

# **CONSTITUTIONAL CONTROL OF THE ELECTORAL PROCESS AND POLITICAL PARTIES\***

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## **POINTS OF INTEREST**

### **1. *Change of Course***

In the U.P. College of Law, the old sleepy subject described as "Public Officers and Civil Service" is now transformed to the subject of "Electoral Process and Public Office." Kindly note, that the change was deliberate if not prescient. This course will stress not the office but the process that will go into the choice, control and accountability of public officers. It will stress the importance of the independent Constitutional Commissions in our present system of government. It will focus on the role of the COMELEC as the fulcrum of the sovereign will of the people expressed through initiatives, referenda, plebiscites, elections and recall: in brief, the electoral processes in a democratic society.

But the new course in its description goes beyond ordinary law. It goes, and deeply I believe, into "a study of the principles" behind the electoral process. And it is the principles that we must stress. So that even if Batas Pambansa Blg. 697 is good only for one election, the principles embedded there will remain and will not be forgotten. And if we remember that the electoral system as well as the right of suffrage are guaranteed in the Constitution, which is more than positive law, but more important, a distillation of the political genius of our people or their mores and their economic aspirations, then the study of the electoral process will once again be a lofty as well as fruitful enterprise even for our sceptical students now.

### **2. *Voting Rights of Aliens***

The aforementioned point of departure is at the micro level. On the macro level, perhaps it should be of interest to all students and practitioners to observe a growing trend concerning the basis of election law in many countries abroad. Previously, we reported that certain countries are beginning to allow alien residents to vote in industrial elections at the firm level. We can now report that, in Europe, there is a growing number of countries that allow alien residents to vote in local, municipal and regional elections. In Denmark, foreigners since 1981 have already the right to vote and be voted upon in local and provincial elections, provided these foreigners have

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had three years residence in that place. Norway since 1983, similarly, has allowed foreigners to vote, provided they are over 18 years old and with three years of residence. Sweden since 1975 has enabled foreigners to vote and be elected in local and regional elections, with the same residence requirement of 3 years only. In Ireland, foreigners have long been allowed to vote and be voted in local council elections. In the United Kingdom, persons from Ireland and all the Commonwealth countries, or 950 million subjects, can vote, provided they are residents of a given constituency. In West Germany, lawyers have moved to grant voting rights to aliens in local council elections (Aliens Law Section). The 1983 Constitution of Holland has granted to foreigners (non-Dutch residents) the right to vote and to stand for elections in local councils. Of course, we all know that in the European Community (consisting of 12 countries including Spain and Portugal) by treaty agreement, European residents are allowed in any country the right to vote by way of universal suffrage in all European Community elections.<sup>1</sup>

As remarked by d'Oliviera, "whether non-nationals (foreigners or stateless persons) may take part in domestic elections at the local, regional or national level is of great theoretical significance."<sup>2</sup> I hasten to add that to sever the nexus of citizenship or nationality from suffrage is next to revolutionary in constitutional law. However, it is but an affirmation of suffrage not merely as a political right but a human right. This seems to be the meaning of the Danish and other European trends. Considering the great number of Filipinos in Europe and in other countries, as well as the envisioned free flow of persons and professions, goods and services in the ASEAN states, then we can expect that this idea of aliens voting in local elections may soon knock on our doors. As well said, "granting of the franchise to aliens will not be an isolated phenomenon."<sup>3</sup>

### 3. Unconstitutional Application of Law

The third point of interest to which we may direct our attention is now with us. This is the doctrine of "unconstitutional application" of valid law to specific cases. To Chief Justice Fernando, we owe the first direct and explicit application of this doctrine in the case of Mayor Layno of Surigao. As the Chief Justice says:

1. A succinct statement of the doctrine of unconstitutional application was set forth in *Pintacasi v. CAR*, in these words: "A law may be valid and yet susceptible to the charge of its being unconstitutionally applied."

2. . . . It is a basic assumption of the electoral process implicit in the right of suffrage that the people are entitled to the services of elective officials of their choice. For misfeasance or malfeasance, any of them could, of course, be proceeded against administratively or, as in this

<sup>1</sup> H. U. Jessurun d'Oliviera, *Electoral Rights for Non-nationals*, 31 NETHERLANDS INT'L LAW REV. 50 *et. seq.* (1984).

