second,* confusion continued to reign over the legal status of the *Kilusang Bagong Lipunan. Third,* a presidential decree declared retroactive the membership of KBL supporters virtually exempting them from the charges of turncoatism which the opposition had to grapple.

For nine years since 1971 the electorate had to labor under the leadership of local officials who ascended to their posts by virtue of the support of pre-martial law political parties. Agitation for the holding of a local election was growing, fueled further by the national election in 1978. On December 22, 1979, with the blessings of the martial law regime and the Kilusang Bagong Lipunan, the Batasang Pambansa enacted Batas Pambansa Blg. 52 calling for a local election to be held on January 30, 1980. The legislation also declared that the campaign period shall commence on December 29, 1979 and terminate on January 28, 1980.[39] With this short notice, candidates never really had a chance to fully prepare for the electoral contest, much less firm up their official ties with political

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[36] *Ibid.*

[37] Teodoro M. Locsin, *Political Turncoatism,* 52 Phil. Free Press 2f (October 20, 1962).

[38] *Ibid.,* This quotation was used on the cover on the same issue of the magazine.

[39] Batas Pambansa Blg. 52 (1979), sec. 6.

parties willing to support their candidacy. To be considered bound by one's political affiliation to a moribund party nine years before is manifestly discriminatory as what happened to Zacarias A. Ticzon, the mayoral candidate of San Pablo City.[40] He was disqualified as a turncoat when he allegedly ran as Nacionalista Party standard bearer within the prohibited period without severing his ties with the Liberal Party. His link with the former party is disputed. In fact the evidence in his favor is as strong as that presented by the adverse party. Yet, in comparison, the COMELEC refused to disqualify his opponent, Cesar P. Dizon despite the contention that Dizon changed parties during his term of office from the Nacionalista Party to the *Kilusang Bagong Lipunan,* a situation similarly proscribed by the ban on turncoatism.[41]

The issue of lack of sufficient notice was raised to the Supreme Court in the case of *Santos v. COMELEC.*[42] There, Justice de Castro ruled that since the prohibition was already in force for more than seven (7) years, it is clearly intended to apply to all elections regardless of whether the holding of said election is declared less than the 6-month period mentioned in the provision.[43] He added that applying the maxim "where the law does not distinguish, we should not distinguish," the Constitution having spoken unequivocally then obedience must be imposed.[44] Justice Makasiar quoted this portion of the decision approvingly in the case of *Geronimo v. COMELEC.*[45] Sadly, both Justices forgot to mention that in *Peralta* and *LABAN* a few years before the Supreme Court did make a distinction to exempt the national assembly elections from the coverage of the constitutional ban.

Compounding the problem of surprise elections was the vague legal status of the *Kilusang Bagong Lipunan* as a political party. Jurisprudence graphically illustrates the problem.

In the case of *LABAN v. COMELEC*[46] the COMELEC resolution giving due course to the wholesale adoption of *Kilusang Bagong Lipunan* candidates by the Nacionalista Party is assailed as contrary to the terms of Section 140 of the Revised Election Code of 1978 which requires that a candidate may be in the ticket of only one political party.[47] To avert the raising of constitutional objections as in the earlier case of *Peralta,* the Supreme Court through Justice Barredo emphasized and quoted with approval COMELEC Resolution No. 1269 which ruled that KBL is not a political party but merely a group, a "temporary alliance, union or coalition including its branches and divisions, of persons or parties for

[40] Ticzon v. Comelec, G.R. No. L-52451, 103 SCRA 671 (1980).
[41] *Id.,* p. 711.
[42] G.R. No. 52390, March 31, 1981.
[43] *Ibid.*
[44] *Ibid.*
[45] G.R. No. 52413, September 26, 1981.
[46] Laban v. Comelec, *supra,* note 35.
[47] *Ibid.*

the purpose of joint action and combining their resources to support a common list of candidates under a ticket officially nominated by it in contemplation of the system of voting provided for in the Election Code of 1978 for the election of the members of the interim Batasang Pambansa."[48] Where two weeks earlier the Supreme Court grudgingly acknowledged that the *Kilusang Bagong Lipunan* and the *Lakas ng Bayan* are political parties in a *generic sense* so as to allow them to enjoy the benefits of registration[49] Justice Barredo now earnestly insists that:

> "... by nominating as its own the candidates of the KBL, the Nacionalista Party gave the mass of its loyal and die-hard partymen the opportunity to vote distinctly as Nacionalistas in the coming election, *leaving it for the future, when political matters shall have more time and opportunity to fully develop and firm themselves up in relation to the modes and objectives of the New Society, for each of them to join the party of their choice, assuming the KBL will eventually evolve into a political party.* (Underscoring supplied).[50]

Despite the facile distinction successfully employed by the Court in this case to blunt the full effects of the law, the simple truth that the KBL was a political party is revealed in the face of simple facts showing beyond doubt that it was so from the beginning. This position the Supreme Court took in disqualifying winning candidates in the local elections.

First, COMELEC Chairman Leonardo Perez himself disclosed to the high court in one of its sessions that the KBL submitted to the Commission on Elections its constitution and by-laws, a complete platform and system of organization.[51]

Second, the granting of block-voting rights reveals also the essential nature of the aggrupation. Justice de Castro emphatically announced in *Santos v. COMELEC*[52] that the "KBL had always been a political party or aggrupation can, therefore, no longer be open to question. Were the KBL not such a political party, block-voting as was declared valid in the case of *Peralta* could not have been availed by it, as it unquestionably did, in the 1978 elections. For block-voting is voting for a political party."[53]

Third, the 1973 Constitution envisioned a two-step process whereby political parties are made full participants in the electoral machinery. Registration as a party is the first step. Accreditation is the second step. The latter is an avenue for parties to enjoy certain electoral privileges which other political groups having no substantial following are denied.[54] Hence,

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[48] *Ibid.*
[49] Peralta v. Comelec, *supra*, note 30.
[50] Laban v. Comelec, *supra*, note 48.
[51] *Ibid.*
[52] G.R. No. 52390, March 31, 1981.
[53] *Ibid.*
[54] The original provision of the CONSTITUTION (1973), art. XII-C, reads:
"Sec. 8. A political party shall be entitled to accredition by the Commission if, in the immediately preceding election, such party has obtained

when on December 22, 1979, pursuant to Batas Pambansa Blg. 53 and COMELEC Resolution No. 1406 issued on the same date, the KBL was accredited,[55] it was precisely in recognition of KBL's status as a registered political party. For without registration there can be no accreditation.

