Chapter Three The Revolution After EDSA: Issues of Reconstruction And People Empowerment

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THE REVOLUTION AFTER EDSA: ISSUES OF RECONSTRUCTION AND PEOPLE EMPOWERMENT

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Introduction

In the Philippines, the struggle—if it may be called such—for a more responsive and accountable government is associated with the name of a freeway, the Epifaño delos Santos Avenue or EDSA. It is there that in 1986 a great number of Filipinos belonging to all levels of society gathered en masse for several days to protest against a corrupt and inefficient government and, in the process, popularize the term People Power Revolution and show the world a rare political and social occurrence—the non-violent overthrow by the people themselves of a long standing administration whose powers were so deeply rooted in the society.

In the language of the "whereas clauses" of the Provisional (Freedom) Constitution of the revolutionary government, the event was characterized as "a direct exercise of the power of the Filipino people" and having been "done in defiance of the 1973 Constitution." Consequently, it resulted in the nullification of the existing order. President Corazon Aquino, exercising legislative powers as the head of the revolutionary government, initiated the drafting of a new constitution and the reorganization of the executive and the judiciary.[2]

Amidst these expected changes in institutions and roles of the political actors was the recognition of the important role of the vast majority of Filipinos who participated in the four-day exercise. That the new government claimed to have derived its mandate directly from the people only highlighted the obvious truth that institutions are mere

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[2] *See* IN RE: JUSTICE REYNATO S. PUNO, A.M. No. 90-11-2697 – CA, June 29, 1992.

instrumentalities and political leaders mere agents, and with the demise of the old political institutions it became indispensable for the new ones to establish closer ties with those whom they sought to represent. At the same time, the lessons derived by the people from past experience and the scar of mistrust that they carried gave birth to the idea that, for the new institutions to not only survive but be truly representative of the will of the sovereign, politics and its processes must be democratized.

Thus, apart from the predictable political realignment after the revolution, the new government, aware of the important role played by the masses in the uprising, decided on a course that still continues up to this day—the idea of democratization of the political process.

This paper focuses on the constitution as a document embodying this idea of democratization and points out that this was conscious attempt on the part of those who drafted it. It analyzes, from a policy perspective, the changes made in the basic law and concludes that the net policy effects were as follows:

a) The strengthening of institutions of accountability;
b) The establishment of institutions that allow for a greater participation of the masses;
c) The reconstruction of the powers of government with the aim of safeguarding against the abuse of public powers.

This paper also discusses the role of Congress as the repository of the powers of the state and how it has carried out the constitutional mandate to widen the base for decision-making and guard against abuse.

Finally, decisions of the Supreme Court are discussed to ascertain how the Court, in actual cases and controversies, has treated the interesting interplay among the various political actors—the national government, local government, and the citizens—in the light of changed circumstances.

I. The People Power Constitution

One of the great lessons of the EDSA Revolution is that a tyrannical government faces the risk of losing sight of the crystallization of the silent dissent among its people; and in a country mired in poverty, the sources of discontent are quite easily identifiable.

One of the first issues to be addressed was that of accountability. Doubtless, the political mind-set of the nation demanded for greater public accountability as an important ingredient in a reconstructed society and this required a re-scaling of the balance of power between the people and their representatives.

The opportunity to formalize this mind-set came immediately after the popular uprising when the president, using her revolutionary powers, decided to form a constitutional commission to draft a new constitution.

The result is the 1987 Constitution which, at the horizontal level, is a tripartite system of government with a bicameral legislature, the president, and the judiciary sharing co-equal powers very much similar to the structure followed in the United States. This is a departure from the 1973 Constitution which allowed what former President Marcos termed Constitutional Authoritarianism.[3] Under the former regime, while the theoretical tripartite structure was maintained, one of the distinguishing characteristics of such system, the separation of powers among the three branches of the government, most especially between

[3] Under the 1973 Constitution, the President, in derogation of the traditional separation of powers, exercised legislative powers and retained the residual powers of the government. Art. VII, §18 of the 1973 Constitution provides:

> All powers vested in the President of the Philippines under the 1935 Constitution and the laws of the land which are not herein provided for or conferred upon any official shall be deemed and are hereby vested in the President unless the Batasang Pambasa (National Assembly) provides otherwise.
>
> Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions, which shall form part of the law of the land.

the executive and the legislature, was practically non-apparent as the Constitution itself allowed the president to legislate and thus override the acts of the legislature.

In essence, under the 1987 Constitution, the realignment of the powers of the three departments of the national government had the effect of producing a "weaker" president. Provisions in the constitution had been placed in order to prevent the president from overpowering the other departments: he is now ineligible for any reelection[4]; his appointing power is now, in some cases, subject to the concurrence of the Commission on Appointments[5]; and his powers as Commander-in-Chief are substantially limited.[6]

On the other hand, the judiciary was strengthened by expressly giving it the power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."[7] This provision seeks to prevent the Court from avoiding the decision in some cases on the ground that the question posed was political in nature, as opposed to a legal one, which the Court did in many cases during the Marcos regime.

