

The Wisdom Among Us: A Critical Examination of the Political Wisdom of the Filipino People and the Theory of Popular Sovereignty in Philippine Democracy

*Eugene T. Kaw**

I. INTRODUCTION: VOX POPULI AND THE WISDOM OF CROWDS	306
A. <i>The Weight of an Ox</i>	
B. <i>The Wisdom of Crowds</i>	
C. <i>The Wisdom in the Numbers: Majority vs. Plurality</i>	
II. SOVEREIGN WILL: THE REPUBLICAN FORM OF GOVERNMENT IN THE PHILIPPINES	316
A. <i>Sovereignty and Representation</i>	
B. <i>Government and Administration</i>	
C. <i>Sovereign Powers: Indivisible and Omnipotent</i>	
III. THE THEORY OF POPULAR SOVEREIGNTY	322
A. <i>Historical and Philosophical Perspective</i>	
B. <i>The 1987 Philippine Constitution</i>	

* '05 J.D., Ateneo de Manila University School of Law. The Author is currently a Lecturer at the Ateneo de Manila University School of Law, where he teaches Administrative Law, Public Corporations, Legal Profession, and Legal Research, and an Assistant Professor at the Marketing and Law Department of the John Gokongwei School of Management at the Ateneo de Manila University, where he teaches Obligations and Contracts, Hospitality Business Law, and Legal Research. The Author is the recipient of the Professorial Chair in Political Law for Academic Year 2021-2022. He also teaches Administrative Law, Labor Relations, and Legal Profession at the Far Eastern University Institute of Law. The Author previously served as Assistant Secretary (2011-2016) and OIC-Undersecretary (2012-2015) of the Department of Tourism during the administration of the late President Benigno Simeon C. Aquino III. He likewise held the positions of Director IV in the Office of the President-Presidential Management Staff (2010-2011) and Director III and Deputy Chief of Staff in the Office of Senator Manuel Araneta Roxas II (2007-2010). This Article was prepared with the assistance of the Raymund Dizon Professorial Chair in Political Law Fund.

Cite as 66 ATENEO L.J. 305 (2021).

C. <i>Sovereign Authority and the Rule of Law</i>	
IV. ELECTORAL POWER AND THE POPULAR VOTES: SOVEREIGN WILL BY THE NUMBERS	330
A. <i>The Wisdom in the Numbers: A Quantitative and Qualitative View</i>	
B. <i>The Majority or Plurality Rule in Jurisprudence</i>	
C. <i>Historical Wisdom Tracking: A Look at the Presidential and Vice-Presidential Elections</i>	
D. <i>Electing Congress</i>	
E. <i>Local Elective Officials, Plebiscite, and Referendum</i>	
F. <i>The Purpose of Elections</i>	
V. THE ELECTORAL FACTORS AND DELIBERATIVE DEMOCRACY: CRITICAL PATHWAYS TO PROTECTING THE SOVEREIGN WILL AND ENHANCING POLITICAL WISDOM.....	347
A. <i>Suffrage and Electoral Power</i>	
B. <i>The Electoral Factors</i>	
C. <i>Deliberative Democracy and Voter Engagement</i>	
VI. CONCLUSION: CAUTIONARY WISDOM AND SOVEREIGN FAITH.....	358

I. INTRODUCTION: VOX POPULI AND THE WISDOM OF CROWDS

[I]f liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost.

— Aristotle¹

The term “*bobotante*,” or “stupid voter,” is frequently mentioned during Philippine elections in reference to the “stupidity” of voters who elect “bad” leaders, both at the national and local levels, or to those voters whose “different” political opinions arise from their belonging to a distinct socio-economic class.² The *bobotante* label first gained prominence and notoriety during the 1998 presidential elections,³ and has been gaining traction since the

1. ARISTOTLE, *POLITICS* 75 (Benjamin Jowett trans., 1905).

2. See Anna Bueno, *Who Are You Calling a ‘Bobotante’?*, CNN PHIL., May 15, 2019, available at <https://cnnphilippines.com/life/culture/2019/5/15/bobotante.html> (last accessed Nov. 30, 2021) [<https://perma.cc/K97D-W885>].

3. See Mark R. Thompson, *Southeast Asia’s Subversive Voters: A Philippine Perspective*, 64 PHIL. STUD.: HIST. & ETHNOGRAPHIC VIEWPOINTS 265, 279 (2016). The election of President Joseph E. Estrada in 1998 drew significant attention to the “moral economy of elections[.]” The populist politician “appeal[ed] directly to poorer voters,” but also “faced adamant opposition from elites threatened by the

2016 national elections.⁴ Voters have been criticized and attacked, unfairly at that, for being ignorant and stupid when it comes to voting for elective officials.⁵

But are they really ignorant voters? Perhaps, since it can be conceded that not all voters would be in possession of full and complete information to formulate an informed vote.⁶ But is it enough to make them “stupid” voters? To describe them as such would be to contradict the very sovereign principle upon which Philippine democracy was founded and built,⁷ among whose hallmarks and pillars include the exercise of suffrage and conduct of elections decided by the plurality of popular votes in keeping with the “Theory of Popular Sovereignty.”⁸

class appeals that challenged not just their privileges[,] but also their ‘moral monopoly’ as self-proclaimed guardians of democracy.” Thompson, *supra* note 3, at 279.

4. See, e.g., Inday Espina-Varona, *Candidates Need to Rethink the ‘Bobotante’*, ABS-CBN NEWS, June 19, 2015, available at <https://web.archive.org/web/20160525005432/https://news.abs-cbn.com/halalan2016/focus/06/19/15/candidates-need-rethink-bobotante> (last accessed Nov. 30, 2021).
5. Richard Heydarian, *The Foolish Myth of ‘Bobotante’ Voters*, PHIL. DAILY INQ., Aug. 10, 2021, available at <https://opinion.inquirer.net/142937/the-foolish-myth-of-bobotante-voters> (last accessed Nov. 30, 2021) [<https://perma.cc/SVR6-MMY7>].
6. JC Punongbayan, [ANALYSIS] *The Myth of the Rational Filipino Voter*, RAPPLER, May 17, 2019, available at <https://www.rappler.com/voices/thought-leaders/230854-myth-rational-filipino-voter> (last accessed Nov. 30, 2021) [<https://perma.cc/VA6K-AG2Y>]. See also WATARU KUSAKA, MORAL POLITICS IN THE PHILIPPINES: INEQUALITY, DEMOCRACY AND THE URBAN POOR 137–38 (2017).
7. Carmina Yu Untalan, *Philippines 2016: Democracy for the Bobotante*, available at <https://nottspolitics.org/2016/02/24/philippines-2016-democracy-for-the-bobotante> (last accessed Nov. 30, 2021) [<https://perma.cc/S3XL-CE53>]. See also PHIL. CONST. art. V, § 1.
8. Popular sovereignty has “[come] to be understood, in the twentieth century, as the principle that the people at large rule, within a single-status community in which everyone as a citizen may participate in decision-making in regimes of representative democracy.” GENEVIÈVE NOOTENS, POPULAR SOVEREIGNTY IN THE WEST: POLITICS, CONTENTION, AND IDEAS 113 (2013).

On the contrary, voters are much wiser than what self-proclaimed pundits give recognition or credit to.⁹ While some may find this political reality unacceptable or inconvenient, the truth remains that there is collective wisdom expressed by the people, and demonstrated and realized through the election results.¹⁰ That notwithstanding, it is conceded, however, that the wisdom of voters can be influenced and corrupted,¹¹ and hence, such must be protected,¹² and not condemned.

Through the lens of the “wisdom of crowds,” as coined and described by American journalist James M. Surowiecki,¹³ and derived from the “guess-the-weight-of-the-ox” experiment in 1906 by British scientist Francis Galton,¹⁴ this Article shall discuss both the political and constitutional history and

9. See Bueno, *supra* note 2.

10. *Contra* CHRISTOPHER H. ACHEN & LARRY M. BARTELS, DEMOCRACY FOR REALISTS: WHY ELECTIONS DO NOT PRODUCE RESPONSIVE GOVERNMENT 9 (2017). “The folk theory of democracy celebrates the wisdom of popular judgments by informed and engaged citizens. The reality is quite different. Human beings are busy with their lives. ... Without shirking more immediate and more important obligations, people cannot engage in much well-informed, thoughtful political deliberation, nor should they.” ACHEN & BARTELS, *supra* note 10, at 9.

11. See, e.g., *Social Weather Stations, Inc. v. Commission on Elections*, G.R. No. 208062, 755 SCRA 124, 150-51 (2015). One example of how external sources can influence or corrupt the wisdom of the electorate is through election surveys, which have the capacity to shape the preferences of voters, who may “act in accordance with what is perceived to be an existing or emerging state of affairs with respect to how candidates are faring.” *Social Weather Stations, Inc.*, 755 SCRA at 150-51.

12. See, e.g., Nathaniel Persily, *Can Democracy Survive the Internet?*, 28 J. DEMOCRACY 63, 70 (2016). The need to protect the wisdom of voters can be understood in relation to the susceptibility of the electorate to fake news —

The prevalence of false stories online *erects barriers to educated political decision making and renders it less likely that voters will choose on the basis of genuine information* rather than [on the basis of] lies or [on a] misleading ‘spin.’

The power (if any) of fake news is determined by the virality of the lie that it propagates, by the speed with which it is disseminated without timely contradiction, and consequently by how many people receive and believe the falsehood.

Persily, *supra* note 12, at 70 (emphasis supplied).

13. JAMES M. SUROWIECKI, THE WISDOM OF CROWDS (2005).

14. *Id.* at xi-xiii.

development of the theory of popular sovereignty, as well as the concept of representative government, as understood today.

Accordingly, the key legal points that the Author will elaborate on are enumerated as follows:

- (1) What is the connection of the “wisdom of crowds” with the democratic exercise of elections and the Philippines’ republican form of government?
- (2) How can the wisdom that determines the fate of the nation and affects the rest of the population simply be marked by a mere plurality of popular votes, if not a majority? Can there be a quantifiable legal measure?
- (3) Can this “wisdom” actually be made “better” if the people are instead grouped according to their educational attainment or income tax bracket, which is tantamount to imposing literacy and property requirements proscribed by the present Constitution?
- (4) What are the electoral factors that affect this “wisdom” and make the same vulnerable to external influence?
- (5) How can the public help safeguard that electoral power, and are there pathways through which this “wisdom” can be enhanced?
- (6) What legal treatment should be afforded to the people’s “wisdom” in the greater scheme of things?

Through legal and political insights, this Article aims to analyze and clarify the legal framework and political theories by which the wisdom of the Filipino people is expressed and manifested through the ballots, as part and parcel of the principle of popular sovereignty enshrined in the fundamental law. At the same time, the Author intends to reexamine and challenge the thinking behind the plurality system itself. While all elections are generally a manifestation of the people’s wisdom, for purposes of this Article, primary and non-exclusive reference will be made to the results of past presidential and vice-presidential elections, since both elective positions still serve as the ultimate expression of the political wisdom of the Filipino people, given the immediate and long-term impact of the presidency and vice-presidency on the nation’s affairs.

Likewise, for purposes of this Article, and by way of clarification and guidance, sovereign wisdom will be distinguished from political wisdom. Sovereign wisdom will be discussed as referring to the will of the people in

the establishment of democratic processes and institutions,¹⁵ including the fundamental government structure and powers, through the Constitution.¹⁶ Political wisdom, on the other hand, is a form of that sovereign wisdom, but which is primarily and specially concerned with both the election of leaders and the expression of votes on matters of public and political interest,¹⁷ such as through plebiscite and referendum, whenever mandated by law.¹⁸ Primarily, however, political wisdom is manifested when the people make political choices through the election of national officials who are deemed worthy to be vested with the mantle of government power and authority to represent the people's best interest.¹⁹ Ultimately, therefore, to recognize the political wisdom in the people is to uphold the sovereign will.²⁰

A. *The Weight of an Ox*

In 1906, British scientist Francis Galton, who was renowned during his time for his work on statistics and heredity, trooped to the “annual West of England

15. PHIL. CONST. art. II, § 1. “Sovereignty resides in the people and all government authority emanates from them.” PHIL. CONST. art II, § 1.

16. *See Lambino v. Commission on Elections*, G.R. No. 174153, 505 SCRA 160, 265 (2006). “This Court cannot betray its primordial duty to defend and protect the Constitution. The Constitution, which *embodies the people’s sovereign will*, is the bible of this Court. This Court exists to defend and protect the Constitution.” *Lambino*, 505 SCRA at 265 (emphasis supplied).

17. The traditional definition of a “political question” provides necessary context. In Philippine jurisprudence,

it refers to ‘those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government.’ It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.

Tañada and Macapagal v. Cuenco, et al., 103 Phil. 1051, 1067 (1957) (citing 16 C.J.S. *Constitutional Law* § 145 (1956)) (emphases supplied).

18. *Lambino*, 505 SCRA at 246. “*The Constitution entrusts to the people the power to directly propose amendments to the Constitution*. This Court trusts the wisdom of the people even if the members of this Court do not personally know the people who sign the petition.” *Id.* (emphases supplied).

19. In *People v. Vera*, in deciding the question of the constitutionality of Act No. 4221, the Court made reference to “that peculiar political philosophy which bids the judiciary to reflect the *wisdom of the people as expressed through an elective Legislature and an elective Chief Executive*.” *People v. Vera*, 65 Phil. 56, 95 (1937) (emphasis supplied).

20. *See id.*

Fat Stock and Poultry Exhibition,” a livestock fair appraising “the quality of ... cattle, sheep, chickens, horses, and pigs.”²¹ At the same livestock fair, Galton chanced upon a guess-the-weight-of-an-ox competition, where the crowd was asked, through a ticket entry, “to place wagers on the weight of [an] ox[]” after it was “slaughtered and dressed[,]” for which the best guesses would get prizes.²²

Eight-hundred people participated in the guessing contest, many of whom were considered experts for being “butchers and farmers[.]”²³ There were also, however, quite a number who were not knowledgeable at all about cattle or horses, and, as such, were considered as non-experts.²⁴ “The analogy to a democracy, [through] which people of radically different abilities and interests each get one vote, [] suggested itself to Galton immediately.”²⁵ Thus, he observed, “*The average competitor was probably as well fitted for making a just estimate of the dressed weight of the ox, as an average voter is of judging the merits of most political issues on which he votes[.]*”²⁶

After the contest, Galton got the tickets, added all the estimates, and performed the following statistical calculations (using 787 out of 800 tickets in total, as 13 were illegible).²⁷ Table 1 provides a compilation of the estimates.