<sup>2</sup> *Id.* at 67.

<sup>3</sup> *Id.* at 69.

instance, criminally. In either case, his culpability must be established. Moreover, if there be a criminal action, he is entitled to the constitutional presumption of innocence. A preventive suspension may be justified. Its continuance, however, for an unreasonable length of time raises a due process question. For even if, thereafter, he were acquitted in the meanwhile his 'right to hold' office has been nullified. Clearly, there would be in such a case an injustice suffered by him. Nor is he the only victim. Clearly, there would be in such a case an injustice suffered by him. Nor is he the only victim. There is injustice inflicted likewise on the people of Lianga [Surigao del Sur]. They were deprived of the services of the man they elected to serve as mayor. In that sense, to paraphrase Justice Cardozo, the protracted continuance of this preventive suspension had outrun the bounds of reason and resulted in sheer oppression. A denial of due process is thus manifest. It is to avoid such an unconstitutional application that the order of suspension [of Mayor Layno since Oct. 26, 1983] should be lifted.<sup>4</sup>

Now this *Layno* case is the progeny of the *Pintacasi* case, where this doctrine was enunciated more as a dictum than ratio, as in twelve other cases. But in *Pintacasi*, the Chief Justice did say explicitly if quite dogmatically: "A law is not to be applied where to do so would create a situation offensive to every norm of justice. Petitioner [Pintacasi] would stress then that an unyielding insistence on a literal compliance with this provision of law as to her runs counter to the due process guarantee."<sup>5</sup> If this doctrine gains adherents, then we are closer to natural law jurisprudence than *Rutter v. Esteban*<sup>6</sup> had put us. It may also import the English idea of natural justice which has been said to play in Britain the same part as "due process of law" in the U.S.<sup>7</sup>

In fact, as I read the vigorous dissents of Justice Teehankee in many election cases like the earlier *Ticzon v. COMELEC*<sup>8</sup> and the *Guiiao*<sup>9</sup> and *Padilla*<sup>10</sup> cases, his principal attack is directed against the narrow or technical interpretation and application of the provisions of election laws with the resultant impression that these technicalities defeat natural justice and the elemental purpose of ascertaining the voters' will. In the second *Occena v. COMELEC*<sup>11</sup> case, Justice Teehankee in his dissent pointed out with sober realism the ill effects of "strictures and restrictions" in the barangay election law (or Batas Pambansa Blg. 222). In his view the law did "oppressively and unreasonably straitjacket the candidates as well as the electorate and gravely violate constitutional guarantees" of freedom of association and other rights at the grassroots level.

<sup>4</sup> *Layno v. Sandiganbayan*, G.R. No. 65848, May 24, 1985, 136 SCRA 536, 540-541.

<sup>5</sup> *Pintacasi v. CAR*, G.R. No. L-23704, July 28, 1972, 46 SCRA 20, 25.

<sup>6</sup> *Rutter v. Esteban*, 93 Phil. 68 (1953).

<sup>7</sup> WADE, *ADMINISTRATIVE LAW* 394 (4th Ed., 1977).

<sup>8</sup> *Ticzon v. COMELEC*, G.R. No. L-52451, March 31, 1980, 103 SCRA 671.

<sup>9</sup> *Guiiao v. COMELEC*, G.R. No. 68056, July 5, 1985, 137 SCRA 356.

<sup>10</sup> *Padilla v. COMELEC*, G.R. No. L-68351-52, July 9, 1985, 137 SCRA 424.

<sup>11</sup> G.R. No. L-60258, January 31, 1984, 127 SCRA 404, 418.

Madame Justice Melencio-Herrera, who often dissents along with Justice Teehankee, is of the same mind as shown in her ponencia in *Cordero v. Mascardon*. "Fundamentally", she says,

the purpose of election laws is to give effect rather than frustrate the will of the voter. No technical rule or rules should be permitted to defeat the intention of the voter, if the intention is discernible from the ballot itself, not from evidence *aliunde*. This rule of interpretation goes to the very root of the system."<sup>12</sup>

It should seem to me that Justices Teehankee and Herrera as well as the emerging troika of dissenters that might include Justice Abad Santos would be well satisfied if we guard against inconsistent, narrowly technical, and perhaps nearly unconstitutional application of provisions of certain election laws. That would be a tall order, of course, but quite ineluctable under the aegis of the rule of law and democracy which we cherish.

