

## The Philippine Law on Elections in Perspective

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### INTRODUCTION: THE MASS OF ELECTION LAW

No law is ever complete. This is especially true of the law on elections, as plainly evident from its history. The listing alone of election laws from 1900 up to the present is as long as one's arm.

Philippine election laws find their genesis in Act No. 502,<sup>1</sup> enacted on November 10, 1902 by the Philippine Commission under the authority of the United States. What followed thereafter were numerous Commonwealth Acts, Republic Acts, Presidential Decrees, Batas Pambansa and Executive Orders.

Many attempts were made to codify all the existing election laws in the country. One such attempt was Republic Act No. 180, the Revised Election

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1. An Act Amending the Municipal Code by Authorizing the Civil Government to Postpone General Municipal Elections under Certain Circumstances, Act No. 502 (1902).

Code, enacted on June 21, 1947. This law, however, was continuously amended until finally, it was superseded altogether. At present, the basic election law is the Omnibus Election Code of 1985.<sup>2</sup>

However, soon after the 1986 EDSA People Power Revolution, the Omnibus Election Code suffered the same fate as its predecessors and was subjected to numerous amendments. Some of the more significant of these dealt with the reorganization of the Commission on Elections (COMELEC),<sup>3</sup> Congressional Elections,<sup>4</sup> local elections,<sup>5</sup> *barangay* elections,<sup>6</sup> and electoral reforms.<sup>7</sup> The Omnibus Election Code was also amended by Congress when it provided for the Organic Acts and Elections for Muslim Mindanao<sup>8</sup> and for the Cordillera Autonomous Region.<sup>9</sup>

In June of 1991, the Omnibus Election Code was again further amended when Congress passed Republic Act No. 7056. The law, however, was declared unconstitutional by the Supreme Court in the case of *Osmena v. Commission on Elections*<sup>10</sup> because it provided for separate national and local elections. Thereafter, Congress passed Republic Act No. 7166 on November 26, 1991, otherwise known as an "Act Providing for Synchronized National and Local Elections" for the May 11, 1992 elections. This law was based on recommendations made by the COMELEC in compliance with its

2. Batas Pambansa Blg. 881 (1985). This law was approved on Dec. 3, 1985 and was published in the Official Gazette on Dec. 9, 1985. The author took part in the deliberations and passage of this law as a then member of the First Regular Batasang Pambansa.
3. Reorganizing the Commission on Elections and Enhancing its Independence, Executive Order No. 57 (1986).
4. Enabling Act for the Elections of Members of Congress on May 11, 1987 and for Other Purposes, Executive Order No. 134 (1987); Supplemental Law on the May 11, 1987 Elections For Members of Congress, Executive Order No. 144 (1987).
5. Amending Proclamation No. 94 Providing for the Holding of Local Elections Pursuant to the Second Paragraph of Section One, Article XVIII of the 1987 Constitution, and Appropriating Funds Therefor, Executive Order No. 270 (1987); An Act Resetting the Local Elections from November 9, 1987 to January 18, 1988, Amending for this Purpose Executive Order Number Two Hundred and Seventy, Republic Act No. 6636 (1987); Republic Act No. 6637 (1987).
6. Republic Act No. 6653 (1988); Republic Act No. 6679 (1988).
7. An Act Introducing Additional Election Reforms in the Electoral System and for Other Purposes, Republic Act No. 6646 (1988).
8. An Act Providing for an Organic Act for the Autonomous Region in Muslim Mindanao, Republic Act No. 6734 (1989).
9. An Act Providing for an Organic Act for the Cordillera Autonomous Region, Republic Act No. 6766 (1989).
10. 199 SCRA 750 (1991).

constitutional duty to recommend to Congress effective measures relative to elections.<sup>11</sup>

Aside from the above-mentioned amendments, Congress further enacted a number of supplemental and amendatory laws.<sup>12</sup> However, in spite of all the changes in procedure and details our election laws have undergone, the fundamental principles remain the same.

### I. HISTORICAL PERSPECTIVE<sup>13</sup>

Suffrage, in its modern concept, began in this country in the year 1899. In May of that year, Baliwag, Bulacan, became the first town to hold an election under American supervision. Four Cavite municipalities followed suit.

