Justice Davide's Contribution to the Formulation of the 1987 Constitution*

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I would like to begin my presentation by recalling briefly the key events that led to the drafting of the 1987 Constitution.

The immediate beginning of the 1987 Constitution of the Republic of the Philippines was the People Power Revolution of February 1986. Both Corazon Aquino and Ferdinand Marcos had run for the Philippine presidency under the provisions of the 1973 Constitution. On February 15, 1986, the Batasang Pambansa, the national legislative body, in the exercise of powers given to it by the 1973 Constitution, proclaimed Ferdinand Marcos president amid widespread protests that the elections had been characterized by massive fraud. The protests escalated into the People Power Revolution popularly remembered as the EDSA I event, which culminated in the ouster of President Marcos and the swearing-in of Corazon Aquino as the first woman President of the Philippines.

President Aquino could have made herself subject to the provisions of the 1973 Constitution by allowing herself to be proclaimed by the Batasan. She, however, chose not to allow the Batasan members to undo what she considered their perfidy. She turned her back on the 1973 Constitution whose officials had denied her the presidency. Barred by the processes of the 1973 Constitution, she chose instead to govern under a Provisional Constitution. Thus, on March 24, 1986, she promulgated her historic Proclamation No. 3, which was later baptized by Teodoro Locsin, Jr. as the

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Freedom Constitution. The Proclamation was at once an official justification of the action she had taken, as well as a major step in the direction of normalizing government and constitutional processes. The introduction to her Proclamation said in part:

> WHEREAS, the heroic action of the people was done in defiance of the provisions of the 1973 Constitution, as amended;
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> WHEREAS, the direct mandate of the people as manifested by their extraordinary action demands the complete reorganization of the government, restoration of democracy, protection of basic rights, rebuilding of confidence in the entire governmental system, eradication of graft and corruption, restoration of peace and order and the supremacy of civilian authority over the military, the transition to a government under a New Constitution in the shortest time possible;
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> WHEREAS, during the period of transition to a New Constitution it must be guaranteed that the government will respect basic human rights and fundamental freedoms;
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> WHEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the sovereign mandate of the people, do hereby promulgate the following Provisional Constitution . . .

The constitutional system under which President Aquino had decided to govern was never meant to last long. She saw clearly that the Provisional Constitution she had promulgated was her creation and therefore not superior to her government. Hence, one of her most immediate concerns was the enactment of a regular constitution which would truly be the supreme law of the land.

But who would draft the new constitution? The choice was between an elected Constitutional Convention and an appointed Constitutional Commission. Under either choice, the final work would have to be submitted to the people for ratification. In her eagerness to have a regular constitution at the soonest possible time and judging that elections immediately after the tumultuous February 1986 event could be very destabilizing for the nation, she opted in favor of an appointed Constitutional Commission. Hence, the Provisional Constitution contained the following provision in Article V, Section 1:

> Within sixty (60) days from date of this Proclamation, a Commission shall be appointed by the President to draft a New Constitution. The Commission shall be composed of not less than thirty (30) nor more than fifty (50) natural-born citizens of the Philippines, of recognized probity,

> known for their independence, nationalism and patriotism. They shall be chosen by the President after consultation with various sectors of society.[1]

Consultations were made expeditiously and from a long list of persons recommended, she chose forty-eight men and women to compose the 1986 Constitutional Commission, among them was Hilario Davide, Jr.

Hilario Davide, Jr. graduated from the University of the Philippines College of Law, the best law school in Diliman. He had long engaged in the practice of law and had been fifteen years earlier a Delegate to the 1971 Constitutional Convention which drafted the 1973 Constitution. He distinguished himself, immediately before the People Power Revolution, as a member of the opposition in the Batasang Pambansa.[2] It was clear therefore that Justice Davide was not a neophyte in political and constitutional matters and he made use of this prior experience during the deliberations of the 1986 Constitutional Commission.

On the contrary, Justice Cecilia Muñoz-Palma, the Constitutional Commission President, in her speech concluding the deliberations of the Constitutional Commission, was, however, most economical in what she said about the contribution of Commissioner Davide to the work of the Commission when she merely described him as "author of innumerable amendments with particular mastery of the legislative department."[3] It must be noted however that this was all she could afford to say since she also had to tap the back of forty-seven other Commissioners waiting to hear their names acknowledged.

For my part, since I have only one back to pat, I can afford to say more. By way of preliminary, let me just say that anybody, even merely browsing through the pages of the five-volume Record of the 1986 Constitutional Commission, cannot possibly accuse Commissioner Davide of sloth or of sleeping on the job. Working out of deliberation hours, he was the highest scorer in terms of resolutions and amendments submitted to the Commission. During the deliberations themselves, like a fired-up point guard, he was all over the court, tireless, persistent, and meticulously seeking precision. As a result, his footprints can be found in every article of the Constitution. And if you are the type who can read between the lines, you will also find blurred Davide footprints representing innumerable proposals and amendments, which were not appreciated by his colleagues. So numerous were his

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1. 1986 FREEDOM CONST. art. V, § 1 (superseded 1987).
2. Computer Professionals for Social Responsibility, *Vulnerable on All Counts: How Computerized Vote Tabulation Threatens the Integrity of Our Elections*, 6 THE CPSR NEWSLETTER No. 4 (1988) at 12.
3. 1973 PHIL. CONST. art. I, § 1 (superseded 1986).

interventions that, midway in my preparation of this talk, I started praying to Pope John Paul II to drastically reduce the number of appearances in the Record of the name Davide. My prayers were not heard. I therefore have the task of selecting his more important contributions, and attempted contributions, and of organizing and presenting them to you in a manner that will do justice to the man, but without simply sounding like a litany in honor of St. Hilario.

In addition to this task, Justice Herrera requested two weeks ago that I include a discussion of what Justice Davide has done for constitutional law during his stint in the Supreme Court. I suggested to Justice Herrera that this by itself would be a major task; nonetheless, I shall make some preliminary attempt provided that someone else will have to do a more comprehensive and thorough job on it. And I ask the indulgence of Justice Davide if he finds my attempt too inadequate.

For the sake of orderliness, I have chosen to use the Articles of the Constitution as the framework for my presentation and I shall follow the order in which the Articles appear in the document, even if the deliberations of the Constitutional Commission were not in that order. In between I shall intersperse brief citations of decisions which Justice Davide either penned or from which he had a significant dissent.

Preamble

The deliberations on the Preamble were fairly substantive even if at times picayune. For instance, we debated on whether *Divine Providence* should be replaced with *God of History* or *Lord of History* or *Makapangyarihang Diyos* or Almighty God or whether to yield to the desire of unnamed atheists to leave God out of it all. In the end, Commissioner Davide was one of those who were happy that the Commission did not expel God altogether. Our Preamble invokes the aid of *Almighty God*.

National Territory

The deliberations on National Territory occasioned some show of emotion. The committee report on National Territory was a consolidation of the resolutions of Commissioners Davide, Tingson, and Nolledo. Essentially it adopted the definition of the national territory as set forth in the 1973 Constitution with slight modification, taking into account the Convention on the Law of the Sea of 1982. The discussion and interpellations that followed focused on three issues: (1) what posture the text should take in relation to the Sabah issue; (2) how the definition of territory related with the 1982 Convention on the Law of the Sea and current international law; and (3) whether to have a definition of national territory at all. A proposal to

delete the Article altogether was defeated by a large margin.[4] The body then proceeded to continue the process of amending the Committee's draft.