On the obverse side is the question of non-application of the law as well as of the Constitutional provisions.<sup>13</sup> I refer to the sectoral representation in the Batasang Pambansa. This is a matter that must be addressed by the President and the COMELEC, as well as the sectors affected, viz., industrial labor, agricultural labor and youth.

#### 4. *Communist Parties*

The fourth and last point of interest, to which I respectfully call attention is none other than the subject of whether the so-called Communist Party of the Philippines should be legalized. Minister Ponce Enrile was once in favor of this step, but judging from the ongoing military campaign against insurgency, he might already have changed his mind.

The point I wish to make, however, is that we should carefully distinguish between the old party known as the PKP (Partido Komunista ng Pilipinas) and the new party called the CPP (Communist Party of the Philippines). PKP led by Dr. Lava and its present General Secretary, Felicisimo Macapagal, have made peace with the government since 1974. This must have been the factor that prompted President Marcos at one time to declare that the Communist Party has become or is a legal party. On the other hand, the CCP led by Prof. Jose Ma. Sison and younger cadres have broken away from PKP as early as 1968-69. The struggle between the old PKP and the new CPP is more than generational: it is one of principle, one that reflects the Maoist view against the Moscow view. We should be clear which party is deemed outlawed prescinding from the *Tayag*<sup>13</sup> case applying RA 1700 up to recent PDA, Public Order and related decrees. My own view is that PKP is legitimate, having been given amnesty which its leaders

<sup>12</sup> G.R. No. UDK-6066, Sept. 30, 1984, 132 SCRA 413, 416.

<sup>13</sup> See Batas Pambansa Blg. 697 (1984; CONST., art. VIII, sec. 2.

<sup>14</sup> *People v. Ferrer*, G.R. Nos. L-3261314,, Dec. 27, 1971, 48 SCRA 382.

accepted, as shown by their acts since diplomatic relations of our government have grown with the governments of Eastern block states.

As revealed by the PKP leaders, however, there is a new dimension in the radical movement. That is the political activation of the Catholic Church in the last decade. While the "new political role of the Church" is far from grounded on a "monolithic basis," it is said that since the Aquino assassination, "the institutional Church has gone further to the militant side." It is remarked that "the left-wing Catholic Church" leaders have contributed "to the transformation of the CPP from a Maoist party to a Catholic communist party."<sup>15</sup> That, if true, is immensely significant to all of us.

### CONSTITUTIONAL CONTROL

Free, orderly and honest elections are now enshrined not merely as a statutory formula but as a constitutional mandate. They form the focus of the powers and functions of the Commission on Elections, its *raison d'être*.

But their specification in the fundamental law reflects somber realities of our political life: (a) our concern to approximate a peaceful and credible conduct of elections; (b) the primacy of the President, whose initiative and consent, must be presumed favorable to such electoral conduct; and (c) the indispensability of the armed forces at this stage of our political development. These realities are graphically crystallized in Art. XII-C, Sec. 2 of the Constitution, for all who care to scan its meaning beyond the inane and the superficial:

The Commission on Elections shall have the following powers and functions:

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(4) Deputize, with the consent or at the instance of the President, law enforcement agencies and instrumentalities of the Government, including the armed forces of the Philippines, for the purpose of ensuring free, orderly, and honest elections.

Our discussion must, of course, hew closely to the terms of reference for the COMELEC professorial chair: "to deliver a public lecture and/or publish a dissertation on a topic bearing the right of suffrage or ancillary rights which are at the base of the democratic idea of republicanism and popular sovereignty embodied in our Constitution." We began with the development of suffrage and elections from the idea of ritual regicide to the present concept of human rights.<sup>16</sup> Then we explored the legal and parliamentary aspects of the election boycott.<sup>17</sup> Now, we direct our inquiry

<sup>15</sup> COURIER, 4 *et seq.* (Jan. 1985).

