

ign affairs by serving under various capacities such as, Counsellor on Legal Affairs and Treaties, Chairman of the Committee on Foreign Affairs of the House of Representatives, Delegate to the Southeast Asia Conference, Delegate to the United Nations General Assembly and other positions. He ran for and got elected Congressman of the First District of Pampanga in 1949 and was re-elected in 1953 when the rival Nacionalista party led by the late President Ramon Magsaysay swept the elections in that year. But even during these times, he never did really stop studying. In 1947, he obtained the Degree of Doctor of Laws and in 1957 he was conferred his Doctor of Economics degree.

If anything is to be said about his personal traits, the one that would stand out most is his integrity and honesty. Of this, no man has had the occasion to question. He has been dubbed as "about the only Liberal with an absolutely clean record"² and "whose honesty and integrity remain unassailed."³ "A ruthlessly honest official,"⁴ he was once called by a leading and impartial publication. These are but few of the comments he received about his moral character. The late President Magsaysay was quoted to have said that he had no dossier on Macapagal because he is truly an honest official and citizen.

Now, as Vice-President of the Philippines, he has remained faithful to his credo of honest public service and of elevating the condition of the masses. In a message to the Filipino people after his election, he said, "I look upon my election as a popular clamor for our government to turn greater attention to the plight of the masses of our people in order that they may rise from their poverty to a better life. The political strife being over, let us all work together to achieve, with God's blessing and thru the means provided by our free and democratic system, a life of abundance, security and happiness for our people."

Amelito R. Mutuc

² Magsaysay-for-President Movement leaders Manuel Manahan and Jaime Ferrer gave Macapagal this tribute in April 1957 when they were asking him to join the Progressive Party of the Philippines.

³ The Manila Times, *Roses and Thorns*, May 12, 1957.

⁴ Philippines Free Press, June 15, 1957.

THE VICE-PRESIDENT UNDER THE CONSTITUTION†

*Diosdado Macapagal**

I wish to thank President Arturo A. Alafritz and the Board of Directors of the Philippine Lawyers' Association for the rare privilege given me to deliver this year the annual Constitution Day address. I shall dwell on the position of the Vice-President under the Constitution. I shall do so not as an incumbent of this post but primarily as a student of the Constitution and of the affairs of the Republic that it regulates.

There are at least three important constitutional questions that have arisen relative to the Vice-President, to wit: (1) The necessity for the position, (2) the circumstances under which the functions of the President shall devolve upon him, and (3) the functions that shall be discharged by the Vice-President.

The President of the Constitutional Convention, Delegate Claro M. Recto of Batangas, had disclosed that the provision that was finally written into the charter concerning the Vice-President was predicated mainly on the personal considerations arising from the rivalry between Manuel L. Quezon and Sergio Osmeña. In the national interest, it is therefore imperative to re-examine the position of Vice-President outside the shadows of that rivalry. Delegate Recto wrote that because of this rivalry, "there was fierce opposition to the creation of a Vice-President, to which, it was expected, Senator Osmeña would be nominated."¹

The abolition of the post of Vice-President was vigorously upheld by Delegates Bonifacio Ysip of Nueva Ecija, Ruperto Kapunan of Leyte and Eusebio Lopez of Batangas, while Delegates Maximino Bueno of Ilocos Norte, Manuel Lim of Manila, Exequiel Grageda of Camarines Sur, Enrique Santos of Nueva Ecija, Luis Morales of Tarlac and Atilano Cinco of Leyte argued for the retention of the office. It was asserted by Delegate Lopez that the vice-presidency would be "the most useless position that we are creating in the draft."² This assertion was immediately repelled by Dele-

† Address before the Delegates to the Constitutional Convention and the Philippine Lawyers' Association at the Manila Hotel on Constitution Day, February 8, 1958.

* Vice-President, Republic of the Philippines.

¹ RECTO, *Our Constitution*, 14 LAWYERS JOURNAL 290 (1949).

