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MAY PRESIDENT AQUINO RUN FOR RE-ELECTION IN 1992?*

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Some time last year, in one of the fraternal gatherings of Ateneo Law graduates, Dong Puno first broached the idea of a lecture on today's topic: whether President Aquino may constitutionally run for re-election in 1992. I suspect Dong has big plans and is surveying the terrain for opponents. But when he asked me what my brief answer to the question would be, I told him that my briefest answer would be no, and that a lecture on the subject could go exactly five minutes. Whereupon he asked me to make it longer. I guess it is not how long you make it, but it is how you make it long. Hence, we are here.

Before all else, however, let me state the issue very clearly. We are not here dealing with the question whether the country should retain President Aquino beyond 1992. There are enough better qualified persons who can discuss the subject with passion. For my part, I prefer to go by the advice of King Solomon who said: "[N]ot everything that man thinks must he say; not everything he says must he write; but most important, not everything that he has written must he publish." Hence, my sole concern is the dispassionate issue of constitutionality: Does the 1987 Constitution allow President Corazon Aquino to be re-elected in 1992?

In attempting to answer this question, I propose to discuss first a preliminary issue: By what constitutional authority is Corazon Aquino President today? To my mind, the answer to this question is relevant to a complete reading of the current Constitution. Thereafter, I shall treat the main issue centering around Article VII, Section 4 of the 1987 Constitution which says: "The President shall not be eligible for any re-election." There are men of goodwill who hold that this prohibition applies only to those who are elected after the ratification of the 1987 Constitution.

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FROM CONSTITUTION TO REVOLUTION AND BACK TO CONSTITUTION

To the first question then: How did she get there? Was she elected under the 1973 Constitution? Was she elected under the current Constitution? Or was she elected at all? There is no question that she is there, to the disappointment of some who themselves would want to be where she is, and also to the disappointment of many others who no longer want her there.

The historical background of her ascent to the presidency is all too familiar. She returned to Manila to bury a murdered husband in 1983. Even as the clamor for Mr. Marcos to leave office grew louder and louder, she denied having any ambition beyond being the widowed housewife that she was then. But in the frenetic search for an alternative to Mr. Marcos, she emerged as the only one around whom those who sought an alternative could rally. In the end, after much consultation and agonizing reflection, she was persuaded to run for election as President after the Supreme Court ruled that it was within the power of President Marcos to call for an unscheduled presidential election even if there was no actual vacancy in the office.

She ran for election under the 1973 Constitution. She criss-crossed the nation campaigning among enthusiastic throngs. Election day came. Votes were cast. Votes were counted, allegedly by rigged computers. Vote tallies were challenged. But, challenges notwithstanding, the *Batasang Pambansa* proclaimed Ferdinand Marcos re-elected, and on February 25, 1986 Chief Justice Ramon Aquino swore Mr. Marcos in as re-elected President. Who then was elected President in the presidential elections of 1986?

It is important to remember that the presidential election process includes the process of canvassing and proclamation. For the purpose of our question, the pertinent provision is Section 3 of Article VII of the Revised 1973 Constitution. The second paragraph says:

> The returns of every election for President, duly certified by the Board of Canvassers of each province or city, shall be transmitted to the Speaker of the Batasang Pambansa, who shall, not later than thirty days after the day of the election, and in the presence of the Batasang Pambansa open all the certificates, and the votes shall then be counted.
>
> The person having the highest number of votes shall be proclaimed elected . . .

It will be recalled that the *Batasang Pambansa*, in full view of television audiences, went through the process of opening the certificates of canvass and of counting the votes and eventually proclaiming a winner. And

the winner proclaimed was not Candidate Aquino, but Reelectionist Marcos. The question we must ask is: What is the legal import of the proclamation made by the *Batasang Pambansa*? Was it conclusive on the courts? Was it conclusive on the people? And if it was not, what avenue for reversing it was available?

