

- The Philippines needs a new constitution after an experience of over 20 years of complete political independence. After considering for about 6 years the question of changing the present Constitution, the Congress of the Philippines at last decided this month of March, 1967, to call a constitutional convention to meet in June, 1971. But egoism or fear made them propose an amendment permitting them to run for seats in the convention.

A CONSTITUTIONAL CONVENTION FOR A NEW CONSTITUTION

The present Constitution of the Philippines leaves to Congress the privilege of choosing one of two methods of proposing amendments to it; one is for Congress itself to make the amendment proposals and the other is for Congress to call a convention to prepare and pass necessary proposals. In both cases the proposed amendments have to be submitted to the electorate, for final approval.

The opinion of many independent and serious students today is that proposals for any change in our present Constitution should be made by a convention to be called by Congress. Among the reasons for this view are:

1. Some observers have felt that Congress did not show sufficient political acumen or foresight or indepen-

dence in all the cases when in the past it made the amendment proposals to our Constitution. In adopting those proposals for constitutional changes, Congress permitted itself to be dictated upon by one man, first by President Quezon and then by President Roxas. The Congress proposals made under Quezon destroyed some valued features of the Constitution which made for simplicity in our national law-making and provided the Presidency and the administration with a great degree of freedom from constant political harassment by partisans and friends.

The congressional proposal made under Roxas was a veritable surrender of the sovereignty and independence of the Filipino people. Known

as the Parity Amendment, it was an acceptance of humiliating terms and a confession of unwillingness to stand on our own feet. These two cases offer extremely strong reasons why it is not advisable to let Congress do the proposing for new constitutional amendments this time. It may not bow down to the President but it may simply accommodate its leading members who may be bent in retaining provisions that could advance their interests for the time being without proper regard for the public welfare or the future interests of the nation.

2. The changes needed in our present Constitution, in the opinion of many responsible citizens, are not just matters of slight significance or routine. They involve substantial subjects. To correct constitutional provisions deemed ill-adjusted to our national modes of thinking and to curb undesirable practices in our political and social life, what is needed is constitutional revision, which may mean some major alterations. Obviously, this should not be left to Congress to decide for the follow-

ing reasons: (a) Congress has not been elected for this work; (b) its regular legislative duties require most if not all of its time and attention; and (c) revisions may call for elimination of certain legislative privileges, functions, or units which could be against the interests of present legislators. All these need concentration of thought and unbiased attention which can best be achieved by a convention elected by the people solely and exclusively for this purpose.

3. The people should have the opportunity to elect delegates to a constitutional convention now to enable them to use their constituent power fully and freely for the first time in their history as an independent nation. The present Constitution was made when the Filipinos were not yet free and sovereign. They had to follow the guidelines set down by the American Congress. For instance, they were not free to choose between a presidential and a parliamentary system of government under the terms of the Philippine Independence Law. They

were practically harnessed with blinkers by the fact that the approval of the American President was a condition precedent to the final adoption and promulgation of the Constitution. Strictly speaking, there is neither intellectual honesty nor legal validity in any claim that the present Philippine Constitution is solely and exclusively the mandate of the sovereign people of the Philippines. The plain fact is that this Constitution was only made possible by an *enabling act* of the Congress of United States. That was its original source. It was similar to the enabling acts passed by the same authority for previous American territories to adopt constitutions before they would be admitted as states of the Union.

Our nearest approach to a constitution drafted by Filipinos was the Malolos Constitution drawn some 68 years ago. But even that document lacked the ingredient of the sovereign approval of the Filipino people. In fact, Mabini strongly opposed its adoption by the Malolos Congress on the ground that that body was not originally

called to meet as a constituent assembly and that the critical conditions then prevailing would make it impracticable to put into effect certain provisions which a good democracy needs. Technically, the Malolos Constitution was a revolutionary constitution. The Constitution we adopted under the American rule should have been properly limited to the organization of the government of the Philippine Commonwealth.

The present is the first opportunity open to the Filipino people in the entire period of their history to prepare for adoption the basic law of their nation. Congress should not deprive them of this rare opportunity. Under these circumstances, for Congress to insist on its right to make proposals of amendment would be to stretch its discretion to a point of doubtful wisdom by ignoring strong considerations in favor of the people's alternative right.