Commissioner Davide's involvement was largely on the debates about Sabah. It will be recalled that the Sabah issue had already been thoroughly debated during the deliberations of the 1971 Constitutional Convention of which Commissioner Davide had been a member. The 1971 Constitutional Convention expressed the Philippine claim to Sabah in the clause "all other territories belonging to the Philippines by historic right or legal title."[5] It was not the intention of the 1986 Committee report to depart from what had been intended by the 1971 Constitution Convention.

The debates on the subject was prolonged and tended to be emotionally intense. The final formula that was approved divided Philippine territory into two parts: the archipelago and [quote] "all other territories over which the Philippines has sovereignty or jurisdiction." The intent of the phraseology of the second part, a departure from the 1973 language, was to avoid language that could offend Malaysia but without foreclosing any claim to Sabah.[6] Davide, however, thought that the new phraseology could still be read as a renunciation of the Philippine claim to Sabah. Hence he proposed the addition of the clause "or which belong to it since times past." But the body did not find the proposed addition to be necessary. However, the exchange that preceded the vote made it abundantly clear that there was no intention to abandon the claim to Sabah but to leave the matter to the Executive.[7]

Declaration of Principles

The Committee charged with the responsibility of formulating a Declaration of Principles had proposed two separate provisions affecting foreign relations. The two provisions embodied four different elements: (1) a declaration of an independent foreign policy; (2) a statement on neutrality; (3) a general statement on foreign military bases; and (4) a statement on the future of American military bases in the Philippines. Although conceptually separable, all of these were jumbled together in the discussions, with the presence of United States military bases and the impending expiration of the 1947 Bases Agreement dominating the consciousness of the discussants. In fact, most of

4. I RECORD OF THE CONSTITUTIONAL COMMISSION 311-312 (1986).

5. 1973 PHIL. CONST. art. I, § 1 (superseded 1986).

6. I RECORD OF THE CONSTITUTIONAL COMMISSION 320-322, 412-419, 424-429 (1986).

7. *Id.* at 331-332, 424-426.

the sponsorship speeches on the proposed Declaration of Principles were on the future of the United States military bases in the Philippines.[8]

The discussion on military bases focused on three sentences. The first sentence asserted national sovereignty and the second was a ban on all foreign military bases. The third was a provision intended for the transitory provisions on the concrete case of the existing United States military bases. All of these, however, were inseparably connected.[9]

From informal inquiry I myself made then, it was quite evident that there was no way for an absolute ban on foreign military bases to win approval. For this reason, the period was spent essentially in search of a formula which, while acceptable to a dominant majority, whose preference would have been for the Constitution to be silent about military bases, could at the same time salvage some gains for a minority who would have been happier with a total ban on foreign military bases. The minority group succeeded in submitting an amended draft consisting of two parts. The first part, intended for the Declaration of Principles, read:

> The State has the inherent right to self-determination, national independence and sovereignty. To ensure the integrity of such right, foreign military bases, troops or facilities shall not be allowed in the Philippine territory except under terms of a treaty duly concurred in by the Senate, ratified by a majority of the votes cast by the people in a referendum held for that purpose and recognized as a treaty by the other contracting nations.[10]

A second part meant for the Transitory Provisions read: Upon the expiration of the RP-US Bases Agreement in 1991, U.S. Military bases, troops, facilities shall not be allowed except in accordance with the provisions of Section 3 of Article II [Declaration of Principles]. These were accepted except that the referendum mentioned in the first part would take place, as insisted by the majority, only if required by Congress.[11] Davide then followed with a proposal that the matter of having a referendum be put to a vote not to the entire Congress but only to the House of Representatives. His thinking was that the Lower House would be more likely to require a referendum. This was rejected 27-15.[12]

Thereafter, Commissioner Davide had to be satisfied with minor victories in the Declaration of Principles which continue to be hot topics

8. IV RECORD OF THE CONSTITUTIONAL COMMISSION 582-603 (1986).

9. *Id.* at 661-662.

10. *Id.* at 773 (emphasis supplied).

11. *Id.* at 783.

12. *Id.* at 789.

today. He succeeded in obtaining approval for an amendment that would require the State to "take positive and effective measures against graft and corruption,"[13] to implement "a policy of full public disclosure of all transactions involving public interest,"[14] and to "assure equal access to opportunities to public service."[15] Last year, the Supreme Court, in the case of *Pamatong v. COMELEC*,[16] cited this last phrase inserted by Davide as indicative of the desire of the framers not to impose a clear state burden to give everyone an opportunity for public service. Thus a nuisance candidate may be disqualified.[17] More significantly however, Davide, as Supreme Court Justice, went back to the Declaration of Principles when, on the basis of Section 16, he enunciated the principles of *intergenerational responsibility* and *intergenerational justice* upholding the right of minor children to demand measures protective of the natural environment.[18] Incidentally, it was also in this decision that Justice Davide opened up the debate on the requisites of *jus standi*. I shall come back to this.

Bill of Rights

In the formulation of the Bill of Rights, Commissioner Davide performed a quick-footed rescue job in the matter of privacy of communications and correspondence. The Committee had proposed that intrusion into communication and correspondence could be done only upon lawful order of a court. This was a departure from the 1973 Constitution, which allowed intrusion even without a court order whenever public safety or order requires it.[19] Commissioner Rodrigo picked this up and, against the background of persistent threats to the Aquino administration, proposed that extrajudicial intrusion be allowed when public safety or order requires it even without a court order.[20] In this, he was supported by Commissioner Regalado who, however, said that extrajudicial intrusion should only be done in extreme cases. The Rodrigo amendment was approved, 24-11, when it was put to vote.[21]

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13. V RECORD OF THE CONSTITUTIONAL COMMISSION 5-7 (1986).
14. *Id.* at 29-31.
15. *Id.* at 946.
16. PAMATONG V. COMMISSION ON ELECTIONS, 427 SCRA 96 (2004).
17. *Id.*
18. Oposa v. Factoran, Jr , 224 SCRA 792 (1993).
19. I RECORD OF THE CONSTITUTIONAL COMMISSION 675 (1986).
20. *Id.* at 687-688.
21. *Id.* at 724-726.

Immediately after this approval however, Commissioner Davide quickly moved to add "as prescribed by law." The presiding officer immediately accepted it and no one objected.[22] In effect therefore, intrusions without judicial order, thanks to Davide, would only be in those instances allowed and prescribed by statute, for example by Republic Act No. 4200.

The development of the jurisprudence on search and seizure continues with Justice Davide continuing his contribution. In 2000, Justice Davide summed up the allowable parameters for checkpoints as a form of search, affirming that not all checkpoints are illegal. He wrote:

> Those which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists are allowed. For, admittedly, routine checkpoints do intrude, to a certain extent, on motorists' right to 'free passage without interruption,' but it cannot be denied that, as a rule, it involves only a brief detention of travelers during which the vehicle's occupants are required to answer a question or two. For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search.[23]

It was also Davide who penned *Malacat v. Court of Appeals*[24] adopting the "stop and frisk rule" of the United States case of *Terry v. Ohio*,[25] which states, thus:

> Where a police officer observes unusual conduct which leads him reasonably to conclude, in light of his experience, that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous, where in the course of investigation of this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such search is reasonable search under the Fourth Amendment.[26]

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22. *Id* at 726.