To answer this question, it is necessary to hark back to jurisprudence under the 1935 Constitution. Under the 1935 Constitution the Congress had the similar task of canvassing the returns of a presidential election and of proclaiming the winner. The 1966 case of *Lopez v. Roxas*[1] characterized the power of Congress, thus:

> Congress merely acts as a national board of canvassers, charged with the *ministerial and executive* duty to make said declaration, on the basis of the election returns duly certified by provincial and city board of canvassers. The grant to Congress of such ministerial and executive duty, the Supreme Court said, did not give to Congress the power to determine whether or not said duly certified election returns have been irregularly made or tampered with, or reflect the true result of the elections in the areas covered by each, and, if not, to recount the ballots cast, and pass upon the validity of each ballot ...[2]

The canvassing power given to Congress under the 1935 Constitution was also the power given to the *Batasan* by the Revised 1973 Constitution. The *Batasan* therefore did not have the power to settle presidential controversies beyond what was shown on the face of the certified election returns. Who then had such power?

Neither the 1935 nor the 1973 Constitution had an explicit provision designating the body with jurisdiction to judge presidential and vice-presidential election contests. When the question of jurisdiction over such contests arose under the 1935 Constitution in *Lopez v. Roxas*,[3] the Court said

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[1] 17 SCRA 756, 759 (1966).

[2] *Id.* The 1987 Constitution departs from the old rule. The clear intent of the 1987 provision is to give to Congress as a canvassing body more than merely ministerial and executive functions. Congress now is given authority to make a "determination of the authenticity and due execution" of the returns coming from provincial and city boards of canvassers in accordance with the manner to be provided by law, that is, by Congress itself. 2 RECORD OF THE CONSTITUTIONAL COMMISSION 385, 433 (1987); 2 J. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 174 (1988).

[3] 17 SCRA at 761.

that a presidential election contest was a judicial issue which could be decided only by a court or body empowered by the Constitution to decide the question. In other words, the power to decide presidential election contests was judicial power. Since, however, the Constitution was silent on the matter, and in the absence of a statute empowering a court to be a judge of such contests, any candidate for president or vice-president who believed "that he was the candidate who obtained the largest number of votes for either office, despite the proclamation by Congress of another candidate as the president-elect or vice-president-elect, had *no* legal right to demand by election protest a recount of the votes cast for the office concerned, to establish his right thereto. As a consequence, controversies or disputes on this matter were *not justiciable.*" Which is to say that, in the constitutional scheme in effect then, the proclamation made by Congress was conclusive on the courts -- unless a power higher than the Court decided otherwise.

As a consequence of this decision, Congress passed Republic Act No. 1793 constituting the Supreme Court as the electoral tribunal for presidential and vice-presidential contests. It will be recalled that the validity of this law was upheld in the already cited case of *Lopez v. Roxas.* The simple reasoning was that since presidential election contests are judicial issues, they may be entrusted for resolution to a body that possesses judicial power. Hence it could be entrusted by statute to the Supreme Court. The decision further reasoned that the entrusting of such power to the Supreme Court did not constitute a creation of a second Supreme Court, but was merely the expansion of the statutory jurisdiction of the Supreme Court.

What happened to that law? Subsequent to the adoption of this law, the original 1973 Constitution took effect. It will be recalled that the new Constitution provided for a parliamentary form of government. In a parliamentary form of government, there are no electoral returns to canvass because it is parliament which chooses the chief executive, and nobody can challenge parliament's choice. Hence, R.A. 1793, by the mere fact of the adoption of a parliamentary system, was repealed for being incompatible with the new system.

When the 1973 Constitution was revised to restore the presidential system, the need for a presidential electoral tribunal was once again recognized. Hence, a presidential electoral tribunal was created by *Batas Pambansa Blg. 884.* Should the aggrieved Corazon Aquino have challenged the proclamation of Mr. Marcos by the *Batasan* before this statutory tribunal?

We know for a fact that she did not. I suspect that there were two reasons why she did not: one doctrinal and the other political. The doctrinal reason was that she must have considered the presidential electoral tribunal created by *Batas Pambansa Blg. 884* as unconstitutional and therefore, without jurisdiction over presidential election contests. But on what ground?

