

THE PHILIPPINE CONSTITUTION

By MANUEL V. MORAN
Chief Justice, Supreme Court

The Philippine Lawyers' Association deserves sincere commendation for having sponsored the idea of a reunion for members of the Bar on Constitution Day, which is celebrated throughout the country to emphasize the importance and significance of the Constitution and to dwell upon its influence on our individual lives and the national fortunes.

Frankly, I could not find it in me to decline the invitation to address this gathering of members of our craft because, considering it the civic duty of every Filipino to cherish the Constitution as the fundamental law of the land, I deem it a sacred obligation specially of the Bench and of the Bar to pay public homage to it and willingly to contribute to that stream of thought and information on Constitutionalism that, fertilizing the fields of freedom and justice, makes for the happiness and prosperity of a people pursuing its destiny under a regime of democracy, liberty and sound government.

In these years when despotic rulers have arisen in nation after nation to challenge the principles of republican government, when the hordes of lawlessness and rebellion are rampant, when peace and order is seriously threatened, it behooves those who believe and thrive in orderly procedure and constitutional safeguards to study the development and application of those basic principles that are the foundations of true liberty and democracy so that, knowing them, they shall all the more appreciate the blessings of a constitutional regime, and dedicate their efforts to the preservation and dissemination thereof, for, in the matter of rights as in the matter of news, a well-informed public is the greatest security of the nation. This reminds me that this occasion could be availed of formally to bid those recalcitrant elements in the field to return to the fold of normalcy with the assurance that their safety and well-being are amply guaranteed by the provisions of the Constitution within the frame of which they may redress their grievances and obtain the remedies they so valiantly, but misguidedly, seek.

I would define a Constitution as that instrument whereby the people entrust to their government the authority to regulate their lives, their honor and their property, defining such authority and setting limits thereto. Any exercise of governmental power beyond those limitations is the assumption of "power without right" and a repetition of such usurpation will eventually establish tyranny or a totalitarian state.

I regard the Constitution as a solemn compact whereby the majority of the people promise to the minority or to the individual, that in the exercise of political sovereignty, they shall not transgress certain well-defined boundaries or will follow specified rules of conduct. It is essentially the shield and the protection of the minority and of the individual citizen. And it is a product of the wisdom of the ages, because experience has shown that although Governments are avowedly intended to promote and preserve society and its components, they have exhibited irresistible tendencies to extend their powers expanding their authority to the detriment and prejudice of their cons-

tituents. Wherefore, curbs are set forth in the Constitution to protect those who should happen to be, for the moment, at odds with their government. No wonder it is the minority people that are the most ardent votaries in the august temple of the Constitution often pleading with the persons commissioned to officiate there, that the arm of the law be extended to restrain the majority on occasions when the latter would seize or wield undelegated prerogatives.

Fifteen years ago today, pursuant to authority given by the Tydings-McDuffie Act of the United States Congress, our Constitution, the greatest instrument ever drawn by Filipino hands, was finally adopted by a Constitutional Convention composed of men selected by the people because of their talent, learning and deep patriotism. Some of the distinguished members of said Constitutional Convention with their worthy President, Mr. Justice Recto, are here now with us, and there is every reason for the people to be grateful to them. Approved later by the President of the United States, our Constitution was overwhelmingly ratified by the people in a plebiscite held in May, 1935.

The makers of our Constitution, mostly lawyers, were, of course, familiar with American Constitutional Law, what with McKinley's Instructions, the Philippine Bill, the Jones Law and the Federal institutions—not to mention the Malolos Constitution which was drawn by liberal Spanish-speaking Filipino jurists.

Unsurprisingly therefore our Fundamental Charter exhibited a blending of American doctrines with Filipino ideals and a few Spanish principles. It was in fact a revised edition of American Constitutions—undoubtedly an improved edition. Being the outcome of peaceful negotiations for the liberation of one subject people—not of war or revolution, as was the American—our Constitution contained an express renunciation of war as an instrument of state policy—even as it prescribed several principles of zealous national character to conserve the patrimony of the realm.

Having been framed by a people not entirely free from outside influence, it was inevitable that the Constitution should carry certain restrictions, which had to be accepted because imposed by the enabling Act, like the trade relations with the United States and the preservation of the rights of American citizens.

