

Philippines - Constitution
(1973)

**REWRITING THE CONSTITUTION: A CALL FOR A
POPULAR DRAFT AND ITS GENUINE RATIFICATION**

On March 25, 1986, the President issued Proclamation No. 3 which adopts certain provisions of the 1973 Constitution and repeal others. One of the most important features of that Proclamation is Article V which calls for the adoption of a new constitution and the appointment within sixty days from the date of said Proclamation of a constitutional commission to draft it, to be composed of not less than thirty but not more than fifty natural born Filipino citizens.

At this point of our historical struggle, we cannot help but worry about the wisdom of convening a mere commission of thirty to fifty people, instead of a Constitutional Convention, to draft our Constitution.

We have all been victims of human rights violations perpetrated by the previous regime, in many cases, ironically tolerated by the well-framed "Marcos Constitution". From scandalous bribing of convention delegates to fake ratification: we were witnesses to how that Constitution came into being. If a large convention failed to prevent anomalies during its proceedings, can a much smaller body succeed where such large body failed? Truly, if not for the people's trust in President Aquino, Proclamation No. 3 would surely be subject to nationwide criticisms.

We can understand our leaders' efforts in searching for the quickest way to create a constitutional government and thereby eliminate all questions as to whether we have a *de jure* or *de facto* government. The situation, however, is rather amusing than serious because while they work toward assuring the people at the earliest possible time that there will be a New Constitution upon which the government shall be based, they seem to forget that they presently draw their power directly from the people who have indubitably given their mandate during the Philippine Revolution, and that there is no need to sacrifice the contents of the new law for swiftness of transition. Even the international community recognizes the personality of our new government. It is thus unnecessary to worry about questions on the status of government at this time because these questions are usually determined after everything else is settled.

We therefore call upon our government to ensure that the new Constitution will be "... truly reflective of the ideals and aspirations of the Filipino people." Section 3 of Article V of Proclamation No. 3 which requires the Commission to conduct hearings, must be strictly implemented because it is the only way by which the different sectors of our society can participate in the formulation of the new fundamental law. Without consultations, the drafting of the new Constitution will be just another uncertain attempt of the government to draft such law.

The previous regime had demonstrated to us the possibility of simulating ratification and its ability to deceive the people into believing in its validity. We can safely say that it is not the present government as a body that should be watched because its actuations in the past few weeks of its existence manifest clearly its intention to bring about a democratic society. Rather, it is the lower rung of the present leadership that we should be wary of for the moment. The

There was a time in our country's history when noble men emerged to liberate the people from the scourge of oppression. One of such men was a blue-blooded Atenean who lived his life with, and died for a cause.

Having chosen to be truly a man for others, Ateneo has never been prouder to have a son like him.

It is sad to think that it took the passing away of his kind to open our eyes to see what they have long seen, and feel what they have long felt.

Our brother Atenean is not with us today but let us live by his memory and fight for the same cause.

To Governor Evelio B. Javier, this issue is respectfully dedicated.

fake ratification of the 1973 Constitution was achieved with the connivance of leaders like Barangay Chairmen, Mayors and other leaders who were instrumental in the creation of the so-called citizens assemblies. Indeed, the situation was challenged by concerned groups in such cases as *Javellana v. Executive Secretary* (L-36142 March 31, 1973) but to no avail.

The people have demonstrated during the last Presidential elections that cheating can be made difficult. Thus, if we have done well in protecting the ballot in the past, we should do better when the plebiscite is held because the Constitution is the only means by which we could limit the acts of government within the bounds of righteousness. If we could accomplish a popular draft of the constitution and ensure its genuine ratification by the people, then all that need to be in place for the good of our country and people will inevitably set in.

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MISSIONS OF JUDICIAL ADMINISTRATION IN ASIA AND THE PACIFIC

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CAUSES OF CONCERN

According to the guidelines formulated long ago by an eminent American jurist,¹ the general causes of concern and satisfaction with the administration of justice are grouped under four (4) categories: (1) the causes for dissatisfaction with any legal system; (2) causes arising from the peculiarities of particular legal systems; (3) causes arising from the particular judicial organization and procedure of any given country, and (4) causes arising from the environment of the particular judicial administration adopted.

Common to all legal systems are two precise causes for dissatisfaction, namely, (1) the necessarily mechanical operation of rules and therefore of laws, and (2) the somewhat inevitable difference in rate of progress between law and public opinion.

One of the necessary consequences of the mechanical operation of legal rules is uniformity. The pendulum has continued to swing since time immemorial from wide judicial discretion on the one hand and strict adherence by the judge to the rules upon the other hand. The problem has always been how to strike the correct balance. Too much discretion results in uncertainty. And too much rule may result in unreasonable inflexibility. The striking of the correct balance is the concern as well as the function of judicial administration.

Legal history has demonstrated that problems arise from the discrepant time tables in the evolution and progress of law and public opinion. The ideal situation is that law should mirror the sentiments and conscience of the community and should formulate rules to which the operation of tribunals must accordingly conform. That ideal situation would preclude corruption, exclude personal prejudices of judges and minimize individual incompetence. But these rules, being formulations of public opinion cannot exist until public opinion has become fixed and settled. Neither can these rules be altered until a change of public opinion has become stable and complete. But the process of evolution is slow and gradual, and the law usually lags several steps behind. This same jurist thus observed that "law is often in very truth a government of the living by the dead." Indeed, very often, the law does not respond quickly to new conditions and does not change until undesirable effects are evident and already felt acutely.

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