Again, we must go back to *Lopez v. Roxas* which established that presidential election contests are judicial issues. If presidential election contests are judicial issues, they are cognizable only by courts vested by the Constitution with judicial power. Separation of powers demands such conclusion. But the presidential electoral tribunal created by B.P. 884, unlike that provided for in R.A. 1793, was not a court. The composition of B.P. 884's creation militated against the conclusion that it was a court, an independent judicial body. It was composed of three justices of the Supreme Court and six other members divided equally between the KBL and the UNIDO. There were, therefore, six non-judges in the body who, moreover, were members of the legislative department.

If it is asked why the Senate Electoral Tribunal and the House Electoral Tribunal can have jurisdiction over election contests if such contests are judicial issues, the simple answer of course is that the present Electoral Tribunal's power to be judge of election contests comes from the Constitution. The Constitution can create exceptions to separation of powers. Congress or the *Batasan* cannot.

But perhaps, the more persuasive reason for not going to the presidential electoral tribunal was political. She must have perceived the tribunal, whose majority consisted of KBL members and of justices belonging to what was then seen as a Marcos Supreme Court, to be likewise a Marcos Tribunal. As the nursery rhyme says: Will you come into my parlor, said the spider to the fly. Cory Aquino did not want to come into the spider's parlor.

The sum total of this entire narrative is that the presumptive validity and regularity of the proclamation of Mr. Marcos as re-elected President was never overthrown through legal process. In fact, even the current Supreme Court, when asked to proclaim the election of Cory Aquino in 1986, in the case of *In re Bernales,*[4] declared in an *obiter dictum* that it could not proclaim her President because proclamation was the function of the *Batasan.*[5]

If the proclamation made by the *Batasan* was conclusive on the courts, was it also conclusive on the people? Historically, Cory Aquino and her supporters did not look at it that way. They saw the Gordian knot as resolvable by popular protest. That was the rationale for the grand protest rally at the Luneta which launched the massive boycott of crony corporations. The object was to force the administration to its knees through popular condemnation. If we must look for constitutional justification for such

[4] 145 SCRA 160 (1986).

[5] In effect, this is an admission by the court that it was Ferdinand Marcos who was elected. The last paragraph of Section 4 fills that void. What was statutory law in R.A. 1793 has now become a constitutional provision.

approach, we can also find it in *Lopez v. Roxas,* which said that presidential election contests, in the absence of a court endowed with jurisdiction, were ultimately political questions. Political questions are resolvable by direct action of the people.

What started out, however, as political protest, which doctrinally could still be fitted into the existing constitutional scheme which allows the people to decide political questions, was short-circuited by the EDSA event. The sequence of events are now retold in varying orders, depending on who does the telling. Conclusions as to who saved whom or whose skin was saved by whom are still debated and will continue to be debated. It will be recalled, for instance, that when then Minister Enrile barricaded himself in Camp Aguinaldo in defiance of the then President Marcos, he said he was taking that step because he was convinced that Mr. Marcos had not been elected although he was part of the *Batasan* that proclaimed Mr. Marcos; lately, he has also been heard to say the neither was Corazon Aquino elected.

But there are a number of indisputable facts. In mid-morning of February 25, 1986, in a cramped hall in Club Filipino, she was sworn in as President by then Senior Justice of the Supreme Court Claudio Teehankee. The formula of her oath is revealing. You may have noticed that she swore to preserve and defend the "fundamental law of the land." It was a departure from the prescribed formula which said "preserve and defend its Constitution." It was a hint, which subsequent actions would confirm, that as far as she was concerned, the 1973 Constitution was no longer binding as the fundamental law. She also swore that she would "execute its just laws." This too was a departure from the formula which says "execute its laws." The implication was clear: she was not indiscriminately accepting all the existing laws inherited from the Marcos presidency. In simple words, what started out as a popular election protest had been transformed into a revolutionary defiance. What was the import of this revolutionary defiance?