What is more interesting, however, were the changes made at the vertical level of power structure for it resulted in two clearly identifiable themes:

First, the constitution allowed for greater opportunities for the substantive exercise of the sovereign powers; these powers are what one may term collectively as the people power provisions of the constitution. These provisions have two aspects, the first of which refers to those provisions favoring the direct exercise of people power, while the second refers to those provisions aimed at decentralizing the powers of the national government.

Second, the constitution heightened the bar for the representatives by strengthening the provisions on public accountability.

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[4]CONST., Art. VII, §4
[5]CONST., Art. VII, §16
[6]CONST., Art. VII, §18
[7]CONST., Art. VIII, §1

A. Proportional Representation in the House of Representatives

The 1987 Constitution introduced the system of party-list representation in the House of Representatives. It is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional, and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections.[8] The party-list system allows sectoral parties or organizations or coalitions thereof belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.[9]

Under Article VI, §5(1)-(2) of the Constitution—

> The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.
>
> The party-list representatives shall constitute twenty *per* centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

[8]R.A. No. 7941, §3

One of the vestiges of the American colonial rule is the majoritarian system of election or the winner-take-all system of electing public officers. Under the present electoral laws, a voter who wishes to exercise his right to vote is called to determine who among different individual candidates he wishes to elect. Except for the election of members of the upper house of the Congress, all national elective offices require that the candidate obtain the highest number of votes.

While this type of system has the advantage of ensuring, in a fair electoral exercise, that those who win have the mandate of the most number of electors, it has been criticized for effectively denying representation to a large number of voters, producing legislation that fail to reflect the views of the public, discriminating against third parties, and discouraging voter turnout.[10] Also, this system has the fundamental drawback of overly concentrating on personalities and therefore tends to encourage patronage politics in a culture where paying one's debt of gratitude is so important.

Under the partial proportional representation scheme adopted in the constitution, people who have strong ideological bonds or those who share similar political interests are given the opportunity to group themselves together and, if they are numerous enough, represent themselves in the lower house. It therefore does away with the need for these groups to engage in incessant lobbying. Also, since it is not a winner-take-all system, the parties, so long as they are able to obtain the minimum number of votes required by law, are guaranteed representation in the legislature notwithstanding that they did not obtain the highest number of votes for the party-list.

In a way, it is also an incentive to some groups who claim a large following yet do not have their constituency concentrated in one district to become stakeholders in policy-making instead of resorting to the streets or following an armed struggle in order to seek

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[9]R.A. No. 7941, §2

[10]*See* DOUGLAS J. AMY, WHAT IS PROPORTIONAL REPRESENTATION AND WHY DO WE NEED THIS REFORM? <http://www.mtholyoke.edu/acad/polit/damy/howprwor.htm>

redress for their grievances. Finally, it produces legislators who are voted upon at a national level and who have a clearly defined and disclosed ideology.

Verily, the idea behind this system is to open up the legislative system, at least a part of it, to groups that have a national following and who otherwise would not be able to elect members of legislature both in the upper and lower houses of the Congress because of the personality-based system of electing these representatives.[11] This is consistent with the aim of widening the base for policy-making by allowing non-traditional groups the opportunity to take a direct part in the legislative process as legislators themselves.

The Party-list Cases

After the first elections for party-list representatives, two important questions were brought before the Supreme Court in *Veterans Federation Party v. Commission on Elections.*[12] The first was whether the provision of the Constitution providing that the party-list shall constitute twenty percent of the members of the House of Representatives was a mandatory or a directory provision, that is, whether the Commission on Elections was duty-bound to proclaim as many parties as were required to make them constitute twenty percent of the entire membership of the House of Representatives.

On the other hand, the second issue centered the proper interpretation of §§11 and 12 of Republic Act No. 7941, the implementing law for the party-list, which provides in part—

> In determining the allocation of seats for the second vote, the following procedure shall be observed:
>
> (a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled

[11] 2 RECORDS OF THE CONSTITUTIONAL COMMISSION 256 (1986).

to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

Procedure in Allocating Seats for Party-List Representatives. — The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system.

With respect to the first issue, the Court held that there was no need to fill up twenty percent of the seats in the House of Representatives and that the Constitution merely sets up a maximum limit for members of the party-list. According to the Court, the Constitution merely provides for the total percentage reserved for the party-list. Thus, only those who are able to satisfy the two percent requirement of Sec.11 (b) are entitled to seats in the House of Representatives.

As regards the manner of allocating seats for the party-list, the Court decided to invent a formula for what it called "Filipino-style" proportional representation which in effect simply means that the highest ranking party-list group is entitled to one seat for every two percent of the total number of votes cast for the entire system while all the others that are able to hurdle the two percent bar will be entitled to one seat regardless of the number of votes they obtain.