The height of all discrimination was shown in the enactment of Presidential Decree No. 1667 on January 26, 1980, four (4) days before election day. It sought to give retroactive effect to a candidate's membership in a political party by providing that, "a person who participated as an officer in the campaign of a political party, group or aggrupation in the immediately preceding elections shall be deemed a member of such party as of the date of the political campaign, for purposes of nomination as official candidate of such party in succeeding elections."[56] Ostensibly, the law sought to benefit all parties listed in the last *Whereas* clause. Nevertheless, it cannot be denied that it worked more for the benefit of many KBL bets who never withdrew their membership from their respective pre-martial law parties when they joined the *Kilusan* which in 1978 was merely characterized as an "umbrella organization" and not a political party. Justice Teehankee cites this anomalous situation in his dissent in the *Ticzon* case.

2. *Constitutional considerations*

a. *Re-appraising the scope of judicial review*

One of the easily controversial issues that faced the Court in the resolution of turncoatism cases was the proper scope of high court's exercise of its certiorari authority over an independent constitutional body like the Commission on Elections.

Throughout the years the concern for a clean, honest and fair elections bore fruit in the form of a constitutionally-mandated independent body known as the Commission on Elections. The 1935 Constitution empowered the COMELEC to enforce and administer all laws relative to the conduct of elections.[57] This power was expanded by the 1973 Constitution where

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at least the third highest number of votes cast in the constituency to which it seeks accreditation. No religious sect shall be registered as a political party, and no political party which seeks to achieve its goals through violence or subversion shall be entitled to accreditation."

The amended provision reads:

"Sec. 8. The political parties whose respective candidates for President have obtained the first and second highest number of votes in the last preceding election for President under this Constitution shall be entitled to accreditation if each has obtained at least ten percent (10%) of the total number of votes cast in such election. If the candidates for President obtaining the two highest number of votes do not each obtain at least ten percent (10%) of the total number of votes cast, or in case no election for President as yet have been held, the Commission on Election shall grant accreditation to political parties as may be provided by law."

55 Santos v. Comelec, *supra*, note 52.

56 Presidential Decree No. 1667 (1980), sec. 1.

57 CONST. (1973), art. XII-C, sec. 2(1).

it states that the COMELEC shall now be the sole judge of all election contests, returns, and qualifications of all the members of the National Assembly and elective provincial and city officials.[58] Then the Election Code of 1978 adds forcefully that decisions of the COMELEC shall be final, executory and inappealable.[59] Qualifying these tremendous powers of the COMELEC is the provision in the Constitution that decisions, orders or rulings of the COMELEC may be raised to the Supreme Court on certiorari.[60]

In the exercise of this certiorari authority the Court has adopted judicial restraint, and in fact, often accepts that the power of review should be used sparingly,[61] and only when there is clear abuse of discretion.[62] Such abuse of discretion and failure to observe the rudiments of due process was found to have been committed by the COMELEC in a number of cases.[63]

Theoretical discussion, however, fails to capture the dilemma of the Supreme Court in trying to give a semblance of order to the so-called flip-flopping resolutions of the COMELEC in many disqualification cases based on turncoatism. This is best exemplified in the Ticzon case.

On January 4, 1980, Zacarias A. Ticzon submitted his certificate of candidacy stating that he was the official candidte of the Nacionalista Party for the mayoral post of San Pablo City, Batangas. His candidacy was challenged by his opponents as violative of the ban on turncoatism. The COMELEC failed to resolve the case on time so Ticzon was able to enter the mayoral race where he was leading his opponent by as much as 2,204 votes out of more than two-thirds of the election results canvassed. Before Ticzon could clinch the victory, the COMELEC ordered the local board of canvassers to stop the canvassing of Ticzon's votes after finding him guilty of turncoatism and certifying his disqualification. Coming to Ticzon's aid the Supreme Court issued a restraining order to prevent the enforcement of the COMELEC order and at the same time ordering the Board of Canvassers to proceed with the counting and to later proclaim the winners. After Dizon, the mayoral opponent, managed to secure the change in the composition of the Board of Canvassers and the transfer of

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[58] CONST. (1973), are. XII-C, sec. 2(2).

[59] Presidential Decree No. 1296, otherwise known as the Election Code of 1978.

[60] CONST. (1973), art. XII-C, sec. 11.

[61] Omar v. Comelec, G.R. No. 53962, February 3, 1981.

[62] Morero v. Bocar, 66 Phil. 429; Bashier v. Comelec, 43 SCRA 238; Pungutan v. Abubakar, et al., G.R. No. L-33541, 43 SCRA 1, 10-11; and, Lucman v. Dimaporo, G.R. No. L-31558, 33 SCRA 387, 388.