<sup>16</sup> Quisumbing, *Election and Suffrage: From Ritual Regicide to Human Rights*, 58 PHIL. L. J. 28-43 (1983).

<sup>17</sup> Quisumbing, *Parliamentary Immunity vs. Liability for Election Boycott: Censure, Expulsion or Prosecution*, 2 BATAS AT KATARUNGAN 71-87 (1983).

to the constitutional ramifications of controlling the electoral process, including the activities of political parties.

Since our research is intended to be applied, and not merely theoretical, may I state right away that one specific question spurred our efforts beyond the academic. That query is: what chance does the Opposition (party or coalition of parties) have to win in the forthcoming elections? Stated differently, we asked: under what conditions may the incumbents (Marcos Administration) be defeated?

While exploring possible answers to these questions, it is inevitable that we look into our Constitution (including the positive provisions and the customary conventions), our electoral laws, and our electoral practices. Decided cases have to be consulted for doctrine and dicta, and possible trends emerging in court. But the greater bulk of the work has to do with empirical researches and theoretical models as well as insights of political thinkers. While election law, including Constitutional law provisions, bears directly on the conduct of voters, registrars and election committees, the efficacy and validity of policies and presumptions behind the law have to be examined. They have to match social and empirical data to be meaningful. Laws that assume a homogenous voting population cannot apply to our setting of geographic and cultural diversity. The scalar distribution of active voters in specific areas reflecting policies founded on middle class values and preferences may be questionable. The legitimacy of certain structures of government, e.g. metropolitan commissions or regional governments, may be open to doubt.<sup>18</sup> The entire control system embodied in our Constitution, which decisively influences the electoral process and the growth of political parties, may be biased in favor of certain economic classes and interests without our wanting it. All these we explore as we tackle our principle queries.

### I N S I G H T S

The first insight that cannot be taken lightly has reference to the use of force in relation to political contest. However much we disguise it, the monopoly of force by the state, which is to say the government or the governors, is something given. In the conduct of elections, the armed forces of the state hold a double-edged sword: to guard or gut the ballot box, to protect or deflect the popular will. That is why it is vital that the armed forces be politically neutral, sworn to defend the Constitution and not individual officers of the state.

Deeper than this observation, we find in the philosopher Karl Jaspers a reminder that, "we too easily forget the fundamental reality of force, although it is present to us daily, even though covertly. Force is in-

<sup>18</sup> *Lopez v. COMELEC*, G.R. No. 56022, May 31, 1985, 136 SCRA. See Abad Santos, J. Dissenting, 633, 650.

escapable . . . there is no human existence without the reality of force."<sup>19</sup> Fortunately, Jaspers offers an enlightened answer to the query: how is force to be set in the right place, divested of its evil character, as a factor in the attainment of order?

The answer is furnished by the primordial struggle of history: between the rule of law and the rule of force. Justice is to become real through law on the basis of a guiding ideal law, natural law. This ideal law takes shape, however, only in the historical law of society that gives itself laws by which it abides. The liberty of man begins with the validity of the written law of the State in which he lives.

This liberty is called *political liberty*. The state in which freedom through law prevails is called a *constitutional State*. A constitutional State is one in which laws come into being and are altered decisively along a legal path. In democracies this path leads *via* the people, *via* its collaboration and participation, whether direct or indirect, through its representatives, who are periodically renewed in unimpeachable free elections.<sup>20</sup>

Given that insight, we are constrained to underscore misgivings about the democratic character and legitimacy of the 1973 Constitution, as expressed by foreign scholars, precisely because of the utilization of military force and the manipulation of the Constitutional Convention in the process of the approval and ratification of the new Charter.<sup>21</sup> With the 1976, 1980, 1981 and 1984 amendments in the Constitution, lapses in the work of the constitutional convention delegates might have been partly covered. But with the clamour of some delegates themselves to reconvene, they impliedly admit their work is incomplete, undone.