² 7 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION 4348.

gate Grageda who said that the post of Vice-President would certainly not be useless because "we can give him an office."³

The claim that the post of Vice-President was useless was based on the argument that in case of removal, resignation or death of the President, one of the members of the cabinet or one selected by the National Assembly could take the place of the President. This argument was refuted by Delegates Grageda and Cinco who declared that such course would be undemocratic and would defeat popular government.⁴ Delegate Santos refuted the proposition of leaving it to the National Assembly to choose the President's successor by pointing out that in a situation where the National Assembly was dominated by a party different from the party of the elected President, the Assembly would choose a successor from their own party, thereby violating the will of the electorate.⁵

After hearing the arguments pro and con over the necessity of keeping the position, the delegates voted to defeat the proposal for its abolition. Indeed, one of the authors of the proposal, Delegate Nicolas Rafols of Cebu, withdrew his authorship because he was not convinced by the arguments of the proponents.⁶

In the perspective of our experience in this country, as well as in the United States, the decision of the Convention to provide for the post of the Vice-President has been vindicated as a wise one. In the United States, at least seven Vice-Presidents became President. These were Vice-Presidents Zachary Taylor, Millard Fillmore, Andrew Johnson, Chester Arthur, Theodore Roosevelt, Calvin Coolidge and Harry Truman. Out of the four Vice-Presidents that we have had from 1935 to 1957, three, namely, Vice-Presidents Sergio Osmeña, Elpidio Quirino and Carlos Garcia, became President. Only one Vice-President had not ascended to the presidency. The experience has led to a growing thinking that in electing a Vice-President the electorate ought to choose one who has the capabilities of discharging the position of President. In the words of Delegate Vicente Francisco of Cavite:

The Vice-President of the Philippines must be chosen with the greatest possible care. Our history teaches us that when we vote for a Vice-President, we may actually be voting for a future President.⁷

The next constitutional question regarding the vice-presidency arises from the provision of the Constitution that:

³ *Id.* at 4329.

⁴ *Id.* at 4328, 4345.

⁵ *Id.* at 4336.

⁶ *Id.* at 4357.

⁷ FRANCISCO, *Address to the Lawyers of the Philippines*, 14 LAWYERS JOURNAL 454.

In the event of the removal of the President from office or of his death, resignation or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President...⁸

The devolution of the powers and duties of the President upon the Vice-President in case of removal, death or resignation of the former is clear enough. There is however, an ambiguity in the contingency of the presidential "inability to discharge the powers and duties" of the office which would result in the said powers and duties devolving upon the Vice-President. What is the meaning of "inability to discharge the powers and duties" of the office? Does going out of the country constitute such inability? In any event, who will determine that the President is suffering from such inability?

The practice in the United States sustains the view that traveling in a foreign country does not give rise to inability to discharge the powers and duties of the presidency. Juridically, this has been justified upon the consideration that wherever the President treads is for the moment the soil of his country.⁹ Ever since President Wilson went to Europe after the first world war to negotiate the Treaty of Versailles, American Presidents, including Roosevelt, Truman and Eisenhower, even when abroad, continued to discharge by remote control the duties and functions of the presidency within the United States. Emulating the American practice, Presidents Quezon and Osmeña have expressly laid down the procedure that in their absence abroad, "the departments will continue to decide matters which they now ordinarily settle and that where the sanction of the President is necessary, presidential approval shall be obtained by cable."¹⁰

The American practice is justified by the legal issue raised that if the Vice-President assumes the powers and duties of the presidency, the United States Constitution has no provision for the restoration of such powers and duties to the President. In this jurisdiction, the practice may be open to question since section 9, article VII of the Philippine Constitution expressly provides for a situation when the Vice-President shall temporarily be acting as President by the provision that: "The Vice-President when not acting as President, shall receive an annual compensation of fifteen thousand pesos."

The constitutional vacuum appears in the case of illness of the President which renders him actually unable to discharge the duties and functions of his office for a considerable period. The grave risk to the public welfare is evident from the resulting official paralysis arising from the incapacity of the President with no one authorized to discharge the functions of his office during such disability. In this connection, one recalls the case of President Garfield who was in a state of coma for eighty

⁸ PHIL. CONST. Art. VII § 8.

⁹ CORWIN, *THE PRESIDENCY* 67.