[63] Amante v. Comelec, G.R. No. 52375 (1980); Lagmay v. Comelec, G.R. No. 52406 (1980); Pimentel v. Comelec, G.R. Nos. 52428 (1980); Nepomuceno v. Comelec, G.R. Nos. 52427 and 52506 (1980); Reyes v. Comelec, G.R. No. 52699 (1980); Abrazaldo v. Comelec, G.R. No. 53730 (1980); Singco v. Comelec, G.R. No. 52830 (1980); Pimentel v. Comelec, G.R. No. 53581-83 (1980); Gonzales v. Comelec, G.R. No. 52798 (1980); Lagumbay v. Comelec, G.R. No. 52426 (1981); Sanciangco v. Comelec, G.R. No. 52692 (1981).

the venue of the counting of votes in Metro Manila, two (2) more restraining orders were issued by the high tribunal at the behest of Ticzon; the last one attempting to prevent the proclamation of Dizon as winner "without an opponent". Notwithstanding the three restraining orders Ticzon was disqualified as a candidate on the very moment the counsel of the COMELEC promised that the electoral body will comply with the order of the Court. The COMELEC, in deciding the disqualification of Ticzon, latched on the affidavit of one Magcase, a former Liberal Party vice-mayor, stating the Ticzon switched parties within the prohibited period for allegedly the latter was never expelled from the Liberal Party despite Ticzon's claim to the contrary as supported by the affidavits of Gerardo Roxas, president of the Liberal Party. Since the Revised Election Code of 1978 automatically considered the Liberal Party as registered, Ticzon was therefore deemed a turncoat when he stated in his certificate of candidacy that he was the official Nacionalista Party candidate.

The issues raised and resolved by the Supreme Court with four (4) dissenting Justices was whether the COMELEC committed grave abuse of discretion in changing the composition of the board of canvassers, in changing the venue of the canvassing, in disqualifying Ticzon for turncoatism, in dismissing the petition for the disqualification of Dizon, and in ordering Dizon's proclamation as the winning mayoral candidate without opponent.

The Court found no abuse of discretion on the first two issues on the ground that the constitutional body was duly authorized by law to so act in the light of investigations duly conducted. As far as the factual matters are concerned there was no justification to interfere with the actions taken by the COMELEC citing the rule enunciated in the case of *Vinzons v. COMELEC*[64] that in such matters the COMELEC is "*en mejores condiciones que ningun otro organismo del Estado para conocer aquellos que tierclara asegurar la pureza del sufragio, en que radica la salud de las democracias. Sus condiciones, por tanto, relativas a los hechos y las cuestiones de equidad no deben ser modificados, a menos que en autos apareza que abuse gravamente de sus facultades.*"[65]

On the issue of turncoatism, the majority of the Court is of the opinion that since the case involves a review of the decision of the COMELEC on certiorari then the Supreme Court cannot review the factual findings of the electoral body particularly when supported by substantial evidence. It found that the COMELEC's disqualification was sufficiently supported by the records which do not show that he ever resigned from the Liberal Party or was expelled from it. Thus, having been disqualified in a proceeding which fully accorded Ticzon due process, the only result

[64] 73 Phil. 247, 351-2 (1941).
[65] *Ibid.*

is to consider the votes in his favor as stray votes and Dizon, his losing opponent, correctly proclaimed winner without opposition.

Justice Aquino, *ponente* of the plurality decision, argued that technically in a special civil action for certiorari the main issue is jurisdiction whereas a petition for review on certiorari is limited to the consideration of questions of law citing *Lucman v. Dimaporo* and others.[66] Hence, following the rule in *Sotto v. COMELEC*[67] the Supreme Court cannot review the factual findings of the COMELEC in this case because the action is one for the review of its decision on certiorari. If the Supreme Court cannot disturb the findings of administrative agencies when supported by substantial evidence then no reason exists for the Court to treat the COMELEC lower than these administrative agencies when it is an independent body created and established by the Constitution.[68]

In his dissenting opinion, Chief Justice Fernando believes that there is no attempt to interfere with the prerogatives of the Commission which are vested by the Constitution.[69] Its independence must be preserved, but it should not be allowed to follow a course contrary to the mandates of the Court. Otherwise, it will defeat the function of judicial review which is to check and strike down legislative and executive acts in conflict with the fundamental law, and, to legitimate those in consonance with the latter.[70] Furthermore, the Supreme Court can speak authoritatively not only on issues of constitutional dimensions but in all cases where it is presented with a legal question.[71]

Vehemently dissenting to the plurality decision, Justice Teehankee calls it unjustified in law and in fact. For him the refusal of the Court to disturb the findings of the COMELEC is an abdication of the high court's power and duty of judicial review. He said,

> "Ironically, the cited case of Vinzon's ... has no application when the COMELEC serves as the very instrument of oppression to thwart the people's will and impose on them the repudiated loser as the remaining winning candidate with 'no opponent'. When the COMELEC makes the baseless finding in its disqualification resolution... such baseless finding cannot be 'binding and conclusive upon this Court...' "[72]

Justice de Castro, coming to the rescue of the Commission on Elections in his concurring opinion which re-echoes his decision in *Santos v. COMELEC*,[73] opines that Teehankee's scathing criticism of the COMELEC is overblown and subjective. As in *Santos*, he reiterates that the decision

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[66] 33 SCRA 387, 399-400 etc.
[67] 76 Phil. 516, 521 (1946).
[68] Ticzon v. Comelec, *supra*, note 40 at 687.
[69] *Id.*, p. 707.
[70] *Id.*, p. 706.
[71] *Ibid.*
[72] *Id.*, p. 717.
[73] G.R. No. 52390, March 31, 1981.

of the COMELEC is beyond judicial interference except upon clear showing of such arbitrary and improvident use of its powers as will constitute denial of due process of law.[74] Proceeding to reconstruct the various actions undertaken by the COMELEC he concludes that none of them deserve the vicious condemnation levelled by his colleague. Even the disqualification of Ticzon finds support in the evidence presented contrary to the allegations of Justice Teehankee.[75]

Perhaps the most stirring comment was that made by Justice Abad Santos in his own dissenting opinion where he said,

> "... This is another instance where the Commission on Elections did not live up to the high expectation of the people and of this Court. The vast powers entrusted to the COMELEC by the Constitution and statutes should have given it a sober sense of responsibility. Instead it has even dealt unfairly with this Court. Add to this its flip-flopping resolutions and we have a constitutional body whose credibility has been seriously eroded."[76]

b. *The Right of Suffrage and Due Process*

Quite possibly, the inability of the Supreme Court to restore order in the COMELEC resolutions stemmed in part from its own inability to follow its own rules as far as the disqualification cases are concerned.