23. People v. Escaño, 323 SCRA 754 (2000).

24. Malacat v. Court of Appeals, 283 SCRA 159 (1997).

25. Terry v. Ohio, 329 US 1 (1968).

26. *Id*.

Citizenship

In the deliberations on citizenship, Commissioner Davide manifested himself to be a gallant defender of the purity of Philippine citizenship. His Resolution No. 7, for instance, contained the following proposal: "Provided, however, that the naturalization of aliens under a decree of the previous regime shall be subject to judicial confirmation, admission to Philippine citizenship is a privilege which can be revoked anytime in the manner and for causes provided by law."[27] This, however, was dropped by the Committee for three reasons: (1) it could be divisive; (2) the Naturalization Law already provided for ways of stripping a person of citizenship; and (3) the proviso could unduly burden the courts.[28]

Davide chose not to fight this, but, after a free-wheeling discussion, he proposed an amendment making judicial naturalization the only allowable mode. The obvious background of the proposal was the situation under the Marcos regime when legislation was in the hand of one man who could and did grant citizenship by decree. The Chairman, however, explained that if the new Constitution would not allow legislation by one man, then what happened under the Marcos regime would not occur. On this argument, the proposal was not accepted.[29]

Davide's strict guardianship of Philippine citizenship, however, did not prevent him from agreeing, on the basis of the text of the Constitution, that legitimacy or illegitimacy has no relevance to natural born citizenship, provided that the Filipino paternity is established. Thus he did not object to the candidacy of Fernando Poe, Jr.[30]

Legislative Department

Commissioner Davide chaired the Committee on the Legislature. In presenting the Committee Report to the assembly, he began with a defense of a unicameral assembly. I do not know if he still holds this position today, but the arguments he used are still presently in vogue among advocates of unicameralism. He said that such a proposal is not only "efficient and less costly to maintain," but also, "simpler, less time-consuming and invites minimum conflicts and controversies, thus, facilitating speedy legislation."[31] He ended with a quotation from Kelsen characterizing unicameralism as

27. I RECORD OF THE CONSTITUTIONAL COMMISSION 185 (1986).

28. *Id.*

29. *Id.* at 346-352.

30. Tecson v. Comelec, 424 SCRA 277 (2004).

31. II RECORD OF THE CONSTITUTIONAL COMMISSION 44 (1986).

more democratic than bicameralism, typical of a constitutional monarchy.[32] As is now well known however, unicameralism, for which I joined Commissioner Davide, lost by a margin of only one vote. Thus, the Davide Committee had to go back to the drawing board, and Davide asked for guidance on the form the bicameral Congress should take. [Not that he had no ideas of his own, but humility can offer strategic advantages.]

The focus of the initial debate on the legislative department was on the term of office. Davide himself favored what became known as Scheme No. VII embodying four-year terms for national officials reminiscent of what was done in the 1935 Constitution.[33] But Davide's choice garnered only seven votes. What prevailed was what we now have: a term of six years for the President, Vice-President and Senators, and three for Representatives and local officials.[34]

The next point of contention was the frequency with which members of the House could be elected. Commissioner Davide proposed that a Member of the House could serve for nine consecutive years and, after an interruption of at least one term, could run for the House again. He was opposed by Commissioner Edmundo Garcia who wanted a life-time ban after nine years.[35] A debate on this issue followed, and when the votes were cast, Davide's position prevailed.[36]

Davide, as Justice of the Supreme Court, went back to term limitations in *Dimaporo v. Mitra, Jr.*[37] The case involved Section 67, Article IX, of the Omnibus Election Code, B.P. Blg. 881, which said that any "elective official, whether national or local, running for any office other than the one he is holding in a permanent capacity, except for the President and Vice-President, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy."[38] Davide penned the decision upholding the validity of the law saying that such approval was not a diminution of the term of the Congressman but of his tenure. It was, according to him, a case of voluntary resignation. The voluntariness of the resignation may be questionable, but the distinction between term and tenure is still valid.

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32. *Id.* at 44.

33. *Id.* at 209.

34. *Id.* at 225-226.

35. *Id.* at 235.

36. II RECORD OF THE CONSTITUTIONAL COMMISSION 243-244 (1986).

37. Dimaporo v. Mitra, Jr., 202 SCRA 779 (1991).

38. Omnibus Election Code, B.P. Blg. 881, Art. IX, § 67 (Dec. 3, 1985).

However, the law's applicability to national elective officers has since been repealed by the Fair Election Act, R.A. 9006.[39]

On the matter of residence qualification of Representatives, Davide merely pointed out that residence was to be understood in the sense of prior Constitutions as domicile. However, even as late as 1995 the meaning was not yet clear. Thus, it became the subject of the interesting case of *Romualdez-Marcos v. Commission on Elections*.[40] The case involved the candidacy of Imelda Marcos in her native Leyte. The decision did not contain an opinion which commanded the concurrence of a majority even though the Court did rule that Mrs. Marcos had satisfied the residence requirement. Briefly, there were three approaches that led to this one conclusion. The first was that Leyte had been her domicile of origin and that all her life she never lost it. Hence, she was qualified to run. The second was that she did lose her domicile of origin because when she married Ferdinand Marcos she acquired the domicile of her husband, but when Ferdinand Marcos died, she automatically reacquired her domicile of origin, which was early enough to satisfy the one year residence in her reacquired domicile. The third was that, when Ferdinand Marcos died, she retained the husband's domicile but she was left free to establish her domicile anywhere and she chose to establish it in Leyte early enough to satisfy the one year residence. Justice Davide espoused this view.

In the later case of *Domino v. COMELEC*,[41] Justice Davide clarified some fundamental points by saying that:

> Domicile is a question of intention and circumstances. In the consideration of circumstances, three rules must be borne in mind, namely: (1) that a man must have a residence or domicile somewhere; (2) when once established it remains until a new one is acquired; and (3) a man can have but one residence or domicile at a time.[42]

When it came to the consideration of the composition of the House of Representatives, almost the entire debate on this section was on the party-list system and sectoral representation. Commissioner "Soc" Rodrigo began by saying that while he was sympathetic with the idea of a party-list system or of sectoral representation, he still had to see a scheme showing that it could be implemented in a practical way.[43] Committee Chairman Davide replied

39. An Act to Enhance the Holding of Free, Orderly, Honest, Peaceful, and Credible Elections through Fair Election Practices, [Fair Election Act] R.A. No. 9006 (Feb. 12. 2001).

40. Romualdez-Marcos v. Commission on Elections, 248 SCRA 300 (1995).

41. Domino v. Commission on Elections, 310 SCRA 546 (1999).

42. *Id.*

43. II RECORD OF THE CONSTITUTIONAL COMMISSION 79 (1986).

that the concrete implementation of the innovative system would have to be devised by Congress and not by the Constitutional Commission.[44] He then presented his final formula:

> The House of Representatives shall be composed of not more than two hundred and fifty members, *unless otherwise fixed by law*, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their *respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations*.[45]

The amendment was approved.[46]

But how many party-list representatives would there be and how would they be chosen? Davide answered with his next amendment:

> The party-list representatives shall constitute twenty percent of the total number of Representatives *including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half* of the seats allocated to party list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

This too was approved.[47] However, during Chief Justice Davide's watch, problems continued to haunt the party-list system. Among the significant cases was *Ang Bagong Bayani et al. v. COMELEC*[48] where a divided Supreme Court made the ruling that the intent of the Constitutional Commission and of the implementing statute, R.A. 7941,[49] was not to allow all associations to participate indiscriminately in the system but to limit participation to parties or organizations representing the *marginalized and underprivileged*. It is not clear what position the Chief Justice had on this because he neither concurred in nor dissented from the opinion but merely concurred in the result.