Table 1. “Distribution of the estimates of the dressed weight of a particular living ox, made by 787 different persons.”²⁸

Degrees of the length of Array 0°-100°	Estimates in lbs.	Centiles		Excess of Observed over Normal
		Observed deviates from 1207 lbs.	Normal p.e. = 37	
5	1074	-133	-90	+43
10	1109	-98	-70	+28

21. SUROWIECKI, *supra* note 13, at xi.

22. *Id.* at xii.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* (emphasis supplied). See also Frank H. Perry-Coste, *The Ballot-Box*, 75 NATURE 509, 509 (1907).

27. SUROWIECKI, *supra* note 13, at xiii & Francis Galton, *Vox Populi*, 75 NATURE 450, 450 (1907).

28. Galton, *supra* note 27, at 450.

15	1126	-81	-57	-24
20	1148	-59	-46	+13
25	1162	-45	-37	+8
30	1174	-33	-29	+4
35	1181	-26	-21	+5
40	1188	-19	-14	+5
45	1197	-10	-7	+3
50	1207	0	0	0
55	1214	+7	+7	0
60	1219	+12	+14	-2
65	1225	+18	+21	-3
70	1230	+23	+29	-6
75	1236	+29	+37	-8
80	1243	+36	+46	-10
85	1254	+47	+57	-10
90	1267	+52	+70	-18
95	1293	+86	+90	-4

Initially, “Galton [] thought that the average guess of the group would be way off the mark[,]” given the mixed background and varying intellectual capacities and occupational expertise of the participants.²⁹ Galton’s thinking, however, proved to be wrong.³⁰ His own mathematical calculations revealed that “[t]he crowd had guessed that the ox, after it had been slaughtered and dressed, would weigh 1,197 pounds. After it had been slaughtered and dressed, the ox weighed 1,198 pounds. In other words, the crowd’s judgment was

29. SUROWIECKI, *supra* note 13, at xiii.

30. *Id.*

essentially perfect.”³¹ Simply put, “[i]f the crowd were a single person, that was how much it would have guessed the ox weighed.”³² Galton wrote —

It appears then, in this particular instance, *that the vox populi is correct to within [one percent] of the real value*, and that the individual estimates are abnormally distributed in such a way that it is an equal chance whether one of them, selected at random, falls within or without the limits of -3.7 [percent] and +2.4 [percent] of their middlemost value.

This result is, I think, *more creditable to the [trustworthiness] of a democratic judgment* than might have been expected.³³

B. *The Wisdom of Crowds*

The Galton discovery in 1906 is what James M. Surowiecki called “the wisdom of crowds,” which he described as a “simple, but powerful, truth”³⁴ —

[U]nder the right circumstances, *groups are remarkably intelligent, and are often smarter than the smartest people in them*. Groups do not need to be dominated by exceptionally intelligent people in order to be smart. Even if most of the people within a group are not especially well-informed or rational, it can still reach a collectively wise decision.³⁵

Additionally, Surowiecki further described the “wisdom of crowds” phenomenon as follows —

[It is] the reason the Internet search engine Google can scan a billion Web pages and find the one page that has the exact piece of information you were looking for. [It is] the reason [why it is] so hard to make money betting on NFL games, and it helps explain why, for the past [15] years, a few hundred amateur traders in the middle of Iowa have done a better job of predicting election results than Gallup polls have. The wisdom of crowds has something to tell us about why the stock market works (and about why, every so often, it stops working). The idea of collective intelligence helps explain why, when you go to the convenience store in search of milk at two in the morning, there is a carton of milk waiting there for you, and it even tells us something important about why people pay their taxes and help coach Little League.³⁶

31. *Id.*

32. *Id.*

33. Galton, *supra* note 27, at 451 (emphases supplied).

34. SUROWIECKI, *supra* note 13, at xiii.

35. *Id.* at xiii–xiv (emphasis supplied).

36. *Id.* at xiv.

Not everyone, however, believed in the wisdom of crowds. Prior to Galton, a Scottish journalist by the name of Charles Mackay, “in 1841, published *Extraordinary Popular Delusions and the Madness of Crowds*, [which provided a] chronicle of mass mania[] and collective follies,” and which Surowiecki paid homage to in the title of his book.³⁷ Surowiecki observed that “[f]or Mackay, crowds were never wise. They were never even reasonable. Collective judgments were doomed to be extreme.”³⁸

There were also other critics of crowd thinking or crowd mentality, as noted by Surowiecki —

The speculator Bernard Baruch, for instance, famously said: ‘Anyone taken as an individual is tolerably sensible and reasonable — *as a member of a crowd, he at once becomes a blockhead.*’ Henry David Thoreau lamented: ‘*The mass never comes up to the standard of its best member, but on the contrary degrades itself to a level with the lowest.*’ Friedrich Nietzsche wrote, ‘*Madness is the exception in individuals but the rule in groups,*’ while the English historian Thomas Carlyle put it succinctly [—] ‘*I do not believe in the collective wisdom of individual ignorance.*’³⁹

Gustave Le Bon, a French writer, was perhaps the staunchest critic of the wisdom, or rather, the “stupidity of groups[.]”⁴⁰ Le Bon published *The Crowd: A Study of the Popular Mind*⁴¹ in 1895, with Surowiecki making the following interesting observations about Le Bon’s position —

Le Bon was appalled by the rise of democracy in the West in the nineteenth century, and dismayed by the idea that ordinary people had come to wield political and cultural power. But his disdain for groups went deeper than that. A crowd, Le Bon argued, was more than just the sum of its members. Instead, it was a kind of independent organism. It had an identity and a will of its own, and it often acted in ways that no one within the crowd intended. When the crowd did act, Le Bon argued, it invariably acted foolishly. A crowd might be brave[,] or cowardly[,] or cruel, but it could never be smart. As he wrote, ‘In crowds it is stupidity and not mother wit that is accumulated.’ Crowds ‘can never accomplish acts demanding a high degree of intelligence,’ and they are ‘always intellectually inferior to the isolated individual.’ Strikingly, for Le Bon, the idea of ‘the crowd’ included not just

37. *Id.* at xv.

38. *Id.*

39. *Id.* at xv-xvi (emphases supplied).

40. SUROWIECKI, *supra* note 13, at xvi.

41. GUSTAVE LE BON, *THE CROWD: A STUDY OF THE POPULAR MIND* (1895).

obvious examples of collective wildness, like lynch mobs or rioters. It also included just about any kind of group that could make decisions.⁴²

In light of the foregoing context and background, how should election results be viewed? Should they be considered the *madness of crowds*,⁴³ as Mackay put it, or the *stupidity of groups*,⁴⁴ as described by Le Bon? Or should election results be considered as the “wisdom of crowds,”⁴⁵ as Surowiecki argues?

It is from this “wisdom of crowds” perspective that this Article seeks to critically examine the legal and political aspects of the “Theory of Popular Sovereignty,” as well as the plurality (of popular votes) system, as integral parts of Philippine democracy. The Author also aims to evaluate the relevance of such pillars in the country’s republican or representative form of government, as periodically expressed and manifested through the regular democratic exercise and cycle of national and local elections. If crowd guesses can be a reflection of collective wisdom, then certainly the electoral choice should be an expression of collective wisdom as well.

Surely, there is much more at stake for the country’s fragile democracy and sovereign stability than just comparing the wisdom of the electorate to guessing the weight of an ox. Thus, for purposes of the discussions in this Article, the “wisdom of crowds” will *not* be used to guess or predict election results, although such an analysis may bear strong similarities to the science of political and election surveys and polling. Instead, the “wisdom of crowds” will be used to understand and appreciate the manifestation of the electorate’s wisdom as expressed through the ballots.

C. The Wisdom in the Numbers: Majority Versus Plurality

One legal question that can be asked is *how majority or plurality can be a quantifiable legal measure of sovereignty?* Except for the plurality system, it is interesting to note that there is no other measure by which democratic wisdom can be quantified precisely.⁴⁶ This is for good reason, considering that no other

42. SUROWIECKI, *supra* note 13, at xvi (citing LE BON, *supra* note 41, at 9 & 14) (emphasis supplied).

43. See SUROWIECKI, *supra* note 13, at xv.

44. SUROWIECKI, *supra* note 13, at xvi (citing LE BON, *supra* note 41, at 9).

45. SUROWIECKI, *supra* note 13, at xiv.

46. See GERARDO L. MUNCK, MEASURING DEMOCRACY: A BRIDGE BETWEEN SCHOLARSHIP AND POLITICS 40 (2009) (citing David Collier & Robert Adcock, *Democracy and Dichotomies: A Pragmatic Approach to Choices About Concepts*, 2 ANN. REV. POL. SCI. 537, 537–38 (1999)).

democracy in the world has provided for a benchmark or measurable standard besides either the “majority rule” or the “plurality system.”⁴⁷ As such, whenever that majority cannot be achieved, it becomes a “plurality system” in a multi-choice scenario.⁴⁸ Attaining that wisdom, and, consequently, fully understanding the same, will ultimately be contingent on the best judgment of the collective sovereign will, which invariably resides in voters of varying age, gender, race, culture, religion, education, profession, and income. Interestingly, income level and education do not and will not make that collective wisdom any more or less wise, which is why the Constitution explicitly prohibits the imposition of any “literacy, property, or other substantive requirement ... on the exercise of suffrage.”⁴⁹

II. SOVEREIGN WILL: THE REPUBLICAN FORM OF GOVERNMENT IN THE PHILIPPINES

A. Sovereignty and Representation

Sovereign will is at the very heart of the republican form of government enshrined in Article II, Section 1 of the 1987 Constitution, which provides, “*The Philippines is a democratic and republican State. Sovereignty resides in the people*

One of the main obstacles to devising better measures of political regimes — and, hence, to improving our ability to describe regimes in a systematic and nuanced manner — is the widely held view that scholars face a choice between generating dichotomous and continuous measures The oft-repeated phrase that there are distinctions ‘of kind’ and ‘of degree,’ and that they should not be confused, indicates how deeply this stark choice is ingrained in current thinking. Even self-consciously methodological discussions of measurement focus on the pros and cons of choosing dichotomous or continuous measures *without ever addressing the wisdom of this dichotomous choice.*

MUNCK, *supra* note 46, at 40 (citing Collier & Adcock, *supra* note 46, at 537-38) (emphasis supplied).

47. *But see* Elisabeth Carter & David M. Farrell, *Electoral Systems and Election Management*, in *COMPARING DEMOCRACIES 3: ELECTIONS AND VOTING IN THE 21ST CENTURY* 27 tbl. 2.1 (Lawrence LeDuc, et al. eds., 2010). “Set against plurality and majority electoral systems are three families of proportional systems: list, single transferable vote, and mixed-member proportional.” Carter & Farrell, *supra* note 47, at 29.

48. *Geronimo v. Ramos*, G.R. No. L-60504, 136 SCRA 435, 446-47 (1985) (citing 29 C.J.S. *Elections* § 243 (1965)).

49. PHIL. CONST. art. V, § 1.

and all government authority emanates from them.”⁵⁰ That “[s]overeignty resides in the people”⁵¹ is the very “cornerstone of every democracy”⁵² and the bedrock of the Philippines’ system of government.⁵³ As stated by Justice Antonio P. Barredo, “[t]ranslating this declaration into actuality, the Philippines is a republic because and solely because the people in it can be governed only by officials whom they themselves have placed in office by their votes.”⁵⁴

Indeed, democracy is about “[u]pholding the sovereignty of the people[.]”⁵⁵ Moreover, “genuine democracy thrives only where the power and right of the people to elect the men [and women] to whom they would entrust the privilege to run the affairs of the state exist.”⁵⁶ This very well supports why the “sovereignty of [the] people is the primary postulate of the 1987 Constitution[.]” as well as why it appears first in the declaration of principles and state policies.⁵⁷ Significantly, “[t]he same principle served as the bedrock of [the] 1973 and 1935 Constitutions.”⁵⁸

Fr. Joaquin G. Bernas, S.J. explained the origin of the provision in this wise —

Article IV, Section 4, of the United States Constitution impose[d] on the Federal Government the duty to guarantee to every [S]tate ‘a Republican Form of Government.’ And a republican form of government is understood as ‘one constructed on this principle, that the supreme power resides in the

50. PHIL. CONST. art. II, § 1.

51. PHIL. CONST. art. II, § 1.

52. *The Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, 747 SCRA 1, 77 (2015) (citing PHIL. CONST. art. II, § 1).

53. *See Santiago v. Commission on Elections*, G.R. No. 127325, 270 SCRA 106, 178 (1997) (J. Vitug, separate opinion).

54. *The Diocese of Bacolod*, 747 SCRA at 85 (citing *Gonzales v. Commission on Elections*, G.R. No. L-27833, 27 SCRA 835, 926-27 (1969) (J. Barredo, concurring and dissenting opinion)).

55. *Loong v. Commission on Elections*, G.R. No. 133676, 305 SCRA 832, 871 (1999).

56. *The Diocese of Bacolod*, 747 SCRA at 84 (citing *Gonzales*, 27 SCRA at 926 (J. Barredo, concurring and dissenting opinion)).

57. *Frivaldo v. Commission on Elections*, G.R. No. 120295, 257 SCRA 727, 789 (1996) (J. Puno, concurring opinion).

58. *Id.* at 789-90. *See also* 1973 PHIL. CONST. art. II, § 1 (superseded in 1987) & 1935 PHIL. CONST. art. II, § 1 (superseded in 1973).

body of the people.’ Its purpose[,] therefore[,] is to guarantee against two extremes: on the one hand, against monarchy and oligarchy, and on the other, against pure democracy.⁵⁹

Justice Isagani A. Cruz further explained that through the Constitution, the people have chosen to establish a representative democracy within a republican government composed of officials discharging their powers on behalf of the people.⁶⁰ This is distinguished from a pure democracy, where the people may exercise the powers of government directly, to wit —

A republic is a representative government, a government run by and for the people. It is not a pure democracy where the people govern themselves directly. The essence of republicanism is representation and renovation, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained, at the option of their principal. Obviously, a republican government is a responsible government whose officials hold and discharge their position as a public trust and shall, according to the Constitution, ‘at all times be accountable to the people’ they are sworn to serve. The purpose of a republican government[,] it is almost needless to state, is the promotion of the common welfare according to the will of the people themselves.⁶¹

In a similar manner, when the 1934 Tydings-McDuffie Act authorized the Filipino people to draft a Constitution,⁶² one of the mandates was that the “constitution formulated and drafted shall be republican in form,”⁶³ in clear adherence to the directive in the U.S. Constitution for the State to guarantee a “Republican Form of Government[.]”⁶⁴ Thus, and as observed by Fr. Bernas, “Section 1, when first formulated in 1934, was a response to that command[.]” and a willing response, given that “a republican form of government was [that] with which the Filipinos were most familiar.”⁶⁵ To

59. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 56 (2009) (citing *Chisholm v. Georgia*, 2 Dall. 419, 457 (1793) (U.S.)).