But as a product of the times, reflecting the political sagacity of the conventionists, the Constitution presents evolutionary accretions, liberal principles found to be consistent with the traditions and necessities of the Philippine commonweal, like the consecration of social justice ardently advocated by our beloved Manuel L. Quezon, the nationalization of natural resources, the expropriation of landed estates, the right of the Government to operate private industries and means of transportation, the duty of the estate to afford protection to labor and the assurance that access to the courts shall not be denied by reason of poverty. I mention some of the highlights. But, I must not forget to include the creation of the Electoral Tribunals and the Commission on Elections, new instrumentalities

designed to insure the untrammelled expression of the popular will.

Assembled during that period when the administration of Franklin D. Roosevelt had proclaimed the necessity of Presidential leadership in the struggle against serious economic depression, at a time when the enemies of the New Deal opposed the numerous administrative regulations implementing congressional legislation upon the ground that they violated the principle outlawing delegation of legislative powers, the delegates perceived the possibility that some day the Philippine people might encounter grave national emergencies requiring swift remedial action of the Executive. Hence the framers foresightedly adopted the modernized constitutional doctrine permitting delegation of legislative powers to the Chief Executive in certain crises. There is no ground to suspect that the provision was calculated to win the good graces of President Roosevelt, and to insure approval of the draft. Anyway the last world conflagration has amply justified the invocation, because it enabled the Commonwealth to function during the war emergency and even after liberation, by executive orders and proclamations. Possibly the pre-war opinion of some eminent jurists was vindicated about the feasibility of establishing here as constitutional dictatorship in a modern democracy. I suppose it does not escape the perspicacity of political scientists and legal scholars that the Executive Department admittedly the strongest in the Republic could, become considerably stronger and result in a virtual dictatorship, a consummation never to be devoutly wished in times of relative normalcy, because a dictatorship is still a dictatorship even if disguised as a constitutional dictatorship.

In connection with the modernization or revision of our basic legal system, the Constitution's treatment of judicial review may be scrutinized. Most of my hearers will recall that the Constitution of the United States did not clearly invest its Supreme Court with jurisdiction to pass on the constitutionality of Congressional legislation. It was Chief Justice Marshall who, in the famous case of *Marbury v. Madison* spelled out the Court's power to measure Congressional laws against the pattern of the Constitution and its duty in case of conflict to declare the latter as paramount, and to annul the Congressional enactment. Such was the formula that gradually evolved into what was subsequently claimed as the principle of Judicial Supremacy, which is really a misnomer, because it is no assertion of superiority over the other departments but only the exercise of the unavoidable obligation to interpret the Constitution and to apply it in proper cases. True that the performance of such obligation has given rise to reports of "judicial oligarchy", or "government by the judiciary" or to the statement by Governor Hughes that the "constitution is what the judges say it is" or to that other of President Wilson that "The Supreme Court is a constitutional Convention in continuous session," but these were probably due to differences in perspective or to the color of the glasses of the speaker or writer. It should properly be called the power of judicial interpretation or review. Now, as such power to interpret and apply was not granted expressly in the Constitution of the United States, regulations for its exercise were naturally not to be found therein. This indefiniteness became the source of controversies over its extent, and conflicting philosophies appeared between those who maintained unlimited power of judicial revision and those who contended that the court should itself fix the boundary adopting the policy not to lightly overrule legislative measures presumably bearing the approval of the whole people, because enacted by their representatives in Congress. The last mentioned school of thought furthermore criticized those five-to-four decisions annulling congressional laws, straining its argument

to the point of asserting that in those cases the law had actually been overthrown "by half a vote."

Well, our Constitutional Convention, alive to the currents of juridical doctrine, endeavored to avoid that controversy by recognizing the authority of the Supreme Court to declare statutes as unconstitutional, but hedging judicial intervention with the requirement that two-thirds of the memberships shall so declare—otherwise the law shall stand.

Some have advanced the belief and prediction that the two-third requirement ultimately enhances legislative preponderance even as it weakens the authority of the Judiciary. I refused to share that view. The power to annul is vested in the court. And there it is. The number of votes required may prevent the possibility of judicial excesses and will, for that reason, make the pronouncements of the Court stronger and more authoritative. And, furthermore, there is no doubt that in proper cases the great majority of the Justices will not fail to perceive as unconstitutional what really infringes the directives of the Constitution.

