

# Suggested changes in the Philippine Constitution

Almost a century ago, Rizal bitterly denounced the Social Cancer, gnawing the very vitals of the Filipino nation. That denunciation escalated into a revolution which threw off the yoke of a foreign power. The Malolos Constitution, embodying our aspirations as articulated by our grandparents, came into being, and for too short a while stood as the guiding star of the destiny of the Filipino.

Another foreign power took the place of the old one, but the Filipino was convinced, that nothing short of political independence can give him the opportunity for national fulfillment. Under the benevolent guidance of the second foreign power, a new constitution was drafted by our immediate predecessors, giving rise to the Constitution that governs us today.

Our present charter in the Preamble, ordains that the government shall conserve and develop the patrimony of the nation, promote the general welfare . . . under a regime of justice, liberty and democracy,

After thirty-five years of effectivity of this basic law, we see the patrimony of our nation mostly depredated and wasted, we see more grinding poverty than ever before, and we have our students out in the street, shouting about gross injustice, repression and dictatorship.

There is now an ever-defeating clamor that has to be stilled, otherwise it is liable to explode into something many of us may not outlive. We need to change, not necessarily perhaps the form of our government, but certainly the actuations and conduct of the persons who occupy positions in that government.

This paper is intended to focus attention on some major problems which have been nagging our country for years; and in attempting to interpret and articulate the changes clamored for by the people to solve those problems, submit these humble proposals to the crucible of public discussion.

But first a problem precedent.

## FORM AND STYLE

The question is: What form to adopt for the new Constitution? Do we adopt the present form or do we change it? Do we make the new Constitution merely a statement of general principles providing for a framework of government? Or do we also add details and include some provisions that could properly be classified under Administrative, Civil or Criminal Law?

As is well known, the present Constitution was drafted pursuant to the Tydings-McDuffy Law. In most cases substance was directly dictated. No matter therefore what its defenders may say, the present charter is far from being the spontaneous will of the Filipino people.

If it was not the spontaneous will of the Filipino people, there is every reason to say that it does not reflect the peculiar traits and characteristic of the Filipino.

Due perhaps to centuries of Spanish influence, the Filipino character was formed, or is deeply influenced, by the so-called Latin temperament. The Latin temperament is by nature argumentative and invariably seeks to exempt himself from rules he would like others to submit. This is perhaps the reason why we have the so-called compartmentalized justice, why Filipinos with or without influence seek exceptions from the rigors of the laws either thru the power of status or the power of money.

The times and our experience tell us that if good faith and correct attitudes were used in implementing our present Constitution, there would be no clamor for change. But our sad history tells us that more statements of general principles do not fit the Filipino character, and that more particular and clear-cut legal provisions, avoiding as much as possible possibilities for exceptions, are what are needed to solve our national problems.

It is then for this reason that it is here proposed that in those areas of the proposed Constitution where specific national problems are to be solved, or the solutions thereof provided for, we depart from the American type of Constitution and provide for specific administrative, civil and criminal provisions necessary to solve the problems.

Hence, the proposals to be propounded in this paper may be considered by strict Constitutionalists as inappropriate for a Constitution in the American style. The answer to that objection is: first, we must have a Constitution that embodies the traits and characteristics of the Filipino people; second,

## Candidate for CC Delegate



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the Constitution, being the law approved directly by the people, we should let the people enact the laws that their legislators have failed to enact all these years; and third, the clamor is for change, and if we want immediate, meaningful change in the conduct of our governmental affairs, a mere change in the framework of government may not suffice.

Briefly, the national problems to be dealt with in this paper are as follows:

1. Graft and Corruption
2. Peace and Order
3. Fraud, Terrorism and Overspending in Elections
4. The Commonwealth
5. Decentralization of Executive Powers
6. Trade, Industry and Economics

### Problem I. — GRAFT AND CORRUPTION

There is none in the country today who could possibly disagree with the statement that graft and corruption in government has grown to monstrous proportions and has seeped thru all levels of government. As a matter of fact, it is the common belief, and with overwhelming justification, that no paper moves or action taken unless graft intervenes, from the airconditioned and chandeliered halls of Malacanang, down to the musty, unlighted cubicles in the remotest Municipal Hall. And, the saddest part of all, knowledgeable opinions are to the effect that graft and corruption is the biggest obstacle to our economic progress and social development.

Most of the delegates to the Constitutional Convention in 1933 were men of high ethical standards, and being so, must have presumed all others to be of their same standard. That perhaps is the reason why they drafted a Constitution without setting up norms of conduct for the public officers, thinking that such norms are found in ethics, and presumably the men who will go to the government will follow the well known ethical norms of conduct. The sad realization of the country is, that there are very few public officers now who conduct themselves with high ethical principles.