Several points may be raised regarding the Court's decision on these issues, foremost of which is that to declare the twenty percent requirement of the Constitution as a mere maximum number is to effectively limit the participation of party-list representatives

[12]G.R. Nos. 136781, 136786 & 136795, October 6, 2000

which is opposed to the avowed policy of opening up the system. Following the ruling of the Court, it becomes clear that the ratio established by the Constitution between party-list representatives and regular district representatives is likewise eliminated.

It should not also be forgotten that under the Constitution, the House of Representatives, under certain conditions, may increase its own number through a reapportionment law. But, considering the fixed rule adopted by the Court in this case, any increase in the number of district representatives (which will have the effect of increasing the maximum number of party-list representatives) will not increase the number of party-list representatives who may occupy the seats simply because the rule of one seat per two percent is not a rule of proportions.

Also, to say that the twenty percent rule in the Constitution is only the maximum number of seats reserved for qualified members is to assume that it is possible that the twenty percent of the seats reserved can be filled up. It is clear, however, that the simplistic formula adopted by the Court will prevent the reserved seats from ever being completed, thus negating the assumption made by the Court.

Policy-wise, the *Veterans Federation* case has a disincentive effect on parties and organizations of similar leanings to group themselves together, a known practice in other countries using proportional representation systems, in order to have a greater participation in the system because only the highest ranking party-list has the chance of obtaining more than one seat. Also, it discourages party-list groups to participate in the process because of the slim chance of winning more than one seat. It should be noted that, unlike regular district representatives whose constituency is limited to a single legislative district, party-list groups have the entire country as their constituency and all other party-list groups as their competitors.

All in all, *Veterans Federation* fails to appreciate the context in which the provisions of the Constitution were drafted and serves as a dampener to organizations that

are interested in participating in the system. Likewise, it veers away from the nature of a proportional representation system in that while the proportional representation system from which the Philippine model was copied (the German system in the Bundestag) treats all seats available as a pie which can be shared by qualifying party-list groups, the one adopted by the Court simply applies a one-seat per two percent rule which is patently not a system of proportions.

The second case decided by the Supreme Court, *Ang Bagong Bayani-OFW Labor Party, Et. Al. v. COMELEC,*[13] held that it was not enough that a party-list organization be able to get the required threshold number of votes, and that it was equally important that it be able to establish its status as a marginalized group.

According to the Court, that political parties may participate in the party-list elections does not mean, however, that any political party – or *any* organization or group for that matter – may do so. The requisite character of these parties or organizations must be consistent with the purpose of the party-list system, as laid down in the Constitution and in the implementing law. It held that it would not suffice for the candidate to claim representation of the marginalized and underrepresented, because representation is easy to claim and to feign. The party-list organization or party must factually and truly represent the marginalized and underrepresented constituencies.

To be sure, one may argue that the decision favors marginalized groups in the sense that only those that are truly marginalized may now participate in the system. The ruling, however, makes two very important assumptions. First, it assumes that the only way to participate in the system is by claiming to be part of the marginalized sector. Second, it assumes that those who are marginalized can easily be identified. The first assumption is susceptible of easy circumvention while the second is impossible to operationalize.

[13]G.R. Nos. 147580 & 147613, June 26, 2001

Under the party-list system, the Constitution itself allows political parties to participate and there is no requirement that these political parties be marginalized. In the implementing law, a political party "refers to an organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office."[14] The implication is clear—that a party disqualified on the ground that it does not belong to a marginalized sector can simply file its candidacy as a political party and thus obviate the need of proof that it represents a marginalized group.

With respect to the requirement that a group be truly representative of a marginalized and underrepresented sector, the problem is that it is a complex question of fact, so much so that in this case, the Court remanded the case to the Commission on Elections for the purpose of determining whether the winning parties indeed were marginalized parties. The truth is, there are no fixed standards for ascertaining whether a group is indeed representative of the marginalized and the under-represented.

More important, it cannot be denied that an organization's status as a marginalized and under-represented group is dynamic. The question may be asked, what standards can be used for determining whether a gay rights group or an association of obese persons belong to the marginalized?

Finally, there is the practical issue that already hounds participants in the most recent party-list elections, which is that winning party-list groups can be barred from occupying the seats they have already won pending proof that they are truly marginalized, and so their term can waste way pending the determination of their real status.

B. Initiative and Referendum

Under the Constitutional set-up, the power to legislate is lodged with the Congress which is composed of an upper chamber, called the Senate, and a lower chamber, called the House of Representatives. The nature of the power of Congress to legislate is considered

[14]R.A. No. 7941, §3(c).

plenary, that is, it has the discretion to determine for itself the necessity for the exercise of its own powers, subject only to the limitations imposed by the Constitution itself.