I look on the event as, among other things, poetic justice. Corazon Aquino and the people with her were not being original. Somebody else did something similar before her, although perhaps through a cleaner surgical cut.

You will recall the final sentence of the Supreme Court resolution in the historic *Javellana v. Executive Secretary.*[6] After an agonizing disquisition, the Court ended with the cryptic conclusion that "there [was] no further obstacle to the new Constitution being considered in force and effect." The Court did not say that the new Constitution had been ratified in accordance with the process dictated by the Constitution which has authorized its drafting. The Court simply said that it was there, a living being, an "operative fact"

[6] 50 SCRA 30, 141 (1973).

which one could ignore only at his own risk.

An analysis of the *Javellana* decision yields the clear conclusion that the operationalization of the 1973 Constitution together with the necessary consequence of prolonging Mr. Marcos' hold on executive power, was not a product of popular ratification but of revolution. Chief Justice Concepcion, in his summary of the votes on the *Javellana* case points out that a majority of the justices did not believe that the constitutional requirements for ratification had been satisfied.[7] As Justice Antonio put it, quoting from an article of Melville Fuller Weston, "[a] written constitution is susceptible of change in two ways: by revolution, which implies action not pursuant to any provision of the constitution itself; and by revision, which implies action pursuant to some procedural provision in the constitution."[8]

What happened in February 1986 was a repeat of what happened in 1973. Just as Mr. Marcos succeeded in extending his tenure by revolution, so also Corazon Aquino succeeded in wrestling the presidency from him by revolution.

President Aquino herself recognized the revolutionary character of her ascent to power when she said the following in Proclamation No. 3, popularly known as the Freedom Constitution: "The present government was installed through a direct exercise of the power of the Filipino people assisted by units of the new Armed Forces of the Philippines in defiance of the provisions of the 1973 Constitution."

There is another parallelism between Mr. Marcos and Mrs. Aquino which is more directly pertinent to the topic we are discussing. Recall that the revolutionary tenure of Mr. Marcos ripened into constitutional tenure. After the *Javellana* decision, we had a referendum on July 27 and 28, 1973, and another on February 28, 1975. Subsequently, amendments to the Constitution were adopted in a plebiscite on October 16 and 17, 1975, and another referendum was held on December 17, 1977. These were followed by elections for the *Interim Batasang Pambansa* in 1978 and local elections in 1980. All of these were held under the auspices of the 1973 Constitution. Thus, Chief Justice Fernando could conclude that clear acquiescence by the people to the 1973 Constitution had been obtained, and that "any argument to the contrary should be consigned to a well-merited limbo."[9]

In a similar manner, Cory Aquino's People Power revolution ripened

[7] An analysis of the Javellana decision may be found in J. BERNAS, PHILIPPINE CONSTITUTIONAL LAW 803-819 (1984).

[8] 50 SCRA at 373-36, *citing* Weston, *Political Questions, 38* HARV. L. REV. (1924-1925).

[9] Mitra Jr. v. COMELEC, 104 SCRA 59, 62-67 (1982).

into constitutional rule which was formalized by the overwhelming ratification of the 1987 Constitution. Which brings us now to a more direct discussion of the provision prohibiting re-election of the President.

ARTICLE XVIII, SECTION 5

A good point to start with is Article XVIII, Section 5:

> The six-year term of the incumbent President and Vice President elected in the February 7, 1986 election is, for purposes of synchronization of elections, hereby extended to noon of June 30, 1992.
>
> The first regular elections for the President and Vice President under this Constitution shall be held on the second Monday of May, 1992.

To extract the full flavor of this provision, it is necessary to trace its period of gestation.

It started off as a simple answer to the question which the EDSA event did not answer: How long may this revolutionary President hold office? The original proposal was a straightforward answer: "The incumbent President and Vice-President shall hold office for a term of six years starting at noon of February 25, 1986 until noon of February 25, 1992."[10]

Aside from giving the incumbents a six-year term, three other points are notable about this proposal. First, it gives no explicit hint as to how the two officers mentioned became incumbents, whether by election or otherwise. Second, the ending date of the presidential term would not synchronize with the proposed terms of the legislative body. Third, there was no indication of when the first presidential election under the Constitution would take place.

