THE FLYING VOTER AND THE CONSTITUTION

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Never before in less than a half-century of popular participation in government have the Filipino people faced a more serious turn in their political affairs than today. Truly, as the campaign orators say, though less out of conviction than out of professional predilection for the dramatic, the coming elections may well decide the fate of democracy in the Philippines for a long time to come. Strangely enough, almost unbelievably, the resolution of the crisis will depend not so much on whether the people will make the correct choice of candidates as on whether they will be able to exercise at all their right to choose, not so much on the outcome of a free and honest election but on the conduct of the election itself.

The portents of post-election violence and disorder, and revolution even, are ominous. Each side accuses the other of frauds and terrorism on a scale that makes those of 1949 seem like peccadillos, and even if only half of the charges are true, the results in November would still completely fail to record the popular will. The reported recent warning of the administration that it will meet force with force, reflects the apparent disposition of both parties to prevail by bullets if they should lose through the desecration of the ballot. In an armed conflict between the two leading parties, neither one of them might come out the winner, but a third force—one that although reduced in numbers, is still formidable, because it is organized and well-disciplined, because it knows what it wants and is fanatical and ruthless—the Hukbalahaps. The ability of the Huks to fish in troubled waters has marked their first success in Russia to their last in China.

To ward off such a catastrophe, we should strive to keep the ballot box, the channel of democratic expression, pure and free, by the full use of the procedures and facilities provided by our laws. Fortunately, alarmed and alert citizens have sprung to the defense of the ballot box. They have been quick to detect and denounce irregularities and suspicious maneuvers designed to prevent the free and full expression of the popular will. And the Commission on Elections has been doing yeoman's work in the discharge of its today supremely important constitutional obligation to keep the polls free and honest. Only recently, with the backing of the Supreme Court (Feliciano v. Lugay, G. R. No. 6756, promulgated September 16, 1953), it opened the way for the annulment of the registration lists of an entire municipality, the municipality of Concepcion, Tarlac. But it is becoming increasingly evident that the Commission on Elections, with its limited facilities, will not be able to cope adequately with its constitutional assignment or attend to all the complaints flooding it. Even in the past many violations of the election laws could not be averted by the preventive powers of the Commission. This year there would probably be more of such violations, if the present rate of irregularities reported to the Commission is an indication, and such violations, as in the past, will have to be dealt with by the Electoral Tribunals and by the regular courts, either in election protests or in criminal prosecutions.

Under normal circumstances, the deterrent effect of penal prohibitions should be sufficient to discourage wrongdoing, and together with the prompt interposition of the preventive powers of the Commission on Elections, should splinter electoral anomalies, which now threaten to assume nation-wide massiveness, into fragmentary futility. But these are not normal times, for criminality and violence, the twin evil off-springs of the war and the enemy occupation, are still rampant, and it is almost pathetic to believe that the penalties provided by our election laws would serve as efficient deterrents to the commission of electoral irregularities.

And as one examines the provisions of the present electoral code, he is dismayed to find that its penal sanctions, or at least the more important ones, may even be unenforcible, because they are of doubtful constitutionality. It is axiomatic in constitutional and criminal law that a

statutory offense must be defined with sufficient certainty to show what the legislators intended to prohibit and punish (22 C. J. S., pp. 70-71). As stated by the United States Supreme Court, "a statute, which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Connally *vs.* General Construction Company, 269 U. S. 385.)

How do the penal prohibitions contained in the Revised Election Code stand up against the constitutional test of definiteness? It should be observed in the first place that the penal prohibitions of the present Code, unlike most penal provisions such as those of the Revised Penal Code, are peculiar in that they do not directly describe the act penalized. In this respect, the provisions of the former election laws as they were finally embodied in the Revised Administrative Code of 1917 were distinctly better. From the constitutional standpoint, they were impeccable. For example, the offense of disturbing registration on election proceedings, was clearly described and penalized by Section 2648 of the Revised Administrative Code as follows:

> "SEC. 2648. *Disturbance of registration or election proceedings.*—Any person who refuses to obey the lawful orders or directions of an election officer or member of a board of registration, or inspector, or who interrupts or disturbs the proceedings of any election or registration board at any registration, or election, shall be punished by imprisonment for not less than one month nor more than two years, and a fine of not less than one hundred pesos nor more than two thousand pesos."

The Revised Election Code on the other hand does not define in direct terms the particular act prohibited and penalized. What the Revised Election Code does is to provide in its first 182 sections rules mostly of a positive character governing the conduct of elections and election contests, and then in section 183 it prescribes the penal sanctions substantially in this wise: "Violation of any of the provisions of Sections 14, 15, etc., etc., shall be serious election offenses; and that of any of the provisions of

sections 22, 23, etc., shall be less serious." (The penalties corresponding to the two classes of election offenses are given in section 185). This system has proved quite ineffective in actual application.