A particularly vexing problem was the effect of the disqualification of a winning candidate. Would it be a diminution of the right of suffrage if the electorate's sovereign will be disregarded by the electoral body or by the Supreme Court by disqualifying their choice at the polls? Is it proper for the COMELEC to proceed with the pre-election disqualification case after the holding of the election?

Reyes v. COMELEC[77] attempted to answer these questions. Chief Justice Fernando, speaking for the Court, ruled that while disqualification for turncoatism has been characterized both as novel and innovative, disqualification itself has not been new to our political life. Since the first Election Code in 1907 until the present, several ineligibilities had been provided to bar a person from public office.[78] The highest expression of the sovereign will, the Constitution, has added another ground as willed by the framers and approved by the people. To enforce what the Constitution decrees is the duty of the Supreme Court. And such an exercise of duty does not defile the right of suffrage, nor ignore the popular will, but precisely to act in accord with the sovereign will of the people expressed in the fundamental law.[79] The same argument may be raised by the COM-

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[74] Ticzon v. Comelec, *supra,* note 72 at 704.
[75] *Ibid.*
[76] *Id.,* p. 736.
[77] 97 SCRA 503 (1980).
[78] *Ibid.*
[79] *Id.,* p. 510.

ELEC to insist upon its right under the Constitution and the Election Code to nullify the election of a person as the sole agency given the task of handling election questions.

Concerning the second question, the Supreme Court wavered. At least in two cases decided after the elections the Supreme Court held that where the parties are denied their right to be heard in the pre-election disqualification cases, the COMELEC may be required to conduct a full-dress hearing to consider all material aspects of the turncoatism charge.[80] In *Pimentel v. COMELEC*[81] the disqualification of a winning mayoralty candidate was set aside by the Supreme Court when it "was not satisfied that he (Pimentel) was fully heard."[82] "The matter was remanded 'to the respondent Commission on Elections so that it could proceed with the proclamation in accordance with the canvassing without prejudice to the ruling thereafter on the question of disqualification of petitioner Pimentel after a hearing to be conducted in accordance with the requirements of procedural due process.' "[83]

Justice Teehankee, in his concurring opinion, explains that a full-dress hearing is necessary for the following reasons: (a) the winning candidate having received the approbation of the electorate is entitled to due process; (b) consideration of several facts including the short notice of election; (c) the question of equal protection of the law; and (d) the proper construction of the turncoatism prohibition so as not to collide with the right to free association; all these, can only be threshed out in a full hearing.[84]

In cases beginning with *Venezuela v. COMELEC*[85] up to *Agcaoili v. COMELEC*,[86] the Court tried to adopt a clearer rule on disqualification cases. In the former the Court held that "after the holding of the January 30, 1980 election, and a proclamation thereafter made, a petition to disqualify a candidate based on a charge of changing political party affiliation within the six months immediately preceding or following an election, filed with this Court after January 30, 1980, arising from a pre-proclamation controversy should be dismissed without prejudice to such ground being passed upon in a proper election protest or *quo warranto* proceeding. Were, however, such constitutional provision had been seasonably invoked prior to that date with the Commission on Elections having acted on it and the

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[80] Pimentel v. Comelec, G.R. No. 52428 (1980); Reyes v. Comelec, 97 SCRA 503 (1980); Nepomuceno v. Comelec, G.R. No. 52427 and 52506 (1980).

[81] G.R. No. 52428 (1980).

[82] Cited in Reyes v. Comelec, *supra*, note 80.

[83] *Ibid.*

[84] *Id.*, pp. 512-513.

[85] G.R. No. 53532, July 25, 1980.

[86] G.R. No. 52791, February 26, 1981; which also includes, among others, Aguinaldo v. Comelec, G.R. No. 53953 (1981); Laguda v. Comelec, G.R. No. 53747 (1981); Arcenas v. Comelec, 101 SCRA 437 (1980); Potencion v. Comelec, G.R. No. 52522 (1980).

matter then elevated to this Court before such election, the issue then presented should be resolved."[87]

This rule was disregarded in *Ticzon*. The COMELEC only resolved the petition for disqualification on February 12, 1980. The petition for review by certiorari filed by Ticzon reached the Supreme Court only on February 15, 1980. Apparent on its face is the fact that the case fell within the principle enunciated above and should have been dismissed and the parties instructed to file the appropriate election protest or *quo warranto* proceeding in the proper forum. There the *ponente* did not even bother to consider the possible effect of the Court's decision as far as the *Venezuela* rule is concerned.

Again, Justice Aquino decided to forget this procedure when he wrote his *ponencia* in the case of *Sandalo v. COMELEC*.[88] COMELEC Resolution No. 9160 setting aside the proclamation was issued only on February 16, 1980. On the contention that like *Santos v. COMELEC*, the *Sandalo* case was similar to *Gabatan v. COMELEC*[89] and *Evasco v. COMELEC*[90] Justice Aquino dismissed the case in a majority supported resolution. Quoting Justice Teehankee's dissent,