Further, neither time nor popular acquiescence has cleared some fundamental confusion about our basic law. For instance, the Chief Justice in the FTWU<sup>22</sup> case asserts our form of government is essentially presidential. But President Marcos in his speech before a National Convention of Lawyers<sup>23</sup> insists it remains a parliamentary system. Sharp contrary views cannot add to the people's reverence for the fundamental law. To the same effect would be the possible inclination of the Supreme Court to negate powers of the COMELEC as "the sole judge of all contests relating to the elections, returns and qualifications" of members of parliament and elective provincial and city officials, despite the *Aratuc*<sup>24</sup> doctrine.

Concern for the sanctity of the fundamental law, however, cannot blind us to demonstrably unwise provisions of the 1973 Constitution, which later amendments did or should correct. Examples were in cases

<sup>19</sup> SHEROVER, *DEVELOPMENT OF THE DEMOCRATIC IDEA* (1974).

<sup>20</sup> *Id.* at 559.

<sup>21</sup> See BEER (Ed.), *CONSTITUTIONALISM IN ASIA* 142-143 (1979).

<sup>22</sup> *Free Telephone Workers Union v. Ople*, G.R. No. 58184, Oct. 30, 1981, 108 SCRA 757.

<sup>23</sup> Nov. 24, 1984 at Malacañang.

<sup>24</sup> *Aratuc v. COMELEC*, G.R. Nos. L-49705-09, Feb. 8, 1979, 88 SCRA 251.

like *Geronimo*<sup>25</sup> and *Ticzon*<sup>26</sup> on turncoatism. The harshness of the provision on turncoatism can now be mitigated by provision of law. But the present unresolved issue of accreditation of political parties also stem from the 1971 Constitutional Convention committee's analysis of factors in the struggle for power among parties. Hence, the inevitable delay in accreditation, despite the 1981 amendments effecting electoral reforms.

Numerous NAMFREL (National Movement for Free Elections) proposals affecting the electoral code suffer, we believe, from the same streak of short-sighted idealism. With due respect, we found, in a detailed study of NAMFREL proposals embodied in a parliamentary bill, certain provisions contrary to or inconsistent with present constitutional provisions, e.g., in the age of candidates for high office. But the more objectionable point in NAMFREL's insistence to continue as the citizens' arm of the COMELEC is baffling, unless it is related to NAMFREL's own self-interest as an organization with funding commitments. If its tenor of distrust is sustained while clamouring to speak for the mass of citizen-voters, it could lead to a variant of ochlocracy. Surely, could it displace public officers and perhaps substitute them with a shadowy agency to manipulate the voters in violation of the provisions for constitutional control of the electoral process?

#### CONTROL OF PARTIES

We come now to the problems related to the control of political parties. There is no doubt that political parties are the main instrument for the mass mobilization of voters. As Max Weber defines it, a political party is a "voluntary society of propaganda and agitation, seeking to acquire power in order to procure chances for its active militant adherents to realize objective aims, or personal advantages, or both."<sup>27</sup> But once the party gains office and acquires power, the authority of the state becomes invested in the acts of the party. "It controls the state's resources—financial, mechanical, and human—although only to the extent that these resources have been entrusted to the part of the government that is generally subject to capture by the party."<sup>28</sup>

The importance of political parties in the conduct of elections and in the structure of government is recognized in the new Constitution explicitly. The COMELEC is duty-bound to register parties that meet requirements therefor, and to accredit two parties with the required votes attained. The only exceptions are religious sects and violence-prone parties.<sup>29</sup> Registration gives the party a legal personality, while accreditation brings bonus rights and privileges.<sup>30</sup> It would appear half the real battle is won if the party gets accredited, because then it will be entitled to representation in registration,

<sup>25</sup> *Geronimo v. COMELEC*, G.R. No. 52413, Sept. 26, 1981, 107 SCRA 614.

<sup>26</sup> 103 SCRA 671.

<sup>27</sup> Quoted in DE GRACIA, *POLITICAL BEHAVIOR* 194 (1962).

<sup>28</sup> *Ibid.*

<sup>29</sup> CONST., art. XII-C, sec. 2 (5).

<sup>30</sup> CONST., art. XII-C, sec. 9 (2).



inspection and canvassing boards. If the law so provides, it might even get some subsidy.