After the American occupation, a municipal government was first temporarily provided for in the Islands by General Orders No. 43, series of 1899, promulgated by the Commander of the military forces of the United

11. PHIL. CONST. art. IX-C, § 2(7).

12. An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor, Republic Act No. 6735 (1989); An Act Providing for the Date of Regular Elections for Regional Governor, Regional Vice-Governor and Members of the Regional Legislative Assembly of the Autonomous Region in Muslim Mindanao and for Other Purposes, Republic Act No. 7647 (1994); An Act Instituting Electoral Reforms for the Purpose of Amending Section 3, Paragraphs (C) and (D) of Republic Act No. 7166, Republic Act No. 7887 (1995); An Act Amending Section 185 of the Omnibus Election Code, as Amended, by Requiring the Commission on Elections to Furnish Every Registered Voter at Least Thirty (30) Days Before an Election with an Official Sample Ballot, Voters Information Sheet and List of Candidates, Republic Act No. 7904 (1995); An Act Providing for the Election of Party-List Representatives Through the Party-List Systems, and Appropriating Funds Therefor, Republic Act No. 7941 (1995); An Act Amending Section 27 of Republic Act No. 7166, Entitled "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, Republic Act No. 8045 (1995); An Act Authorizing the Commission on Elections to Conduct a Nationwide Demonstration of a Computerized Election System and Pilot-Test it in the March 1996 Elections in the Autonomous Region in Muslim Mindanao (ARMM) and for Other Purposes, Republic Act No. 8046 (1995); An Act Granting All Citizens Arms Equal Opportunity to be Accredited by the Commission on Elections, Amending for the Purposes Republic Act Numbered Seventy-One Hundred and Sixty-Six, as Amended, Republic Act No. 8173 (1995); An Act Providing for General Registration of Voters, Adopting a System of Continuing Registration, Prescribing the Procedures Thereof and Authorizing the Appropriation of Funds Therefor, Republic Act No. 8189 (1996); An Act Providing for the Proclamation of a Lone Candidate for Any Elective Office in a Special Election, and for Other Purposes, Republic Act No. 8295 (1997); An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National and Local Elections and in Subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes, Republic Act No. 8436 (1997).

13. See JOSE P. LAUREL, *THE ELECTION LAW 101-141* (2d ed. 1936) for an excellent discussion of early Philippine election law.

States. Subsequently, the Military Governor of the Philippine Islands issued General Orders No. 40, Series of 1900, which more or less formally and permanently established municipalities in the Philippine Islands. The order was based upon the report of a board constituted by the Military Governor to formulate a plan of municipal government, of which Board Chief Justice Cayetano Arellano, who later became Chief Justice of the Philippine Supreme Court, was chairman. A portion of this report reads:

For the first time the Philippine people are to exercise the right of suffrage in the election of municipal officers — a right only slightly restricted by conditions which have been imposed for the purpose of rewarding, as well as encouraging the people of their just and natural aspirations to become educated, and worthy to enjoy all the benefits of civilization.<sup>14</sup>

The first election law was enacted as early as January 9, 1907.<sup>15</sup> In framing this law, the Philippine Commission consulted the election codes of Massachusetts, New York, the District of Columbia, and California. Features were adopted from each, but modified in such a way as to meet insular conditions. The law aimed to afford the necessary safeguards and machinery to ensure purity, secrecy, certainty and expedition, without causing too great a drain upon the resources of municipal and provincial governments.<sup>16</sup>

But even before the first election laws, the electoral process already existed in the Philippine islands. Certainly there must have been some crude form of electoral system as a means to choose leaders starting with the Pre-Spanish Filipinos in *barangays* long before Magellan came in 1521. Although suffrage was virtually curtailed under Spain, the regime of laws during the four centuries of Spanish rule gave Filipinos considerable political education, and also unified them into one nation.<sup>17</sup> Other factors also contributed to Philippine unity. Christianity was implanted, an educational system established, and the beginnings of economic development made visible.

Directly or indirectly, therefore, Spain contributed the idea of self-government or self-rule, and thus, the seed of independence grew. Whether intentional or not, Spain awakened the spirit of the Filipino people into asserting and fulfilling their instinct for freedom. All these and more were continued during the American period.

14. See JOSE B. LAUREL, *THE ELECTION LAW I* (1925).

15. Philippine Election Law, Act No. 1582 (1907).

16. See Report of the Philippine Commission, Part I, 154 (1906); Report of the Philippine Commission, Part I, 5 (1907).

17. This is with the possible exception of the Muslims of the Sulu Archipelago, parts of Mindanao, and the various tribes in the mountains and jungles elsewhere.

## II. THE PURPOSE OF ELECTIONS — GOOD GOVERNMENT

Hell or heaven, the key is government, good government. Undeniably, the existence of a state depends on several other factors, including territory, sovereignty, and a populace. Without government, however, there cannot be an ordered society.