60. *Frivaldo*, 257 SCRA at 791-92 (J. Puno, concurring opinion) (citing ISAGANI A. CRUZ, PHILIPPINE POLITICAL LAW 49 (1991)).

61. *Id.* (emphasis omitted).

62. Tydings-McDuffie Act, Pub. L. No. 73-127, § 1, 48 Stat. 456, 456 (1934).

63. BERNAS, *supra* note 59, at 56-57 (citing Tydings-McDuffie Act, § 2 (a)).

64. BERNAS, *supra* note 59, at 57 (citing U.S. CONST. art. IV, § 4).

65. BERNAS, *supra* note 59, at 57.

date, this Constitutional influence continues to serve as the underlying basis and principle for the present Philippine republican State.⁶⁶

Fr. Bernas further clarified that the definition of a republican government, “as understood by the delegates [in 1934], was the one expressed by James Madison[,]” a Founding Father and fourth President of the United States —

We may define a republic to be a government which derives all its power directly or indirectly from the great body of people; and is administered by persons holding their offices during pleasure, for a limited period, or during good [behavior]. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favorable class of it. It is sufficient for such a government that the person administering it be appointed either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified.⁶⁷

B. Government and Administration

Corollary to the concept of representative government, therefore, is the helpful classification of and distinction between government and administration.⁶⁸ In *United States v. Dorr*,⁶⁹ the Supreme Court distinguished between the institutions of government, on one hand, and the individuals administering the government, on the other —

We understand, in modern political science, [...] *by the term government, that institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them. Government is the aggregate of authorities which rule a society. By ‘administration[,]’ again, we understand in modern times, and especially in more or less free countries, the aggregate of those persons in whose hands the reins of government are for the time being (the chief ministers or heads of*

66. See *Frivaldo*, 257 SCRA at 789-90 (J. Puno, concurring opinion) (citing Tydings-McDuffie Act, § 2 (a); *Roa v. Collector of Customs*, 23 Phil. 315, 340 (1912); *Severino v. Governor-General*, 16 Phil. 366, 383 (1910); & *United States v. Bull*, 15 Phil. 7, 27 (1910)).

67. BERNAS, *supra* note 59, at 57 (citing 1 JOSE M. ARUEGO, *THE FRAMING OF THE PHILIPPINE CONSTITUTION* 132 (1936)).

68. See Woodrow Wilson, *The Study of Administration*, 2 POL. SCI. Q. 197, 198 (1887). Thomas Woodrow Wilson, the 28th President of the United States, wrote that “[a]dministration is the most obvious part of government; it is government in action; it is the executive, the operative, the most visible side of government, and is of course as old as government itself.” Wilson, *supra* note 68, at 198.

69. *United States v. Dorr*, 2 Phil. 332 (1903).

departments). ... But the writer adds that the terms ‘government’ and ‘administration’ are not always used in their strictness, and that ‘government’ is often used for ‘administration[.]’⁷⁰

Otherwise stated, “[g]overnment is the institution through which the [S]tate exercises power; administration, on the other hand, consists of the set of people currently running the institution.”⁷¹ Thus, as further explained by Fr. Bernas, “[a]dministrations change without a change in either [S]tate or government. The transitions from the 1935 Constitution to the 1973 Constitution to the 1987 Constitution involved changes of government but not of [S]tate[.] The transition [between] President[s] ... did not involve a change of government but only of administration.”⁷²

The very distinction between government and administration, therefore, only serves to affirm and highlight the representative aspect of the nation’s republican framework. Administration constitutes that very representative government chosen by the sovereign wisdom of the people made manifest through popular elections.⁷³ Thus, the sovereignty of the people is the very reason why both elective and appointive government or public officials can only possess the authority that has been directly (by election) or indirectly (by appointment) granted to them with the consent of the people through the law.⁷⁴

C. Sovereign Powers: Indivisible and Omnipotent

To give flesh to that republican form, and “[t]o ensure order in running the [S]tate’s affairs, sovereign powers were delegated and individuals would be elected or nominated in key government positions to represent the people.”⁷⁵ Accordingly,

[r]epublicanism, insofar as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. Each time the enfranchised citizen goes to the polls to assert this sovereign will, that abiding credo of republicanism is translated into living reality.

70. *Id.* at 339 (citing 1 JOHN BOUVIER, BOUVIER’S LAW DICTIONARY 981 (1897)) (emphasis supplied).

71. BERNAS, *supra* note 59, at 44.

72. *Id.*

73. *See id.* & *Gonzales*, 27 SCRA at 926-27 (J. Barredo, concurring and dissenting opinion).

74. *Gonzales*, 27 SCRA at 926-27 (J. Barredo, concurring and dissenting opinion).

75. *The Diocese of Bacolod*, 747 SCRA at 77.

Indeed, a truly-functioning democracy owes its existence to the people's collective sovereign will.⁷⁶

Thus,

in a representative democracy[,] the people should ultimately control the political decision-makers and the decisions they take; and that everyone should be equal in the exercise of that control and possess equal citizenship rights. These principles are realized through 'contributing values[,] such as accountability, equality, representation, participation, and so on.'⁷⁷

When that sovereignty is collectively exercised by the people, it remains indivisible even though it is not exercised by the people together all the time.⁷⁸ As articulated in Justice Reynato Puno's concurring opinion in *Frialdo v. Commission on Elections* —

I agree that sovereignty is indivisible[,] but it need not always be exercised by the people together, all the time. [F]or this reason, the Constitution and our laws provide when the entire electorate or only some of them can elect those who make our laws and those who execute our laws. Thus, the entire electorate votes for our senators[,] but only our district electorates vote for our congressmen, only our provincial electorates vote for the members of our provincial boards, only our city electorates vote for our city councilors, and only our municipal electorates vote for our councilors. Also, the entire electorate votes for our President and Vice-President[,] but only our provincial electorates vote for our governors, only our city electorates vote for our mayors, and only our municipal electorates vote for our mayors. By defining and delimiting the classes of voters who can exercise the sovereignty of the people in a given election, it cannot be claimed that said sovereignty has been fragmented.⁷⁹

76. Ernesto L. Ching v. Carmelita S. Bonachita-Ricablanca, G.R. No. 244828, Oct. 12, 2020, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66802> (last accessed Nov. 30, 2021) (citing *Moya v. del Fierro*, 69 Phil. 199, 204 (1939) & *People v. San Juan*, G.R. No. L-22944, 22 SCRA 498, 505 (1968)) (emphasis omitted).

77. Stuart Weir, *Foreword* to EDNA E. A. CO, ET AL., PHILIPPINE DEMOCRACY ASSESSMENT: FREE AND FAIR ELECTIONS AND THE DEMOCRATIC ROLE OF POLITICAL PARTIES x-xi (2005).

78. *Frialdo*, 257 SCRA at 792 (J. Puno, concurring opinion) (citing VICENTE G. SINCO, PHILIPPINE POLITICAL LAW: PRINCIPLES AND CONCEPTS 23-24 (1954)).

79. *Id.*

Likewise, when that sovereign power is exercised, it is meant to be supreme and accorded legal omnipotence, as articulated in *Frialdo v. COMELEC*,⁸⁰ to wit —

To be sure, the sovereignty of our people is not a kabalistic principle whose dimensions are buried in mysticism. Its metes and bounds are familiar to the framers of our Constitutions. They knew that in its broadest sense, sovereignty is meant to be supreme, the *jus summi imperii*, the *absolute right to govern*. Former Dean Vicente Sinco states that an essential quality of sovereignty is legal omnipotence, *viz[—]* ‘Legal theory establishes certain essential qualities inherent in the nature of sovereignty. The first is legal omnipotence. This means that the sovereign is legally omnipotent and absolute in relation to other legal institutions. It has the power to determine exclusively its legal competence. Its powers are original, not derivative. *It is the sole judge of what it should do at any given time.*’ Citing Barker, he adds that a more amplified definition of sovereignty is that of ‘*a final power of final legal adjustment of all legal issues.*’ The U.S. Supreme Court expressed the same thought in the landmark case of *Yick Wo v. Hopkins*, where it held that ‘[...] *sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.*’⁸¹

III. THE THEORY OF POPULAR SOVEREIGNTY

A. Historical and Philosophical Perspective

In lengthy but brilliant legal prose, English political theorist Harold J. Laski presented comprehensive historical and philosophical discourse and perspective on the theory of popular sovereignty, which traces its origins to antiquity, but only gained full significance during the Middle Ages.⁸² Laski narrated —

This theory of popular sovereignty has had amazing influence; nor should the novelty of the democratic [S]tate blind us to its antiquity. ‘It is a distinctive trait of medieval doctrines,’ says Gierke, ‘that within every human

80. *Frialdo v. Commission on Elections*, G.R. No. 120295, 257 SCRA 727 (1996) (J. Puno, concurring opinion).

81. *Id.* at 790–91 (citing 39A WORDS AND PHRASES 68 (citing *Cherokee Nation v. Southern Kan. R. Co.*, 33 F. 900, 906 (1888) (U.S.)); SINCO, *supra* note 79, at 22; ERNEST BARKER, PRINCIPLES OF SOCIAL AND POLITICAL THEORY 59 (1952); & *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

82. Harold J. Laski, *The Theory of Popular Sovereignty*, 17 MICH. L. REV. 201, 202 & 204–05 (1919).

group it decisively [recognizes] an aboriginal and active right of the group taken as a whole.’ There is a sense, indeed, in which the theory may be said to be coeval with the very birth of political doctrine; though it was not until the [M]iddle [A]ges that its full significance began in any adequate fashion to be perceived.⁸³

Despite its long-standing development, sovereignty in the modern democratic community has customarily been associated with the people as a whole, so much so that Adhémar Esmein “insists that only the [S]tate[]—[and] the people, ... viewed as a political unit[]—[]can exercise supreme power.”⁸⁴ Laski, however, further opined that

[a S]tate must, as a general rule, act by agents and ministers to whom the exercise of power is entrusted. The power so confided may, as in America, be limited, or plenary, as in Great Britain. But in neither case is it in actual fact more than a permission to perform such acts as are likely to secure public approval.⁸⁵

From Plato and Aristotle to Alexander Hamilton and Jean-Jacques Rousseau, among other equally remarkable political thinkers cited by Laski, political philosophies vary on what should be recognized as the true authority in a sovereignty.⁸⁶ Thus, Laski’s political discourse centered on two schools of thought when it came to understanding sovereignty: (1) on one hand, sovereignty was to be understood as being delegated and entrusted, which is now commonly known as popular sovereignty and representative government;⁸⁷ and (2) on the other hand, sovereignty in the people was to be considered as direct and supreme.⁸⁸

Laski largely credited Rousseau for coming up with the “theoretic basis of popular government[,]”⁸⁹ to wit —

The active source of innovation is Rousseau; and the theory he consecrated for his disciples in the Revolution certainly requires a somewhat more critical examination than it has received. In its classical conception, whether in France or in America, it is open to a variety of interpretations; nor is it obvious that, for the practical purposes of government, it possesses the merits

83. *Id.* at 202 (citing OTTO GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE* 37 (Frederic William Maitland trans., 1900)).

84. Laski, *supra* note 82, at 202 (citing ADHÉMAR ESMEIN, *ÉLÉMENTS DE DROIT CONSTITUTIONNEL: FRANÇAIS ET COMPARÉ I* (6th ed. 1914)).

85. Laski, *supra* note 82, at 202 (emphasis supplied).

86. *Id.* at 205–06, 208–09, & 212–13.

87. *Id.* at 207.

88. *See id.* at 202 (citing ESMEIN, *supra* note 84, at 1).

89. Laski, *supra* note 82, at 203.

of clearness and utility. That is not to allege its lack of influence. *On the contrary, it is matter of record that it has, again and again, been the basis of popular action; and it is still, for most, the theoretic basis of popular government. Certainly[,] it is undeniable that when Rousseau declared sovereignty to be in the people as a whole, he gave birth to a plethora of constitutions of which some, at least, were intended to give partial substance to his ideas.* Nor did the Revolutions of 1848 have a very dissimilar objective.

But, in the technical sense of full administrative application, it is seriously questionable whether the theory of Rousseau is in fact a working hypothesis. *What he [emphasized] was the distinction between state and government, and it was to the former alone that he gave unlimited power.* It is, however, obvious that no system of politics is workable which involves so frequent an elicitation of the sovereign's will. *The business of the modern state is too complex to be conducted by perpetual referenda; and, in actual practice, governments which can obtain the necessary support are able to act as they on occasion deem warranted. Rousseau's doctrine, in any case, will mean no more than majority rule.* We shall not easily surrender the convenience that has been administratively secured by the transition from the impossible medieval system of unanimous judgments. But the hypothesis of majority rule herein implied is itself too simple to cover the facts. *What, in fact, Rousseau's system, like any other, does is to leave power in the hands of that minority which is able most effectively to manipulate the will of the inert mass of the population.*

It is dear, in brief, that popular sovereignty, if it means that the whole people is, in all but executive detail, to govern itself, is an impossible fiction. There are, indeed, occasions when it may have been operative; at least it was theoretically possible for the citizen-body of Athens to make its sovereign decisions as a unity. *But once we turn to the modern state, with its absence of the numerical limits within which the Greek cities were confined, it is obvious that, for the general purposes of daily life, popular sovereignty is non-existent. We cannot avoid, that is to say, the device of representation. The scale of our social life involves specialization of function. Political business has to be confined to a small group of men whose decisions, generally speaking, are accepted by the vast majority.*⁹⁰

Dr. Bernard Bosanquet, another English political theorist, had a different variation of the Rousseau theory. While Dr. Bosanquet acknowledged that sovereign power resides in the people, he believed that there must be some "determinate expression []" of that power, which can be seen through the institutions.⁹¹ Laski critically observed, however, that "Dr. Bosanquet, like Rousseau, makes government simply an instrument for effecting the will of

90. *Id.* at 203-04 (citing JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT bk. III, ch. I (1762)) (emphases supplied).