For example, the legislature undoubtedly wanted to prohibit and penalize, as the Revised Administrative Code in section 2648 quoted above did prohibit and penalize, the disturbance of registration or election proceedings. But one would be hard up to it to specify the particular section of the Revised Election Code, taken in connection with the penal sanctions found in Sections 183 and 185 of the code, upon which to base a prosecution for disturbance of registration or election proceedings. To be sure, Sections 100-105 and 107-109 contain provisions concerning the registration of voters and the preparation of registration lists, and Sections 130-139 and 142-157, provide for the manner of casting and counting the ballots, and violations of any of the cited provisions are classified by section 183 as serious election offenses penalized by imprisonment of from one year and one day to not more than five years under section 185. But there is nothing in the sections mentioned containing the slightest reference to the disturbance of registration or election proceedings.

One means of insuring the purity of the ballot is the protection given by the law to its secrecy. For this purpose the legislators have given thought to the construction, contents and arrangement of polling places through sections 63 and 67, among others. The first sentence of Section 63 is as follows:

> "SEC. 63. *Requirements for polling places.*—Each polling place shall be, as far as practicable, a ground floor hall of sufficient size to admit and comfortably accommodate forty voters at one time outside the guard rail for the board of inspectors."

Section 67 contains a detailed sketch of the arrangement and contents of polling places and it further provides that "each polling place shall conform as much as possible" to the sketch drawn in the section. The terms "as far as practicable" and "as much as possible" employed in sections 63 and 67 are flexible and broad enough cracks

in the law tthrough which a poll violator gets a chance to peep and violate the secrecy of the ballot. Section 183 which classifies violations of sections 63 and 67 as serious election offenses is in this regard no better than an admonition.

One favorite trick of poll swindlers is to locate the polling place with an eye to discouraging voters of the opposite faction from going to the polling place to register or to cast their ballots because of the distance of the polling place from their residence. In towns and thickly populated communities, such a trick will not work, but in widely-scattered settlements, without easy means of transportation or communication, it can be effective, and to guard against it, Section 63 of the Code provides that "the polling place shall be located as centrally as possible with respect to the residences of the voters of the precinct." But here again the expression "as centrally as possible" permits of too much leeway in the interpretation and application of the provision and in a criminal prosecution, the courts might well hesitate to decide that a designated polling place is or is not located as centrally as possible with respect to the residence of the voters of a particular precinct. The courts will probably find the case of Connally *vs.* General Construction Company, *supra*, apt authority. In that case the Supreme Court of the United States had before it for consideration an Oaklahoma statute creating an 8-hour day for all persons employed for the state, provided "that not less than current rate of per diem wages in the locality where the work is performed shall be paid to laborers," etc. In declaring the statute unconstitutional for lack of reasonable definiteness, the court described the use of the qualifying word "locality" as a source of uncertainty.The court said:

> "Who can say, with any degree of accuracy, what areas constitute the locality where a given piece of work is being done? Two men, moving in any direction from the place of operations, would not be at all likely to agree upon the point where they passed the boundary which separated the locality of that work from the next locality."

To paraphrase the United States Supreme Court in connection with section 63 of the Electoral Code, who can say, with any degree of accuracy, what are the outermost limits of the area that is located as centrally as possible to the voters' residence? Two men moving in any direction from the dead center of the residence of the voters (assuming that the center can be located), would not be at all likely to agree upon the point where they had passed the boundary which separated what was "as centrally as possible" from what was not "as centrally as possible."

One defect of the election law provisions that is more common than the others is that many of the sections of the Revised Election Code that are backed by penal sanctions do not contain just one sentence or one prescription, but often too many requirements and details more or less interrelated. Section 107 of the Code is typical. It reads as follows:

> "SEC. 107. *Registration in another municipality.*—Any voter who desires to transfer his registration to another municipality shall, at least ten days before the first registration day, file with or send by registered mail to the municipal treasurer of the municipality wherein he is registered a sworn petition in quadruplicate applying for the cancellation of his registration and giving his address at his new residence and the date on which he removed to his new residence. Upon receipt of the petition, the municipal treasurer shall strike out the name of the applicant from the copy of the list on file in his office and shall immediately send a copy of the petition to the proper board of inspectors, another to the register of deeds of the province and another to the Commission on Elections, who shall likewise strike out the name of the applicant from the copy of the list used in the last election under their custody."

Now section 183 of the Election Code classifies a violation of the foregoing provisions of section 107 as a serious election offense. We may agree that the probable intention of the legislature was to penalize only one offense, namely, the act of a registered voter in registering in another mu-

nicipality to which he has transferred his residence, without first asking for the cancellation of his previous registration. But, the express words of Section 107, in relation to Section 183, would cover a number of deviations from the provisions of Section 107. For example, suppose a voter files the necessary application for cancellation of his registration less than ten days before the first registration day, or files his application in duplicate or triplicate instead of in quadruplicate as required by the law, or sends his application by ordinary mail instead of by registered mail or sends it to the municipal secretary instead of to the municipal treasurer, who can say with absolute certainty that these acts were not intended to be punished? We may believe that it would be absurd to prosecute and punish such deviations from the prescriptions of the law, but as already stated, the express words of Section 107 in relation to Section 183 cover them.