I make this statement without forgetting that our Constitution is intended "to endure for ages to come and, consequently, to be adapted to the various crises of human affairs" and to the varying needs of human life and accordingly Justices must be responsive to the necessities of changing conditions calling for vision and judicial statesmanship. And I also have in mind that in the area of constitutional affairs, there is much uncertainty as to particulars of future litigations. The expanding demands of society and civilization and the fields of governmental activity newly opened by the Constitution, will require new types of legislative commands and prohibitions to solve the multiple problems of commerce, industry and agriculture, of labor and capital, and the necessities in general of the common welfare. Unprecedented complication on a national scale will happen, novel controversies will be joined and submitted to the men on the Bench, troubling their mind, testing their mettle. Yet it is reasonable to expect that as in the past the official interpreters of the Constitution will perform their function, with all diligence and impartiality, unswayed by storms of partisan strife, unmindful of personal advantage, with an eye single to the meaning and words of the fundamental Charter to give effect to the known intention of its framers and to the will of the people that approved it. And speaking for the judicial department, I say, that is our firm purpose, our solemn pledge.

In our task for the attainment of our high objective, I am happy to say that we can always count on the cooperation of our good Bar. Indeed, any accomplishment of the court in the past is due, to a great extent, to the assistance and devotion to duty of our able lawyers. There is truth in the saying that with a good Bar there can be no bad Bench. Our lawyers in the Philippines may be compared, not unfavorably, with any Bar in the world today, specially in point of capacity, integrity and knowledge. There are many of them who are indeed true leaders in Juridical Science and are conscious that the life of the law is not logic alone but experience also, and thus they seek mature legal wisdom not only from books but from real life as well. One of my joys in court is to observe with pride how our good lawyers, specially the young ones argue their cases with such brilliance, conviction and wonderful capacity that I cannot help but raise my eyes to God and thank Him, for the assurance that in the future we will have worthy successors in court.

These years of our Republic, and the many more years to come, are crucial for us. The things we do now will make their mark upon the years to come. We are building upon the foundation of our future, much of which has already been laid. We have a form of government, which history

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to be effective, must be in Washington sometime next month.

The campaign however is not totally confined in Congress. Other American leaders whose friendship to Filipinos has been demonstrated time and again have been asked to help in the cause. These include Mrs. Eleanor Roosevelt and Gen. Jonathan M. Wainwright.

The help of these two particularly has been solicited following reports recently to the effect that both have co-sponsored a \$2,000,000 drive to aid Philippine civilian and military war casualties. Separate letters thanking them for their benevolence and asking them to help in the approval of the Cavalcante bill were written by Mr. Brillantes.

There are others in Washington who are unselfishly doing their bit for the cause. There is Atty. Vicente Villamin, still considered one of the most influential Filipinos in the United States who is making contacts with his American friends in Congress regarding the measure.

Ultimately adjudication of claims will have to be made by the War Claims Commission composed of Daniel Francis Cleary, chairman and Mrs. Georgia L. Lusk and David N. Lewis, members. The membership however has been reduced to two with the untimely death in an airplane crash recently of Mr. Lewis. No successor to his office has yet been announced in Washington.

Chairman Cleary is well-prepared for the job. As senior attorney in the Office of Legislation of the Veterans' Administration, it was his work to analyze and report on legislative proposals affecting veterans. One of these proposals became the War Claims Act of 1948. As Chairman of the Commission it will be up to him to determine who is and who is not eligible for the benefits under the act. The months he spent analyzing the law as it passed through the various stages of the legislative process will prove to be beneficial to him in carrying out his duties.

Claims by Americans and Filipinos who were former members of the USAFFE are now being processed by the Commission. It is the hope of the PEPPA that before long, the War Claims Act shall have been amended to as to include former Filipino civilian internees among its beneficiaries.

The Philippines: . . .

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has shown to be the best. We have perpetuated that government in a sacred document, our Constitution. In no other time in the past and perhaps in no other time in our future as a nation and as a people, have we ever and will we ever feel the importance and the need of a Constitution as in these years of our political, social and economic adolescence. Our destination will be at the end of the path which we are now blazing. Our acts today will be precedents of the future. Even our sins and abuses now may be assimilated into the background and perpetuated

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into customs. The generations of tomorrow shall look back upon the march that we have begun and which we now lead and I fervently hope that they shall not find a tortuous, dusty and bloody trail that we may leave behind as our meagre, miserable contribution to a proud and glorious lineage. Today on this occasion, I thank Divine Providence that, having implored His aid, we have a great Constitution which embodies our ideals and guides us to secure to ourselves and our posterity the "blessings of independence under a regime of justice, liberty, and democracy". —Speech delivered before the Philippine Lawyers' Association on Constitution Day, Feb. 8, 1950.