With obligatory voting mandated in the Constitution,<sup>31</sup> the provision on political parties is an incentive for mass mobilization by interested party leaders of different sectors in support of public causes and issues. For this and other reasons, care should be taken by political parties to avoid foreign entanglements that could compromise their integrity or embarrass their activities. "The exercise of the sovereign will of the people through the ballot," says Dean Irene Cortes, "is the keystone of the system of government envisioned in the Constitution."<sup>32</sup> But it is the political parties which have been entrusted with the prerogative to mobilize and direct the masses for that sovereign exercise. If the voter is prohibited from demeaning his ballot by an individual act, neither can the political party compromise the integrity of the electoral process by collective acts. It behooves all parties to resist, for instance, foreign intervention, however well-meaning and lucrative.

#### IRON LAW

At this point, we have to contend with a second insight of social scientists, which is crucial to the Constitutional control of political parties. This refers to what is now known as the "iron law of oligarchy" operating in political parties. According to Roberto Michels in his 1915 treatise, *Political Parties*,

[e]very party organization represents an oligarchical power grounded upon a democratic basis. We find everywhere electors and elected. Also we find everywhere that the power of the elected leaders over the electing masses is almost unlimited. The oligarchical structure of the building suffocates the basic democratic principle. That which *is* oppresses that which *ought to be*.

Further:

Reduced to its most concise expression, the fundamental sociological law of political parties . . . may be formulated in the following terms: 'It is organization which gives birth to the dominion of the elected over the electors, of the mandatories over the mandators, of the delegates over the delegators. Who says *organization*, says oligarchy.'<sup>34</sup>

The oligarchic trend expressed in this iron law does not exempt monopolistic and charismatic parties like KBL, elitist and coalition parties like UNIDO, much less class-oriented parties like the SDP and Workers Party.

The iron law might have already reared its head in the Philippines in the bosom of the Nacionalista Party in Quezon's time.<sup>35</sup> Martial law

<sup>31</sup> CONST., art. V, sec. 4.

<sup>32</sup> GOVERNMENT IN TRANSITION 90 (U.P. Law Center, 1979).

<sup>33</sup> In 2 CURTIS (Ed.) GREAT POLITICAL THEORIES 309 (1967).

<sup>34</sup> Michels, cited in De Grazia, *supra* note 29 at 224.

<sup>35</sup> FRIEND, BETWEEN TWO EMPIRES (1965).

from 1972 to 1981 raised also the alarm of another oligarchy, substituted by a 'constitutional dictatorship.' Under the amended Constitution, we should watch out for a sure sign that Michel's iron law will strike again, e.g., when the Constitution no longer controls political parties but, instead, one party controls the organs of the Constitution, including, but hopefully never, the COMELEC.

#### ELECTORAL FLAWS

Our job will be incomplete if we did not touch upon fundamental flaws of the electoral process subsumed in journalistic parlance as "lack of credibility" and in the economist's jargon as "patent irrationality." In truth, how can there be free, orderly and honest elections if the conduct of electors is irrational, and the election results incredible? We have to address the issues of rationality and credibility, like Siamese twins, on the premise that once electoral conduct is rational, electoral results will be credible.

Since rationality in our view has an economic underpinning, we have to consult thinkers on this aspect of the problem. The economist Gunnar Myrdal has observed:

If the United States had prepared the Philippines for political independence rather better than the European colonial powers had prepared their dependencies, the same cannot be said of its achievements in the economic sphere. American policy did little to modify the Spanish heritage of large landholdings, the high proportion of sharecropping, and the wealth and influence of the Church.

... 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 interest in preserving their privileged position is hardly compatible with the democratization of Filipino society. Yet it was to this class that political power was increasingly transferred from the 1930s onwards, and the results were what might be expected. 'Political bosses' effectively controlled the votes of those who were enfranchised by virtue of their literacy qualifications; corruption was widespread and shameless; and those conditions were bluntly disclosed by an extraordinarily free press, which was another product of American dominance.<sup>36</sup>

Since Myrdal is one of the economists that influenced President Marcos, on the theory of the "soft state," we find the President citing Myrdal in two seminal books, *Today's Revolution: Democracy*, and *Notes on the New Society*. The President echoes the sentiments of Myrdal:

The oligarchic elite manipulate the political authority and intimidate political leaders; the masses in turn, perpetuate a populist, personalist and individualist kind of politics. The permeation of oligarchic 'values' is also managed through the control of the means of mass communication.<sup>37</sup>

<sup>36</sup> 1 MYRDAL, *ASIAN DRAMA: AN INQUIRY INTO THE POVERTY OF NATIONS* 148 (1968).