¹⁰ HAYDEN, *THE PHILIPPINES* 84.

days. It was clear that Garfield was unable to discharge the duties and functions of the presidency but despite the urging of many officials, Vice-President Arthur refused to take over the presidency even only temporarily, apprehensive that, since the Constitution was not clear on the matter, he might be regarded as a usurper.

Something must be done to fill this constitutional void if the welfare of the nation is not to be jeopardized. Awakened to this fact undoubtedly by his health and advanced age, President Eisenhower in March, 1957, took the initiative in recommending to Congress the enactment of legislation in order to cope with the massive problems created when a President suffers a disability. As a result, the American Congress has had under consideration the following remedies:

1. A constitutional amendment authorizing the President to direct the Vice-President to take over completely until the President can resume his duties. Under this amendment, if the President failed to do so, the cabinet could.

2. A law requiring the President to take physical and mental examinations. A commission representing the three branches of the government would decide, on the basis of what the doctors reported, whether he was able to carry on.

3. A law empowering the Vice-President to inform Congress that he was taking charge as "Acting President" because the President had become sick. Congressional approval in such instance would not be needed.¹¹

The third constitutional issue which has the most momentous import in Philippine contemporary politics is the question of what office or functions shall be discharged by the Vice-President.

I must stress anew at this point that I shall discuss this question as a student of constitutional law and not as the incumbent Vice-President of the country. From my standpoint as the Vice-President belonging to an opposite party to that of the President, my position has been to leave it to the President to decide whether or not to avail of my services in his administration because the power and responsibility are his. It will perhaps be of use to the present and future Presidents in discharging this power and responsibility, as well as to students of constitutional law, for me to set forth the pertinent debates in the Constitutional Convention from which one may glean the intent of the fathers of the commonwealth as regards the place of the Vice-President in the set-up of our government.

When the framers of the Constitution voted to retain the post of Vice-President, it can be construed that they rejected the theory that the position was a useless or unimportant one. As it was argued by the proponents of the abolition of the post that it was against public policy to have an

official who receives salary without doing any work,¹² and the Convention, nevertheless, retained the position, it can likewise be interpreted that the Constitutional Convention intended that the Vice-President should be assigned some substantial public business. Had the bicameral legislature been established at the time, the thinking in the Convention was to make the Vice-President the presiding officer of the Senate as in the United States, for as Delegate Ysip said, "No puede ocupar el cargo de presidente del senado porque ya no tenemos senado."¹³

It can be said, therefore, that it was the intent of the framers of the Constitution not to make the post of Vice-President useless in any case by leaving him to discharge no important function. Delegate Santos expressed the practical purpose of this constitutional policy when he said that the Vice-President should be given an opportunity to be a great or successful President, if and when he becomes one.¹⁴ The thinking of Delegate Santos of giving the Vice-President an opportunity to be posted on what is going on in preparation for the presidency has also been realized in the United States. Whereas, before, the Vice-President was left only to preside over the Senate, an increased importance has evolved out of the post so that we now see President Eisenhower actively readying his Vice-President to assume the presidency any time. Thus, Vice-President Richard Nixon is consulted or kept posted on governmental policies and decisions; he is the chairman of some policy bodies; and he is charged with important missions abroad by the President. The wisdom of this new presidential practice became evident during the recent stroke suffered by President Eisenhower, which produced no undue anxiety among the American people because they felt that the Vice-President had been duly posted on administration policies and measures and, therefore, could momentarily, as the new President — should such an eventually take place — safeguard and serve the vital interests of the American nation.

In accordance with the constitutional policy not to leave the Vice-President without discharging substantial public business in order that he may readily be in a position to assume the presidency, and since he could not be made the presiding officer of the Senate for the reason mentioned by Delegate Ysip, it was finally provided in the Constitution that:

The President may appoint the Vice-President as a member of his cabinet and also as head of an executive department.¹⁵

While the wording of the Constitution is permissive in character, all Presidents who have been elected under the charter, Quezon, Roxas, Quirino and Magsaysay, accepting the spirit, intent and policy indicated by the Constitutional Convention, appointed all their Vice-Presidents to the

¹² 7 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION 4342.

¹³ *Id.* at 4320.