Thus, to properly appreciate elections and electoral processes, one should understand and accept the importance of government and its impact on the lives of people in society. Any treatise on elections must, therefore, devote a portion of its discussion on the term *government*, the full details of which lie in the realm of political science.<sup>18</sup>

Generally, good government has one basic purpose: the ordering of society so as to establish the conditions necessary for individual and common achievements. This is true whether on the municipal or international plane. Without a government capable of maintaining peace and security within a country, meaningful endeavors of any kind, *e.g.*, family life, education, industry and commerce, would be almost impossible. Beyond this, the Government provides essential services the people would not otherwise enjoy, such as the construction of roads and bridges, and the maintenance of public health and sanitation. On a global scale, governments are likewise essential for constructive international relations. States establish amicable relations with other states, under which their respective citizens conduct cultural, commercial and political intercourse. The alternative to these peaceful international relations would be chaos, anarchy, mutual distrust and suspicion, if not outright war.<sup>19</sup>

At the same time, the government depends upon the people for support: financial, in the form of taxes; moral, in the form of favorable public opinion; and loyalty, in many forms including war service for its defense. Effective governance requires a balance between a good and well-informed society and a just government.

### A. A Government of Men and Women

It should be remembered, however, that governments are human institutions and, as such, depend on men to frame constitutions, promulgate laws and regulations, and implement them to attain given objectives. So, while it is an accepted democratic principle that we are a "government of laws and not of

18. Such details include politics, political parties, political history, political philosophy, political sociology, political geography, political psychology, public administration, and international relations.

19. VICENTE ALBANO PACIS, *PHILIPPINE GOVERNMENT AND POLITICS* 4 (1967).

men,"<sup>20</sup> in truth, a democracy is inescapably a government of men in varying degrees.

In a democracy like the Philippines, sovereignty resides in the people, and all powers of government emanate from that sovereignty.<sup>21</sup> 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 sovereignty thereby, and remain sovereign, thus retaining control of the government. However, this is not necessarily true in practice. For instance, the framers of the Constitution, who are either elected or appointed,<sup>22</sup> are not the people themselves.

Control by the sovereign power is exercised from day to day through the application of laws which govern the conduct of public officers,<sup>23</sup> through public opinion from various organizations and through political parties expressed through media groups and other means. Such control, however, is more apparent than real. And in case of callous and insensitive government officials, public opinion, and even laws, have no effect.

20. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

21. "The Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them." PHIL. CONST. art. II, §1.

22. The forty-eight members of the Constitutional Commission of 1986 were appointed by President Corazon C. Aquino.

23. PHIL. CONST. art. VII, §§6 & 13, art. XI, §§15 & 16; The Anti-Graft & Corrupt Practices Act, Republic Act No. 3019 (1960); Making it Punishable for Public Officials and Employees to Receive, and for Private Persons to Give, Gifts on Any Occasion, Including Christmas, Presidential Decree No. 46 (1972); An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Procedure Therefor, Republic Act No. 1379 (1955); Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act No. 6713 (1989); The Ombudsman Act of 1989, Republic Act No. 6770 (1989); Revised Penal Code, Act No. 3815, arts. 210-216 (1930); Immunity to Briber or Gift Givers, Presidential Decree No. 749 (1975); and Plunder Act, Republic Act No. 7080 (1991).

### B. The Electoral Process as an Instrument of Change

Thankfully, the people, in their sovereign capacity, retain one potent weapon. This effective manner of control by the sovereign people is through the electoral process. Of necessity, this is but periodic. To do it more often not only expensive, it is also disruptive of government operations. This is why the present Constitution limits the term of office, and even the reelection of various elective officials.<sup>24</sup>

The right of *suffrage* refers to the political right to vote in an election, by those who are qualified to determine who will run the government, as well as the right to vote on issues or questions submitted to the electorate for determination in a plebiscite or referendum. On the other hand, *election* is the process by which qualified voters exercise their sovereign authority through the ballot, wherein they choose their representatives to exercise the powers of government for definite and fixed periods. Election also means the act of casting and receiving the ballots from voters, counting the ballots, and making the returns thereon.<sup>25</sup>

Currently, the right of *suffrage* has been expanded beyond *election*, as traditionally understood, to encompass *plebiscite*, *referendum*, *initiative*, and *recall*.<sup>26</sup>