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44. *Id*. at 80.

45. *Id*. (emphasis supplied).

46. *Id*. at 660-661, 664.

47. *Id*. at 664-666.

48. Ang Bagong Bayani et al. v. Commission on Elections, 359 SCRA 698 (2001).

49. An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefore, [Philippine Party List System Act], R.A. 7941 (1995).

His next amendment was simple and was readily approved. It simply raised the population requirement of representative districts from 200,000 to 250,000.[50]

The fourth Davide amendment, however, was more problematic. It read: "For the first election under this Constitution, the membership of and the constituencies for the House of Representatives, other than those for the party-list, shall be the same as that provided for in the ordinance governing the parliamentary election in 1984."[51]

What this meant was that the Representatives would be elected by district and not by cities or provinces as preferred by some Commissioners. Thus, the choice between election by district or election by provinces, Davide explained, had to be settled first before there could be any talk about districting. Davide favored election by districts. On nominal voting, the proposal to elect representatives by provinces and cities was rejected.[52]

Next was the question of initial apportionment. Who should do it? Already in the hands of the Commission was a proposed apportionment submitted by the Commission on Elections. Davide, however, said that his Committee was receiving almost daily complaints about the COMELEC's proposal. Various questions were debated upon. Should apportionment be done by the COMELEC or should it be left to Congress? If Congress will eventually do the apportionment, who will do the apportionment for the election of the First Congress? The COMELEC? The Constitutional Commission through an ordinance appended to the Constitution? The decision was that the Commission itself would make the initial apportionment.[53] This was done through an Ordinance appended to the Constitution. Commissioner Davide's contribution to this discussion was fully acknowledged in *Montejo v. Commission on Elections*.[54]

The amendment that followed was non-controversial. Davide obtained the approval of the following: "Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section."[55]

Next came the consideration of the composition of the Senate. The draft proposal for an Upper House, resurrecting the old system, provided for a

50. II RECORD OF THE CONSTITUTIONAL COMMISSION 669 (1986).

51. *Id.* at 669.

52. *Id.* at 690-691.

53. *Id.* at 698-700.

54. Montejo v. Commission on Elections, 242 SCRA 415 (1995).

55. II RECORD OF THE CONSTITUTIONAL COMMISSION 701 (1986).

Senate of twenty-four members elected at-large. Commissioner Davide explained the rationale behind the small number:

> MR. DAVIDE: Madam President, in fixing the composition of the Senate at 24, we did not consider its proportion to the number of population … In short, we actually look upon the Senate as the second level to that of the President and the Vice-President … Since the grounds for the restoration of the Senate were those stated on record by the proponents for bicameralism, we believe that the composition of 24 would be sufficient in order, first, to at least attain economy; and if the idea is quality legislation, we submit that a Senate with only 24 may be able to achieve quality legislation, instead of again putting more in the Senate [making it] just another body similar to the Lower House. [56]

This was readily accepted. Thus it is that we now have twenty-four senators, all of superior quality!

We now come to the immunities and responsibilities of the Members of Congress. Davide objected when Commissioner Ambrosio Padilla proposed that members of Congress, in addition to being immune from arrest during sessions, be also made immune from searches. He explained that the reason for the immunity from arrest was the need to preserve the liberty of legislators to attend sessions. He said that a search, however, would not be an obstruction to attending sessions and the probability of documents being taken from a member of Congress was remote.[57] Davide again won.

When Commissioner Colayco, a long time trial court judge, proposed an amendment banning legislators and the law firms to which they belonged from appearing as counsel before any court, regardless of the rank of the court. Davide, veteran law practitioner, again objected and argued for the limited ban proposed by the draft. He argued that: first, the influence of legislators over courts had been removed by removing judicial appointments out of the scope of the Commission on Appointments; second, a total ban would discourage highly competent lawyers from joining Congress; and third, collegiate courts, where legislators would be allowed to appear, were not as vulnerable to influence as single judge courts might be.[58] That matter, I suppose, will be debated in the next Constitutional Convention. In the end, the ban was only limited to the person of the legislator but not the firm to which he belongs.

I come next to initiative and referendum, which was provided for in the draft of the Davide Committee. Commissioner Rodrigo's problem with

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56. *Id.* at 146.

57. *Id.* at 179-185.

58. *Id.* at 123.

initiative and referendum, like his problem with the party-list system, was with regard to its practicality or practicability.[59] But the provision, Davide explained, was merely an authorization for Congress to provide for such system.[60] Congress, therefore, as with the party-list system, would have the responsibility for devising a workable scheme. Davide's views prevailed.

Finally, the Davide Committee's draft included a proposal for a Question-Hour. Chairman Davide recognized that the proposal of a Question-Hour was a deliberate introduction of an element of a parliamentary system into the presidential system as an aspect of checks and balances. He added that the intention was not to require prior presidential approval for the appearance of Cabinet members.[61] He lost on this point. It was decided that separation of powers should be preserved and Cabinet members, as alter egos of the President, should be protected from being compelled to appear before Congress or its committees. Hence, a substitute provision was proposed which avoided the phrase Question-Hour peculiar to the parliamentary system. However, it was made clear that since Congress could not compel Cabinet members to appear, neither could they impose their appearance on Congress.[62] But Commissioner Davide succeeded in inserting: "as the rules of each House will prescribe." It was, however, made abundantly clear, and the Rules could not go against this, that Congress could not compel a Cabinet member to appear and neither may either House be compelled to permit appearance of a Cabinet member. Nor may the President be compelled to give his consent. Hence, executive privilege was preserved while at the same time respecting the autonomy of Congress.[63]

Interestingly, however, the following day, while the Commissioners were probably distracted by the announcement that a delegation of Concerned Women of the Philippines was present, the following thoughts were exchanged between Commissioner Davide and Commissioner Maambong:

> MR. MAAMBONG: I want to be clarified on a statement made by Commissioner Suarez when he said that the fact that the Cabinet ministers may refuse to come to the House of Representatives or the Senate does not mean that they need not come when they are invited or subpoenaed by the committee of either House when it comes to inquiries in aid of legislation or congressional investigation. According to Commissioner Suarez, that is

59. *Id.* at 79.

60. *Id.* at 80.

61. II RECORD OF THE CONSTITUTIONAL COMMISSION 92 (1986).

62. *Id.* at 133, 143.

63. *Id.* at 148-151.