¹⁴ *Id.* at 4335.

¹⁵ PHIL. CONST. Art. VII § 11, Cl. 3.

¹¹ NEWSWEEK, Dec. 9, 1957, p. 6.

cabinet. Under the rule of construction that established practice is as much a part of the law as the text itself, it may be safely said that because of this uniform practice of all past Presidents, the people, in voting for a Vice-President, expect him to be named to the cabinet.

It speaks well of the foresight of the framers of the Constitution that they foresaw that a situation might arise where the Vice-President would belong to a party distinct from that of the President. Delegate Ysip argued that the President could not appoint to the cabinet a Vice-President who did not belong to his party since cabinet members must be men of the President's confidence. He said:

Suponiendo que en una eleccion dada el presidente y el vice-presidente pertenezcan a partidos contrarios, que sucederia entonces? Sucederá que colocariamos al presidente teniendo en su gabinete a una persona que posiblemente no sea de su confianza, y estos cargos de secretarios departamentales, tengo entendido que son cargos de la entera confianza del presidente de la nacion. Por que vamos a obligar a un presidente para que tenga en su seno a un miembro que no es de su confianza?¹⁶

Delegate Ysip's argument was forthwith impugned by Delegate Grageda whose stand, together with the other opponents of the abolition of the vice-presidency, was upheld by the Convention. Delegate Grageda said:

It has been argued by Delegate Ysip that the President and the Vice-President may be of different parties. What of it? We must have faith in our President. If there is nothing to hide in the administration of our President, and if we will have faith in his patriotism, there is no reason here to fear for having a man who is against his party to be in the cabinet. If he is really a good man, he should not fear anything.¹⁷

The final question is, is it then obligatory for the President to name his Vice-President to the cabinet? The answer, of course, is no. As delegate Morales observed, in commenting on the provision that the Vice-President may be appointed to the cabinet, "esta a discrecion del presidente aunque fuese de su partido y aunque no lo fuese."¹⁸ In fact, this question was directly clarified during the debates, as shown by the following portion of the minutes of the Convention:

Mr. Bueno: Is it not possible that the Vice-President may not be given a cabinet portfolio?

Mr. Lopez (E.): It is very possible, because according to our draft, there is no obligation to give anybody a position in the cabinet.¹⁹

In synthesis, the situation before the President and before us students of the Constitution is, therefore, this: It was the intent of the fathers of the commonwealth and the republic that the Vice-President shall be oc-

cupied with substantial public business which would ready him for the presidency; it was indicated by the Constitution to the President that the means for this purpose be membership in the cabinet; but it left this matter to the sound judgment of the President as a statesman and leader of the nation.

I submit that the President should be given full and unhampered opportunity to discharge his responsibility under the Constitution of determining what to do with his Vice-President, particularly one who belongs to another party. In such a moment of arriving at a far-reaching decision to resolve a situation which is unprecedented not only in our country but in other democracies, partisan strife and selfishness should be cast aside in order to enable the President to reach a correct and sagacious decision. In the particular situation that has taken place in this country as a result of the last elections. I had hoped that left to himself, the President, with his mind illumined by the light of reason, would resolve the situation wisely with no consideration other than the highest interest and welfare of our people and the enrichment of our constitutional tradition as an example to the rest of the democratic world.

If in the discharge of his power and responsibility, the President does not name the Vice-President to the cabinet, it is nevertheless my conclusion, from my reflections on the Constitution, which amounts to a conviction, that in accordance with the intent of the fathers of the Constitution, the Vice-President, who is denied an opportunity to serve in the cabinet, is not thereby divested of his value to the nation. In the words of Delegate Francisco, "The nature of the position of Vice-President is inherently of vital importance in our present scheme of government."²⁰ There are functions and duties which are inherent in the position or which are attached to it by established practice, as well as by necessary implication. Those who may think that the elected Vice-President of the people can be reduced to inactivity and futility are wrong and go against the intent of the Constitution and of the people. As far as I am concerned, when I swore before God at our inauguration, among others, that "I shall faithfully and conscientiously fulfill my duties as Vice-President of the Philippines, preserve and defend the Constitution, and consecrate myself to the service of the Nation," those were not empty words. So as long as I hold this position, I shall discharge vigorously the vital duties and functions that go with the position in accordance with my solemn oath of office, the intent of the Constitution and the requirements of the welfare and happiness of the masses of our people.