While the party-list system dealt with the nature of the composition of the legislature, another one of those people power provisions in the Constitution is in the arena of legislation itself. Art. VI, §1 gives to the Congress the general power to legislate with the significant addition of the phrase "except to the extent reserved to the people by the provision on initiative and referendum." The theory of our government is one wherein the powers exercised by legislature, as a body of representatives, are derived from those delegated by its citizens and the latter reserves to themselves, insofar as legislation is concerned, what is known as the constituent power or the power to alter the constitution. With the present constitution, while there is not alteration of the scope of the powers of the legislature, the plenary powers of congress is now subject to the exercise by the people of their right to directly enact an ordinary law.

The system of initiative was unknown to the people of this country before the 1987 Constitution. It is an innovative system as under the 1935 and 1973 Constitutions, only two methods of proposing amendments to the Constitution were recognized: (1) by Congress upon a vote of three-fourths of all its members and (2) by a constitutional convention.[15]

Thus, under Art. VI, §32 of the Constitution

> The Congress shall, as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition signed by at least ten *per centum* of the total number of registered voters, or which every legislative district must be represented by at least three *per centum* of the registered voters thereof.

[15] *Defensor-Santiago v. Commission on Elections*, G.R. No. 127325, March 19, 1997.

In addition to the power reserved to the people to enact national legislation, the Constitution also reserved to the people the right to propose amendments to the constitution itself. Art. XVII, §2 provides—

> Amendments to this Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
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> The Congress shall provide for the implementation of the exercise of this right.

This power, however is not self-executory, and the right of the people to directly propose amendments to the Constitution through the system of initiative and referendum would remain entombed in the cold niche of the Constitution until Congress provides for its implementation.[16]

To implement the provisions of the Constitution on initiative and referendum, Congress passed Republic Act No. 6735 or the Initiative and Referendum Act. Under the law, initiative is the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. It recognized three systems of initiative, namely that on the Constitution, on the statutes and on local legislation. Referendum, which may refer to statutes or to local law, is defined as the power of the electorate to approve or reject a legislation through an election called for the purpose.[17]

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[16] *Id.*
[17] R. A. No.6735, §3

It is interesting to note, however, that despite the implementing law passed by the Congress, the Supreme Court, in *Defensor-Santiago v. Commission on Elections*, held that the law was inadequate for the purpose of exercising the right of the people to propose amendments to the Constitution. In dismissing the petition of several citizens to amend the Constitution to allow then President Fidel V. Ramos to seek a second term by lifting the term limits in the Constitution, it held that while the law intended to cover initiative to propose amendments to the Constitution, the law as worded and passed by Congress failed to fully operationalize the constitutional mandate. Thus, the Commission on Elections could not cure the defect in the implementing legislation as Congress failed to provide sufficient standards for subordinate legislation. As Congress has yet to enact another legislation to implement the right to propose an amendment to the Constitution, the constitutional provision is thus still inoperative.

C. The Ombudsman

The people power provisions of the Constitution are not limited to the grant of direct powers to the people to participate in the legislative process through the party-list system and in the provisions on initiative and referendum. Another dimension of the effect of the people power is the need to protect the people from those who exercise the powers of the sovereign.

The principle enshrined in the Constitution is that public office is a public trust; public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[18] This statement sets the tone for the multitude of changes leaning towards the protection of the people from those sworn to serve them.

The most potent institution created under the 1987 Constitution is the office of the Ombudsman. Given the scope of its extensive powers, it is no doubt the Constitution's answer to the public clamor for greater public accountability, so much so that it has been

[18]CONST., Art. XI, §1

dubbed as the protector of the people, a champion of the citizens, the eyes and ears of the people, and the super lawyer-for-free of the opposed and the downtrodden.[19]

The Ombudsman's mandate, as protectors of the people, is to act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action and the result thereof.[20]

Under Art. XI, §13, the office of the Ombudsman have the following powers, functions, and duties—

> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
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> (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of public duties.
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> (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
>
> (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

[19] 2 RECORDS OF THE CONSTITUTIONAL COMMISSION 265, 267 (1986).
[20] CONST., Article XI, §12

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

It is noteworthy that the 1973 Constitution mandated the creation of an Ombudsman, then known as the *Tanodbayan* (now known as the Special Prosecutor).[21] The present Ombudsman, however, is different from the Ombudsman of the 1973 Constitution in several respects. First, the present Ombudsman is a creation of the Constitution itself, whereas its predecessor was mandated by the 1973 Constitution to be created by the national legislature. The implication in this is that the structure of the present Ombudsman, as well as its powers enumerated in the Constitution cannot be altered by the legislature. Second, the office of the Ombudsman is an independent constitutional body whose office holder is removable only by impeachment; on the other hand, the 1973 Ombudsman is a statutory creation and was not endowed with the guaranty of independence and tenure. Third, present Ombudsman was not meant to be a prosecutory body, as the intention was to follow the European model of an Ombudsman whose effectiveness was derived from his power to use moral suasion and his power to publicize matters under his jurisdiction; on the contrary, the *Tanodbayan* of the 1973 Constitution was a prosecutor.