At the time of drafting of our present Constitution, the Spanish word, (untranslatable in the English) delicadeza, was not only well known and understood, but was indeed the criteria for behavior amongst public officers. Nowadays, the word is mostly unknown, and if known, not understood, and worst, seldom practiced.

The reason perhaps lies in the fact that by some alchemy in the Philippine process of developing public officials, the philosophical foundation of a public office being a public trust was lost, and in its place the public office became just like any other occupation or profession, and more, became a most attractive source of income. What then used to be, and properly is, a vocation — meaning to say an altruistic dedication to the service of the community — became the source not only for the exercise of power, but for the exercise of that power for the pecuniary benefit of the officer.

Most any day, the public is regaled with accounts in the press, on radio, and TV, of certain shenanigans or rascalities, be it in landgrabbing, coddling of criminals, smuggling, or what have you, invariably with a politician, usually unnamed, as behind the anomaly. Also, time and again, me-

dia bring information that a certain public officer is using his position not in defending the people he is supposed to protect, but some certain vested interest. Oftentimes it is made clear, the public officer is in the pay of the vested interest he is defending, and this is no longer considered a slur on the character of the officer.

The situation continues to aggravate, and if we wait merely for conscience to turn this trend around, we may have to wait for centuries. We have to correct this anomalous situation immediately. The only way to do so is to drive the fear of the law (inasmuch as apparently they have lost the fear of God) into our public officials. The solution then is to have the people themselves, who have been so disenchanted, if not outrightly disgusted, with these public officers, to embody in the basic law the norm of conduct of those who would occupy a government position. For this purpose, a specific article in the proposed Constitution should be inserted along the following tenor:

### Art. — PUBLIC OFFICERS

Sec. 1. Public officers, as used in this Article shall include all appointive or elective officials and employees of the national, provincial, city, and municipal governments, including the government agencies, and government-owned or controlled entities or corporations.

Sec. 2. All public officers shall, on or before January 31 of each year, file with the Commissioner on Integrity, a sworn statement of his assets and liabilities as of December 31 of the preceding year, which statement shall be open to inspection to the public and remain so for ten years. Failure to comply with this provision shall be considered automatic resignation of the public officer effective the day after the duty to file the same has lapsed.

(1) The Commissioner of Integrity shall prepare the form for this statement which shall, amongst others, include the total income received during the year, the assets, real or personal, held at the end of the year the liabilities owed and to whom, and the banks where the public officer has deposits or obligations.

(2) The Commissioner on Integrity shall satisfy himself as to the veracity of the statements so filed, and for this purpose should avail of the services of Certified Public Accountants, who may be called upon to render their services for free, as a civic duty. Any citizen may contest either the statement filed by the public officer or the verification by the auditor, and if the contest is proven valid in a competent court, the officer and/or the examining auditor, shall be held liable under their oaths.

(3) No person may assume a public office without first filing with the Commissioner on Integrity a sworn statement of all his assets and liabilities as at a convenient date before such assumption.

Sec. 3. A public officer shall not, during his continuance in office, engage in the practice of any profession, in any private business enterprise, directly or indirectly, or receive any emoluments whatsoever other than his salary as such public officer, nor directly or indirectly be interested in any contract with the Government or any subdivision or instrumentality thereof. Before the assumption of office of such public officer, if his net assets exceed P50,000, or, while in office, such assets reach this amount, all his real properties, and business assets, excluding only the residence where he lives, shall be delivered to the Auditor General, who in turn shall assign them to a bank or consortium of banks in trust for their administration, but in no case shall such assets be given in trust to a bank where the public officer or a relative within the third degree of consanguinity or affinity is a stockholder, officer or employee. During the continuance in office of such public officer, he shall in no way interfere with the administration of said assets other than to receive the proceeds of the income thereof.

Sec. 4. No person enjoying any license or permit to do business, concession or franchise from the government or any of its subdivisions can assume a public office without first having such license, permit, concession, or franchise cancelled.

Sec. 5. Any government office, charged with the issuance of titles to real properties, concessions, or franchises, or releasing of impor- (Turn to page B)

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tations, or exportations, shall publish any such issue, grant, import, or export, whenever made to, or by, a public officer, or any relative of such public officer, within the third degree of affinity or consanguinity. All banks shall make available for public scrutiny for ten years, all records of all banking transactions of a public officer, his spouse and children.

Sec. 6. A public officer, who delivers to the state proceeds of a bribe and helps the state prosecute the corruptor for the crime of corruption of a public officer, shall be exempt from criminal liability, and the corruptor who helps the state convict a public officer for bribery shall likewise be exempt. In case both parties simultaneously file cases against each other, the court shall determine who is less guilty, acquit him and convict the other.