The problem of synchronization was solved easily enough by the addition of the clause "for purposes of synchronization of elections, [the term of the incumbents is] hereby extended to noon of June 30, 1992."

The question of how the incumbents got to where they were, however, became a subject of intense debate between two unequal factions which we might for convenience identify as the minority representation in the Commission and the dominant majority.

[10] 5 RECORD OF THE CONSTITUTIONAL COMMISSION 566 (1986), hereinafter to be referred to as RECORD.

The minority premised its argument on President Aquino's admission through Proclamation No. 3, that she had assumed office through direct action of the people and with the aid of units of the armed forces. She, therefore, did not assume office by virtue of a proclaimed electoral victory. In short, hers was a revolutionary presidency and therefore, it was argued, it should also end with the transition to normal constitutional government. Hence, Commissioner Rustico de los Reyes proposed the following addition to the original proposal:

> ... unless a majority of the votes cast in the plebiscite is for the holding of an election for President and Vice-President simultaneously with members of Congress after the ratification of this Constitution. Said issue shall be submitted as a separate question during the ratification of this Constitution. In case an election for said positions is held on the aforementioned dates, the term of office of the newly elected President and Vice-President shall commence at noon on June 30, 1987 and shall expire at noon on June 30, 1992.[11]

Commissioner de los Reyes was supported in his efforts by Commissioners Regalado Maambong,[12] Teodulo Natividad,[13] and Blas Ople.[14]

The dominant majority opposed the de los Reyes proposal on the argument that Aquino and Laurel already were entitled to a six-year term by right of election in the February snap exercise, contrary to the *Batasan* proclamation and contrary to the revolutionary tenor of the oath which the President had taken in Club Filipino and to the tenor of her own Proclamation No. 3. The principal advocates of this position, in the order of their appearances, were Commissioners Gregorio Tingson,[15] Cirilo Rigos,[16] Serafin Guingona,[17] Jose Bengzon Jr.,[18] Napoleon Rama,[19] Jose Colayco,[20]

[11] *Id.* at 567-572.

[12] *Id.* at 572-576.

[13] *Id.* at 578-580.

[14] *Id.* at 580-584.

[15] *Id.* at 566-567.

[16] *Id.* at 571-572.

[17] *Id.* at 576-577.

[18] *Id.* at 577-578.

[19] *Id.* at 583-584.

Rene Sarmiento,[21] Crispino de Castro,[22] Jose Nolledo,[23] and Ambrosio Padilla.[24]

As would be expected in such an uneven match, the outcome was 4 to 32 against the de los Reyes amendment, with 3 abstentions.[25] Whereupon, the victors set out to recast the original formulation.

The reformulation was originally presented by Commissioner Christian Monsod in the following tenor: "The term of the incumbent President and Vice-President by virtue of their election and proclamation by the people in the February 7, 1986 elections shall be extended, for purposes of synchronization of the national elections, from February 25, 1992 to noon of June 30, 1992."[26]

What this single sentence contains can be broken up into four sentences: (1) President Aquino was elected on February 7, 1986 to a six-year presidency and was proclaimed as such by the people. (It should be noted, however, that the date of proclamation is not indicated.); (2) She was elected to a six-year term (presumably of the 1973 Constitution, but by *fictional anticipation* also of the new Constitution); (3) She assumed office on February 25, 1986, and therefore, her six-year term should end February 25, 1992; (4) For purposes of synchronization of the national elections, her term is extended to noon of June 30, 1992.

After some discussion, a brief suspension of session, and more but still brief discussions, the present formula was approved, this time, you guessed it, by a vote of 34 to 4 with 2 abstentions.[27]

Four days after the approval of the provision, however, it was noted

[20] *Id.* at 585.

[21] *Id.* at 585-586.

[22] *Id.* at 586-587.