91. Laski, *supra* note 82, at 206.

the sovereign [S]tate; but [] gives [] no means of knowing when that will has received expression.”⁹² Laski commented —

A more subtle interpretation of Rousseau’s formula has been attempted by Dr. Bosanquet. He sees that ultimate power must reside in the community as a whole; but he insists that the conception is meaningless unless the power finds some determinate expression. *He places sovereignty, therefore, in the [S]tate, and he defines the [S]tate as ‘the entire hierarchy of institutions by which life is determined.’ Sovereignty, in his view, really belongs to the general will, to the acts, that is to say, of the [S]tate’s best self.* But this, surely, does no more than move the enquiry back to a further stage. *The [S]tate must find organs for the expression of its selfhood; and Dr. Bosanquet gives us no criterion by which to [recognize] the expression.* The sovereignty of the general will, indeed, is very like the assertion that right and truth must prevail; but it does not tell us how certainly to discover the presence of right and truth. It is, moreover, questionable whether the identification of the community as a whole with the [S]tate is adequate.⁹³

Given the deficiency in the Bosanquet formulation, Laski came up with the missing element for the “determinate expression[]” of that will⁹⁴ — through the exercise of suffrage.⁹⁵ Accordingly, Laski explained —

At this point an interpretation emerges which has all the merit of simplicity and clearness. *The people, it is admitted, cannot directly govern itself; but it can directly delegate, through the device of universal suffrage, the business of government. The national assembly, whether Congress or Parliament, then in fact becomes the people, and it derives the right therefrom to exercise completely sovereign powers. Popular sovereignty, that is to say, implies representative government. Some institution, or set of institutions, has to be erected in which the will of the people as a whole may find expression.* The most eminent of Rousseau’s disciples did not hesitate to accept this view. ‘The nation,’ said the Constitution of 1791, ‘from which alone all powers derive, can exercise them only by delegation. The French constitution is representative; its representatives are the legislative body and the King.’ The Belgian constitution expresses a similar idea. ‘*All powers,*’ it asserts, ‘*emanate from the nation; they are exercised in the manner established by the Constitution.*’ The sovereignty of the King in Parliament has a basis in nowise different; and it has been given classically emphatic expression in Burke’s insistence that the private member ideally represents the nation as a whole. Statesmen of distinction, indeed, have not hesitated to affirm that resistance to the representative assembly is resistance to the [S]tate

92. Laski, *supra* note 82, at 207.

93. *Id.* at 206–07 (citing BERNARD BOSANQUET, *THE PHILOSOPHICAL THEORY OF THE STATE* 150 (2d ed. 1910)) (emphases supplied).

94. Laski, *supra* note 82, at 206.

95. *Id.* at 207.

itself. M. Briand, for example, based his opposition to the demands of the French civil service on the ground that they could not secure the support of the Chamber. ‘The civil servants,’ he said, ‘are confronted by the national representatives, that is to say by the nation itself.’ ‘Against whom,’ asked M. Barthou, ‘are the postal workers on strike? [...] it is against you, gentlemen, against the whole nation [.] The question is whether we are to abandon general interests, we who represent the national sovereignty.’ *‘The system of representation,’ said Brougham in his famous speech upon the Reform Bill of 1832, ‘consists altogether in the perfect delegation by the people of their rights and the care of their interests to those who are to deliberate and to act for them.’*

But it is, as a distinguished authority has admitted, at least an open question whether the theory of popular sovereignty is compatible with representative government. *The element of representation, he says, ‘means that, within the limit of the powers conferred upon them, the members are called upon freely and finally, to represent in the name of the people, what is considered to be the will and voice of the latter.’* There is herein implied exactly that theory of a restricted mandate which Burke and Mill so emphatically rejected. Rousseau himself, indeed, insisted that sovereignty cannot be represented because that is to admit, what is illogical, the possibility of its alienation. To part with paramount power was, in his view[,] already to betray it.⁹⁶

Needless to say, but still worth highlighting at this juncture, the system of popular sovereignty and representative government as the expression of that will, through the theories formulated by Bosanquet and Rousseau, and as fully articulated by Laski, has been reaffirmed in the 1987 Philippine Constitution under Article II, Section 1 thereof — “The Philippines is a democratic and republican State. *Sovereignty resides in the people and all government authority emanates from them.*”⁹⁷

There is another sense to sovereignty, however, that deserves equal attention — that the ultimate sovereign power lies in the majority that “will get itself obeyed[.]” if and when roused by a government that is acting contrary

96. *Id.* at 207–09 (citing 1791 FR. CONST. tit. III, art. 2; BELG. CONST. tit. III, art. 25; 2 SPEECH AT BRISTOL WORKS 165 (World’s Classics ed.); Journal Officiel De La République Française, (May 14, 1907); The Lord Chancellor’s Speech on Parliamentary Reform in the House of Lords (Oct. 7, 1831), at 49; ESMEIN, *supra* note 84, at 391; JOHN STUART MILL, UTILITARIANISM, LIBERTY & REPRESENTATIVE GOVERNMENT 323 (Everyman’s Library ed., 1910); & ROUSSEAU, *supra* note 90, bk. III, ch. XV) (emphases supplied).

97. PHIL. CONST. art. II, § 1 (emphasis supplied).

to the sovereign interest.⁹⁸ Such thought is rooted in Aristotle's *Politics*,⁹⁹ and was explained by Laski as follows —

There is herein implied a second and vaguer sense in which the notion of popular sovereignty has become accepted. Historically, it perhaps goes back to the teleology of Aristotle's *Politics*, at least in the sense in which it is given ethical justification. For its practical bearing, the sense insisted upon by Hume when he urged the paramountcy of public opinion is a sufficient expression of its meaning. *No one will deny that any government can, often enough, secure obedience from an unwilling people; but no one will deny either that the ultimate power in any [S]tate belongs to the majority and that the latter, if it be roused, will get itself obeyed[.]*

*Here, indeed, we verge upon the teleological factor by which Aristotle justified the existence of the [S]tate. Its object, he said, is to secure the good life; and popular sovereignty is therefore in turn justified by the argument that government should not proceed against the will of the governed.*¹⁰⁰

Following Aristotle's teleological justification was the recognition by Alexander Hamilton of that implied "careful limitation of the power to be entrusted" to the government, with the people having the "reserve power of revolution."¹⁰¹ Laski further clarified —

A corollary that has been deduced from this attitude is worthy of some notice. The authors of the *Federalist* were compelled, of course, to accept the dogma wholeheartedly, though it is interesting, in view of Hamilton's attitude to democracy, to note that they nowhere attempted any analysis of its meaning. *What, with them, it seemed to imply was the necessity of a careful limitation of the power to be entrusted to the various branches of government; and they were urgent, with historic precedent immediately behind them, in insisting upon the reserve power of revolution. 'If the representatives of the people,' said Hamilton, 'betray their constituents, there is then no resource left but in the exertion of that original right of self-[defense] which is paramount to all positive forms of government[;']* and he even conceived of the constituent states as an organized security against national usurpation.¹⁰²

98. Laski, *supra* note 82, at 205.

99. *Id.* at 204-05.

100. *Id.* at 204-05 (citing David Hume, *Essays, Moral, Political, and Literary*, in THE WORLD'S CLASSICS 24 (1903) (emphases supplied)).

101. Laski, *supra* note 82, at 206.

102. *Id.* (citing THE FEDERALIST NO. 28 (Alexander Hamilton)) (emphasis supplied).

In the Philippine context, the Aristotelian and Hamilton views on this “careful limitation” and “reserve power of revolution” very much explain the underlying political thought and philosophy behind the “extra-constitutional” principle that Fr. Bernas espoused in his distinguished lectures on Philippine Constitutional Law as the legal justification for the 1986 EDSA People Power Revolution as the Filipino people’s own direct way of exercising sovereignty in the overthrow of the Marcos dictatorship and his authoritarian government and regime.¹⁰³

B. The 1987 Philippine Constitution

As previously discussed, the theory of popular sovereignty presently finds constitutional basis in the second sentence of Article II, Section 1 of the 1987 Constitution — “Sovereignty resides in the people and all government authority emanates from them.”¹⁰⁴ Accordingly —

Sovereignty in this [second] sentence therefore can be understood as the source of ultimate legal authority. Since the ultimate law in the Philippine system is the [C]onstitution, sovereignty, understood as legal sovereignty, means the power to adapt or alter a constitution. This power resides in the ‘people’ understood as those who have a direct hand in the formulation, adoption, and amendment or alteration of the Constitution.¹⁰⁵

The Supreme Court in *Moya v. Del Fierro*¹⁰⁶ succinctly described popular sovereignty in this wise —

As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the [] common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justifiable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality.¹⁰⁷

103. BERNAS, *supra* note 59, at 50.

104. PHIL. CONST. art. II, § 1.

105. BERNAS, *supra* note 59, at 55.

106. *Moya v. del Fierro*, 69 Phil. 199 (1939).

107. *Id.* at 204 (emphasis supplied).

Corollary to the theory of popular sovereignty, Justice Regalado E. Maambong describes this political exercise as follows —

The fundamental law or Constitution is ratified by the people. The highest officials of the land — the President, the Vice-President, Members of Congress, and high local government officials — are all elected by the people. *The other men and women who run the government, whether by election or appointment, are, in turn, invariably given the power to appoint the millions of other government functionaries, to make laws and regulations, and to implement the same. Therefore, the source of governmental power in a democracy is the people who elect those who, in turn, appoint others.*

In principle, therefore, the people directly create their own government and vest it with the powers that it may exercise through a Constitution that they themselves ratify. *This principle postulates that the people do not abdicate their sovereign thereby, and remain sovereign, thus retaining control of the government.*¹⁰⁸

C. Sovereign Authority and the Rule of Law

According to Fr. Bernas,

[p]olitical writers distinguish between legal sovereignty and political sovereignty. The former is described as the supreme power to make laws and the latter as the sum total of all the influences in a [S]tate, legal and non-legal, which determine the course of law.

Sovereign authority, [however], is not always directly exercised by the people. It is normally delegated by the people to the government and to the concrete persons in whose hands the powers of government temporarily reside. The temptation to which government personnel are prone is to forget that public office is a public trust, and an essentially temporary trust at that, and to equate every attempt to wrest that trust from them, no matter by what means, to criminal acts of subversion. It is a temptation not easily resisted under any form of authoritarian rule.

...

This is the meaning of the rule of law: a government of laws and not of men. The Constitutional Commission, however, did not consider it necessary to make explicit the right of the people to oust an abusive and authoritarian government through non-violent means.¹⁰⁹

108. Regalado E. Maambong, *The Philippine Law on Elections in Perspective*, 46 ATENEO L.J. 436, 441 (2001) (emphases supplied).

109. BERNAS, *supra* note 59, at 55–56 (citing LORENZO M. TAÑADA & FRANCISCO CARREON, *POLITICAL LAW OF THE PHILIPPINES* 18 (1961); VICENTE G. SINCO, *PHILIPPINE POLITICAL LAW* 17–26 (1962); & 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 90, at 959–69 (1986)).

However, the “Declaration of Principles and State Policies” and the provisions therein, including Article II, Section 1,

were not intended to be self-executing principles ready for enforcement through the courts. They were rather directives addressed to the executive and to the legislature. If the executive and the legislature failed to heed the directives of the article, the available remedy was not judicial but political. The electorate could express their displeasure with the failure of the executive and the legislature through the language of the ballot.¹¹⁰

Accordingly, the people themselves constitute the very sovereign power exercised by the State through the government. The people are the very government that they choose to form through the leaders that they choose to elect and appoint. This sovereignty is collectively exercised by the people through the ballots as an electorate, which allows them to choose their public servants directly (by election) and indirectly (by appointments made by the officials elected by the people). Of course, and needless to state, neither popular sovereignty, nor the political wisdom of the people, is limited to the mere election of national and local officials, extending to matters of mutual political and national interest, such as the party-list system, plebiscite, and initiative and referendum as constitutive parts of the exercise.

IV. ELECTORAL POWER AND THE POPULAR VOTES: SOVEREIGN WILL BY THE NUMBERS

A. The Wisdom in the Numbers: A Quantitative and Qualitative View

When engaging in any discourse about sovereign will, electoral power, and political wisdom within the framework of a representative democracy, it is crucial to know how many Filipino people and voters are being referred to. The following table covering the election years from 1998 to 2019 presents a quantitative snapshot and view —

110. BERNAS, *supra* note 59, at 36.

Table 2. Voters by the Numbers (1998–2019) Versus Total Population¹¹¹

ELECTION YEAR	REGISTERED VOTERS	ACTUAL VOTES	VOTER TURNOUT (%)	TOTAL POPULATION
2019	63,643,263	47,296,442	74.31%	108,116,615
2016	54,363,844	44,549,848	81.95%	103,663,816
2013	52,014,648	31,568,679	61%	98,871,555
2010	51,292,465	36,321,087	71%	93,966,780
2007	42,453,236	28,945,710	68%	89,405,482
2004	43,536,028	36,613,800	84%	84,710,542
2001	34,176,376	27,709,510	81%	79,672,873
1998	33,873,665	29,285,775	86%	74,672,014

Given the average voter turnout from 1998 to 2019, can the average of 70–75% of 50 million voters, which is approximately just 40% and not even a majority of the country's total population of 100 million Filipinos, be considered as truly representative of that sovereign will? The query certainly raises the further question of whether there is a quantifiable benchmark or standard by which sovereignty can be effectively measured and represented. As will be seen and discussed later, that percentage becomes smaller when further distributed according to votes obtained.