A *plebiscite* involves a constituent act of citizens generally associated with the amending process of the Constitution. It is provided in the Constitution for the amendment or revision of the organic act,<sup>27</sup> and for the creation, division, merger, abolition or substantial boundary alteration of local government units.<sup>28</sup> By *initiative*, the people directly propose and enact laws; by *referendum*, the people approve or reject any act or law or part thereof passed by the Congress or local legislative body.<sup>29</sup> In a non-legal and loose sense, therefore, referendum is the assessment of the public reaction to given issues submitted to the people for their consideration.<sup>30</sup> Finally, through *recall*, an

24. See PHIL. CONST. art. VII, §4 (on the term limits of the President and Vice President); art. VI, §4 (on the term limits of Senators); art. VI, §7 (on term limits of members of the House of Representatives); art. X, §8 (on the term limits of elective local officials). See also An Act to Postpone the May 9, 1988 Election to the Second Monday of November This Year and for Other Purposes, Republic Act No 6653 (1988) as amended by Republic Act No. 6679 (1988) (resetting the barangay elections to Mar. 28, 1989).

25. See Emilio Espinosa Jr. v. Benigno S. Aquino, Jr., Electoral Case No. 9, Jan. 15, 1969; Hontiveros v. Altrins, 24 Phil. 632, 637 (1913).

26. See PHIL. CONST. art. IX-C, §2(1).

27. See PHIL. CONST. art. XVII, § 4.

28. See PHIL. CONST. art. X, §10.

29. See PHIL. CONST. art. VI, §32; art. X, §3 (on effective mechanisms of recall, initiative and referendum for local structures).

30. See Sanidad v. Comelec, 73 SCRA 333, 371-72 (1976).

elective official may be deprived of his position for causes recognized by the local government code for a more responsive and accountable local government.<sup>31</sup>

### III. OBSERVATIONS ON THE PHILIPPINE ELECTORAL PROCESS

The mandate of the Constitution is clear: "free, orderly, honest, peaceful and credible elections."<sup>32</sup> Even with this, however, the specter of perverted and manipulated elections remain. Election laws, no matter how exceptional, do not always produce the desired result, for the Philippine electoral process depends not only on the laws, but also on the men and women who enforce and implement them. Furthermore the attitudes of political parties and contending candidates in their quest for power contribute to the perversion of the electoral process.

Material inducements, and in the extreme, threats, violence, outright fabrication of election results, illegal registrants or flying voters, fake ballots, ballot-snatching and the like, are blatant violations of law which now appear to be accepted as part of practical political strategy.<sup>33</sup> When outright violation of election laws are committed through the use of guns, goons, gold and ghosts, the implementation of good election laws is put to naught, regardless of the sincerity and devotion of the guardians of election laws.

#### A. Mistrust

In this author's opinion, the circumvention of election laws occurs largely because of one element: *mistrust*. The Commission on Elections, charged with the enforcement of election laws, mistrusts the candidates. Because of such distrust, it effectively bankrupts the government because of expensive safeguards: metal ballot boxes that look like tanks complete with several padlocks and self-locking metal seals, numerous copies of election documentation, and the employment of the resources of the military and law-enforcement agencies. Hapless voters are subjected to the embarrassment of indelible ink painted on their fingers, in order to prevent flying voters.

31. See PHIL. CONST. art. X, §3.

32. PHIL. CONST. art. IX-C, §2(4).

33. Not all electoral manipulations are encompassed by election laws. News manipulation includes the hiring of editors, columnists, journalists, and radio commentators. Targeted groups like political parties, women's organizations, professional, youth and cultural associations are infiltrated and used for electoral and propaganda purposes. Economic "terrorism," applying pressure against selected sectors of the economy, could influence the outcome of elections. Dirty tricks are applied through techniques such as bugging, wire-tapping, planting of bogus evidence, misinformation and blackmail to create incidents or obtain information to embarrass political opponents.

Even with the modernization of the electoral process, it will take some time before candidates will trust each other. Until then, the dockets of the COMELEC, the regular courts, and the Supreme Court will continue to be clogged by protests of losers who refuse to accept defeat.