How should we proceed in adopting revisionary changes or amendments on our Constitution? I propose certain points for consider-

ation. Others may perhaps be deemed as important or more important than these; but for the present brief discussion, the considerations that follow might well serve as starters.

After 32 years of experience, we should now be in a position to raise the following questions affecting the Constitution — the desirability of some of its parts, the inadequacy of others, the inadaptability of certain provisions, and the impracticability of certain rules or prohibitions:

(a) What provisions have been abused? We may examine perhaps the power to tax, to appropriate, and spend public funds. They affect the basic economic life of the nation. Measures to raise taxes and issue bonds should be given wide publicity and submitted to all local governments for comment at least 40 days before final action by Congress. This is a form of referendum.

We may reexamine the vast powers of the President, particularly the power to declare martial law and to suspend the habeas corpus writ.

We might set limits on the power of Congress and its committees to investigate not only public officials but also private persons so as to prevent legislative usurpation of purely judicial authority.

(b) What parts have been violated with impunity? We might look into the salaries of our legislators and other public officials and their allowances, and the violation of provisions prohibiting congressmen from holding other positions without forfeiting their congressional seats.

(c) What government organizations or functions should be placed outside the reach of political decisions? We might mention the control of currency and monetary policies by the Central Bank, the administration of other government business corporations, the conduct of public and private education, the establishment of an effective police system, in addition to the maintenance of the independence of the courts and civil service.

(d) What constitutional principles have not been correctly understood or honestly applied? The rule of the

separation of powers should be defined or modified, considering the effect of the party system upon it. The rule that a public office is a public trust, not a means of enriching its occupant, should be effectively protected.

(e) If democracy is to be a reality and not just a myth or a mere rule by the ignorant, the irresponsible, or the rich, what basic regulations and modifications should be adopted affecting suffrage and elections? Direct elections for local officials and indirect for national officials may perhaps be seriously considered; and certain definite qualifications may be prescribed for candidates for all public appointive and elective positions to secure the choice of persons of intellectual maturity and tested sense of moral, social, and personal responsibility. At present the qualifications for elective positions refer only to age, residence, citizenship, and mere ability to read and write or bare literacy. At present, one of the type of Adam Clayton Powell of the American Congress could sit in our Senate or House of

Representatives to the detriment of our national dignity and the dishonor of the occupancy of a government position.

(f) What measures should be adopted to preserve the Two-Party System if we are convinced of its value as an essential ingredient in the orderly and practical functioning of a viable political democracy? One way may be to remove or dismiss an official elected to an office under one party when he transfers to another party during his term. Another way may be to disqualify an opportunist or turncoat from holding any public office whether political, administrative, academic, judicial, or technical, appointive or elective.

(g) Should the present Presidential system be modified to embody some features of the Parliamentary system? Many of our past political leaders of experience, maturity, and responsibility — Osmeña, Laurel, Recto, Briones, and a few others — were of this opinion. The change may mean a President elected by a Presidential Electoral College

— composed of all the provincial governors and board members, city and municipal mayors and councilors — and a Cabinet headed by a Prime Minister chosen by the members of the majority party in a unicameral legislature on the advice of the President.

(h) The present Senate is a rare political phenomenon based upon a strange rule, practice, and theory of representation. It weakens in principle the idea of a united national leadership in the office and person of the President, it prevents a fair and just distribution of representation, giving each senator a claim to a right of national representation which when seriously exercised is bound to result in chaos and confusion, the nation speaking through 24 separate and distinct voices, each one being theoretically entitled to speak for the whole nation as each is legally a senator of the Philippines, being elected at large and not by a province, or district, or region, although he is conveniently but confusingly addressed as the Senator from Manila or from Davao, etc. The Senate

should be either abolished or modified radically so as to establish the democratic principle of definite representation in legislation.