111. Commission on Elections, Senatorial Summary Statement of Votes (By Rank), *available at* <https://comelec.gov.ph/index.html?r=2019NLE/ElectionResults/SenatorialSummaryStatementofVotes> (last accessed Nov. 30, 2021) [<https://perma.cc/JC3G-SBF9>]; Commission on Elections, Number of Registered Voters, Voters Who Actually Voted and Voters' Turnout, *available at* <https://comelec.gov.ph/index.html?r=2016NLE/Statistics/VotersTurnout2016NLE> (last accessed Nov. 30, 2021) [<https://perma.cc/KQ43-FWFD>]; ElectionGuide, Republic of the Philippines, *available at* <https://www.electionguide.org/countries/id/171> (last accessed Nov. 30, 2021) [<https://perma.cc/VF3L-GWR9>]; & Macrotrends, Philippines Population 1950–2021, *available at* <https://www.macrotrends.net/countries/PHL/philippines/population> (last accessed Nov. 30, 2021) [<https://perma.cc/XVV2-N5BN>].

The election data was collected from various sources due to the lack of a single consolidated official source. The election data reproduced herein is intended only to be illustrative of this Article's main point. Thus, the Author and the *Ateneo Law Journal* do not guarantee the accuracy of the cited election figures.

On the other hand, the qualitative aspect of understanding voter preference that translates into political wisdom upon the casting of those ballots can be shown and represented in a 2003 Psychographic Study on Voter Preference by the Institute for Political and Electoral Reform (IPER).¹¹² While the psychographic study is almost two decades old, it is interesting to note that many of the factors affecting voter preference are still very much existing and are in fact similar to the current considerations that voters look into.

Table 3. A Psychographic Study on Voter Preference (2003)

DETERMINANTS OF VOTE	
1995 STUDY	2003 UPDATE
<p>First Factor: Popularity</p> <ul style="list-style-type: none"> • <i>Pagiging artista</i> [(Actor, actress, or celebrity)] • <i>Pagiging sikat/Popular</i> [(and well-known)] • <i>Pag-endorso ng mga artista</i> [(Endorsed by actors, actresses, or celebrities)] • <i>Maraming poster</i> [(Number of posters)] • <i>Mahusay magtalumpati sa mga pagtitipon</i> [(Great speaker or orator)] • <i>Nagbabahay-bahay sa panahon ng kampanya</i> [(Goes house-to-house during campaign period)] 	<p>First Factor: The Benefit factor (Characteristics that can be of benefit to the voter)</p> <ul style="list-style-type: none"> • <i>Madaling lapitan</i> [(Approachable)] • <i>Malinis na pagkatao</i> [(Clean and honest)] • <i>Matulungin sa mga nangangailangan</i> [(Helpful to the needy)] • <i>Nagtataguyod ng programa ng gobyerno para sa kaunlaran</i> [(Administers government programs for progress)] • <i>Nagtataguyod ng altematibong programa ng gobyerno para sa kaunlaran</i> [(Administers alternative government programs for progress)]

112. INSTITUTE FOR POLITICAL AND ELECTORAL REFORM, THE VOTER'S CHOICE: MYSELF — A PSYCHOGRAPHIC STUDY ON THE VOTING BEHAVIOR OF THE FILIPINO PEOPLE 30 (2004) (emphases supplied).

<p>Second Factor: Endorsement of traditional network and organization</p> <ul style="list-style-type: none"> • Endorsement of family or relative • Endorsement of church • Endorsement of organization • Endorsement of ward leader 	<p>Second Factor: Political Machinery</p> <ul style="list-style-type: none"> • <i>Pagiging kabilang sa oposisyon</i> [(Opposition member)] • <i>Partidong kinabibilangan ng kandidato</i> [(Candidate's political party)] • <i>Maraming posters at streamers</i> [(Volume of posters and streamers)] • <i>Mahusay magtalumpati</i> [(Great speaker/orator)] • <i>Nagbabahay-bahay sa panahon ng kampanya</i> [(Goes house-to-house during campaign period)]
<p>Third Factor: Characteristics that can be of benefit to the voter</p> <ul style="list-style-type: none"> • <i>Madaling lapitan</i> [(Approachable)] • <i>Malinis na pagkatao</i> [(Clean and honest)] • <i>Matulungin sa mga nangangailangan</i> [(Helpful to the needy)] 	<p>Third Factor: Popularity</p> <ul style="list-style-type: none"> • <i>Pagiging artista</i> [(Actor, actress, or celebrity)] • <i>Pagendorso ng artista</i> [(Endorsed by actors, actresses, or celebrities)] • <i>Pagiging sikat/popular</i> [(Popular and well known)]
<p>Fourth Factor: Party Program</p> <ul style="list-style-type: none"> • <i>Matagal na nanunungkulan at subok na</i> [(Length of public service/tried and tested)] • <i>Nagtataguyod ng programa sa gobyerno-Philippines 2000</i> [(Administers government programs for progress)] • <i>Nagtataguyod ng alternatibong programa para sa kaunlaran</i> [(Administers alternative 	<p>Fourth Factor: Endorsement of traditional network and organization</p> <ul style="list-style-type: none"> • <i>Pag-endorso ng pamilya o kamag[-]anak</i> [(Endorsed by family members or relatives)] • <i>Pag-endorso ng simbahan</i> [(Endorsed by the church)] • <i>Pag-endorso ng samahan/organisasyon</i> [(Endorsed by associations/organizations)]

government programs for progress]]	<ul style="list-style-type: none"> • <i>Pagendorso ng lider</i> [(Endorsed by community or organization leaders)]
------------------------------------	--

B. The Majority or Plurality Rule in Jurisprudence

Since the early days of democracy, electoral power as the expression of the sovereign will has always been determined through the majority or plurality of popular votes,¹¹³ with the one having the greatest number of votes winning the coveted elective position.¹¹⁴ Concomitantly,

it would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who [h]as not acquired the majority or plurality of votes is proclaimed a winner and imposed as the representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him.

Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless [the person] receives a majority or plurality of the legal votes cast in the election.¹¹⁵

It was in observance of the foregoing plurality principle that the Supreme Court ruled in *Geronimo v. Ramos*¹¹⁶ that the second placer in an election cannot be declared as the winner therein even if the candidate who has the

113. See, e.g., James A. Gardner, *Consent, Legitimacy and Elections: Implementing Popular Sovereignty Under the Lockean Constitution*, 52 U. PITT. L. REV. 189, 214-15 (1990).

From the perspective of the Lockean theory of popular sovereignty, there are at least two different ways to view an election under a republican form of government. The first is to conceive of the *election as a sovereign act of the people*, essentially unconfined and uncontrollable because *taken in their sovereign capacity*.

Gardner, *supra* note 113, at 214-15 (emphases supplied).

114. *Geronimo*, 136 SCRA at 446-47 (citing 29 C.J.S. *Elections* § 243 (1965)).

115. *Id.*

116. *Geronimo v. Ramos*, G.R. No. L-60504, 136 SCRA 435 (1985).

highest number of votes dies, is disqualified, or is ineligible.¹¹⁷ This was rooted on the premise that the second placer is not the people's choice and, as such, not the sovereign will.¹¹⁸

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible [f]or the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which clearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void[,] or meaningless. This is particularly true where, as in this case, there is only one other candidate who ran for the public office. The votes for the deceased or non-qualified candidate are still expressive of a public clamor that the majority of the voters do not like the losing candidate to be their representative or to hold the reins of government for them.

As early as 1912, this Court has already declared that the candidate who lost in an election cannot be proclaimed the winner in the event that the candidate who won is found ineligible for the office to which he was elected. This was the ruling in *Topacio v. Paredes* —

'Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the election is quite different from that produced by declaring a person ineligible to hold such an office. [...] If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the *real victor*, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots.'

The result is a failure of elections for that particular office. The winning candidate is not qualified and cannot qualify for the office to which he was elected. A permanent vacancy is thus created.¹¹⁹

117. *Id.* at 447.

118. *See id.*

119. *Geronimo*, 136 SCRA at 447-48 (citing *Topacio v. Paredes*, 23 Phil. 238, 254-55 (1912)).

C. Historical Wisdom Tracking: A Look at the Presidential and Vice-Presidential Elections

In the context of the Presidential and Vice-Presidential elections, “[t]he person having the highest number of votes shall be proclaimed elected[.]”¹²⁰ This requirement is represented through the majority or plurality of popular votes, which has been expressed since 1935 as follows —

Table 4. Presidential Elections Results (1935–2016)¹²¹

ELECTION YEAR	ELECTED PRESIDENT	VALID VOTES	POPULAR VOTES	TOTAL POPULATION
1935	Manuel L. Quezon	1,022,547	694,546 (68%)	13,000,000

120. PHIL. CONST. art. VII, § 4, para. 5.

121. ELECTIONS IN ASIA AND THE PACIFIC: A DATA HANDBOOK (VOLUME II: SOUTH EAST ASIA, EAST ASIA, AND THE SOUTH PACIFIC) 225–28 (Dieter Nohlen, et al. eds., 2001); ElectionGuide, Republic of the Philippines: Election for President (May 10, 2004), *available at* <https://www.electionguide.org/elections/id/1927> (last accessed Nov. 30, 2021) [<https://perma.cc/Q5C9-Y3WC>]; ElectionGuide, Republic of the Philippines: Election for President (May 10, 2010), *available at* <https://www.electionguide.org/elections/id/2148> (last accessed Nov. 30, 2021) [<https://perma.cc/8YYK-KE5X>]; Commission on Elections, Number of Registered Voters, Voters Who Actually Voted and Voters’ Turnout, *available at* <https://comelec.gov.ph/index.html?r=2016NLE/Statistics/VotersTurnout2016NLE> (last accessed Nov. 30, 2021) [<https://perma.cc/75Y9-CDHG>]; Commission on Elections, List of Candidates for President and Vice-President with Votes Obtained, *available at* https://comelec.gov.ph/php-tpls-attachments/References/Results/2010NLE/Results_Pres_VPres_2010_Election_s.pdf (last accessed Nov. 30, 2021) [<https://perma.cc/QQZ5-PNS2>]; Resolution of Both Houses Approving the Report of the Joint Committee, Declaring the Results of the National Elections Held on May 9, 2016, for the Offices of President and Vice President, and Proclaiming the Duly Elected President and Vice President of the Republic of the Philippines, Resolution of Both Houses No. 1 (May 30, 2016); & Aaron O’Neill, Population of Philippines from 1800 to 2020, *available at* <https://www.statista.com/statistics/1067059/population-philippines-historical> (last accessed Nov. 30, 2021) [<https://perma.cc/34SQ-XZJG>].

The election data was collected from various sources due to the lack of a single consolidated official source. The election data reproduced herein is intended only to be illustrative of this Article’s main point. Thus, the Author and the *Ateneo Law Journal* do not guarantee the accuracy of the cited election figures.

1941	Manuel L. Quezon	1,638,000	1,340,000 (82%)	14,800,000
1943	José P. Laurel	—	KALIBAPI (100%)	15,400,000
1946	Manuel Roxas	2,471,538	1,333,006 (54%)	16,500,000
1949	Elpidio Quirino	3,542,018	1,803,808 (51%)	18,000,000
1953	Ramon Magsaysay	4,227,719	2,912,992 (69%)	20,670,000
1957	Carlos P. Garcia	5,020,204	2,072,257 (41%)	23,750,000
1961	Diosdado Macapagal	6,457,817	3,554,840 (55%)	27,160,000
1965	Ferdinand E. Marcos	7,434,431	3,861,324 (52%)	30,910,000
1969	Ferdinand E. Marcos	8,061,804	5,017,343 (62%)	34,790,000
1981	Ferdinand E. Marcos	20,801,403	18,309,360 (88%)	48,670,000
1986	Corazon C. Aquino ¹²²	20,156,606	9,291,716 (46%)	55,760,000
1992	Fidel V. Ramos	22,654,195	5,342,521 (24%)	65,020,000
1998	Joseph E. Estrada	26,902,536	10,722,295 (40%)	74,670,000

122. The 7 February 1986 Snap Elections were tainted with widespread election fraud and irregularities that triggered the 1986 People Power Revolution, which disregarded the COMELEC count identifying Ferdinand E. Marcos as the winner and led to the proclamation of Corazon C. Aquino based on the count by the National Movement for Free Elections (NAMFREL) instead. See JÜRGEN RÜLAND, ET AL., *PARLIAMENTS AND POLITICAL CHANGE IN ASIA* 127 (2005) (citing Benedict J. Tria Kerkvliet, *Contested Meanings of Elections in the Philippines*, in *THE POLITICS OF ELECTIONS IN SOUTHEAST ASIA* 159 (R.H. Taylor ed., 1996)).

2004	Gloria M. Arroyo	32,269,100	12,905,808 (40%)	84,710,000
2010	Benigno Aquino III	36,321,087	15,208,678 (42%)	93,970,000
2016	Rodrigo Duterte	44,549,848	16,601,997 (37%)	103,660,000

Table 5. Vice Presidential Elections Results (1935-2016)¹²³

ELECTION YEAR	ELECTED PRESIDENT	TOTAL VOTES	POPULAR VOTES	TOTAL POPULATION
1935	Sergio Osmeña	934,128	811,138 (87%)	13,000,000
1941	Sergio Osmeña	1,446,000	1,446,000 (100%)	14,800,000
1943	-	-	-	-
1946	Elpidio Quirino	2,218,847	1,161,725 (52%)	16,500,000
1949	Fernando Lopez	3,370,067	1,741,302 (52%)	18,000,000
1953	Carlos P. Garcia	3,999,067	2,515,265 (63%)	20,670,000
1957	Diosdado Macapagal	4,702,478	2,189,197 (47%)	23,750,000
1961	Emmanuel Pelaez	6,372,813	2,394,400 (38%)	27,160,000

123. ELECTIONS IN ASIA AND THE PACIFIC, *supra* note 121, at 229-231; ElectionGuide, Republic of the Philippines: Election for Vice President (May 9, 2016), available at <https://www.electionguide.org/elections/id/2921> (last accessed Nov. 30, 2021) [<https://perma.cc/Z6HC-USUA>]; Commission on Elections, List of Candidates for President and Vice-President with Votes Obtained, *supra* note 121; Legarda v. De Castro, P.E.T. Case No. 003, 542 SCRA 125, 128 (2008); & O'Neill, *supra* note 121.

The election data was collected from various sources due to the lack of a single consolidated official source. The election data reproduced herein is intended only to be illustrative of this Article's main point. Thus, the Author and the *Ateneo Law Journal* do not guarantee the accuracy of the cited election figures.