> "The majority decision is contrary, without explanation or distinction, to the Court's unanimous doctrine laid down in numerous decisions penned by the Chief Justice since *Venezuela v. COMELEC* as far back as July 25, 1980 to *Faderanga v. COMELEC* on June 26th of this year that 'all such pre-proclamation controversies *not* submitted to this Court or resolved before election day, January 30, 1980, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding.' The Court laid down this doctrine and rule of law precisey ot rid its dockets of all such pre-proclamation controversies and in the Chief Justice's language in *Arcenas v. COMELEC* 'ought to have furnished guidance,' but almost two years after the election here comes the decision at bar ignoring and disregarding the same, contrary to the Court's own injunction in the cited case that 'to upset the existing conditions x x x under the circumstance would not be conducive to stability. On the othe hand, to follow the authoritative pronouncements of this Court and thus put an end to the pre-proclamation controversy, reserving the right to private respondents to pursue the matter in the appropriate election protest or quo warranto petition as the case may be, would be more in keeping with the orderly ways of the law.' Coincidentally, the President himself as far back as February 27, 1980 as reported in the metropolitan newspapers, apparently recognizing the need of respecting the sovereign will of the electorate had directed the withdrawal by KBL losers of all disqualication cases against the opposition survivors, without prejudice to their filing an election protest — but apparently to no avail."[90a]

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87 Cited in Agcaoili v. Comelec, G.R. No. 52791 (1981).
88 G.R. No. 52737, August 31, 1981.
89 G.R. No. 52387, January 25, 1980.
90 G.R. No. 52401, January 28, 1980.
90a Justice Teehankee's dissent in Sandalo v. Comelec, *supra*, note 88.

The citation of these two cases is not purposeless for precisely they illustrate how the right of suffrage is endangered every time the Supreme Court ignores its own pronouncements. Going back to the original purpose of requiring aggrieved parties to file either an election protest or quo warranto petitions before the COMELEC of the Court of First Instance (now regional trial courts), the end sought to be achieved is to encourage the full ventilation of the various aspects of the turncoatism charge affording the party charged the fullest observation of his constitutional right to due process. In the meantime, it will decongest the dockets of the COMELEC and the Supreme Court of pre-proclamation disqualification cases as well as assure the public that the winning candidate in a fair and honest election will remain in office until proven to be disqualified in a full-pledged adversary, and not summary, proceeding.

Following the *Venezuela* rule the will of the people expressed in the ballot is given effect even as their sovereign will expressed in the Constitution is allowed free play in the deliberations of the tribunals appointed to weigh the competing interest involved.

When the Supreme Court chose to ignore the above-mentioned principle, at least in the two cases cited, it lent itself to charges of flip-flopping decisions similar to that levelled by the dissenting Justice Teehankee to the COMELEC.[91] The main opinion on *Sandalo*[92] does not even mention the reason why the Court decided to disregard the *Venezuela* rule. Likewise, the other members of the Court, except Justice Teehankee who wrote a dissenting opinion and possibly also Chief Justice Fernando and Justice Abad Santos both of whom did not take part in the deliberations of the Court, were seemingly oblivious to the erratic course taken by the high tribunal. Where in several cases the Court vigilantly struck down resolutions of the COMELEC that bear the earmarks of failure to observe the demands of due process, here the majority supported wholeheartedly the disqualification of David Q. Sandalo, the winning mayoralty candidate of Tubay, Agusan del Norte, on the basis of what Justice Teehankee calls "the flimsiest of evidence." Again, Justice Teehankee observes;

> "The COMELEC resolution was based on the flimsiest of evidence with Sandalo at the hearing emphatically denying that he ever signed the certificate of affiliation with the KBL at the organization meeting of December 3, 1979 for he was then in Manila having a dental check-up and specifically averred in his Answer that 'since he joined politics in 1951 when he ran and won as the Municipal Mayor of Tubay, Agusan del Norte up to the time he won in 1971 as member of the Provincial Board of Agusan del Norte he has been a consistent member of the Nacionalista Party.' But the COMELEC, as against these unresolved conflicting issues of fact and without making any *findings* of fact, resolved to summarily

[91] These dissents are reiterated more fully in the cases of Ticzon v. Comelec, Santos v. Comelec, and Sandalo v. Comelec, all previously cited above.

[92] Sandalo v. Comelec, *supra*, note 90.

act and grant after the election the most petition for disqualification of Alburo, and the majority would now hold this COMELEC action as 'binding and conclusive on this Court."[93]

Another aspect relevant to this discussion is the observation of Justice de Castro in his concurring opinion in *Ticzon* where he stated,

> "The high regard I hold for democratic tenets and processes would make my personal sympathy go for Ticzon if he had indeed obtained more votes than Dizon, without fraud or any other election irregularity as those charged by Dizon, and yet unable to assume office by reason of disqualification. The will of the people, however, as expressed in the Constitution against 'turncoatism' may not be disregarded, even if only momentarily in order to give effect to the supposedly winning votes cast by the electorate of a given locality in favor of a certain candidate. The constitutional prohibition, like all constitutional provisions, is mandatory and unyielding. *It constitutes a basic, permanent and continuing expression of the will of the people, unlike a passing fancy or preference for, certain candidates expressed at intervals of time when elections are held.* Hence, my commitment as a member of the Supreme Court, the judicial guardian of the Constitution, leaves me no choice but to subordinate my personal sympathy to the supremacy of the fundamental law." (Underscoring supplied).[94]

Belittled by the honorable Justice as passing fancy is the vote of the electorate of San Pablo City as if the competing interests sought to be resolved by the high court is merely the will of a certain locality vis-a-vis that of the national weal enshrined in the Constitution. He forgets that the stronghold supporting the people's participation in the electoral process and the ultimate cause for the whole court to decide with greatest care the controversy before it, is the right of suffrage equally safeguarded by that same mandatory and unyielding instrument called the Constitution. It is true that the turncoatism provision is one of the methods employed to keep the people's vote meaningful, pure and undefiled. Yet when the method or tool is used unwisely it may in fact initiate the destruction of the very cause it is supposed to protect.

Furthermore, respect for the people's decision at the polls is not without precedence in the jurisprudence of the Supreme Court. *Lino Luna v. Rodriguez*[95] and *de Guzman v. Board of Canvassers*[96] early explained that,

> "... the rules and regulations for the conduct of elections are *mandatory before* the election, but when it is sought to enforce them *after* the election, they are held to be *directory only*, if that is possible especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. The various and numerous provisions

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[93] *Ibid.*
[94] Ticzon v. Comelec, *supra*, note 40 at 703.
[95] 29 Phil. 208.
[96] 48 Phil. 211.