Sec. 7. All proceeds of graft including their substitutes shall be forfeited to the state, and shall be reachable for forfeiture within a period of 20 years even if already in the hands of heirs.

Sec. 8. Being a public officer shall be considered an aggravating circumstance in the commission of any crime, felony or violation of an ordinance.

Sec. 9. Salaries and wages received by public officers directly from the government shall be free from income tax although said public officer shall, in proper cases, file tax returns.

Sec. 10. Children of public officers are entitled to free education up to the college level, and may enter the private schools where either parent had studied, or in any case any public school, and these schools shall grant the privilege of free tuition and books subject only to the child maintaining the academic and behavioral standards of the school.

Of course the foregoing provisions are harsh. However, prevailing conditions dictate the same.

There is a law at present that requires the filing of statement of assets and liabilities, but these statements are never scrutinized. There are many laws on the confidential nature of many documents, and these are resorted to by public officers to avoid discovery of anomalies. By making these statements of assets and liabilities open for scrutiny by the public, the public officer will be more careful in making those statements accurate, and more so because an auditor from the private sector will certainly conduct an audit of the statement.

The present Constitution prohibits only the members of Congress from accepting any other position in the government, and there are some regulations in the Civil Service which prohibit some Civil Service employees from engaging in private practice. Only in the case of the Chairman and members of the Comelec does the Constitution specifically set forth prohibitions for engaging in practice of profession or engaging in business. Because of these very lenient prohibitions, we have government officials, especially the elective ones, engaged in private business or practice of their professions. It should be remembered that there is no private business or profession which is not subject to regulation by law. Invariably, the business or profession is rapidly enhanced pecuniarily when laws regulatory thereof, are evaded of their full impact minimized. In this conflict of interests, if is the good of the community that usually suffers.

Besides, especially in the case of most of our elective officials, we see them discharging their functions as a government official at the same time that they are actively engaging in private business. Again here, there is a conflict as to the time the public officer has either to dedicate to the service of the community, or to his own business interests, and in the same manner, the former suffers in favor of the latter. It is well known that people are interested in acquiring public office simply as a means to further their own personal interests. And this is the reason why many spend fabulous sums even to the extent of borrowing, to get either elected or appointed to public office, fully convinced that whatever is thus spent will be more than compensated by the pecuniary returns, not from the office but from the exercise thereof. By Sec. 3 above, one fertile source for graft, as well as conflict of interests is eliminated or at least greatly minimized.

The banking laws which protect from discovery graft committed by public officers, should also be changed by making the records of all banking transactions of public officers open to citizens who may care to scrutinize them. If the public officer has nothing to hide, then he has nothing to

feared, and the objective of this facility for discovery is precisely to drive fear into the public officer not to commit graft. And by providing that proceeds from graft may be reached by forfeiture to the state even when already inherited, should further make the public officer realize that not even his children, the innocent, will benefit from his graft.

The biggest stumbling block in prosecuting and convicting bribery at present, under the Revised Penal Code, is the fact that both parties, the recipient and the giver of the bribe, are to be convicted hence once is able to hold a Damocles' sword on the other's head, and consequently both keep quiet.

It is also commonplace in the country today that government officials and employees think they are above the law even in the matter of traffic ordinances. By making their position an aggravating circumstance, should awaken them to the fact that they are the first ones who should comply with the laws.

Despite the harshness of the foregoing provisions, there should be no fear that people will not accept positions in the government. In the first place, the provision in the present Constitution that compels citizens to render either military or civil service should be clarified and reinforced, and in the second place you have the two pecuniary inducements in Section 9 and 10 above.

In the foregoing proposals there is mentioned a new office, the Commissioner for Integrity. As has been said in this paper, there is need to drive the fear of the law into the public officer. Such need cannot be achieved if there is no office who does nothing but concentrate on driving this fear into the public officer. Hence the proposal to create this constitutional office.

## Art. — Commissioner on Integrity

"Sec. 1. There shall be a Commissioner on Integrity who shall be elected directly by qualified voters nationwide, is disqualified for reelection, and who shall hold office for ten years, unless sooner removed as provided herein. The first Commissioner shall be elected in the first election held after the effectivity of this Constitution, and the succeeding ones during regular elections if they coincide with the ending of the term of the predecessor, otherwise a special election shall be held for this purpose.