1965	Fernando Lopez	7,284,811	3,531,550 (48%)	30,910,000
1969	Fernando Lopez	7,970,653	5,001,737 (63%)	34,790,000
1981	-	-	-	48,670,000
1986	Salvador M. Laurel ¹²⁴	20,005,394	9,173,105 (46%)	55,760,000
1992	Joseph E. Estrada	20,410,169	6,739,738 (33%)	65,020,000
1998	Gloria M. Arroyo	25,559,269	12,667,252 (50%)	74,670,000
2004	Noli de Castro	No Official or Credible Data Available.	15,100,431	84,710,000
2010	Jejomar Binay	35,165,531	14,645,574 (42%)	93,970,000
2016	Leni Robredo	43,531,338	14,023,093 (35%)	103,660,000

In Table 4, it is worth noting that except for Carlos P. Garcia in the 1957 Presidential Elections, the Philippine Presidents from Manuel L. Quezon to Corazon C. Aquino¹²⁵ all enjoyed majority victories, and not mere plurality affirmation. The subsequent Philippine Presidents from Fidel V. Ramos to Rodrigo Duterte would acquire their mandate by plurality of votes.¹²⁶ Post-

124. In the aftermath of the 7 February 1986 snap elections, widespread disregard of the COMELEC count in favor of NAMFREL's tabulation pointed to Corazon Aquino and running mate Salvador Laurel as the winners. Leslie Ann Aquino, 1986 Snap Elections, MANILA BULL., Feb. 7, 2021, available at <https://mb.com.ph/2021/02/07/1986-snap-elections> (last accessed Nov. 30, 2021) [<https://perma.cc/RNF3-258R>].

125. The majority victory of Corazon Aquino was based on the NAMFREL count, and not on the COMELEC tally, because of widespread electoral fraud during the 1986 snap elections. See Belinda A. Aquino, *The Philippines: End of an Era*, 85 CURRENT HIST. 155, 155 (1986) & Aquino, *supra* note 124.

126. ELECTIONS IN ASIA AND THE PACIFIC, *supra* note 121, at 228; ElectionGuide, Republic of the Philippines: Election for President (May 10, 2004), *supra* note 121; ElectionGuide, Republic of the Philippines: Election for President (May 10,

EDSA, however, Fidel V. Ramos had the lowest percentage of that plurality of popular votes to secure the presidency, but still enough to be considered as the choice of the sovereign will to be bestowed the mantle of representative government.¹²⁷ Among the Philippine Presidents, it was only Manuel L. Quezon in 1935 who enjoyed a genuine overwhelming majority with 82% of the total voters.¹²⁸

It is also interesting to note how the majority or plurality of votes garnered by the winning President or Vice-President has only represented a fraction of the total population, which raises the following questions:

- (1) How is it truly the voice or expression of the sovereign will when only a fraction makes that choice?
- (2) How is it a genuinely representative government when only a fraction makes that choice?
- (3) How does it sufficiently establish the political wisdom of the Filipino people when only a fraction makes that choice?

These points of inquiry notwithstanding, it is nonetheless posited that the majority or plurality of popular votes that has consistently determined the winners of Philippine elections possibly represents the voters in the “median range” in consonance with the “wisdom of crowds,” as calculated by Galton more than a century ago,¹²⁹ and as currently espoused by Surowiecki.¹³⁰ Thus, regardless of the numbers and of the results, the winning majority or plurality percentage is an able and viable collective representation of the political wisdom of the people.

D. Electing Congress

On the legislative side, Senators “shall be elected at large by the qualified voters of the Philippines, as may be provided by law[.]”¹³¹ with the members of the

2010), *supra* note 121; Commission on Elections, List of Candidates for President and Vice-President with Votes Obtained, *supra* note 121; Commission on Elections, Number of Registered Voters, Voters Who Actually Voted and Voters’ Turnout, *supra* note 121; & Resolution of Both Houses No. 1.

127. *See id.*

128. ELECTIONS IN ASIA AND THE PACIFIC, *supra* note 121, at 225.

129. SUROWIECKI, *supra* note 13, at xi-xiii.

130. *Id.* at xiv.

131. PHIL. CONST. art. VI, § 2.

House of Representatives being “elected from [the apportioned] legislative districts[.]”¹³²

For the party-list representatives, however, it is quite a different system and much more complicated in terms of computing and determining that sovereign mandate. As provided in the 1987 Constitution,¹³³ Congress has determined by law that those garnering “at least two percent (2%)” of the votes cast for the party-list system shall be guaranteed seats in the House of Representatives and shall be entitled to additional seats in proportion to their total number of votes, to wit —

SECTION 11. *Number of Party-List Representatives.* —

...

(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 to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in [] 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.*¹³⁴

In *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA) & Serbisyo sa Bayan Party (SBP) v. Commission on Elections*,¹³⁵ the Supreme Court affirmed its previous ruling in *Barangay Association for National Advancement and*

132. PHIL. CONST. art. VI, § 5 (1).

133. PHIL. CONST. art. VI, § 5 (1).

SECTION 5. (1) 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.*

PHIL. CONST. art. VI, § 5 (1) (emphasis supplied).

134. An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor [Party-List System Act], Republic Act No. 7941, § 11 (b) (1995) (emphases supplied).

135. *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA) & Serbisyo sa Bayan Party (SBP) v. Commission on Elections*, G.R. No. 246816, Sept. 15, 2020, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66558> (last accessed Nov. 30, 2021).

*Transparency (BANAT) v. Commission on Elections*¹³⁶ pertaining to the allocation of guaranteed seats, including additional seats, for those who obtain the two percent threshold requirement, with the rest of the allocated seats given to the non-two percenters according to rank until the 20% party-list composition in the House of Representatives, as mandated by the Constitution, is completed.¹³⁷ The Court summarized its ruling as follows —

The only instance every vote obtained in a party-list election can be given equal weight is when the allocation of party-list seats in the House of Representatives is based on absolute proportionality. But this is not required under, nor the system envisioned in, Section 5[](1), Article VI of the *Constitution*. Instead, the manner of determining the volume and allocation of party-list representation in the House of Representatives is left to the wisdom of Congress.

Heeding the call of duty, Congress enacted RA 7941. Its features preclude the allocation of seats based solely on absolute proportionality[:] (1) to bar any single party-list party, organization[,] or coalition from dominating the party-list system, and (2) to ensure maximization of the allotment of 20% of seats in the House of Representatives to party-list representatives.

Too, RA 7941 ordains a two-tiered seat allocation wherein those who reach the [two percent] threshold are guaranteed seat[s] in the first round and get to keep their votes intact for the first stage of the second round. To recall, the original application of RA 7941 in *Veterans* limited the allocation of guaranteed and additional seats to two-percenters alone. Though the Court opened the system to non-two percenters, this was *only* to abide by the 20% composition decreed by the Constitution. Given the reasonable distinction between two-percenters and non-two-percenters, we see no cogent reason to nullify their advantage.¹³⁸

Nevertheless, in whatever manner computed, the party-list system as currently prescribed by law raises certain critical questions. How is the guarantee of seats for the two-percenter and additional seats for the non-two percenter consistent with the plurality of popular votes, and how is it an accurate expression of the sovereign will? Can this even be considered as truly representative of the wisdom of the Filipino people?

136. *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*, G.R. No. 179271, 586 SCRA 210, 233-46 (2009).

137. *Id.*

138. *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA) & Serbisyo sa Bayan Party (SBP)*, G.R. No. 246816, at 33.

Regardless, there is the rub — the system is what Congress has legislated,¹³⁹ and that is what the Constitution has ordained it to do.¹⁴⁰ Corollary to this point, the Supreme Court itself noted in the same case of *ANGKLA* that the question of whether or not the present party-list system reflects the broadest representation possible is a matter for the legislature to determine, to wit —

Surely, it is not for the Court to recalibrate the formula for the party-list system to obtain the ‘broadest representation possible’ and make it seemingly less confusing and more straightforward. This is definitely a question of wisdom which the legislature alone may determine for itself. Perhaps, after twenty-five (25) years following the enactment of [R.A.] 7941, it is high time for Congress to take a second hard look at Section 11[](b) for the purpose of addressing once and for all the never-ending issue of seat allocation for the party[-]list system. We do not write policies, simply this is not our task. Our forebears have said it once and several times over, we say it again[—]

We do not sit in judgment as a supra-legislature to decide, after a law is passed by Congress, which state interest is superior [to] another, or which method is better suited to achieve one, some or all of the [S]tate’s interests, or what these interests should be in the first place. This policy-determining power, by constitutional fiat, belongs to Congress as it is its function to determine and balance these interests or choose which ones to pursue. Time and again we have ruled that the judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of government and of the people themselves as the repository of all [S]tate power[.]¹⁴¹

E. Local Elective Officials, Plebiscite, and Referendum

For local elective officials, results are determined by the plurality system, according to which “[t]he governor, vice-governor, city mayor, city vice-

139. See ISAGANI A. CRUZ & CARLO L. CRUZ, *PHILIPPINE POLITICAL LAW* 133 (2014) (citing *Bengzon v. Drilon*, G.R. No. 103524, 208 SCRA 133, 142 (1992) & *Fort Bonifacio Development Corp. v. Commission of Internal Revenue*, G.R. No. 173425, 679 SCRA 566, 571 (2012)).

140. PHIL. CONST. art. VI, § 5 (1).

141. *ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA) & Serbisyo sa Bayan Party (SBP)*, G.R. No. 246816, at 34 (citing *British American Tobacco v. Camacho*, G.R. No. 163583, 562 SCRA 511, 571-72 (2008) (citing *Valmonte v. Belmonte, Jr.*, G.R. No. 74930, 170 SCRA 256, 268 (1989))).

mayor, municipal mayor, municipal vice-mayor, and *punong barangay shall be elected at large in their respective units by the qualified voters therein.*¹⁴²

When it comes to plebiscites, however, the requirement is that there must be a *majority*, as mandated by the Constitution.¹⁴³ Appropriately, the Local Government Code of 1991 follows the majority requirement for plebiscites.¹⁴⁴

In the exercise of initiative and referendum, a majority requirement is likewise needed to carry out the people's proposed legislation.¹⁴⁵ At the local level, “[t]he power of local initiative and referendum may be exercised by all registered voters of the provinces, cities, municipalities, and barangays.”¹⁴⁶ The Local Government Code provides —

SECTION 123. *Effectivity of Local Propositions.* — If the proposition is approved by a majority of the votes cast, it shall take effect fifteen (15) days after certification by the COMELEC as if affirmative action thereon had been made by the sanggunian and local chief executive concerned. If it fails to obtain said number of votes, the proposition is considered defeated.¹⁴⁷

From the perspective of legal theory, is there a legal inconsistency in the democratic exercise of elections when, on one hand, only a mere plurality is required in the selection of leaders who will steer the wheels of the nation? This obviously has far greater implications for the people. On the other hand, a majority is necessary for the approval of a plebiscite or referendum, which,

142. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160, § 41 (a) (1991) (emphasis supplied).

143. PHIL. CONST. art. X, § 10 (“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.*”) (emphasis supplied).

144. LOCAL GOV'T CODE, § 10 (“No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect *unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected.*”) (emphasis supplied).

145. An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor [The Initiative and Referendum Act], Republic Act No. 6735, § 9 (a) (1989). “The [p]roposition of the enactment, approval, amendment[,] or rejection of a national law *shall be submitted to and approved by a majority of the votes cast by all the registered voters of the Philippines.*” *Id.* (emphasis supplied).

146. LOCAL GOV'T CODE, § 121.

147. *Id.* § 123.

relatively speaking, would have lesser impact compared to choosing national and local officials.

Curiously, therefore, a majority vote is required in a plebiscite for a change in political territory with limited application,¹⁴⁸ while only a plurality of votes is required in electing national and local leaders with far greater socio-political-economic impact and consequences.¹⁴⁹

As it stands, there certainly appears to be an imbalance in terms of the legal and political consequences of voting for issues where a majority is required and voting for leaders where plurality is allowed.

F. The Purpose of Elections

Whether the law calls for majority or plurality, proportionate ranking, or otherwise, it is nevertheless conceded that

[e]lections are [still] the [primary] means by which citizens choose their representatives who would shape and make policies and decisions governing the people. In elections[,] all citizens, rich or poor, educated or unschooled, male or female, young or old, are considered equal — each voter casts one vote, and each vote is the equal of any other. The choice of leaders and of the people’s representatives finds its avenue in elections. Elections constitute the one best way for the people to exercise their control of government [by] choosing, recalling, or changing those who form the government. Elections are, therefore, at the core of the democratic process.¹⁵⁰

Thus, “[i]n elections, the first consideration of every democratic polity is to give effect to the expressed will of the majority. [Accordingly,] constitutional and statutory provisions requiring compliance with measures intended to enhance the quality of our democratic institutions must be obeyed.”¹⁵¹

148. PHIL. CONST. art. X, § 10.

149. See, e.g., PHIL. CONST. art. VII, § 4, para. 5; Omnibus Election Code of the Philippines [OMN. ELECTION CODE], Batas Pambansa Blg. 881, §§ 20, 25, & 231 (1985); LOCAL GOV’T CODE, § 72; & An Act Establishing Reforms in the Sangguniang Kabataan Creating Enabling Mechanisms for Meaningful Youth Participation in Nation-Building, and for Other Purposes [Sangguniang Kabataan Reform Act of 2015], Republic Act No. 10742, § 19 (2015).

150. CO, ET AL., *supra* note 77, at 1.

151. *Yason v. Commission on Elections*, G.R. No. L-52713, 134 SCRA 371, 379 (1985).

In *Geronimo*, the Supreme Court explained the paramount importance of the people's constitutional right to express its sovereign choice as part of governance, to wit —

The importance of the people's choice must be the paramount consideration in every election, for the Constitution has vested in them the right to freely select, by secret-ballot in clean elections, the men and women who shall make laws for them or govern in their name and behalf. The people have a natural and a constitutional right to participate directly in the form of government under which they live. *Such a right is among the most important and sacred of the freedoms inherent in a democratic society and one which must be most vigilantly guarded if a people desires to maintain through self-government for themselves and their posterity a genuinely functioning democracy in which the individual may, in accordance with law, have a voice in the form of his government and in the choice of the people who will run that government for him.*¹⁵²

Indeed, it is through elections that the people are granted a very direct means of participation in administering the government,¹⁵³ which is why the voter's choice has always been regarded as a sacred part of Philippine democracy that must be freely expressed through the ballots without interference,¹⁵⁴ as well as safeguarded and protected.