[21] 1973 CONST., Art. XIII §6. The Batasang Pambansa (National Assembly) shall create an Office of the Ombudsman, to be known as the *Tanodbayan*, which shall receive and investigate complaint relative to public office, including those in government-owned and controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

The favorable grant of powers to the Ombudsman does not end with the Constitution. With the passage of Republic Act No. 6770 or the Ombudsman Act of 1989, the Ombudsman has indeed become a powerful institution; in fact, more powerful than intended by the Constitution Commission.

The most important addition to the Ombudsman's power under the law is the power to prosecute. During the deliberations of the Constitution Commission that drafted the 1987 Constitution, it was made clear by the sponsors of the ombudsman provisions that they did not intend to give the office of the ombudsman prosecutory powers, the other powers of the ombudsman being sufficient enough. Also, they were really angling for the European model of an ombudsman whose powers rested more on his power to persuade and publicize.[22]

However, despite the opposition from some of the members of the Commission that the lack of prosecutory powers of the Ombudsman would reduce the office to a paper tiger, the proposal of the committee sponsors was sustained; nonetheless, in order not to tie the hands of congress—if ever it saw the need to arm the office with the power to prosecute, the Constitution itself provided that the ombudsman may "exercise such other powers or perform such functions or duties as may be provided by law."

The scope of the disciplinary authority of the Ombudsman is just as far-reaching; its powers affect all elective and appointive officials of the government, local government, government-owned or controlled corporations and their subsidiaries, with the exception of officers removable only by impeachment or over members of congress and the judiciary.[23]

Just as important and threatening is the power of the Ombudsman to impose preventive suspensions. Under the law, the Ombudsman or his deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charges against such officer or

[22] 2 RECORDS OF THE CONSTITUTIONAL COMMISSION 268-271(1986)

employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty, (b) the charges would warrant removal from the service; or (c) the respondents' continued stay in office may prejudice the case filed against him. The preventive suspension shall continue until the case is terminated by the office of the ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the office of the ombudsman is due to the fault, negligence, or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.[24]

The Supreme Court has also sustained the vast powers of the Ombudsman and interpreted them liberally. In *Zaldivar v. Sandiganbayan*,[25] the Court held that the general power of investigation of the Ombudsman covers the lesser power to conduct a preliminary investigation; thus, the office of the special prosecutor (formerly the *Tanodbayan*) may no longer conduct such preliminary investigation unless duly authorized by the Ombudsman.

In another case, the Court held that the Ombudsman has primary jurisdiction over cases cognizable the anti-graft court known as the *Sandiganbayan,* so that it may take over at any stage from any investigatory agency of the government the investigation of such cases.[26]

With respect to the authority of the Ombudsman to investigate any illegal act or omission of public officials, it was held that the law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate; nor does it require that the act or omission be related to or be connected with or arise from the performance of official duty.[27] In deference to the investigatory and prosecutory powers of the ombudsman, the Court has also adopted a hands-off policy with respect to the exercise of the former's discretion to dismiss a complaint or proceed with an

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[23]R.A. No. 6770, §21
[24]R.A. No. 6770, §24.
[25]G. R. Nos. L-79690-707, April 27, 1988.
[26]*Cojuangco v. Presidential Commission on Good Government,* G.R. Nos. 92319-20, October 2, 1990
[27]*Deloso v. Sandiganbayan,* G.R. No. 90951, November 21, 1990

investigation.[28] The Court also held that notwithstanding the passage of the Local Government Code, the Ombudsman retained the power to conduct administrative investigations against erring local government officials and impose sanctions based on its findings.[29]

II. People Power Legislation

A. The Local Government Code

The vertical reconstruction of power relations was by no means limited only to the relation of the national government directly with the people; it likewise affected the dynamics between the national government and the local governments.[30] Under Article X, §3—

> The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualification, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

The mandate of the Constitution is for the territorial and political subdivisions to enjoy local autonomy.[31] For the first time, local government units were granted the power to create and exclusively enjoy their own sources of revenue and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent

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[28]*Young v. Office of the Ombudsman*, G.R. No. 110736, December 27, 1993; *Ocampo v. Ombudsman*, G.R. No. 103446-47, August 30, 1993; *Jao v. Court of Appeals*, G.R. Nos. 104604 &111223, October 6, 1995.
[29]*Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995.
[30]CONST., Art. X,§1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.
[31]CONST., Art. X,§2

with the basic policy of local autonomy.[32] The guarantees extend to a just share in the national taxes,[33] in an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas,[34] and in sectoral representation in local legislative bodies.[35]

Pursuant to these commands, Congress enacted R.A. No. 7160 or the Local Government Code of 1991. From that moment on, the operative term for local governments has been autonomy. Implementing the provisions of the Constitution, the local government code devolved from the government many areas of concern traditionally handled by the national government alone.