[23] *Id.* at 587-589.

[24] *Id.* at 589-590. Commissioners Edmundo Garcia and Wilfrido Villacorta also spoke, but they did not touch on the snap elections as the source of the six-year term.

[25] *Id.* at 591. A similar amendment, which said "[W]ithin one hundred twenty days from the ratification of this Constitution, the incumbent President shall call elections for President and Vice-President which may be simultaneous with the elections for members of Congress on May 11, 1986," was likewise rejected by a vote of 4 to 35 with 1 abstention. *Id.* at 590.

[26] *Id.* at 592.

[27] *Id.* at 592-595.

that a proposal setting the date for the first presidential election under the auspices of the new Constitution had been overlooked. The overlooked proposal read thus: "The first election under this Constitution for the President and the Vice-President shall be held on the second Monday of May, 1992."[28]

When it re-emerged four days later, it had undergone slight transformation to read: "The first REGULAR elections for the President and the Vice-President under this Constitution shall be held on the second Monday of May, 1992."[29]

There was an objection to the word "regular" for fear that it might lead to the conclusion that the snap election of February 1986 had been "irregular." But this was soon enough clarified by the explanation of Commissioner Azcuna that "regular" was being used in contradistinction not to "irregular" but "special." Hence, the proposal was readily approved.[30]

As approved, Section 7 (now 5) reads:

> The six-year term of the incumbent President and Vice President elected in the February 7, 1986 election is, for purposes of synchronization of elections, hereby extended to noon of June 30, 1992.
>
> The first regular elections for the President and Vice President under this Constitution shall be held on the second Monday of May 1992.

The first paragraph of this provision accomplishes two effects. First, it transforms President Aquino from a revolutionary President into an elected President. As shown earlier, it was Ferdinand Marcos who was proclaimed President in the election of February 1986. Corazon Aquino, however, did not seek remedy from the Electoral Tribunal created by B.P. 884. And even if she had, one can assume that the Tribunal would have dismissed her petition, or, if it had proclaimed her President, the great likelihood is that the Supreme Court could have correctly nullified her proclamation under the doctrine of *Lopez v. Roxas*. At any rate, the supreme political authority, the Filipino people, through the ratification of the 1987 Constitution declared her elected in February 1986. She is, therefore, as ordained by the people through their ratification of Article XVIII, Section 5, of the 1987 Constitution, now an

[28] *Id.* at 594.

[29] *Id.* at 871, 872.

[30] *Id.* at 872, 873.

elected President. Accepting the authority of *Lopez v. Roxas* that, absent a judicial body charged with deciding presidential election contest, such contests are political questions resolvable by the people. The Constitutional Commission in effect, submitted the question of her election for resolution by the sovereign people through the ratification of the new Constitution.

Here we see a partial convergence of the views of the minority and the majority. The former also wanted to submit the matter to the decision of the people, but they wanted it as a question separate from the ratification of the Constitution. The latter, however, wanted the matter decided using loaded dice. I am, therefore, reminded of another historic provision found in Transitory Provisions of the original 1973 Constitution. Speaking of the composition of the projected interim National Assembly, it said that the Assembly would include "those Delegates to the nineteen hundred and seventy-one Constitutional convention who have opted to serve [in the National Assembly by voting affirmatively for] the Transitory Provisions."

But back to Article XVIII, Section 5. The second effect of the first sentence is to establish a juridical link between the 1973 Constitution and the 1987 Constitution. The 1987 Constitution proclaimed her elected in an election initiated under the auspices of the 1973 Constitution, by reversing a contrary proclamation under the 1973 Constitution. The 1987 Constitution, therefore, makes her a President who straddles two Constitutions. While elected under the 1973 Constitution, the *institution* of her office as well as her *powers* and the *limitations* on her powers are those found in the 1987 Constitution. Moreover, for purposes of synchronization of the national elections, she is given a bonus of roughly 120 days.