To the provisions of Section 107 and other provisions of the Election Code (for example, Sections 16, 17, 22, 23, 40, 59 and 60, to mention only a few) similar to Section 107, violations of which are made criminal offenses by Section 183, the following rules may be applied:

> "x x x but where the legislature declares an offense in words of no determinate signification, or its language is so general and indefinite that it may embrace not only acts commonly recognized as reprehensible but also others which it is unreasonable to presume were intended to be made criminal, the statute will be declared void for uncertainty; x x x" (22 C. J. S., p. 72).
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> "The test to determine whether a statute defining an offense is void for uncertainty is whether language may apply not only to particular act about which there can be little difference of opinion, but equally to other acts about which there may be radical differences, thereby giving court arbitrary power of discrimination between several classes of acts, and whether dividing line between what is lawful and what is unlawful is left to conjecture." (22 C. J. S. ftn. 49, p. 72).

Tested by the foregoing rules, Section 107, in relation to Section 183, appears to be of doubtful validity, because the language of the two sections apply not only to the act of registering in two municipalities about which there can be little difference of opinion, but equally to other acts, such as filing an application for cancellation about which there may be radical differences, thereby giving to the courts arbitrary power of discrimination between several classes of acts, and leaving to conjecture the establishment of the dividing line between what is lawful and what is unlawful.

If the offense intended to be penalized had been expressly described in the language of the repealed Section 2647 of the Revised Administrative Code,[1] there would be no difficulty, from the standpoint of due process, about prosecuting a registered voter who registers in another municipality without having first applied for the cancellation of his previous registration. Moreover, Section 107 in relation to Section 183, even if it can meet the constitutional test, does not cover all double registration, for it mentions only the case of voters who have transferred their residence from one municipality to another. It does not affect a voter who has transferred his residence from the territorial limit of one precinct to another within the same municipality. Section 107 does not prevent a voter from registering in all the election precincts of the same municipality. This is not to say that the flying voter cannot be shot down; he can be, but with a different gun—Section 59, and even then only because of the amendment of this section by Republic Act No. 867, which became law last June 16. The amendment introduces as a requirement to registration, bona fide residence not merely in the municipality where the elector proposes to vote but in the territorial limit of the precinct where he presents himself

[1] The pertinent portion reads: "Any person .... who, having previously registered in any other polling place, does not first request the necessary cancellation or cancellations as required by the Election Law..."

for registration.[1] And a violation of section 59 is made a less serious election offense by Section 183.

Voting more than once in the same elections is certainly one of the most serious offenses against our democratic institutions and yet—this would be laughable were it not dangerous—one cannot pin-point that provision of the Revised Election Code under which, in connection with the penal section (183), voting more than once may be punished. Under the first election laws embodied in the Revised Administrative Code, while voting more than once or any other form of illegal voting was severely punished (section 2642), double registration and registering in a new place without having first applied for cancellation of the previous registration, while indeed indictable, were yet in themselves not actually punishable, because if the defendant could show in the trial that he did not vote or that although he voted, he voted only once, such fact constituted a valid and efficacious defense (see proviso of Section 2647, Revised Administrative Code, as amended), so that double registration was punishable only if the voter had voted more than once. In other words, what the law actually sought to repress was not double registration but double voting. Today, however, as the height of legal absurdity, the act of voting more than once appears to be neither indictable nor punishable, but double registration, the preparatory step to voting more than once, is made or sought to be made punishable, as a serious election offense by Sections 107 and 183 if a registered voter registers in a new municipality without first requestng the cancellation of his previous registration, and by sections 59 and 183 as a less serious election offense, if the voter registers in different precincts of the same municipality.

[1] Note, however, that not even Sec. 59 would cover the case of a registered voter who has tranferred his residence to the territorial limit of another precinct of the same municipality without having applied first for the cancellation of his previous registration.

The Commission on Elections has long been aware of the serious defects in our election code, particularly in its penal sanctions. It knows that prosecuting agencies because of vagueness and indefiniteness of the code provisions have been encountering great difficulties in the determination of whether a poll irregularity constitutes a criminal offense under the code and in the articulation of the proper charges. Unfortunately, the recommendation of the Commission to Congress for the enactment of corrective legislation have so far gone unheeded. Meanwhile, as more and more violators of the election laws escape prosecution and conviction, our democratic institutions are being steadily undermined. Let us hope that the Congress will act before it is too late.