> of the Election Law were adopted to assist the voters in their participation in the affairs of government and not to defeat that object." (Underscoring supplied)[97]

Lastly, and perhaps, the more immediate reason, the Supreme Court has so decided on several occasions to pay obeisance to the "passing fancy" of the people's vote, to prevent the overzealous administrative and summary action of the COMELEC from nullifying a fair vote, with the laying down of the *Venezuela* rule. Were it not the rule then there would have been no point in the high court's interference on the functions assigned by the Constitution to the Commission on Elections.

c. *Literal versus Liberal Application*

Capping the jurisprudential chaos was the issue on the proper application of the turncoatism provision.

Justice Felix Antonio approached the problem in *Peralta* by asserting that before the provision could even be applied it is imperative that implementing and supplementary legislation be enacted to effectuate the bare prohibition otherwise many questions of policy properly ventilated in the legislature have to be ruled and encroached upon by the judiciary. For instance, what rule should be followed in determining infringements and what sanctions are available for the punishment of violations?

Justice Antonio's advice was followed subsequently but only insofar as Batas Pambansa Blg. 52 declared that violation of Section 10, Article XII-C of the Constitution is a ground for disqualification[98] and empowered the Commission on Elections to refuse to give due course to the certificate of candidacy of the violator thereof.[99] The only relevant legislations enacted prior to the local elections aside from BP 52 were Presidential Decree Nos. 1661 and 1661-A which included in the coverage of the disqualification provision guest candidates,[100] and providing sanction for violations;[101] and, Presidential Decree No. 1667 issued four (4) days before the January 30, 1980 election which attempted to exempt certain candidates from the possible charge of turncoatism by adding the following proviso in Section 1 of PD 1661-A, to wit:

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[97] *Id.*, Cited by Justice Teehankee in his dissenting opinion in Ticzon v. Comelec, *supra*, note 94 at 719.

[98] Batas Pambansa Blg. 52 (1979), sec. 4.

[99] Batas Pambansa Blg. 52 (1979), sec. 7.

[100] Presidential Decree No. 1661 (1980), sec. 1 as amended, provides:

> "It shall be unlawful for any registered or accredited political party to nominate and/or support as its official candidate any person belonging to another accredited or registered party unless he has affiliated with the nominating party at least six months before the election: Provided, that a person who participated as an officer in the immediately preceding elections shall be deemed a member of such party as of the date of the political campaign, for purposes of nomination as official candidate of such party in succeeding elections."

[101] *Ibid.*

> "... Provided, that a person who participated as an officer in the campaign of a political party, group or aggrupation, in the immediately preceding elections shall be deemed a member of such party as of the date of the political campaign, for purposes of their nomination as official candidate of such party in succeeding election."[102]

It is reasonable to suppose that these were not the legislations in the mind of Justice Antonio.

Justice Teehankee insists that there should be a full-dress hearing on the charge of turncoatism for the Court or proper administrative party affiliation. For him the bare assertion and proof of changes in party links within the prohibited period is not enough to conclude that a candidate is a despicable turncoat. There must be a showing of the badges of opportunism. Thus, the bare factual finding by the COMELEC that a winning candidate changed parties as in *Sandalo, Ticzon,* and *Santos* fails to fully adhere to the letter and spirit of the constitutional provision. A full-dress hearing cures this defect for there the parties are allowed "full opportunity to present all relevant evidence (with confrontation and examination of the witnesses) on the vital factual and legal issues..."[103] The administrative and summary proceeding of the Commission on Elections will not suffice.

Justice Makasiar fully adheres to this liberal trend in declaring Meliton Geronimo, the winning mayoral candidate of Baras, Rizal, as a turncoat and political opportunist. He noted that the turncoatism of Geronimo was particularly despicable by the fact that he filed his candidacy as Nacionalista Party standard-bearer only after it was apparent that the KBL will support another candidate. He observes,

> "If his change of political color were due to honest disagreement on principles with KBL leaders, his act would have the aura of noble heroism. But his turncoatism is sheer opportunism because his change of party loyalty was simply due to the fact that he was not chosen the official candidate of the KBL."[104]

However, as I have discussed earlier, there had been no consistent hewing to the liberal or strict interpretation.

Justice de Castro attempts to apply the prohibition according to a more basic distinction to the effect that what the Constitution condemns is the adoption of and adherrence to, the ideals of a political party different from those of the party to which one had always affiliated himself.[105] Thus, he supported the Court's ouster of Ticzon from the mayoralty of San Pablo City after concluding that the latter changed parties from Liberal Party

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[102] *Ibid.*

[103] See Justice Teehankee's concurring opinion in Arcenas v. Comelec, G.R. No. 54039, 101 SCRA 437, 443.

[104] Geronimo v. Comelec, G.R. No. 52413, 107 SCRA 614 (1981).

[105] See Justice de Castro's concurring opinion in Ticzon v. Comelec, *supra,* note 40 at 699.

to the Nacionalista Party within the prohibited period. This position of Justice de Castro is not particularly strong on the basis of the records of cases where he took part. In *Ticzon,* he assumed that the Liberal Party and the Nacionalista Party had different ideals and party platforms. He never bothered to show the difference in his concurring opinion. The fact is, as earlier intimated in this paper, even Napoleon Rama is of the view that the two parties actually share the same ideals and platforms.[106] Justice de Castro made the same assumption in the *Santos* case. There he declared Manuel I. Santos to Taytay, Rizal a turncoat because he found substantial evidence to support that Santos transferred from the KBL to the NP. Again, he did not bother to examine whether the KBL and NP had conflicting ideals and platforms so as to include the case of Santos within the ambit of the turncoatism provision. Nevertheless, the fact that the KBL was able to act as the umbrella organization of the NP and LP in the assembly election of 1978 is already an indication that the three parties have a community of interests, ideals and platforms.