Finally, we come to pay-off after this extended peregrination from Constitution to revolution and back to Constitution. If, as clear from Section 5 of Article XVIII and from the Constitutional Commission deliberations, the 1987 Constitution considers her an "elected" President, then, as far as the 1987 Constitution is concerned, any subsequent election to the presidency, whether in 1991, or in 1992, or in 1998, will be a second election or a "re-election." It will be a re-election under one and the same corporate entity; that is, the Philippine state. Hence, the question that must be answered is whether the prohibition of "any re-election" found in Article VII, Section 4 applies to Cory Aquino. In other words, does the 1987 Constitution consider her so unique as to exempt her form the prohibition of re-election? Again we must look into the text and, if necessary, into the deliberations of the Constitutional Commission.

ARTICLE VII, SECTION 4

The pertinent provision of Article VII, Section 4 says: "The President shall not be eligible for any re-election . . ."

It goes without saying that when the 1987 Constitution speaks of the President today, it refers to Corazon Aquino. A major reason for rushing the formulation and ratification of the current Constitution was the desire to place the President under a Constitution that would be superior to her. Prior to the ratification of the 1987 Constitution, she was operating under the Freedom Constitution which was her creation and which, therefore, she could uncreate. The presumption that is created, therefore, is that every time the word President appears in the 1987 Constitution, whether for purposes of granting her powers or limiting her powers and prerogatives, it refers to her for as long as she is President. Anyone, therefore, who argues that she is not the President referred to by any of the references to a President must bear the burden of showing that the 1987 Constitution has made an exception in her favor. When, therefore, Article VII, Section 4 says that "[t]he President shall not be eligible for any reelection," the presumption is that it refers to her. Are there factors in the current Constitution which rebut that presumption?

It has been argued that the second sentence of Section 5, Article XVIII places her outside the ambit of Article VII, Section 4. The sentence says: "The first regular elections for the President and the Vice-President under this Constitution shall be held on the second Monday of May, 1992."

If the intention of the argument from this provision is to say that Article XVIII, Section 5 makes the prohibition of Article VIII, Section 4 refers only to Presidents elected in a "regular election," the fallacy is too obvious to need refutation. Under such an interpretation, any President elected in a "special" and not a "regular" election would not be covered by the prohibition -- an interpretation which can subvert the purpose of the prohibition.

If the argument is meant to say that the prohibition applies only to one elected under the 1987 Constitution, the text obviously does not say so. It does not say "any re-election of one elected under the 1987 Constitution." The text simply and without distinction prohibits "any re-election," which is to say any second election. And if the 1987 Constitution says that Corazon Aquino is an elected president, perforce any subsequent election for her will be a "re-election" prohibited by the Constitution. *Ubi lex non distinguit, nec nos distinguere debemus.* As noted earlier, the current Constitution, through Article XVIII, Section 5, makes Corazon Aquino an elected President who straddles two Constitutions.

If it is further argued that since President Aquino was elected under

the 1973 Constitution the institution of her presidency is governed by the 1973 Constitution, the obvious answer is that the 1973 Constitution no longer exists and that Article XVIII, Section 27 of the current Constitution says: "This Constitution shall take effect immediately upon its ratification...and shall supersede all previous Constitutions."

In sum, the sole purpose of the second sentence of Article XVIII, Section 5 is to set a starting point for the series of "regular elections" that will take place under the 1987 Constitution. It has no hidden or underhanded implications.

Is it possible, however, that the Constitutional Commission wanted to exempt her from this prohibition but simply forgot to say so or preferred not to say so? That is not entirely improbable. Unfortunately, however, constitutional commands are not created by preterition or forgotten intentions. Constitutional commands, especially those of far-reaching consequences, come in the form of clear assertions. Moreover, I have reviewed the debates on the subject and I find no expression of an intent to consider her immune from the irresistible temptations that can assail long reigning presidents.