> allowed and their presence can be had under Section 21. Does the Gentleman confirm this, Madam President?
>
> MR. DAVIDE: We confirm that, Madam President, because Section 20 refers only to what was originally the Question-Hour, whereas, Section 21 would refer specifically to inquiries in aid of legislation, under which anybody for that matter, may be summoned, and if he refuses, he can be held in contempt of the House.
>
> MR. MAAMBONG: Let us crystallize this with one last question. Is the Commissioner saying now that if the member of the Cabinet or the Cabinet minister himself refuses to comply with the subpoena of any of the committees of either of the House or the Senate, he can be held in contempt, just like in the case of *Arnault v. Nazareno*?[64]
>
> MR. DAVIDE: Madam President, it is not a member of either the House or the Senate who can issue a subpoena. In cases like this, the subpoena must be signed by either the President of the Senate or the Speaker of the House of Representatives. In short, it is really contempt not of a particular committee but a contempt of the House.
>
> MR. MAAMBONG: In that situation, therefore, any Cabinet Minister can be compelled, through that kind of subpoena signed by either the President of the Senate or the Speaker of the House, to appear before that particular committee.
>
> MR. DAVIDE: The answer must be qualified. If it is truly in aid of legislation, yes; but if it is in the guise of an aid in legislation, then it could be refused.
>
> MR. MAAMBONG: Suppose it is a congressional investigation, Madam President?
>
> MR. DAVIDE: If it is, then necessarily, he can be compelled. [65]

It should be noted that this exchange took place after the substitute provision had been approved with the explanation that members of the Cabinet could not be compelled to appear. They could only be requested to appear. In my opinion, therefore, the above exchanges were at most mere personal views of two Cebuanos. After our experience of almost twenty-years with the current Congress, it may be interesting to ask if this is still the view of the two Cebuanos concerned.

Executive Department

When Commissioner Sumulong introduced Article VII on the Executive Department, the body had already finished its consideration of the term of

64. Arnault v. Nazareno, 87 Phil. 29 (1950).

65. II RECORD OF THE CONSTITUTIONAL COMMISSION 199-200 (1986).

the various officers and had already decided that the President would not be eligible for reelection.[66] But this was not yet clear in the draft text. Hence, Commissioner Davide proposed an explicit text saying that the President was not eligible for any reelection. This was readily approved.[67]

Davide next sought to add a new paragraph: "No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected." This too was readily approved.[68]

Davide was also responsible for the provision authorizing the Supreme Court as Electoral Tribunal to promulgate its own rules. He wanted to emphasize the intent to make the Supreme Court sole judge of presidential and vice-presidential election contests.[69]

Similarly, he was responsible for the provision in Section 4, which authorizes Congress to promulgate rules of the canvassing of the votes for President and Vice-President.[70] Thus, when Congressman Ruy Lopez challenged the validity of the canvassing rules for the canvass of the votes in the 2004 presidential election, Davide wrote an extended opinion saying that the canvassing rules were authorized by the Constitution and the canvassing committee's preliminary and recommendatory work was still subject to confirmation of Congress, which had plenary canvassing authority.[71]

On the President's power to appoint, Davide added to Section 13 the prohibition on appointment of the spouse and relatives of the President within the fourth civil degree to the Constitutional Commissions or to the Office of Ombudsman. His idea was to prevent the President from being in a position to perpetuate himself through these offices.[72]

Likewise, Davide was responsible for the provision prohibiting the President from making appointments within two months preceding the date of the next presidential election. The purpose was to avoid what was known as *midnight appointments*.[73]

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66. *Id.* at 386.

67. I RECORD OF THE CONSTITUTIONAL COMMISSION 432 (1986).

68. *Id.* at 432.

69. *Id.* a 433.

70. *Id.* at 433.

71. Lopez v. Senate and House, G.R. 163556 (June 8, 2004).

72. I RECORD OF THE CONSTITUTIONAL COMMISSION 542-543 (1986).

73. *Id.* at 387.

Still on appointments, should the President appoint the Vice President to a Cabinet position, David proposed that in deference to the Vice President's rank, confirmation by the Commission on Appointments should not be required. This was readily approved.[74]

Together with Commissioner Rama, Davide added an amendment, which required Congress to convene automatically should martial law be declared. The purpose was to prevent the President from frustrating corrective action by Congress.[75]

On the pardoning power of the President, the original draft had proposed that Congress be authorized to limit the President's pardoning power in cases involving graft and corruption. Davide supported this provision as another means of strengthening accountability of public officers. But the proposal was not approved.

As Supreme Court Justice, Davide came back to the pardoning power of the President in *People v. Salle, Jr.*[76] He said that since pardon can be extended only to one whose conviction was final, pardon had no effect until the person withdrew his appeal and thereby allowed his conviction to be final. He thus corrected an earlier case, which said that clemency terminates an appeal.[77] But his humanitarian concern for those already convicted manifested itself when, as Chief Justice, he called a Special Session, even when the Court was already on its traditional recess, in order to deliberate on the Urgent Motion of death convict Echegaray to delay his execution on the basis of reports of moves in Congress to repeal the death penalty law.[78]

The Judiciary

Jurisprudence at the time of the Constitutional Commission did not prohibit a reorganization of the judiciary provided that it was done in good faith. Commissioner Davide was responsible for making the rule explicit but in negative terms: "No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members."[79]

Davide's concern for the judiciary was also manifested in his sponsorship of the provision requiring members of collegiate courts to be natural-born citizens. At any rate, he added, that there would be more qualified natural-

74. *Id.* at 431-432.

75. *Id.* at 502-503.

76. People v. Salle, Jr., 250 SCRA 58 (1995).

77. People v. Crisola, 128 SCRA 1 (1984).

78. Echegaray v. Secretary of Justice, 301 SCRA 96 (1999).

79. I RECORD OF THE CONSTITUTIONAL COMMISSION 442-443 (1986).

born citizens under the newly approved definition of natural-born citizens.[80] This is now the law.

Vacancies in the judiciary are a continuing concern even now. It was Davide who authored the provision that the President shall issue appointments to the lower courts within ninety days from the submission of a list by the Judicial and Bar Council.[81]

An important aspect of judicial power is the power of judicial review. One of the requisites for the exercise of this power is that the person challenging the constitutionality of law must have *locus standi*. Justice Davide has figured prominently in the development of the doctrine on standing. Within a brief span of less than two years, the rule underwent liberalization, and then reversal of that liberalization. The liberalization may be seen to have started with Davide's *ponencia* in *Oposa v. Factoran, Jr.*,[82] which affirmed the standing of minors, represented by their parents, to challenge the validity of logging concessions on the basis of the concept of intergenerational responsibility for and right to a balanced and healthful ecology guaranteed by Article II, Section 16 of the Constitution. This was followed by *Kilosbayan v. Guingona, Jr.*,[83] which affirmed, by a close vote of seven to six, the right of petitioners to challenge the validity of the lotto contract of the Philippine Charity Sweepstakes on the argument that the case was of transcendental importance. The reversal of this liberalization trend, if you can call it a trend, came with the second *Kilosbayan* case. Coming barely four months after the first and still about the authority of the Philippine Charity Sweepstakes to operate lotto, the Court reversed 8-5 in *Kilosbayan v. Morato*.[84] However, the reversal was short lived because the dissents in the second *Kilosbayan* case advocating liberality, one of them Davide, had since become the prevailing view.

Another important rule in decision-making is found in Section 14 which says that decisions should express clearly and distinctly the facts and the law on which it is based. The import of this rule was well explained by Justice Davide in *Yao v. Court of Appeals*,[85] expressing strongly that the rule is an important aspect of due process.

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80. *Id.* at 515.

81. *Id.* at 489-490.

82. Oposa v. Factoran, 224 SCRA 792 (1993).

83. Kilosbayan v. Guingona, Jr., 232 SCRA 110 (1994).

84. Kilosbayan v. Morato, 246 SCRA 540 (1995). This case was affirmed on reconsideration. Such result was already anticipated by the *ponente* in Tatad v. Garcia, Jr., 243 SCRA 436 (1995).