On the political level, two areas governed by the local government code stand out; the first is the nature of autonomy and the second refers to the power of the people to recall local elective officials.

Local Autonomy

That the Constitution devotes one entire article on local government is a clear indication of the significance of the matter to those who framed it. Indeed, autonomy for the local governments has been the aim ever since the United States, through President McKinley's instruction of April 7, 1900, urged the colonial government to "devote [its] attention…to the establishment of municipal governments [which] shall be afforded the opportunity to manage their own local affairs to the fullest extent of which they are capable and subject to the least degree of supervision and control…."

In a case decided before the enactment of the Local Government Code, the Court held that decentralization meant devolution of national administration—but not of power—to the local governments. It pointed out that autonomy was either decentralization of

[32]CONST., Art. X,§5
[33]CONST., Art. X,§6
[34]CONST., Art. X,§7
[35]CONST., Art. X,§9

administration or decentralization of power. The former occurs when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process make local governments more responsive and accountable, while at the same time relieving the central government of the burden of managing local affairs and enabling it to concentrate on national concerns; the latter, on the other hand, involves an abdication of political power in favor of the local government units declared to be autonomous in which case the local government is free to chart its own destiny and shape its future with minimum intervention from central authorities.[36]

In another case, the Court resolved the "tug of war" between the national government and the local government in favor of the latter, holding that where a law is capable of two interpretations, one in favor of centralized power in Malacanang and the other beneficial to local autonomy, the scales must be weighed in favor of local autonomy.[37] That case involved the appointing power of the then Minister of Budget and Management over provincial budget officers which provided that "All budget officers…shall be appointed henceforth by the Minister of Budget and management upon recommendation of the local chief executive concerned…."

The facts show that the recommendee of the local chief executive was not qualified and thus the Minister of Budget and Management decided to fill up the vacancy pursuant to its own circular reserving to itself such power in cases where the local chief executive failed to recommend a qualified nominee.

In reversing the decision of the Civil Service Commission and nullifying the circular, the Court ruled that when the Civil Service Commission interpreted the recommending power of the local chief executive as purely directory, it went against the letter and spirit of the constitutional provisions on local autonomy. It therefore nullified the appointment made by the Ministry of Budget and Management and ordered it to ask for the submission by the local chief executive of qualified recommendees.

[36] *Limbona v. Mangelin*, G.R. No. 80391, February 28, 1989.

The Court has also used the policy of local autonomy to favor the local government in order to broaden its powers. In a case,[38] the Municipality of Santiago in Isabela province was converted into an Independent Component City through Republic Act 7720. Under the Local Government Code, the conversion of a local government unit should be based on verifiable indicators of viability and projected capacity to provide services such as income, population, and land area.

The petitioners claimed that the municipality had not met the minimum income required for an independent component city as the Internal Revenue Allotments[39] (IRAs) should not have been considered part of the income of the municipality.

In ruling against the petitioners, the Court stated that the resolution of the controversy hinged on the correlative and contextual explication of the meaning of internal revenue allotments vis-à-vis the notion of income of a local government unit and the principles of local autonomy and decentralization. It explained that with the broadened powers and responsibilities, local governments must now operate on a much wider scale. These expanded duties, all necessary consequences of its autonomy, are accompanied with a provision for reasonably adequate resources, one of which is the right of a local government unit to be allocated a just share in national taxes in the form of internal revenue allotments. It follows that since these allotments accrue to the general fund of the local government and are used to finance its operations, then they should be considered income of the local government for purposes of determining whether it has satisfied the requirement of the local government code for upgrading the municipality into an independent component city.

Curiously enough, the Court had the occasion to apply the same principle of local autonomy when Congress decided to downgrade the status of the now independent

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[37]*San Juan v. Civil Service Commission,* G.R. No. 92299, April 19, 1991.
[38]*Alvarez v. Guingona, Jr.*, G.R. No. 11803, January 31, 1996.
[39]Under the Local Government Code, Internal Revenue Allotments refer to the share of local government units from the national internal revenue taxes collected by the government. *See* R.A. No. 7160, §§284-288.

component city of Santiago to a municipality. The issue, this time, was the proper interpretation of Article X, Sec. 10 of the Constitution which provides—

> No province, city, municipality, or barangay, may be created, divided, merged, abolished, or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

The case turned on whether the downgrading of the City of Santiago required that a plebiscite be conducted to ascertain the will of the people in the community. The petitioners argued in the affirmative while the respondents argued otherwise, claiming that the downgrading of the City of Santiago is not an act of creation, division, merger, abolition, or substantial alteration of the boundaries of the local government unit concerned.

In holding that a plebiscite was needed to reject or accept the act of Congress, the court stated that "a close analysis of the constitutional provision will reveal that the creation, division, merger, abolition, or substantial alteration of boundaries of local government units involve a common denominator—material change in the political and economic rights of the local government units directly affected as well as the people therein."