During the deliberations on the term of the president on **July** 25, 1986, the choice narrowed down to either "a six-year term with no immediate re-election" or "a six-year term with no re-election whatsoever."[31] The early consensus was at least against an immediate re-election. The principal reason given was the desire, which is also the desire of most of us, to force the President to concentrate his or her entire attention on working for the nation and not on working for re-election.[32] There is no indication whatsoever that the Commission intended to exempt her from the need to concentrate on the task of working for the nation. When the matter was put to a vote, the result was 32 to 5 in favor of the proposition: "The President shall have a term of six years without *immediate* re-election."[33]

Before the day ended, however, Commissioner Ambrosio Padilla asked for a reconsideration of the vote in order to secure approval for a total ban on re-election. He based his argument on Mexican history. He said that Mexico once had a ban against immediate re-election, but that the lofty purpose of the ban was circumvented when a president worked to ensure the election of his alter ego, who, in turn, worked to ensure the re-election of his immediate predecessor. Thus the evil sought to be avoided was not only not

[31] 2 RECORD 228.

[32] *Id.* at 208, 210, 219.

[33] *Id.* at 228.

avoided, but was even compounded.[34] Commissioner Edmundo Garcia, supporting Padilla, argued that an absolute ban would work only against the possibility of one man perpetuating himself in office, but also against the possibility of one party's permanent hold on the presidency.[35] After some debate,[36] the motion for reconsideration was approved, and on a subsequent ballot, the proposition that the President should serve for a six-year term "without re-election at any time" was approved by a vote of 26 to 15. An attempt by Commissioner Serafin Guingona to have this second vote reconsidered was defeated by a vote of 31 to 10.[37]

During the amendment, which took place on July 30, 1986, the provision was given the following form: "The President shall be ineligible for any re-election."[38] The change from "ineligible" to the present text's "not eligible" was just a matter of style. And the full import of this prohibition had already been explained in the following exchange:

BISHOP BACANI: I would like a clarification first. Does "no reelection" mean the President can never be reelected?

. . . .

MR. ROMULO: Madam President, the meaning of "without reelection" is that the person can never run again -- absolute ban.

BISHOP BACANI: Therefore, if she ceases from office she cannot run even after six years.

THE PRESIDENT: Even after?

BISHOP BACANI: That is the understanding.[39]

[34] *Id.* at 247.

[35] *Id.* at 249.

[36] *Id.* at 247-250.

[37] *Id.* at 250-252.

[38] *Id.* at 432.

[39] *Id.* at 226-227.

CONCLUSION

To go back then to our original question: May President Corazon Aquino run for re-election in 1992 or even 1991? Let me simply conclude by saying that the prohibition against re-election is meant for humans. And our Constitution envisions that all our Presidents, present and future, are and will be humans.

STATE IMMUNITY FROM SUIT

JACINTO D. JIMENEZ*

I. INTRODUCTION

To many, the doctrine of State immunity from suit is an anachronistic remnant of the days of monarchy which continues to bedevil modern democracies. However, this principle has been inscribed in the 1987 Constitution. Adopting Section 16, Article XV of the 1973 Constitution, Section 3, Article XVI of the 1987 Constitution provides: "The State may not be sued without its consent."

The prior Organic Acts of the Philippines from the Instructions of President William McKinley to the Second Philippine Commission to the 1935 Constitution did not contain a similar provision. However, Section 16, Article XV of the 1973 Constitution did not introduce any change in constitutional principles. It merely made explicit in the Constitution what had been settled in Philippine jurisprudence. As early as March 1, 1922, the Supreme Court held in *L.S. Moon & Co. v. Harrison*[1] that the State cannot be sued without its consent.

II. HISTORICAL BACKGROUND

A. England

The origin of the doctrine of sovereign immunity from suit is enveloped in uncertainty. Some legal historians believe it evolved because of the structure of the English feudal system. The lord of each manor held court for his subjects. However, he himself was not subject to the jurisdiction of his own court but was subject only to the court of a higher noble. Since the king was at the pinnacle of the feudal structure, he was not subject to any court and was immune from suit. There was no court above him. The immunity of the king from suit was not due to the belief that he was above the law but was

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[1] 43 Phil. 27, 39 (1922).