85. Yao v. Court of Appeals, 344 SCRA 202 (2000).

The Constitutional Commissions

The article on Constitutional Commissions begins with some general provision applicable to the three Constitutional Commissions. Commissioner Davide was responsible for prohibiting Commissioners from holding, managing, or controlling any business or office during their tenure.[86] On the positive side, he succeeded in obtaining consent to a provision allowing increase of salary during a Commissioner's term[87] and the automatic and regular release of a Commission's budget.[88] Finally, he added an authorization for Congress to create additional functions for the Commissions.[89]

On the structure of the Civil Service, Davide succeeded in reformulating a provision, which, if not amended, could be read as prohibiting members of the Civil Service from voting in elections.[90] He made it clear that while members may vote, they may not engage in electioneering and other partisan political activity.

Later, as Supreme Court Justice, he clarified the meaning of the prohibition of double compensation. In *Santos v. Court of Appeals,*[91] Davide ruled that one who has retired from the Civil Service may accept another appointment and continue to receive retirement benefits from his previous position. However, upon retirement from the second position, the computation of his retirement benefits may no longer include the months of service in his previous position because that would mean double compensation.

With regard the task of the COMELEC, he succeeded in obtaining approval for the provision which prohibits registration of organizations supported by any foreign government.[92]

On the qualifications of the lawyer members of the Commission on Audit, he clarified that they should not only be members of the Bar but must have actually been engaged in the practice of law. He also added the prohibition of *lame duck* appointments.[93]

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86. I RECORD OF THE CONSTITUTIONAL COMMISSION 559 (1986).

87. *Id.* at 549-551.

88. *Id.* at 561.

89. *Id.* at 565.

90. *Id.* at 543.

91. Santos v. Court of Appeals, 345 SCRA 553 (2000).

92. I RECORD OF THE CONSTITUTIONAL COMMISSION 654-657 (1986).

93. *Id.* at 607-608.

As Supreme Court Justice, he clarified that since under the 1987 Constitution, the Commission on Audit can "promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties," it necessarily follows that the Commission is ultimately responsible for the enforcement of these rules and regulations, and can therefore disallow expenditures that violate them.[94]

Local Governments

Section 3 of Article X contains the elements which should make up the Local Government Code. Of these elements, *a system of decentralization*[95] and the provision for *initiative and referendum*[96] were Davide contributions. Section 3 also ordains that there should be a system of recall. When a statutory provision allowing recall to be initiated by a preparatory committee was challenged in *Garcia v. Commission on Elections,*[97] Justice Davide took the side of the petitioner saying that only the electorate could initiate recall proceedings. The majority, however, ruled otherwise.

In Section 5, the assurance that any limitation on the fiscal powers of the government must be "consistent with the basic policy of local autonomy"[98] and the provision that "taxes, fees, and charges shall accrue exclusively to the local governments"[99] were, in their final form, Davide contributions. Similarly, the provision on the automatic release of the local governments' share in national taxes owes much to Davide's intervention.

The entire Section 8, which prescribes the term of government officials, was not in the original Committee report, but came entirely from an amendment proposed by Davide.[100] When it came to the interpretation of this provision in *Socrates v. COMELEC,*[101] Justice Davide dissented from the majority view that Mayor Hagedorn could run in a recall election within months after finishing a full third term. Davide argued that Hagedorn was

94. Caltex Philippines v. Commission on Audit, 208 SCRA 726 (1992); Sambeli v. Province of Isabela, 210 SCRA 80 (1992).

95. I RECORD OF THE CONSTITUTIONAL COMMISSION 394 (1986).

96. III RECORD OF THE CONSTITUTIONAL COMMISSION at 394-397 (1986).

97. Garcia v. Commission on Elections, 227 SCRA 100 (1993).

98. III RECORD OF THE CONSTITUTIONAL COMMISSION 466 (1986).

99. *Id.* at 478-479.

100. *Id.* at 406-408, 451.

101. Socrates v. Commission on Elections, 391 SCRA 457 (2002).

being allowed, contrary to the Constitution, to run for a term immediately following his third term.

Section 12 sets down the difference between highly urbanized cities and component cities. In the Local Government Code under the 1973 Constitution, urbanized cities were independent of the province whereas some component cities, although under the jurisdiction of the province, were denied the right to vote in provincial elections. This injustice to residents of component cities was remedied because of the intervention of Davide.[102]

The recasting of what is now Section 14 on regional development councils was the work of Davide.[103] The values, which were preserved in the recasting, had for their objective decentralized organization and administration of government.[104] The urgency of this objective was emphasized by empowering the President, instead of Congress, to create such regional councils.[105]

Davide's contributions to the formation of Autonomous Regions, however, were not significant.[106]

Accountability

When Chief Justice Davide presided at the impeachment of President Estrada, the process did not come to a vote. Chief Justice Davide will probably never have a chance to preside during the impeachment proceedings of another President, but the provision which says that the Chief Justice, when so presiding, shall not vote came from him.[107]

The Cebuano, together with a Tagalog, Commissioner Jamir, also authored the provision that the Ombusdman shall be known by the compounded Tagalog title *"Tanodbayan."*[108]

Section 16 contains a list of those who may not obtain any loan, guarantee, or financial accommodation from any government financial institution. Davide specified the list to include the President, Vice-President,

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102. III RECORD OF THE CONSTITUTIONAL COMMISSION 442-450 (1986).

103. *Id.* at 462.

104. *Id.* at 462-463.

105. *Id.* at 466. Co-authors were Commissioners Bengzon, Maambong, and Monsod.

106. *See Id.* at 533-541, 546-547, 557-558, 559-560.

107. *Id.* at 306.

108. II RECORD OF THE CONSTITUTIONAL COMMISSION 338-340 (1986).

members of the Cabinet, of Constitutional Commissions, of Congress, and of the Supreme Court, and the Ombudsman.[109]

National Economy

During the discussion of the article on the National Economy, more specifically on the provision on nationalization of some aspects of the economy, Commissioner Davide argued for the 100% nationalization of corporations involved in the exploration of natural resources. He contended that full Filipino ownership would be the only arrangement consistent with the desire of the approved Preamble "to preserve and develop the national patrimony for the sovereign Filipino people and for the generations to come." Commissioner Villegas, however, insisted that the 60% minimum would guarantee the protection of Filipino interests and that to require full Filipino ownership would prejudice Filipino employment because of the shortage of Filipino capital.[110] Davide did not succeed.[111]

He next argued for the exclusion of foreigners from the governing bodies of such corporations.[112] His intent was to strip foreign stockholders of the right to sit in the board of directors. Commissioner Romulo, however, argued that this would be unfair to foreign stockholders. Commissioner Padilla added that refusing them a voice in management would make "co-production, joint venture, and production sharing illusory."[113] Although Davide failed to get the support of the majority, he managed in getting support for the limitation of lease of alienable public lands to "a period not exceeding twenty five years, renewable for another twenty-five years,"[114] for the reduction of the size of public lands which may be purchased to twelve hectares, and for the subjection of the development of natural resources to the "principles of agrarian reform."[115]

The initial disposition of forest lands and parks found in Section 4 was freed by Davide from the need of presidential recommendation. The effect was to broaden the discretion of Congress with reference to forest lands and

109. *Id.* at 298-302, 363, 414.

110. *Id.* at 358-359.

111. III RECORD OF THE CONSTITUTIONAL COMMISSION 358-359 (1986).

112. *Id.* at 362-363.

113. *Id.* at 362-363.

114. *Id.* at 385.