Justice Aquino's approach typifies the strict and literal application of the law. In *Sandalo,* the only significant consideration that caused him to declare David Sandalo a turncoat was the fact that the latter changed parties. In *Ticzon,* devoting only five short paragraphs on the turncoatism issue, Justice Aquino ruled that since the factual findings of the COMELEC cannot be disturbed on certiorari, the finding that Ticzon changed parties is binding upon the Supreme Court. No other findings were necessary.

Clashing approaches made by the Supreme Court in the disqualification cases did little to straighten the flip-flopping resolutions of the COMELEC. But these heightened the inconsistencies and confusion in the Court's own decisions in the numerous turncoatism cases that went before its consideration.

C. *1981 Amendments: Administering the Final Emasculation*

Perceiving the prohibition to be well-intentioned but unwieldy, the party in power worked to tone down its harshness and rescue it from the jurisprudential chaos it spawned in the local elections. In anticipation of the presidential election, the Batasang Pambansa sought the amendment of Section 10, Article XII-C, of the Constitution.

Working as a constituent assembly, the Batasang Pambansa approved the Pelaez proposal to maintain the section with the additional proviso leaving to the discretion of the National Assembly the enactment of appropriate legislation to cure the ailment of the turncoatism prohibition.[107] On April 7, 1981 the amendment became law and incorporated in the 1973 Constitution.

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[106] Napoleon Rama, *supra,* note 20 at 3.

[107] 2 BATASAN RECORDS 310 (February 26, 1982).

It is difficult to fully grasp the ramifications of the 1981 amendment. One observer said, "(T)he formula in the proposed amendment may yet solve some perplexing, if not embarrassing permitations in party affiliation."[108] What is presently clear is that in the sudden rush to amend the Constitution in 1981, the party in power succeeded exceedingly in emasculating the "novel and innovative" provision to control and eliminate the evils of indiscriminate changes in party affiliations.

Looking back it might be useful to reflect upon the question whether it was necessary to insert the proviso. It seems not. For instance, the arbitrary prohibited period of six (6) months did not present a problem to most candidates. It was the surprise elections which caused much of the furor. Unable to firm up ties with existing political parties coupled with the uncertain status of the *Kilusang Bagong Lipunan,* the sudden calling of the election subjected almost all of the candidates to charges of turncoatism. Only Presidential Decree No. 1667 issued four (4) days before the election saved the rest. Neither was the proviso necessary for the presidential election held that same year. Turncoatism was not even an issue. The hasty amendment made the turncoatism ban subject to the whims of the National Assembly which was the very reason why it was supremely important to place the provision in the Constitution. It is a sad commentary to our political culture that many electoral reforms we worked so hard to enshrine in the Constitution have now been virtually obliterated in a decade of constant desire to revert to electoral norms of the past. Two-party system. Partisan representation in the election boards. A turncoatism ban of uncertain future. All these we now favor after having been deliberately junked in the past.

III. *CONTINUING ELECTORAL REFORM*

Ever since the historic coup de grace executed by the *Batasan* to the turncoatism provision in 1981, several proposals have been received for consideration by the various committees of the National Assembly in anticipation of the passage of a code to govern all elections of the country. They are here discussed one by one.

A. *The Perez-Zamora Proposal*

Parliamentary Bill No. 1872 proposes a moratorium on the tuncoatism ban. It provides,

> "Sec. 4. *Moratorium.* — The provision of existing law to the contrary notwithstanding, any elective officer may change his political party affiliation or status during his term of office if:
>
> (a) He has been expelled by his party;

[108] Leonardo Quisumbing, *Electoral Reforms,* in UP LAW CENTER, 1981 CONSTITUTIONAL AMENDMENTS 20 (1981).

(b) He selects to join another political party; or
(c) He wants to assume a partyless status.

No change of political affiliation or status as provided in the preceding paragraph shall be permitted within six months before or two years after an election.

Any elective officer shall be entitled to change his political affiliation only once during his term of office."

The moratorium is defective in two ways. First, expulsion and assumption of a partyless status are not covered by the ban. The former is involuntary loss of party affiliation while the latter can hardly be classified as an attempt to change parties. Only very serious breaches of party discipline merit expulsion. It is hardly the best means of intentionally escaping a party in power. And moreover, a party can always deny a member's opportunity to change party membership by meting out a lesser penalty like indefinite suspension which can have the same effect as expulsion. Assuming a partyless status involves no change of parties and it is seriously doubted if there is a way of interpreting this situation so as to be covered by the existing ban. Second, the moratorium assumes that opportunism afflicts only those who move from the minority party to the majority party. Or, that the opportunism of party members who transfer to the opposition is of a lesser degree. History, however, has shown that many politicians, including President Ferdinand E. Marcos, moved to the minority party in order to escape the judgment of the electorate on the incumbent party's performance while in power. These situations are no less opportunistic than in those where politicians move to the party in power to partake of the spoils in office and the benefits of patronage.

B. *The Tolentino Proposal*

Parliamentary Bill No. 1917 proposes the following: (a) allowing elective public officers to change parties within one year immediately preceding an election where they shall be bonafide candidates; (b) allowing a non-elective public officer to change parties anytime; (c) prohibiting a person who has sought but fails to be nominated by any political party from being nominated by any other political party as a candidate in that election; and, (d) providing penalties for violations.