"Sec. 2. The Commissioner of Integrity shall be a natural born citizen, 35 years old or over at the time of assumption of office. No person may file a certificate of his own candidacy for Commissioner on Integrity. A certificate containing the signature of at least 500 qualified voters shall be accepted by the Commission on Elections as a certificate of candidacy of the individual endorsed therein, if he has the qualifications mentioned in this Section. The Commission on Elections shall publish or cause to be published all over the country the biodata and pictures of all persons whose certificates of candidacy have thus been filed.

Sec. 3. A Commissioner on Integrity may, during his term of office be removed by a Recall carrying the signature of at least 100,000 qualified electors and filed with the Supreme Court, who shall verify as far as reasonable, the genuineness and spontaneity of the signatures. Upon such determination, the Supreme Court shall certify to the Commission on Elections that the Office of the Commissioner on Integrity is vacant, and within 90 days after such Certification, the Commission on Elections shall hold an election for a new Commissioner on Integrity.

Sec. 4. The Commissioner on Integrity shall receive an annual remuneration of P100,000 and the state shall furnish him with an official residence.

Sec. 5. Duties and Powers of the Commissioner on Integrity:

(1) He shall be in charge of enforcing all laws relative to the conduct of public officers and the maintaining of integrity in government.

(2) Any public officer, when so required by the Commissioner, shall act as his deputy for the purpose of discovering or prosecuting graft and corruption in government. Any practicing lawyer or certified public accountant may likewise be deputized either for a fee or de officio as a civic duty.

(3) For the first year Congress shall provide a budget of P2 Million for the office of the Commissioner on Integrity, and thereafter the Commissioner shall present his own budget to the Congress which, unless there is an increase of more than 10% over the pre-

ceding year's budget, may not be reduced.

(4) He may issue subpoenas, subpoena duces tecum, and search warrants which may be enforced by any officer or agency of the government, so requested by the Commissioner.

(5) The Commissioner or his deputy shall have the powers to initiate and prosecute criminal as well as civil actions relative to the conduct or integrity of public officers.

(6) He shall publish printed annual report to the people of his activities, furnishing copies thereof to any citizen who may request for the same. All treasurers of provinces, cities and municipalities shall always keep copies of this report available for scrutiny of any citizen who may so desire."

The foregoing provisions seek:

(a) To make the Commissioner of Integrity directly bounden only to the people, and to no public officer whatever. He is elected and removable by, and reports directly to the people.

(b) To give the Commissioner pecuniary returns more than sufficient for his material needs, which, added to the tax free and free schooling privileges of his children, should free him completely from the worries of day to day family needs and sustenance, and convince him to dedicate his entire self to the task of clearing out graft and corruption in our government.

(c) To give him all the powers and the funds needed, to organize and get good men, to successfully carry out the functions of his office. As a matter of fact this almost nominal initial budget is cheap if the objectives of the office is attained.

(Next part will be on Peace and Order)

## PFM's Statement on Funds for Constitutional Convention

President Marcos, answering queries from newsmen during an informal interview, made the following statement concerning the funds for the forthcoming constitutional convention.

"... on the matter of funding ... what seems to be bothering everyone is (whether) we should release the funds immediately. The truth of the matter is that there is a provision in the budget for about P14 million. ... but P14 million will not be enough ... and they are asking for more than this. There is a provision of law ... but where is the cash?"

"Where will the funds come from? If necessary I'll save on my department, if Congress says they cannot pass any more measures. ... and I'm not talking about additional tax measures, I'm talking about increased efficiency in tax collection ... like removing the escape clauses (in the tariff and customs code, the payment by corporations of income tax not twice a year but every quarter ... so the low ebb of our tax collection during September, October and November will level off into an even collection.

"There are other measures to generate funds ... amend some of the subsidies, like the subsidy in gold and possibly subsidy for agricultural products.

In addition is the following statement from Budget Commissioner Faustino Sy-Changco:

Concerning the availability of funds for the P17 million needed for the holding of the election of the delegates to the Constitutional Convention and the P12 million needed for the convention itself, or a total of P29 million, the Budget Office finds difficulty in allocating cash for the purpose.

Congress has approved S. No. 77 and H. No. 1347, appropriating P17 million for the election of delegates to the Constitutional Convention and P12 million for the holding of the Convention, or a total of P29 million. The bill is now pending signature of the President.

But while such an appropriation exists, cash requirements exceed available cash, and a new cash budget will have to provide for an additional appropriation of P147,529,118, which is rendered as follows:

1. GENERAL APPROPRIATIONS, REP. ACT. No. 6130 .....	P68,082,528
1. For implementation of the increase over the program previously made for the Congress and the Judiciary ..	38,786,089
2. Bureau of Public Schools For salaries, maintenance and other operating expenses of the Division of the City of Manila .....	14,296,495

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