The Court ruled that it was precisely for that reason that the Constitution requires the approval of the people "in the political units directly affected." It stressed that the rationale behind the provision of the constitution was to address the undesirable practice in the past whereby local government units were created, abolished, merged, or divided on the basis of vagaries of politics and not of the welfare of the people. It therefore served as a checking mechanism to the exercise of legislative power and an instance where the people in their sovereign capacity were able to decide on a matter directly affecting them or direct democracy as opposed to democracy through people's representatives. Finally, it held that such ruling was in accord with the philosophy granting local governments greater autonomy in the determining their future.

Recall

Recall is a mode of removal of a public officer by the people before the end of his term of office.[40] In a real sense, it is local equivalent of EDSA with the sanction of law and a specific procedure for its exercise. By analogy, one may liken it to what civilists term as a tacit resolutory condition or the power to rescind an agreement for failure of one party to comply with his contractual obligations. The same is true in recall, the contract being the agreement between the elector and the elected that the latter will serve his constituency with competence and integrity. This can be inferred from the statement of the Court in *Garcia v. Commission on Elections* when it characterized the people's prerogative to remove a public officer as an "incident of their sovereign power."

Recall is a novelty of the 1973 Constitution.[41] Pursuant to the 1973 Constitution, the national assembly enacted a local government code providing for the procedure for the exercise of the people of the right to recall.[42] Under the Local Government Code of 1991, the provision on recall was retained with the added feature that the process can be initiated by a Preparatory Recall Assembly or a group of elected representatives. In *Garcia v. Commission on Elections,* the petitioner questioned the constitutionality of this procedure arguing that only the people, by direct action, can initiate the removal of a local chief executive. In dismissing the petition, the Court ruled that what the Constitution required what for the Congress to enact an "effective mechanism" for the exercise of the power of recall. The legislature was not straightjacketed to one particular mechanism of initiating recall elections, and the power given was to select which among the means and methods of initiating recall elections are effective to carry out the judgment.

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[40]*Garcia v. Commission on Elections,* G.R. No. 111511, October 5, 1993

[41]1973 CONST., Art. XI, §2 provides: The Batasang Pambansa shall enact a local government code which may not thereafter be amended except by a majority vote of all its members, defining a more responsive and accountable local government structure wsith an effective system of recall, allocating among the different local government units their powers, responsibilities, and resources….

[42]Batas Pambansa Bldg. 337, §54 provides: *By whom exercised; Requisites.* – (1) The power of recall shall be exercised by the registered voters of the unit to which the local elective official subject to such recall belongs. (2) Recall shall be validly initiated only upon the petition of at least twenty-five percent of the total number of registered voters in the local government unit concerned based on the election in which the local official sought to be recalled was elected.

The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs.[43] §70 of R.A. No. 7160 provides in part—

> *Initiation of the Recall Process.* – (a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.
>
> (b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:
>
> (1) Provincial Level. – All mayors, vice mayors, and sanggunian members of the municipalities and component cities.
>
> (2) City Level. – All punong barangay and sangguniang barangay members in the city;
>
> (3) Legislative District Level. – In cases where sangguniang panlalawigan members are elected by district, all elective municipal officials in the district; and in cases where the sangguniang panglungsod members are elected by district, all elective barangay officials in the district; and
>
> (4) Municipal Level. – All punong barangay and sangguniang barangay members in the municipality.
>
> (c) A majority of all the preparatory recall assembly members may convene in session in a public place and initiate a recall proceeding against any elective official in the local government unit concerned. Recall of provincial, city, or municipal officials shall be validly initiated through a resolution adopted by a majority of all the members of the preparatory recall assembly concerned during its session called for the purpose.
>
> (d) Recall of any elective provincial, city, municipal, or barangay official may also be validly initiated upon petition of at least twenty-five percent (25%)

[43]R.A. No. 7160, §69

> of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected.

The recall of an elective official shall be effective only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall; should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office.[44]

The case of *Claudio v. Commission on Elections*[45] focused on the proper interpretation of Sec.74 of the Local Government Code which provides—

> *Limitations on Recall.*—(a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.
>
> (b) No recall shall take place within one (1) year from the date of the officials' assumption to office or one (1) year immediately preceding a regular local election.

In this case, the Preparatory Recall Assembly of the local government unit initiated a petition for recall of the local chief executive in his first year of office. Arguing that he was protected by the one-year bar of Sec.74(b), petitioner asked the Court to nullify the recall proceedings.

Against the theory that Sec. 74(b) provides for a period of repose to protect against disturbances created by partisan politics, the Court ruled the recall refers to the recall election itself and not to the process initiated by the Preparatory Recall Assembly. It justified the ruling on the ground that what makes the recall effective is the vote of the people on the day of the election itself that the local elective official must be removed. It

[44]R.A. No. 7160, §72

added that from the day an elective official assumes office, his acts become subject to scrutiny and criticism; that it is not always easy to determine when criticism of his performance is politically motivated or not.