Again, the proposal is described as modifying or qualifying the constitutional prohibition. Yet a simple comparison reveals that the end result is a complete destruction of the present prohibition. The proponent similarly assumes that opportunism exists only when a political hopeful shops for a party and when an elective public officer transfers to the majority party after his election into office. It can be reiterated here that there is as much opportunism involved when in the face of an election the elective officer abandons the party that placed him in office. Furthermore, the turncoatism ban has not only a restrictive function but also one which

is creative. It commands the political man to cultivate his roots with a party and work for its strength to enable the whole political machinery to maintain stable party organizations. The present period provided by the Constitution is enough for him to sink a few roots in the new party. For, as it has often been stated, an electoral process grounded upon principles and issues is better than that grounded upon men and the charisma of leaders. Allowing any person other than an elective public officer to change parties anytime is to encourage a return to the political rootlessness of the past and its attendant irresponsibility. The problem of "party shopping" sought to be proscribed by the third provision is amply covered by the present ban. As presently worded no candidate in an election will qualify for office if he changed parties within the prohibited period. Unless political parties choose earlier than six (6) months preceding the election, all others nominated or not as candidates during or after the commencement of the six-month period have no hope of escaping the ban. If a candidate was nominated within the six-month period he must prove to the Commission on Elections that he did not change parties within that period to qualify. Removing or expelling an elective public officer who violates the ban is perfectly valid and commensurate penalty as that of disqualification of a candidate from the election race.

C. *The Baterina, et al. Proposal*

Parliamentary Bill No. 1877 intends to implement the constitutional amendment "by providing circumstances where" party changes are "justified, but which do not amount to turncoatism." They are, namely: (a) subsequent changes in party platforms; (b) loss of confidence or ostracism; (c) expulsion from the party; (d) founding a new party; (e) inactivity or dissolution of a party; (f) graft and corruption in a party; (g) re-alignment of party membership brought about by changes in the political structure. Except for expulsion from and dissolution or inactivity of a political party which are involuntary in nature and are not, it is submitted, covered by the ban on turncoatism which intends to cover intentional schemes of candidates, the rest are at best unwieldy standards to gauge the presence or lack of the requisite opportunism in the party change. For instance, changes in platforms may take many forms and degrees, and a shrewd politician can take insignificant changes, oppose these changes, and be freed to join other parties. Ostracism, loss of confidence, suspicion of connivance with other political parties, charges of graft and corruption, are ordinary fare to a politician's life. To allow party changes on these grounds is to create chaos upon chaos. It is not beyond popular knowledge that charges of similar kind fly thicker and thicker as the election day approaches. The Commission on Elections and the Supreme Court demonstrated in the preceding elections their unreliability in the application of a simple provision. What more if the exempting grounds above-enumerated are added? These grounds are easy to concoct, susceptible to myriad interpretations, and worse, broad

enough to cover even party changes clearly opportunistic. Suspicion of political connivance can apply even to the most loyal of partymembers. For example, the candidacy of Alejo Santos as Nacionalista Party standard bearer for the presidency in 1981 was interpreted by many, oppositionists and neutral observers alike, as a mere propaganda tool to create a semblance of a legitimate election, and that in fact, Santos' candidacy was financed by the party in power to minimize the negative effects of the boycott staged by the other existing political parties.

Contrary to its intention the Bill essentially does not "implement" the ban on turncoatism. It is designed to defeat it. It is true that healthy political parties must be encouraged for a working democracy patterned partly after a parliamentary government to succeed. Nevertheless, it is highly dubious if assistance can come from creating loopholes in a law whose primary purpose is to disrupt the very inimical activities which undermine the electoral process.

D. *The Davide, et al. Proposal*

Parliamentary Bill No. 58 provides that any person found violating Section 10, Article XII-C, of the Constitution, "shall be ineligible for office, or his certificate of candidacy shall not be given due course nor the votes in his favor be counted." It is also provided that "in the event that judgment comes after his election, he shall automatically cease in office." A similar provision appears in the *Tolentino* proposal. This avoids the problem of "no opponent" proclamations made by the Commission on Elections such as the one made in the *Ticzon* case. It has been observed that all candidates whose candidacy have not been invalidated up to the day of the election are entitled to a canvassing. Also, this provision clarifies to a large extent the effect of a turncoatism charge found meritorious by the COMELEC and the court before and after election.

These various proposals are now the subject of consideration by the *Batasang Pambansa* together with the proposals that surfaced in the three public hearings conducted by *Batasan* representatives in the cities of Baguio, Cebu and Davao, respectively. Whatever may be the result, surely a move in the direction of the moratorium/exception proposals seriously weakens the turncoatism ban even as its future is held uncertain by the power of the *Batasan* to nullify it completely by virtue of the amendment introduced in 1981.

Conclusion

The road we have followed in analyzing the rise and fall of an electoral reform had been long and often circuitous. And in the process we discovered how a sector of the legal order responded to a threat to its stability. In the late sixties when it became clear that indiscriminate changes in party affiliation corroded the electoral process by render-

ing inutile the people's vote, the people's representatives in the constitutional convention passed a law and placed it among the primary rules that govern political exercises, the Constitution. Amazingly, in the span of three elections, elections which can hardly be characterized as normal, regular, as well as appropriate for the application of the turncoatism ban, we have reduced the constitutional provision to the level of an ordinary Batasan legislation with the 1981 Amendment, and most probably, before the next election the provision will be shot through with exceptions as to be practically worthless in relation to the original cause and purpose for which it was enshrined in the fundamental law, not because it was ineffective, nor because it was harsh, but because two institutions charged with the responsibility of interpreting popular aspirations failed to respond adequately in the application of the rule. The Commission on Elections was inconsistent in its orders and judgments. Moreover, it demonstrated time and again its unwillingness to defer to the rules laid down by the Supreme Court. Similarly, the high tribunal contributed to the chaos by refusing to heed its own precedents. Thus, it cannot be deemed unfounded to assert that the source of so much fear on the part of the *Batasang Pambansa* which led ultimately to the enactment of the 1981 proviso was the spectacle provided by the Commission on Elections and the Supreme Court during and after the 1980 elections. It is indeed unfortunate that an electoral reform should be wasted, or rendered lifeless, by the inadequacies of two governmental institutions sworn to support its vigorous application.

In their hands the tamer came back tamed!