<sup>37</sup> MARCOS, *TODAY'S REVOLUTION: DEMOCRACY* 99 (1974).

The problem of the moment clearly involves more than economic backwardness. The conflict is between different levels of underdevelopment. For while we may have a sophisticated constitutional structure, it serves an unsophisticated population in a largely feudal economy. The mass of voters are rooted in custom and tradition of the village (barangay) where reciprocity and kinship, rather than rationality and civic conscience, are prevailing values. Political leaders and parties cannot ignore the constant tug-of-war between tradition and modernity, except at the cost of forfeiting votes. Nor may the individual voters ignore obligations of family honor and reciprocal debt to political patrons, even if it means blind obedience at the polls.

There is a poignancy if not irony in par. 6 Sec. 2, Art. XII-C of the Constitution, which directs the COMELEC to "recommend to the Batasang Pambansa effective measures to minimize election expenses and prohibit all forms of election frauds and malpractices, political opportunism, guest or nuisance candidacy or other similar acts." No doubt the framers' intent is laudable. But the growing list of prohibited acts penalized by our election law attests to the herculean task of eliminating "all forms of election frauds and malpractices." Control of the electoral process by criminalizing an infinite series of acts may prove draconian and futile. It is preferable to provide incentives for obedience to law rather than fines or prison terms for disobedience. It is time perhaps to reduce the number of acts penalized in the election code. Attention should be focused only on those transgressions that are worth the economic and human costs of proper prosecution.

If cost-benefit analysis is made of the electoral process, perhaps the flaws in the system could be pinpointed. As of now, an impression is created that the economic impact of political campaigns could hemorrhage the nation's economy, and further bankrupt the government. Ill-timed snap elections could only produce destabilizing effects on the nation's recovery program. Our society needs respite from repeated shocks from many causes: inflation, devaluation, foreign debts and political violence. Dates already set by law or the Constitution for regular elections ought to be regularized and respected for the people's peace of mind.

#### DEFENSIVE MEASURES

Part of the control of the electoral process and partisan activities relates precisely to irrational and whimsical conduct of politicians. Voters ought to be defended against such conduct. Examples of defensive measures already exist: limits on election expenses, ban on offensive advertising, equal time and space in mass media, and responsibility for solicited campaign funds. To ensure free, orderly and honest elections, the COMELEC may supervise or regulate the enjoyment and utilization of all franchises or permits for the operation of transport, other public utilities, and mass

media,<sup>38</sup> if only to underscore the need for preventing their abuse during the election period.

At this point, we have to contend squarely with the view, advanced theoretically in an economic model of democracy, that some voters may find it rational to sell votes or abstain from voting on election day, were not these acts punishable by law.<sup>39</sup> Thus, according to this thesis, a voter without scruples, disinterested in election results, may find it perfectly rational to make a net profit by selling his vote. Or disgusted by the performance or platforms of contending parties, a voter may rationally boycott an election that will bring him no utility income, even in a psychological sense. This thesis is supported by persuasive scholarship, not by gut-feeling activism. Our only rebuttal is to state that, even if boycott and vote-buying could be psychologically and economically rational, they could not be countenanced because in the long run they would cause the collapse of the electoral system. No rational voter or party would deliberately court such peril to democratic society.

But for purposes of control of the electoral process and party activities, it is well to bear in mind Downs' assertion that voting is never costless for the individual voter.<sup>40</sup> Timing and spacing of elections could add to costs that a worker or farmer bears in going to the polls, or attending meetings. Were he to vote with full intelligent data on candidates and parties, his cost of decision-making will soar beyond his income capacity. The alternative is voting without sufficient knowledge of issues and persons involved, which is to say, voting below the rational threshold. Knowing that millions of voters come from rural and depressed areas, the task of full information delivery and voter education on election issues should now be addressed by public agencies and the mass media seriously. It is unfair to burden the individual voter with the obligation to vote, without providing him the facilities to cast his vote intelligently, and thus decide election issues rationally.