Claudio v. Commisssion on Elections posed a difficult legal issue of when an elective official may be recalled; more difficult, however, was the policy issue involved as its required the balancing of two equally important considerations. On the part of the elective official, one may say that his term is a protective shield against needless politicking and that the period is for his benefit in the sense that between the power of the people to recall him (which is speculative until after he is effectively recalled) and the theory that a regularly elected official is deemed to have the support of the entire constituency, then the latter consideration should prevail.

In the end, the Court tilted the scale in favor of the electorate and thus added another pro-people power decision. What clinched the case for the people is the idea that in politics, there is really no such thing as a honeymoon period between the public officer and his constituents and that to rule otherwise would limit the constitutional right of the people to seek redress for their grievances.

In fact, the financial and political expense of recalling public officers is not a recognition of the right of the people to be fickle-minded but a recognition that in this jurisdiction, the people are better off knowing they have the power to release a Damocles' Sword hanging over the head of their local officials.

B. The Code of Conduct and Ethical Standards Law

Another aspect of the people power mindset of the legislature is rooted on the need to lower the threshold for making public officers accountable. Prior to 1986, the statutes governing the liability of public officers take the form of criminal, civil, and administrative

[45]G.R. Nos. 140560 & 140714, May 4, 2000

actions. Criminal proceedings are governed by the Revised Penal Code[46] and special laws[47]; civil proceedings are governed by the Civil Code[48]; administrative proceedings are governed by various special laws, especially the civil service law.[49]

As a reaction to the magnitude of the corruption committed during the Marcos regime, the legislature passed Republic Act No.7080 or the Plunder Law. Under the law, any public officer who acquires ill-gotten wealth through a combination or series of overt or criminal acts in the aggregate amount of P75,000,000.00 shall be punished by *reclusion perpetua* to death. Just recently, the constitutionality of the statute was sustained by the Supreme Court after a challenge thereto was lodged by former President Joseph Estrada who is now preventively incarcerated for this crime.[50]

The legislature also passed Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. The declared policy of this law is to promote a high standard of ethics in public service pursuant to the mandate of the Constitution.[51] It adds on to the growing number of statutes aimed to curb corruption in the government. Aside from the mandatory provisions of the law, it also enumerates hortatory provisions or so-called norms of conduct such as commitment to public interest, professionalism, justness and sincerity, political neutrality, responsiveness to the public, nationalism and patriotism, commitment to democracy, and simple living.[52]

The highlight, however, of the statute is the fact that it addresses not only the obvious violations committed by public servants like conflict of interest and solicitation of gifts, but also the more common problems encountered by the people in dealing with public servants. The Code, under pain of sanction, obligates public officers to act promptly on

[46]Act No. 3815, Arts. 204-244.
[47]R.A. No. 3019 or the Anti-graft and Corrupt Practices Act & R.A. No.1379 or the Law on Forfeiture of Unexplained Wealth are the main statutes enacted to curb corruption in the government.
[48]R.A. No. 386, Art.32
[49]P.D. No. 807
[50]See *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001
[51]R.A. No.6713, §2
[52]R.A. No.6713, §4

letters and requests, submit annual performance reports, process documents and papers expeditiously, act immediately on public's personal transactions, and make documents accessible to the public.[53]

Conclusion

The mass uprising in 1986 gave the Philippine society an answer to the question of what is to be done when the political institutions fail, in an outrageous and unacceptable manner, to respond to the popular will. It also gave an opportunity for Filipinos to restructure the institutions that influence public life. The result is a constitution pregnant with the ideals of good governance, public accountability, and democratization of public power.

As a normative document, the constitution serves its purpose of not only setting down the rules by which everyone is to be governed but also of prescribing particular norms that should guide most especially those who participate in the affairs of the nation. But that is all that the constitution can achieve as a reconstructive document.

Ultimately, the issue lies in whether the policies in the organic law has seeped into the consciousness of the people. For, as Rudolf Steiner argued, consciousness determines events, and the events chronicled by historians are a mode of expression of the consciousness characteristic of an age.

It may therefore not be amiss to point out that anyone interested in analyzing attempts in the Philippines at empowering the people should never lose sight of the broader historical context involved. The historical fact is that the Philippine society is a stranger to the notion of public accountability and responsibility, owing mainly to the more than three and a half centuries of foreign domination. It is in this context that one should understand attempts at reconstruction and see that it is a continuing process of calibrating and re-calibrating institutions in order that they may match the political mind-set of the nation.

[53]R.A. No.6713, §5

For the long view of reconstruction is not simply to make institutional changes whenever there is a need for them, but ultimately to aid the political maturation of the nation. This is as it should be, especially in a time of greater interaction among nations and increased complexity of domestic life that requires peoples and institutions to exhibit greater ability to balance competing values and norms.