(i) What can be done to protect and maintain the democratic rule of equality of opportunity and the basic axiom of rotation in political offices? Just as we favor the limitation of the tenure of office of the President to two terms, there is absolutely no reason why we should not limit the tenure of all law-makers to no more than 2 successive terms of 4 years each without further reelection until after an interval of at least 7 years. Elective public offices in a democracy should never be converted into professional careers. This should be an inflexible rule in a country such as the Philippines where the people have been reared in paternalistic practices and modes of living. As President Eisenhower recently wrote, the holding of a public office should be but "an interlude in a man's career, time he took out from his business." Repeated reelections tend to revive the embers of *caciquism*.

(j) As the administration of justice is a fundamental function of every government and state, what changes should be introduced through constitutional amendments to assure the establishment of an honest, impartial, independent, and competent judiciary? Candidates for judicial positions should be persons of proven integrity and ability to be determined on the sworn statement of a fixed number of persons of high reputation and should pass competitive tests in law and government. Then instead of merely requiring them to have been in law practice for 5 to 10 years, they should prove that they have handled at least a hundred cases and have given written opinions on actual controversial matters of great variety — civil, criminal, and administrative — or have been known for their legal scholarship by their authorship of critical publications and their teaching law in reputable law schools for at least ten consecutive years. Consequently, only renowned law practitioners, highly competent judges of lower courts, or law scholars of re-

cognized erudition should be appointed to the Supreme Court.

(k) Local governments should be guaranteed an adequate measure of autonomy subject to such regulatory rules to protect the integrity of the nation and to maintain the national defense and stability.

(l) There is need to prohibit the practice of dividing or subdividing provinces and municipalities into smaller units for the mere purpose of creating additional political positions without securing the consent of the communities affected and without taking into account the economic, social, and other pertinent conditions involved.

All these suggested changes, if seriously considered, should obviously require a substantial revision of the Constitution of the Philippines. They may result in a longer document as in the case of American State constitutions which are lengthened after almost every revision or amendment because of popular dissatisfaction with the loose and careless way with which state legislatures used

to exercise their powers and privileges.

But even constitutions of sovereign states drafted after the last World War are much longer than their older organic charters. They actually express the general feeling of distrust of the people in their governments, parliaments, and parties. The extreme cases are the constitution of India which has 315 articles and that of Burma with 234 articles. But even those of older states which have adopted new constitutions are much longer than the American Federal Constitution which has been largely reproduced in the present Philippine constitution. Italy today has a constitution of over 139 articles and that of West Germany contains about 140 articles. On the other hand, the Philippine Constitution has only 18 articles, a condition which clearly gives to our government organs unusually broad powers and have therefore been susceptible to abuse.

On this interesting subject about the length of a constitution, Professor Karl Loewenstein's views deserve careful consideration. He said:

"The ideal constitution will contain *only* the essentials of the national political order — organs, functions, jurisdictional delineation — but, at the same time, *all* the essentials. If a constitution wishes to be crisis proof — that is, in practice, to avoid deadlocks between the constituted organs — it can leave nothing to chance and must spell out all contingencies."

Considering the question of amendment or revision of our present Constitution as a whole, it should appear that there are certain provisions in it that should remain unchanged or with very slight modifications as for instance Articles II, III, IV, XI, XII, and XIII which deal on the Declaration of Principles, Bill of Rights, Citizenship, The General Auditing Office, The Civil Service, and the Conservation and Utilization of Natural Resources. Most of the remaining provisions can stand partial or complete alterations on the basis of the circumstances and the experience which the country and the people have had during the last 32 years when the operation of the principal agencies of government,

— the executive, the legislative, and the judicial departments — has had ample time to be tried and observed. It may be safely asserted that in many instances they have shown to be not well adapted to the needs of the people and the conditions of the nation. This is not surprising, especially to careful observers and serious students of constitutions and constitutional law, since these organizational organs are mere reproductions of the Ameri-

can idea and system of government under the Constitution of the United States based naturally on the historical, economic, social, and political conditions of the American people. Our country and our people are still quite different from America and the Americans despite the claims of a few of us who adore America as their Mother. — *By V. G. Sinco, — from a lecture in Foundation College, Dumaguete.*

GOVERNMENT AND CONSTITUTION

“A Constitution is a thing antecedent to a government, and a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of the people constituting a government.” — *Thomas Paine in his “Rights of Man.”*