Thus, in *Yason v. Commission on Elections*,¹⁵⁵ the Supreme Court “stressed the basic principle [that] has governed all elections in [the] country from the early years of democratic government [until] the present[.]”¹⁵⁶ reiterating the ruling in *Lino Luna v. Rodriguez*¹⁵⁷ —

The purpose of an election is to give the voters a direct participation in the affairs of their government, either in determining who shall be their public officials or in deciding some question of public interest; and for this purpose, all of the legal voters should be permitted, unhampered and unmolested, to cast their ballots. When that is done,

152. *Geronimo*, 136 SCRA at 446 (citing *United States v. Iturrius*, 37 Phil. 762, 765 (1918)) (emphasis supplied).

153. *See id.*

154. *See ABS-CBN Broadcasting Corp. v. Commission on Elections*, G.R. No. 133486, 323 SCRA 811, 827 (2000). “[T]he government has a stake in protecting the fundamental right to vote by providing voting places that are safe and accessible. It has the duty to secure the secrecy of the ballot and to preserve the sanctity and the integrity of the electoral process.” *ABS-CBN Broadcasting Corp.*, 323 SCRA at 827.

155. *Yason v. Commission on Elections*, G.R. No. L-52713, 134 SCRA 371 (1985).

156. *Id.* at 378.

157. *Lino Luna v. Rodriguez*, 39 Phil. 208, 215 (1918).

and no frauds have been committed, the ballot should be counted and the election should not be declared null. Innocent voters should not be deprived of their participation in the affairs of their government for mere irregularities on the part of election officers for which they are in no way responsible. A different rule would make the *manner* and *method* of performing a public duty of greater importance than the duty itself.¹⁵⁸

It was in the spirit of protecting the exercise of that sovereign will through the ballots that Constitutional Commissioner and Justice Regalado E. Maambong advocated for automated elections to counter efforts to subvert electoral power.¹⁵⁹ He opined —

*Electoral power is the most important exercise of sovereignty by the people. This explains the tremendous expense of the government, not only because the process is complicated, but also because the safeguards to make sure that the true will of the people is fulfilled are expensive. Unless we learn to trust each other, the cost of safeguards will escalate to unbearable proportions. Unless we adopt modern technological tools to modernize the electoral system, especially the counting[or]recording of votes and the consolidation of results, mistakes[,] and the opportunity to commit fraud, inherent in a manual counting, cannot be avoided.*¹⁶⁰

V. THE ELECTORAL FACTORS AND DELIBERATIVE DEMOCRACY: CRITICAL PATHWAYS TO PROTECTING THE SOVEREIGN WILL AND ENHANCING POLITICAL WISDOM

A. Suffrage and Electoral Power

The exercise of suffrage and electoral power is fundamentally premised on the people being the sovereign collective itself.¹⁶¹ Through free and fair elections,

158. *Yason*, 134 SCRA at 378-79 (citing *Lino Luna*, 39 Phil. at 215 (citing *Loomis v. Jackson*, 6 W. Va. 617 (1873) (U.S.))) (emphasis supplied).

159. Maambong, *supra* note 108, at 445-46.

160. *Id.* (emphasis supplied).

161. See *Moya*, 69 Phil. at 204.

As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the [] common weal. *Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority.*

the people are called upon to flex electoral power as part of their sovereign duty to exercise ownership over a government run by both elected and appointed leaders who have been chosen to represent the people's best interest and advance the common good.¹⁶²

Given the monumental and historical implications of the people's choice of leaders, there is a compelling need not only to protect the votes and the ballots, but also to shield the voters themselves from any unwarranted intrusion into their choice and wisdom.¹⁶³

Following the same line of thinking, Justice Maambong emphasized the need to safeguard the electoral power of the people, which he believed could only be done by the people themselves, to wit —

The free choice of our country's leaders should stir one's political and national consciousness. The study and implementation of our electoral process, as well as the implementing laws and systems, should be given more than cursory thought if we are to succeed as a nation. *A democratic government can only be sustained over time, if the people themselves are enlightened, educated, and properly mobilized in the selection of those who shall govern. In the final analysis, neither the Constitution nor machines can safeguard the electoral power of the people, but the people themselves.* As Judge Learned Hand said[,] 'Liberty lies in the hearts of men and women. While it lies there, it needs no Constitution, no law, no court to save it. When it dies there, no Constitution, no law, no court can save it.'¹⁶⁴

In line with the sacred objective of safeguarding the electoral power of the people, it is submitted that there are critical pathways towards protecting the sovereign will, as well as towards enhancing the people's political wisdom. To

Moya, 69 Phil. at 204 (emphasis supplied).

162. See *Geronimo*, 136 SCRA at 446 (citing *Iturrius*, 37 Phil. at 765).

163. See *Tan v. Commission on Elections*, G.R. Nos. 166143-47, 507 SCRA 352, 356 (2006).

In their capacity as having sovereign authority, the Filipino people are accorded the constitutional right of suffrage to select the representatives to public office. To ensure that Filipinos fully and freely enjoy this right and that their choices are recognized, the right of suffrage must be safeguarded. Courts should thus be vigilant in protecting this constitutional right so that the people's voice would not be stifled.

Tan, 507 SCRA at 356.

164. Maambong, *supra* note 108, at 446 (citing Learned Hand, *The Spirit of Liberty*, in *THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND* 190 (Irving Dilliard ed., 1953)) (emphasis supplied).

meet these ends, it is necessary to address the electoral factors that impact voters and engage the electorate through a deliberative process that would affirm that democratic resolve.

B. The Electoral Factors

The succeeding subchapters elaborate on several electoral factors that can facilitate the enhancement of the political wisdom of voters and, accordingly, aid in safeguarding the genuine exercise of electoral power.

I. Voter Education and Information

As part of its constitutional mandate to “[e]nforce and administer all laws and regulations relative to the conduct” of elections,¹⁶⁵ the Commission on Elections (COMELEC) has the statutory function to

[c]arry out a continuing and systematic campaign through newspapers of general circulation, radios[,] and other media forms to educate the public and fully inform the electorate about election laws, procedures, decisions, and other matters relative to the work and duties of the Commission and the necessity of clean, free, orderly[,] and honest electoral processes.¹⁶⁶

While the tasks of voter education and the dissemination of election information are primarily the responsibility of the COMELEC,¹⁶⁷ the COMELEC itself can only do so much. Worth noting is the fact that the COMELEC’s responsibility is largely limited to informing and educating the public about election processes and procedures (i.e., how, where, and when to vote); responsibilities (i.e., the civic obligation to vote); and the value, necessity, and significance of having honest, orderly, and peaceful elections (i.e., preventing election fraud and offenses).¹⁶⁸

Notably, except to provide basic information, the COMELEC cannot discuss or debate, extensively or otherwise, any substantive matters about candidates and political parties.¹⁶⁹ After all, the COMELEC is supposed to be

165. PHIL. CONST. art. IX-C, § 2 (1).

166. OMN. ELECTION CODE, art. VII, § 52 (j).

167. *See, e.g.*, An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes, Republic Act No. 8436, § 25 (1997) (as amended).

168. *See* OMN. ELECTION CODE, art. VII, § 52 (j).

169. *See* PHIL. CONST. art. IX-B, § 2 (4) (“No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political campaign.”).

neutral and non-partisan by law,¹⁷⁰ and, hence, cannot be expected to engage citizens in political discourse,¹⁷¹ except in providing a venue where citizens (voters and non-voters alike) can freely listen and participate.¹⁷² These include, for example, the public debates usually sponsored by COMELEC in partnership with the media.¹⁷³

Clearly, the COMELEC cannot shoulder this burden alone, especially in terms of enhancing and protecting the political wisdom of the people. The people themselves, through civil society composed of private sector groups, non-governmental organizations, educational institutions, and groups affiliated with the church, must step in, and contribute towards not only educating and protecting themselves and others as voters, but also in establishing a deliberative platform for voter engagement on burning issues.

170. See Instituting the “Administrative Code of 1987” [ADMIN. CODE], Executive Order No. 292, bk. V, tit. I, ch. 8, § 55 (1987).

SECTION 55. *Political Activity.* — No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. *Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of candidates for public office whom he supports: Provided,* That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

ADMIN. CODE, bk. V, tit. I, ch. 8, § 55 (emphasis supplied).

171. *But see id.*

172. See Commission on Elections, Rules and Regulations Implementing Republic Act No. 9006, Otherwise Known as the “Fair Election Act”, in Connection With the May 9, 2022 National and Local Elections, Resolution No. 10730 [COMELEC Reso. No. 10730], whereas cl. para. 4 (Nov. 17, 2021). “[I]t is eminently desirable for COMELEC to take a more active role in promoting political debate culture in the Philippines with the need to ensure that these debates shall be conducted ... with the same standards of fairness and impartiality as could be expected from the COMELEC[.]” *Id.*

173. An Act to Enhance the Holding of Free, Orderly, Honest, Peaceful and Credible Elections Through Fair Election Practices [Fair Election Act], Republic Act No. 9006, § 7 (7.3) (2001).

Political analyst Dr. Edna E. A. Co emphasized the value of voter education and succinctly described highly specific ways for civil society organizations to participate therein, to wit —

Voters' education should be part of the social education curriculum so that the principles, ethics, and procedures of intelligent voting are inculcated at an early age. Voters' education should be addressed as a citizenship issue — both as a right and as the responsibility of every Filipino.

Voters' education focuses on vigilance at every stage of the election. The IPER has crafted the Action Points for Citizen Voters that emphasizes vigilance in one's exercise of suffrage. This could be adopted as a model for voters' education activities by other non-governmental organizations. The [Parish Pastoral Council for Responsible Voting, or the] PPCRV[,] offers a discerning method that challenges voters' consciences and ethics on voting. In a religious environment, the PPCRV module might be functional and effective.

Other NGOs, such as the Ateneo Center for Social Policy and Public Affairs, have offered an educational-analytical approach to voters' education by emphasizing the distinction between *trapo* (literally, rags) versus *guapo* (literally, handsome). *Trapo*, short for 'traditional politician,' refers to politicians who exhibit the traditional practices of clientelism and patronage as well as of coddling voters in exchange for votes. *Guapo*, on the other hand, represent the new politicians who have a program of governance and offer an option to the old ways of doing things. The module contrasts the two diametrically opposed views and perceptions about leaders and the choice of leaders. The module is interesting as it delves into the Filipino psyche and culture as a way to embed guidelines in the selection of leaders. More secular than PPCRV's approach, the *trapo* versus *guapo* module also maps out the values and principles of intelligent voting. Voters' education that recognizes Filipino culture and values, and sensitizes the voter to new voters' ethics, should be pursued at both the formal level such as schools, universities, and academic curricula, and the informal level such as capacity-building activities, seminars, meetings, gatherings, and through popular media. Moreover, the informal mode of voters' education should target the low-income and unschooled voters, among whom vote buying and [trade offs] commonly occur, and with whom independent voting is more vulnerable. This is not to say, however, that the non-poor should be spared voters' education.¹⁷⁴

The reality of media's crucial role in influencing political wisdom is certainly not lost on the people. Media indeed has vast potential as a mechanism for information and education,¹⁷⁵ especially given the proliferation

174. CO, ET AL., *supra* note 77, at 115-16.

175. *Id.* at 111.

of fake news and misinformation through social media platforms,¹⁷⁶ which has caused erosion and decay in electoral wisdom.¹⁷⁷ Dr. Co indirectly acknowledges this while describing the role of political parties in the electoral exercise, to wit —

Moreover, the media — broadcast, electronic, or print — have taken center stage in shaping and influencing voters' minds regarding their choice of representatives. Sadly, the media themselves are fettered to patronage, either to business interests or partisan politics. In most instances, the media have effaced the political parties as mediators between government and people. A challenge to media lies in their role as providers of substantive information about elections and party platforms and candidates.¹⁷⁸

2. Countering Fake News and Misinformation

In the present, the special election offense of electoral sabotage, which is punishable by life imprisonment, applies when the tampering, increase, or decrease of votes or the refusal to credit the correct votes and/or to deduct tampered votes is perpetrated in large scale or in substantial numbers involving a national elective office, or regardless of the elective office if such exceeds 5,000 votes, or any and all other forms if such exceeds 10,000 votes.¹⁷⁹

Thus, electoral sabotage takes place only when the integrity of the actual votes cast has been compromised. But what if the preference and wisdom of the voters themselves have been tampered with through fake news and misinformation? Should tampering with voter preference and wisdom not be classified as electoral sabotage as well? Undoubtedly, fake news, wittingly or unwittingly, influences the mind and choice of the electorate and, hence, unavoidably compromises and tampers with political wisdom.¹⁸⁰

176. Jomari James T. De Leon, et al., *Rise of the Troll: Exploring the Constitutional Challenges to Social Media and Fake News Regulation in the Philippines*, 64 ATENEO L.J. 150, 156 (2019).

177. *See id.* at 162.

178. CO, ET AL., *supra* note 77, at 111.

179. An Act Introducing Additional Reforms in the Electoral System and for Other Purposes [The Electoral Reforms Law of 1987], Republic Act No. 6646, § 27 (b) (1987) (as amended).

180. *But see* Matthew Loveless, *Information and Democracy: Fake News as an Emotional Weapon*, in DEMOCRACY AND FAKE NEWS: INFORMATION MANIPULATION AND POST-TRUTH POLITICS 72 (Serena Giusti & Elisa Piras eds., 2021). The challenge of fake news has been characterized as “predominantly an unfortunate

Thus, it is submitted that the organized and widespread sharing and/or propagation of fake news that seeks to disseminate misinformation about a candidate and/or a political party for the purpose of influencing or swaying voters to perceive that candidate or political party in a negative light is a form of “electoral fraud.” This should be considered as an equally severe mode of electoral sabotage, whether it concerns a national or local elective office, regardless of the exact number of voters affected and the media channel or platform utilized, and regardless of whether or not a voter was actually swayed.

The very “organized sharing of fake news” itself during the election period should be classified as *mala prohibita* and should be consequently punishable as the special election offense of electoral sabotage, penalized by the same penalty of life imprisonment. This is potential legislation which the COMELEC can very well recommend to Congress under the 1987 Constitution, viz —

SECTION 2. The Commission on Elections shall exercise the following powers and functions:

...