115. *Id.* at 586-587.

national parks without, however, excluding the wisdom of getting recommendation from the Department of Natural Resources. [116]

The debates on Section 11 regarding the Filipinization of the operation of public utilities became heated. Davide had to defend himself against the accusation that he had implied that those who were for a lower ratio for Filipinos, as low as twenty five percent, were anti-Filipino.[117] He said: "My only … is that we are not making a Constitution for any of these groups battling for the retention of the 60–40 ratio." But Davide maintained his cool throughout the discussion and even during the nominal voting. The proportion 60–40 prevailed.

On the length of public utility franchises, Davide initially obtained approval for a limit of twenty-five years renewable for another twenty-five years.[118] Later however, he moved for the return to the provision of the 1973 Constitution which allowed for a period no longer than fifty years.[119] He agreed that there was existing jurisprudence on the subject and that twenty-five years may indeed be insufficient. The longer period was approved.

The final contribution of Commissioner Davide to the article on National Economy touched on members of the Monetary Board: "They shall likewise be subject to such other qualifications and disabilities as may be prescribed by law."[120]

Since the ratification of the Constitution in 1987, perhaps the most significant decisions involving natural resources were the two decisions on the constitutionality of the Mining Act. On January 27, 2004, the Mining Act was declared unconstitutional by a vote of 8–5 and one abstention.[121] Justice Davide was among those who voted for unconstitutionality. On December 1, 2004, however, the Supreme Court reversed.[122] Justice Davide voted for reversal this time. This is all I can say about the matter because a full analysis of the two decisions will require a full-length disquisition. All I can say now is that a change of mind in constitutional cases is always a possibility because of the varied allowable modalities of constitutional interpretation.

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116. III RECORD OF THE CONSTITUTIONAL COMMISSION 592 (1986).

117. *Id.* at 659–660.

118. *Id.* at 666.

119. *Id.* at 692–694.

120. *Id.* at 695–696.

121. La Bugal-B'laan v. Ramos, 421 SCRA 148 (2004).

122. La Bugal-B'laan v. Ramos, 445 SCRA 1 (2004).

Social Justice

Most of what are contained in Article XIII on Social Justice are not, strictly speaking, constitutional provisions. Almost all of them are in the form of exhortations on what the government must do. Much of the contribution of Commissioner Davide to Article XIII came in the form of clarification or expansion of the exhortations.

The exchange between Commissioners Davide and Regalado on the manner of carrying out evictions and relocations of urban and rural poor dwellers was also clarificatory. They clarified that in the process of relocation, the government must consult both those who are being relocated and the residents of the areas to which they are being relocated. But the word used, it was emphasized, was *consultation*. Hence, the government would not be under obligation to follow what it heard during its consultations.[123] But the government would have the duty of doing the relocation "in accordance with law and in a just and humane manner," a duty which requires great wisdom, diplomacy, and patience.

Article XIII also provides for a Commission on Human Rights, which, however, is of a lower order than the Constitutional Commissions under Article IX. The powers enumerated under Section 18 are predominantly investigative and cover only human rights as distinguished from economic and social rights. With a view to giving it a little more teeth, Davide succeeded in having the following approved: "Congress may provide for other cases of violations of human rights that shall fall within the authority of the Commission, taking into account its recommendations." [124]

Education

The key provision on education that was approved says: "The State shall, in support of the primary right of parents, protect and promote the right of all citizens to quality education at all levels of education, and shall take appropriate steps to make such education accessible to all." [125]

Commissioner Davide was part of the group that crafted the provision. It embodies four points: 1) that the primary right of education belongs to the parents; 2) that the State has the duty to support this primary right; 3) that the State should make efforts to support this primary right by promoting quality education; and 4) make such quality education accessible to all.

123. *Id.* at 98.

124. IV RECORD OF THE CONSTITUTIONAL COMMISSION 7 (1986).

125. *Id.* at 257.

However, the recognition of this primary right of parents was transferred to the Declaration of Principles.[126]

But what should education aim for? Section 3 of Article XIV now contains an enumeration of the values which schools should seek to inculcate in students. In the course of formulating this provision, Commissioner Davide got entangled in a discussion on whether schools should aim for nationalism, patriotism, or love of country. In the end all three found a place in the text[127] and everyone was happy.

On the ownership of private schools, the Committee proposal was for 100% Filipino ownership. This would have stripped the exemption for religious schools found in the 1973 Constitution. The 100% proposal was based on the assumption that all religious schools were already owned by Filipinos. Davide, however, pointed out, as admitted by the Committee, that there was no data in support of such assumption. Davide's intervention eventually led to the retention of the exemption for religious schools.[128] He also succeeded in extending this exemption to schools for *temporary foreign residents.*[129]

After this he shifted his attention to teachers, which resulted in the following provision: "The State shall enhance the right of teachers to professional advancement. Non-teaching academic personnel and non-academic personnel shall enjoy protection of the State."[130]

Two more amendments on education came from Davide: first, the provision that when non-stock, non-profit schools cease to exist, their assets should be disposed of in accordance with law,[131] and second, the exemption from tax, subject to conditions prescribed by law, of "all grants, donations, or contributions used actually, directly, and exclusively for educational purposes."[132]

The Cebuano's next object of attention was the proposal that Filipino be recognized as the national language, that is, the language that is expressive of the Filipino soul. He questioned the existence of Filipino as *lingua franca* contending that the gap between *Pilipino* and Filipino recognized by the 1973 Constitution had not been bridged in the intervening years between

126. *Id.* at 257-258.

127. *Id.* at 132-133, 343, 350.

128. *Id.* at 131-132.

129. *Id.* at 391.

130. IV RECORD OF THE CONSTITUTIONAL COMMISSION 443-445 (1986).

131. *Id.* at 408.

132. *Id.* at 451-452, 447.

1973 and 1986.[133] But the supporters of Filipino as an existing *lingua franca* were insistent. When pressed for examples of what the language looked like, a Commissioner said:

> [w]e are referring to the masses of our people … who say, *"Sain kayo maglakad tapos dini?"* instead of the purist saying *"Saan kayo magtutungo pagkatapos aito."* But we understand what they mean when they say, *"mas guapo giud ang bana ko sa bana mo"* or *"guapa kuno ang kanyang amiga"* or *"yawa kawatan pala ang soltero"* or *"huwag ka man magtapo sa road"* or *"mayroon pa ngani."*

If the national language is supposed to be a language that is expressive of the Filipino soul, after hearing such examples, the Cebuano must have wondered what the Filipino soul looked like. After more debate, the following was approved: "The national language of the Philippines is Filipino. As it evolves, it shall be further developed and enriched on the basis of existing Philippine and other languages."[134]

When it came to the discussion of the official language, as opposed to the national language, Davide pointed out what appeared to be a contradiction: whereas the body had approved that the State would take steps to initiate and sustain Filipino as a language of communication, here both Filipino and English were being declared official languages of communication. Finally therefore, the body approved the following: "For purposes of communication and instruction, the official languages of the Philippines are Filipino and, until otherwise provided by law, English."[135]

Our Commissioner is also a man of the arts. Thus, he obtained approval for the following: "Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation's historical and cultural heritage and resources, as well as artistic creations."[136]

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133. *Id.* at 154-157.

134. *Id.* at 475-489.