In the light of the exposition which I have laid before you with your patient indulgence, I now conclude by advancing the following self-evident propositions:

²⁰ *Supra* note 7, at 454.

¹⁶ See note 13 *supra*.

¹⁷ See note 3 *supra*.

¹⁸ See note 12 *supra*.

¹⁹ *Supra* note 2, at 4350.

1. That the Constitution should be amended in order that, as in the United States, Bolivia, Cuba, Liberia and other countries, the Vice-President be made the presiding officer of the Senate.

2. That the Constitution should be amended in order that in case of inability of the President to discharge the powers and duties of his office, the President or the cabinet may direct the Vice-President to take over the presidency until the President can resume his duties.

3. That pending the adoption of these constitutional amendments, a law should be passed which will enable the Vice-President who does not become a member of the cabinet, to have access to all official records, make available to him adequate technical facilities and keep him posted on the doings of the administration in order that he may readily cope with the responsibilities of the presidency in those eventualities envisaged in the Constitution.

I thank you all for your presence and for your patience in listening to my discourse. I greet the living members of the Constitutional Convention and congratulate them not only for a labor well done but for living long enough to see that the charter that they framed, altho now needing urgent revisions as a live organism that must respond to metamorphosing conditions, has passed the test of time in two decades as a truly stable foundation for a great republic that, despite the lingering throes of birth and infancy, rises slowly before our eyes as a gorgeous edifice.

To the members who have passed to the great beyond, I pay fitting homage that they had the good fortune of having taken a distinguished part in laying the cornerstone of our nation and that the mortal part of their eternal life which they spent on earth became worthwhile by the role they played in the epic of nation building.

To the rest of us in this and in future generations, who were not bestowed the privilege of taking part in the writing of the fundamental law, it remains for us to reward the fathers of our republic who gathered in Constitutional Convention in 1934 by consecrating ourselves to the remaining duty of defending and preserving the Constitution as the eternal rock upon which the Philippine Republic shall grow in an expanding status of greatness as an instrument for the enduring welfare and joy of our people in the countless centuries still to come.

RELIGION AND NATIONALIZATION†

*Ambrosio Padilla**

It is traditional for a commencement speaker to express some words of counsel and guidance to the young graduates who may expect inspiring or encouraging advice in pursuing higher education or in facing the realities of life. I feel, however, that your thorough training in the solid principles of Catholic education within this respected institution of learning would make any attempt on my part to follow the tradition superfluous and unnecessary on this occasion. For you are very fortunate indeed in not only having imbibed knowledge and culture from your academic courses but more so, the moral training and spiritual guidance essential to the discharge of your duties to our nation as good citizens and to our community as deserving mothers who shall rear their children in the love or at least in the holy fear of God. You are fortunate in having been impressed within the walls of this institution with the atmosphere of correct conduct and right living not only in your subordination to the will of the Almighty but also in your social relations with the constituted authorities, and with your fellow citizens.

With your indulgence, I wish to discuss two legislative measures towards nationalization, which in the guise of dynamic Filipinism, may undermine the principles of universal instruction and education and may infringe upon the constitutional right of liberty, with particular reference to the right to education, and the prerogative of our people to choose the candidates to public office considering their religious principles and moral standards. For however desirable may be the purpose to foster the nationalistic spirit which permeates our Constitution, such laudable objective must not be promoted by dangerous, if not prohibited, means, especially in the guise of legislative measures.

Senate Bill No. 38 entitled "An Act To Nationalize Certain Positions in Schools, Colleges and Universities," provides in section 1 thereof that, "Hereafter, no person who is not a natural-born citizen of the Philippines shall be head of any school, college or university, or teacher, instructor

† Address delivered as Commencement Speaker of the St. Scholastica's College, on March 22, 1958.

* Minority Floorleader, Senate of the Philippines. A.B., Ateneo de Manila, 1930; LL.B., U.P., 1934; D.C.L., U.S.T., 1938.