#### TWO-PARTY SYSTEM

From this same standpoint of rationality, it should be clear that the electoral control structure embodied in the Constitution now is intended for a two-party system. This was not the original intent of the 1973 Constitution, which contemplated a third party in the constituency where accreditation is sought. Our political leaders should take heed of this fundamental change, which effectively institutionalizes the existence of one opposition party to face the ruling party nationwide. The present system will be inefficient or will bog down if several parties present themselves to the electorate. Worse, third or fourth parties will only complain

<sup>38</sup> CONST., art. XII-C, sec. 5.

<sup>39</sup> Downs, *ECONOMIC THEORY OF DEMOCRACY* (1965).

<sup>40</sup> *Id.* at 265.

of discrimination, a denial of equal opportunity. But the Constitution is clear: only two parties will be accredited and entitled to the prerequisites that such accreditation brings (including election inspectors and canvassers).

Incidentally, the electoral control system embodied in the Constitution negates the idea of a parliamentary system in the European context. To compare our present system with the French system could be superficial and misleading. For example, we do not have a run-off system or proportional representation that are the hallmarks of the multi-party system followed in France. This brings us, of course, to the question of a legal Communist Party, abovementioned. The logic of a multi-party system allows Communist Party candidates because that system encourages sharp ideological differentiation of parties for the benefit of voters. Our control system, in contrast, encourages two parties to fuzz their respective platforms, and tone down their ideological commitments, if any.

If we want the Communist Party (or Parties) in the Philippines to participate legally in our elections, if we want to follow the European parliamentary system with possible election run-offs and coalition governments, then we have to re-think the control structure in our Constitution. If we now allow multiple parties, the elections will be confusing and inefficient. Unless we change to proportional representation, Communists and Socialist Parties, if any, will have to be content with protest votes and fringe activities like marching in a parliament of the streets. You cannot allow three or more trains to run in a two-track railroad, in the same way that we cannot encourage three or more political parties in a constitutional system intended for two-party controls. Both scenarios are simply irrational, and foreseeably disastrous.

For the sake of rationality, a welcome development is the batching together in the National Unification Committee (NUC) of all oppositionist elements, including the LP (Liberal Party), NP (Nacionalista Party), PDP-Laban, UNIDO (United Democratic Opposition), SDP (Social Democratic Party), Muslim Federal Party, etc. so they can secure accreditation as the real legitimate Opposition.<sup>41</sup> The NUC could face the KBL, a party that also began as an umbrella for pro-Marcos elements, in a meaningful contest for political power. In such a two-party encounter, the control system in our Constitution will be operative and efficient. The armed forces, the judiciary, the media and utilities, the league of voters and the COMELEC should then properly be in place for the conduct of an election that will be free, orderly and honest as well as even-handed, credible and fair.

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<sup>41</sup> Aquino, "The Accreditation Issue", *Bulletin Today*, p. 6, col. 3, May 27, 1985.

## THE OPPOSITION AND THE ISSUES

Who will win such an election? Can the Opposition win it? Based on our research the answer is yes. The Opposition will defeat, rationally, the incumbent Administration if:

- (1) There is an issue on which the Administration has committed itself such as Issue X (e.g. labor unrest, further devaluation of the peso, retention of the military bases, or leniency for Aquino-Galman killers) and all other issues, ahead of the Opposition who merely keeps its counsel in the meantime;
- (2) The Opposition unites all voters who hold minority views or oppose the Administration in any or all issues, except X in the meanwhile; and
- (3) These minorities and oppositors join the Opposition stand on issue X when it is finally revealed; or,
- (4) The Opposition succeeds to match and/or oppose all the Administration's known policies in such a way that more voters or voter-groups taken together are demonstrably in favor of the Opposition's own set of policies, which should be revealed just before the election period.<sup>42</sup>

Since politics is an art and not a science, hedged as it is with the uncertainty principle and affected greatly by the self-interest axiom, only the fair count of votes on election day will confirm whether our prognosis is right or wrong. But only the COMELEC can tell us the official result in its proper hour.

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<sup>42</sup> DOWNES, *Supra* note 41, at 56 *et seq.*