### B. Manipulation of Laws

There are, of course, more subtle means to win elections. In certain periods of our electoral history, the Constitution and the laws were realigned to achieve legalized electoral manipulation to favor those in power. For instance, through the December 2, 1940 constitutional amendment, the term of the President from six years without re-election was changed to four years with one re-election. This was designed to favor President Manuel L. Quezon. Moreover, through Proclamation No. 1081, President Ferdinand E. Marcos declared martial law, thus paving the way for his maintaining power beyond his second elective term.<sup>34</sup>

Clothed in legal dress, such manipulative devices provide a built-in advantage that requires no fraud or violence to win. Block or straight voting was one such device.<sup>35</sup> In one case, for instance, reform-minded candidates who won seats in the Senate and the House of Representatives were arbitrarily disallowed to take their seats under the transparent fiction that coercion had been used to influence voters.<sup>36</sup> Even now, a candidate who admittedly lost by 17,903 votes in the May 2001 elections continues to sit in the House of Representatives, though the winner has been proclaimed by the COMELEC.

34. Marcos' subsequent election on June 16, 1981 was virtually unopposed and considered by many as farcical. He ran under the Kilusang Bagong Lipunan (KBL) and garnered 18,309,360 votes as against 1,716,449 votes of Alejo S. Santos (Nacionalista Party), and 749,845 votes of Bartolome C. Cabangbang (Federal Party).

35. Block voting was legally used during the time of President Quezon, and again during the 1980 local elections. Virtually unknown candidates belonging to the Kilusang Bagong Lipunan (KBL), suddenly found themselves in power. So did the opposition Pusyon Bisaya in the regional elections of the Interim Batasang Pambansa in 1978.

36. The Huks took part in the April 1946 elections to test the good faith of the government, as part of a democratic alliance of liberal and socialist peasant groups. As matters turned out, the Commander-in-Chief of the Huks, Luis Taruc, and several other members of the alliance who won the election to Congress, three to the Senate and seven to the House, were not allowed to take their seats. Strangely enough, no investigation had even been carried out by the appropriate body, the House Electoral Tribunal. It was only two years later when Taruc was temporarily allowed to take his seat when he came to Manila to discuss a ceasefire with the government. Due to the debasement of the electoral process, many felt they had little alternative but to take up arms once again, especially with so many of their leaders killed, jailed, tortured, maimed or otherwise missing.

### C. Continued Vigilance

A common misconception is that electoral power, the inherent power of the people to delegate the functions of government to officials by election, can only be exercised on election day. On the contrary, the people should continue to ensure that the powers they have delegated to government officials are exercised in accordance with law.

The continuing power of the people is directly exercised through the process of *recall* of elective local officials. Furthermore, the people may cause the impeachment of particular officials and the dismissal of others, by the filing of criminal or administrative complaints. Indirectly, the people can influence the conduct of government through various forms of free association, free speech and other modes of expression, inherent rights that may not be abridged or prohibited by government.

All told, the problem is not in the laws; rather, it is in the performance of election officers, the maturity of the electorate, and the attitude of those who are in power, along with those who seek power, who often undermine the laws by direct or subtle means.

## IV. EFFECTIVE EXERCISE OF SOVEREIGN WILL

A sustained effort is required in order that the people's sovereign will is effectively exercised through electoral power. First and foremost, the electoral process must be clean, honest, orderly, peaceful and credible. This means that the people must be able to vote of their own free will without the influence of external factors such as coercion, threat, intimidation, or illegal persuasion like vote buying. It goes without saying that the votes must be counted and recorded correctly, or otherwise fraud-free. Illegally increasing or decreasing votes (*dagdag-bawas*), which has been practiced since time "immoral" must be prevented. Second, political offices must be held at definite periods, as provided by the Constitution, if not by law. When an elective office-holder can dictate his continuance in office, the people have lost sovereign control over such office. Where the term of office is indefinite, there is the tendency to yield to the temptation of prolonged tenure, subjecting the term of office to the office-holder's will rather than law. In much the same way, when the holding of elections is indefinite and uncertain, the temptation is great to postpone, or even to do away with such election altogether. This permits elective office-holders to frustrate the exercise of the sovereign will through electoral power.

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/recording of votes and the consolidation of results, mistakes and the opportunity to commit fraud, inherent in a manual counting, cannot be avoided.

#### CONCLUSION

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."<sup>37</sup>

37. Learned Hand, *The Spirit of Liberty*, Speech in New York (May 21, 1944), in *THE SPIRIT OF LIBERTY* 189-90 (Irving Dillard ed. 1953).

## Restraining Free Trade Unionism: A Critique of Supreme Court Decisions that Unduly Restrict Labor's Exercise of the Right to Self-Organization

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#### INTRODUCTION

On paper, the policy environment in the Philippines appears to be conducive for the organization of labor unions. Unfortunately, however, the written policy does not reflect the reality of trade unionism in the country. To be more accurate, the written policy does not translate into concrete implementing mechanisms that ensure the free exercise of the right to self-

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