135. *Id.* at 504-505. During the consideration of the report of the Committee on Style, Commissioner Padilla pleaded for the inclusion of Spanish as official language. After remarking that the point being raised was a *cadaver, which [had] long been buried*, the Presiding Officer, Commissioner Jamir, instructed Commissioner Rodrigo to proceed with the report of the Committee on Style. V RECORD OF THE CONSTITUTIONAL COMMISSION 824-826 (1986).

136. IV RECORD OF THE CONSTITUTIONAL COMMISSION 545-557 (1986).

Family

The lead formula we now find in the Article on the Family is essentially the one presented by Commissioner Davide.[137] Aside from recognizing the family as the "foundation of the nation," it also commands the State to take measures to "strengthen its solidarity and actively promote its total development."

Davide also provoked excitement when he proposed that "All children, regardless of filiation, shall enjoy the same social protection." But he explained his proposal as limited merely to giving *social protection* and not *property protection*, that is, to discrimination by individuals and institutions based on illegitimacy. In the discussion there was mention of the case of a mother who allegedly tried to pressure the Ateneo de Manila not to admit the illegitimate son of her husband, a prominent government official. His proposal commanded only seven votes.[138]

General Provisions

Section 2 on the General Provisions authorizes Congress to adopt a new name for the country, a national anthem, and a national seal. Recalling, perhaps, an earlier attempt to change the name of the Philippines to *Maharlika*, Commissioner Davide added a failsafe provision which now says: "Such law shall take effect only upon its ratification by the people in a referendum."[139]

The extension of the tour of duty of military officers marked for compulsory retirement had been a cause of demoralization in the military. Hence, Davide, jointly with others, succeeded in obtaining approval for the following: "Laws on retirement of military officers shall not allow extension of their service."[140]

When it came to the discussion of advertising agencies, Davide again proposed requiring 100% Filipino ownership.[141] His reason essentially was that the advertising industry was not capital intensive but talent intensive. He eventually lowered it to seventy percent and obtained approval.[142]

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137. *Id.* at 52.

138. *Id.* at 67-74.

139. V RECORD OF THE CONSTITUTIONAL COMMISSION 147-148 (1986).

140. *Id.* at 303.

141. *Id.* at 210.

142. *Id.* at 215-218.

Amendments

The 1987 Constitution contains the novel provision of proposal of amendments by *initiative and referendum*, Davide clarified that this novel provision would apply only to amendments and not to revision. For the purpose of carrying this out, Davide proposed an amendment containing the following: (1) the number of petitioners should be at least twelve percent of all voters and three percent of the voters of each district; (2) the base for twelve and three would not be the list of the last preceding national election but the current list; and (3) a general empowerment of the legislature to provide implementing details provided that the act of Congress should not "destroy the substantive right to initiate."[143] In other words, none of the procedures to be proposed by the legislative body may diminish or impair the right conceded.[144] The intent was, among others, to withhold from the legislature the power to alter the substance of the amendment being proposed.[145]

When in 1997, there was the first attempt to amend the Constitution by initiative and referendum, it was Justice Davide who penned the decision saying that the constitutional provision on amendment and referendum was not self-executory and that R.A. 6735 was not an adequate implementation of the constitutional authorization.[146]

Transitory Provisions

Commissioner Davide was instrumental in fixing the date for the first elections under the new Constitution.[147] What he initially wanted was simultaneous national and local elections. In deference, however, to the President's Proclamation No. 3, he agreed that the local elections could be held with the national elections "unless otherwise fixed by the President."[148] Other Commissioners, however, were very much opposed to a provision categorically commanding simultaneous elections. In the end, what was approved was a provision saying that the "first local elections shall be held on a date to be determined by the President which may be simultaneous with the election of Members of Congress."[149]

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143. *Id.* at 406, 409.

144. *Id.* at 399.

145. *See also Id.* at 391.

146. Defensor-Santiago v. COMELEC, 270 SCRA 106 (1997).

147. V RECORD OF THE CONSTITUTIONAL COMMISSION 317 (1986).

148. *Id.* at 317-320.

149. *Id.* at 323-324.

Davide was also responsible for the approval of the provision saying: "The Senators, Members of the House of Representatives, and local officials elected in the first election shall serve until noon of June 30, 1992." It was all part of a scheme he had in mind of eventually being able to synchronize elections by 1992. It also gave to Senators and Representatives a *bonus* of several months beyond the term provided for in Article VI.[150]

This was followed by another proposal of Commissioner Davide intended to stagger the term of senators beginning with those to be elected in 1992.[151]

Next came the discussion of treaties entered into by the President on his own as authorized under Section 16 of Article XIV of the 1973 Constitution. The Committee had no proposal on this but Commissioner Davide came up with a proposal which eventually became Section 4: "All existing treaties or international agreements which have not been ratified shall not be renewed or extended without the concurrence of the Senate."[152]

Section 19 of the Transitory Provisions is a housekeeping detail. As originally worded, the provision was very limited in its scope, covering only the offices of the Prime Minister and of the defunct *Batasang Pambansa* and Interim *Batasang Pambansa*. This was broadened when Commissioner Davide proposed instead the formulation, patterned after Section 14 of Article XVII of the 1973 Constitution, saying: "All records, equipment, buildings, facilities, and other properties of any office or body abolished or reorganized under Proclamation No. 3 issued on March 25, 1986 or this Constitution shall be transferred to the office or body to which its powers, functions and responsibilities substantially pertain."[153]

The final question was when the new Constitution should take effect. Davide wanted the new Constitution to take effect upon "the proclamation by the President that it [had] been ratified." An objection arose proposing instead the retention of the Committee proposal that it take effect immediately upon its ratification, that is, on the day of the plebiscite. After some debate, Davide himself withdrew his amendment "in view" he said, "of the explanation and overwhelming tyranny of the opinion that it will be effective on the very day of the plebiscite."[154]

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150. *Id.* at 429-431.

151. *Id.* at 434.

152. *Id.* at 470-471.

153. V RECORD OF THE CONSTITUTIONAL COMMISSION 421-423 (1986).

154. *Id.* at 620-623.

Thus ends my stylized litany in honor of our Commissioner. As can be seen, Commissioner Davide performed different kinds of functions in the Constitutional Commission. At times he was like a vacuum cleaner, cleaning up the text. At other times, he was like an interior decorator, beautifying the text; or like a construction engineer, insuring that the building parts fitted and held together.

Notwithstanding his efforts and the efforts of others, the Constitution, to no one's surprise, has been the target of criticism from various quarters. Should the critics come across this litany of Davide contributions, they will also probably say that Commissioner Davide was more than just a minor culprit—he was a principal by outstanding participation.

Let me say this, however: The 1935 Constitution was revised almost immediately after it took effect by replacing a unicameral National Assembly with a bicameral Congress. The 1973 Constitution was amended, to put it facetiously, almost every other day. For several years now, many politicians have been salivating to revise the 1987 Constitution. But so far, it has survived untouched for more than eighteen years. But if in our lifetime the moment should finally come for the revision of the 1987 Constitution, I would move for the inclusion of Hilario Davide, Jr. in the body that will do the job. In that way, like former Chief Justice Roberto Concepcion in the 1986 Constitutional Commission, the future ex-Chief Justice Davide can teach lesser mortals a lesson or two on constitution making. But I believe Chief Justice Davide will agree with me that writing a constitution is not so difficult a task. Within the lifetime of many of us here, we have already produced three Constitutions. Four, if you include the Freedom Constitution, and five if you include the Constitution under the Japanese occupation. Writing a constitution is not the main challenge; the real challenge is making a constitution work.