(7) *Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.*¹⁸¹

3. Strong Political Party System

No less than the Philippine Constitution allows for a multi-party system, with the fundamental law itself providing that “[a] free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article.”¹⁸² The intent is undoubtedly laudable, but the political realities and consequences have not been as initially desired. On this point, Dr. Co challenged political parties to “promote their agenda and platforms, rather than limit themselves to projecting candidates’ images and personalities.”¹⁸³

covariate rather than a determinant of the problem between information and democracy.” Loveless, *supra* note 180, at 72.

181. PHIL. CONST. art. IX-C, § 2 (7) (emphases supplied).

182. PHIL. CONST. art. IX-C, § 6.

183. CO, ET AL., *supra* note 77, at 115.

Interestingly, it was during the years when the Philippines had a strong two-party system (from 1935 to 1986)¹⁸⁴ that the winners in the presidential and vice-presidential elections enjoyed the majority of the votes cast and not just winner plurality.¹⁸⁵ Thus, while the current multi-party system has resulted in a more free, open, and democratic electoral process with more choices in terms of political parties and in the fielding of candidates,¹⁸⁶ it has done very little for the voters themselves.¹⁸⁷ Elections in general have largely and unfortunately become a contest of personalities and a battle of theatrics and entertainment bonanzas instead of serious and honest debates about the leadership qualities, governmental values, and policy platforms that candidates represent.¹⁸⁸

184. See Allen Hicken, *Party and Party System Institutionalization in the Philippines*, in PARTY SYSTEM INSTITUTIONALIZATION IN ASIA: DEMOCRACIES, AUTOCRACIES, AND THE SHADOWS OF THE PAST 312 (Allen Hicken & Erik Martinez Kuhonta eds., 2015) & JONG-SUNG YOU, DEMOCRACY, INEQUALITY AND CORRUPTION: KOREA, TAIWAN AND THE PHILIPPINES COMPARED 104 (2015).

185. See Tables 4 and 5.

186. See *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, G.R. No. 147589, 359 SCRA 698, 738-39 (2001) (J. Vitug, dissenting opinion).

Advocates commend the multi-party [system for] allowing the expression and the compromise of the many interests of a complex society, including a range of ideological differences, conflicting political values and philosophies. ... The multi-party system of proportional representation broadens the composition of the House of Representatives to accommodate sectors and organizations that do not have well-defined political constituencies and to facilitate access to minority or small parties.

Ang Bagong Bayani-OFW Labor Party, 359 SCRA at 738-39 (J. Vitug, dissenting opinion).

187. See Julio C. Teehankee, *Institutionalizing Political Party Reforms in the Philippines*, in BUILDING INCLUSIVE DEMOCRACIES IN ASEAN 323 (Ronald U. Mendoza, et al. eds., 2019). The multi-party system in the Philippines has been criticized for “the seeming lack of individual party institutionalization[,]” with such political parties “essentially [being] an amalgamation of vote-generating machines, oriented towards putting [their] leaders in government, gaining access to patronage, and generally securing the benefits of public office.” Teehankee, *supra* note 187, at 323.

188. See, e.g., Agence France-Presse in Manila, *‘It Is a Circus’: Philippines Election Season Gets Under Way*, GUARDIAN, Sept. 30, 2021, available at <https://www.theguardian.com/world/2021/oct/01/it-is-a-circus-philippines->

Moreover, aside from the obvious and expected consequence of having political turncoats occasioned and triggered by election results due to a frail political party system made even weaker by the lack of party discipline,¹⁸⁹ much of the political collateral damage impacts the voters themselves, the plurality of whom find themselves attracted to personalities, promises, and theatrics instead of identifying, affiliating, or aligning with the policy platforms and issues that candidates and political parties stand for.¹⁹⁰ Therefore, the lack of a strong political system — at least one that could have a strong and positive influence on the mindset of voters in terms of cause-driven and people-oriented policies and advocacies — has contributed greatly to the vulnerability of the political wisdom of voters.

4. Populism

As witnessed in Philippine electoral history,¹⁹¹ political wisdom can be easily influenced by political polarization as a result and consequence of populism.¹⁹² Populism resorts to intellectual and policy dishonesty as a disingenuous way of courting the people's votes, making political wisdom vulnerable to

election-season-gets-under-way (last accessed Nov. 30, 2021)
[<https://perma.cc/WU5R-B5EE>].

189. See Teehankee, *supra* note 187, at 323.

[T]he seeming lack of individual party institutionalization has largely contributed to the de-institutionalized nature of the overall political party system. On the other hand, highly institutionalized political parties (that can be found in mature democracies) are most likely to be well-organized, possess strong linkages with citizens and society, and contribute to a more democratic and competitive political party system. Ultimately, the benefits of institutionalized parties and the party system are a continuity of alternatives that increase the prospects of electoral accountability.

Teehankee, *supra* note 187, at 323.

190. Teehankee, *supra* note 187, at 322.

191. See generally Aries A. Arugay & Dan Slater, *Polarization Without Poles: Machiavellian Conflicts and the Philippines' Lost Decade of Democracy, 2000-2010*, 681 ANNALS AM. ACAD. POL. & SOC. SCI. 122, 133-34 (2019).

192. *Id.* See also Jennifer McCoy, et al., *Polarization and the Global Crisis of Democracy: Common Patterns, Dynamics, and Pernicious Consequences for Democratic Polities*, 62 AM. BEHAV. SCIENTIST 16, 20 (2018).

chicanery.¹⁹³ Thus, a populist approach or measure, whether in form or in substance, is a very shrewd way of tapping, dictating, and tampering into that wisdom of the people. It is a subtle form of “electoral manipulation,” as it seeks to direct the electorate to behave according to a populist beat for the sole purpose of securing votes and winning elections.¹⁹⁴

Conscious and deliberate efforts by populist leaders to entice the “wisdom” of the people through proposed measures that are only temporary expedients in character serve no real purpose except to ensure possession of political power, doing little to nothing at all for long-term and sustainable governance and institutional reforms.¹⁹⁵ They strengthen the popular leader, but not the democratic institutions.¹⁹⁶

Populism is therefore just as harmful as electoral fraud, constituting a danger to democracy with the tendency to cause institutional damage.¹⁹⁷ This could result in “democratic backsliding”¹⁹⁸ and in the weakening of civil liberties, good governance, and democratic institutions.¹⁹⁹ Thus, it is only through free and healthy discourse on policy issues that the disillusion created by populism can be thwarted and corrected.

C. Deliberative Democracy and Voter Engagement

Voter education and information are often preached, but equally necessary is what James Fishkin describes as “*deliberative democracy*.”²⁰⁰ “Proponents of the political theory on ‘deliberative democracy’ submit that ‘substantial, open, [and] ethical dialogue is a critical, and indeed defining, feature of a good

193. Michael Hameleers, *We Are Right, They Are Wrong: The Antagonistic Relationship Between Populism and Discourses of (Un)truthfulness*, 29 DISCLOSURE: J. SOC. THEORY 104, 105 (2020).

194. *See id.* at 115.

195. *See generally* JAN-WERNER MÜLLER, WHAT IS POPULISM? 41-42 (2016).

196. Andrea Kendall-Taylor & Carisa Nietsche, *Combating Populism: A Toolkit for Liberal Democratic Actors*, available at <https://www.cnas.org/publications/reports/combating-populism> (last accessed Nov. 30, 2021) [<https://perma.cc/SRL8-RHLZ>].

197. Nadia Urbinati, *Political Theory of Populism*, 22 ANN. REV. POL. SCI. 111, 112 (2019).

198. Michael W. Bauer & Stefan Becker, *Democratic Backsliding, Populism, and Public Administration*, 3 PERSPECTIVES PUB. MGMT. & GOVERNANCE 19, 21 (2020).

199. *See* Urbinati, *supra* note 197, at 112.

200. SUROWIECKI, *supra* note 13, at 260-61.

polity.”²⁰¹ On one hand, citizens should not only have a voice, but should, more significantly, be able to express that voice on matters of public interest as part and parcel of press freedom and freedom of speech and expression. However, there is likewise sense in referring to the deliberative process that a voter should undergo prior to exercising the right of suffrage.

Voters should be informed and educated to vote properly or to vote wisely. Ideally, a voter should be engaged through a series of deliberative caucuses or a consultative type of forum where he or she can develop a genuinely informed choice. Instead of telling the people who they should and should not vote for, a deliberative forum should seek to challenge the thinking behind their preferences. Along an avenue of discourse, voters may figure out whether their rationale bears semblance to the reality of their choices, and then come to conclusions after healthy engagement, purposeful challenge, and spirited debate, all in the exercise of democratic spirit.

Thus, according to Surowiecki, deliberative polling through political debates, as conceptualized by political scientist James Fishkin, can lead to more meaningful and genuine choices from the people.²⁰² Surowiecki explained —

In January of 2003, 343 people, carefully chosen so that they represented an almost perfect cross-section of the American population, gathered in Philadelphia for a weekend of political debate. The topic was American foreign policy, with the issues ranging from the impending conflict with Iraq to nuclear proliferation to the global AIDS epidemic. *Before the weekend, the participants were polled to get a sense of their positions on the issues. They were then sent a set of briefing materials that, in a deliberately evenhanded fashion, tried to lay out relevant facts and provide some sense of the ongoing debate about the issues. Once they arrived, they were divided up into small groups led by trained moderators, and went on to spend the weekend deliberating. Along the way, they were given the chance to interrogate panels of competing experts and political figures. At the end of the weekend, the participants were polled again, to see what difference their deliberations had made.*

The entire event, which bore the unwieldy name of the National Issues Convention Deliberative Poll, was the brainchild of a political scientist at the University of Texas named James Fishkin.

Fishkin invented the deliberative poll out of frustration with the limitations of traditional polling data and out of a sense that Americans were not being given either the information or the opportunity to make intelligent political

201. *The Diocese of Bacolod*, 747 SCRA at 77 (citing James A. Gardner, *Shut Up and Vote: A Critique of Deliberative Democracy and the Life of Talk*, 63 TENN. L. REV. 421, 422 (1996)).

202. SUROWIECKI, *supra* note 13, at 260–61.

choices. *The idea behind deliberative polls — which have now been run in hundreds of cities across the world — is that political debate should not be, and [does not] need to be, confined to experts and policy elites. Given enough information and the chance to talk things over with peers, ordinary people are more than capable of understanding complex issues and making meaningful choices about them. In that sense, Fishkin’s project is a profoundly optimistic one, predicated on a kind of deep faith in both the virtue of informed debate and the ability of ordinary people to govern themselves.*²⁰³

The choices and preferences of voters, whatever they may be and regardless of the underlying socio-political considerations, are valid. The thinking, however, behind these choices and preferences can still be discussed, engaged, and challenged. Hence, there is a need for deliberative engagement and polling.

Deliberative engagement and polling, not just information dissemination and education, which seeks to test and challenge the wisdom of voters, must be placed at the front and center of that electoral exercise. This plan can be implemented nationwide at the grassroots level through what can be called a “Sovereign Town Hall” to be established in each of the more than 42,000 barangays in the country. These forums should operate as concrete spaces for public discourse where citizens can meet and discuss among themselves every election cycle. Through a deliberative polling approach prior to actual voting, all the electoral factors that affect the free and full exercise of political wisdom can be threshed out (i.e., correcting fake news and misinformation, countering populism, and standing firm for sound policy issues and platforms).

VI. CONCLUSION: CAUTIONARY WISDOM AND SOVEREIGN FAITH

If at all, the “wisdom of crowds” certainly serves as a cautionary tale relative to the country’s fledgling and still struggling democracy. With the restoration of a democratic government under the 1987 Constitution, the sovereign power of the popular vote has once more been bestowed upon the Filipino people, on whose shoulders the fundamental law has placed the power to carve the path of the nation and determine its destiny.

While the Constitution does not explicitly mention the “wisdom of crowds,” the very spirit of the idea is recognized and manifested in the theory of popular sovereignty, thus embedded in a republican form of government and representative democracy. This political design is straightforward and simple — sovereign power lies in the people who have ratified the Constitution that created not only these democratic institutions, but also the very democratic processes that put into effect the right of suffrage and the

203. *Id.* at 259–260 (emphases supplied).

holding of elections for the selection of leaders to represent the best interests of the people and uphold the common good. Ultimately, it all leads back to the Filipino people and their sovereign wisdom.

When political wisdom is exercised as part of the sovereign will, the collective must abide thereby and respect its very expression, including the government receptacle and the agents who are entrusted to represent and implement that wisdom. For better or worse, trust must be given to the wisdom of the people, in which must be placed the sovereign faith. On that point, Commissioner Felicitas S. Aquino of the 1986 Constitutional Commission said —

I think that it is now the time to return the power to the people; let us have faith in them. And by faith, I mean real and abiding faith, not just looking at the people as some kind of a mystical entity in whose name the eternal politician in some of us have done themselves proud. In other words, let the Filipinos chart their own histories.²⁰⁴

Whether or not one agrees with the people's choices, majority or otherwise, and whether or not the same conforms with the country's political color, shade, or belief system, it cannot be denied that there is wisdom in the electorate, and that there is wisdom in the people, even if critics would call it "stupidity" or "madness." While the plurality of votes may not seem acceptable to minorities and then some, that is, nonetheless, the very same sovereign wisdom and spirit that has been carefully and deliberately enshrined in the Philippine Constitution, not by its writers and framers, but by the Filipino people themselves.

Should that political wisdom be tampered with or unduly influenced, resulting in "stupidity" or "madness," then recourse is had not by attacking or condemning the electorate, but rather by strengthening the democratic institutions and processes that would help shield the voters from these unwarranted vulnerabilities.

Looking beyond the elected leaders and the resulting representative government, and at the heart of it all, every exercise of political wisdom is sacred democratic affirmation by the sovereign Filipino people making those choices. Like any other wisdom that humans possess, political wisdom must be valued, nurtured, developed, enhanced, and protected. In its purest and truest form, political wisdom is the most wonderful aspect of local democracy — it decides the nation's identity as a people and its direction as a nation.

204.2 RECORD, PHIL. CONST., NO. 45, at 566.

Thus, after every election cycle, the question of which wisdom will manifest itself is always a mystery — will it be the wisdom of one's fears representing the worst of one's anxieties and self-interests, or will it be the wisdom of one's hopes representing the best of collective joys as a people and common dreams as a nation? Irrespective of election results, regardless of the leaders elected, and now more than ever, the political wisdom of the Filipino people must be given the deepest sovereign faith and respect. After all, it is the rule of law that the Filipino people signed up for. And at the end of the day, each one is none the wiser.