

PHILIPPINE ELECTIONS: THE RIGHT TO POLITICAL PARTICIPATION IN AN ELITE DEMOCRACY

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INTRODUCTION

This paper studies the current legal structure for electoral participation in the Philippines and evaluates, in the light of emerging norms in international law towards a "democratic entitlement" as well as the reality of contemporary Philippine politics, how effectively this structure enables the majority of the Filipino people to participate in the governance of their nation.

President Fidel V. Ramos has described the Philippines as a "functioning democracy, not a country in transition, not a newly democratic country, but a country with sturdy and effective democratic institutions and a robust democratic culture that is shared by virtually all the Filipino people."¹ Indeed, even as a colony, the Philippines experienced features of democratic government, notably elections. As early as 1642, the Spanish Cortes had already passed an ordinance allowing prominent natives of the colony a limited right to participate in the selection of municipal officials.² The introduction and development of democratic institutions in the colonial context became a goal of the American government when the Philippines was ceded to it by Spain at the close of the Spanish-American War. In a proclamation, President McKinley stated that:

The United States is not only willing, but anxious, to establish . . . an enlightened system of government under which the Philippine people may enjoy the largest measure of home rule and the amplest liberty consonant with the supreme ends of government and compatible with those obligations which the United States has assumed towards the civilized nations of the world.³

Institutions aside, democratic aspirations run deep in the Filipino people. Influenced by the Enlightenment ideas of nineteenth century Spanish liberals, the political thinkers of the Philippine Revolution utilized the "compact theory"⁴ and

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¹ Fidel V. Ramos, President of the Republic of the Philippines, Address before the Kennedy School of Government on the Occasion of the Working Visit to the United States of America (UN 50th Anniversary), ARCO Forum of Public Affairs, Harvard University, Cambridge, MA (October 20, 1995).

² JOSE P. LAUREL, PHILIPPINE LAW ON ELECTIONS 45 (1940), citing the Ordinance of 1642 which gave certain prominent natives the right to vote for *gobernadorcillos* and *cabezas de barangay*.

³ CESAR ADIB MAJUL, POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION 11 (1967).

⁴ *Id.* at 189.

drafted a constitution establishing a government along republican lines.⁵ Only ten years ago, the Filipino people dramatically expressed their commitment to democracy with their televised popular revolution against the late dictator Ferdinand Marcos which started a worldwide democratic resurgence.⁶

Of all the Asian countries, the Philippines' experience of democracy has been the longest. But perhaps the peculiar manner in which democratic institutions were transplanted to and grew in Philippine soil has made the experience of Philippine democracy different from that intended by the theory underlying its form. Certainly, it would be difficult to find in the Philippine model of democracy a government representative of the majority of the Filipino people and responsive to the preferences of its citizens. Although agrarian reform has long been considered necessary for social reform, a landlord-dominated Congress from the administrations of Manuel L. Quezon to Corazon C. Aquino has consistently resisted or watered down attempts to pass meaningful agrarian reform legislation. Thus, the consistent observation of political science scholars studying Philippine politics is that "Philippine democracy, though complete with formal structures and processes that accompany it, has been characterized as an elitist democracy (Abueva, 1990), a cacique democracy (Andersen, 1988), an oligarchic democracy and bourgeois democracy."⁷

The Filipino people's right to democratic governance is protected by the Philippine Constitution.⁸ Additionally, however, Professor Thomas Franck argues that "the right of people to be consulted in a meaningful fashion is . . . protected . . . by international law."⁹ The collapse of dictatorships in the last decade, whether by the proletariat under socialist or communist regimes or by autocratic governments suspending democracy in the name of modernization, has been viewed by a number of international law scholars as evidence of the emergence of a "democratic entitlement" under international law:

So we stand on the cusp of a remarkable new idea: that each state owes an obligation of democratic governance to all other states as a price of its membership in the community of nations. And more: each government, as an incident of membership in the globally intergovernmental system, owes to each of its citizens the acknowledgment of his or her right to participate meaningfully in the process of governance. More extraordinarily still is the ensuing legal premise that when a citizen is denied the democratic entitlement by his or her government, a form of cause of action may lie in an appropriate international forum, which may determine whether the denial is lawful. Finally, if the denial is not sustained, the international

⁵ *Id.* at 5.

⁶ See Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L. L. 46, 49 (1992) [hereinafter Franck, *Democratic Governance*].

⁷ ERIC GUTIERREZ, ALL IN THE FAMILY: A STUDY OF ELITES AND POWER RELATIONS IN THE PHILIPPINES 7, quoting Alex Brillantes of the University of the Philippines (1992) [hereinafter GUTIERREZ, FAMILY].

⁸ PHIL. CONST. art. II, § 1 provides: "The Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them."

⁹ Thomas Franck, *The Democratic Entitlement*, 29 UNIV. OF RICHMOND L. REV. 1, 6 (1994) [hereinafter Franck, *Democratic Entitlement*].

system may provide a remedy to redress the international delict committed by a government, perhaps under the color of its own laws, against its citizens.¹⁰

Historically, international law support for the people's role in governance is traced to the development of the principle of self-determination.¹¹ Prior to World War I, one mode in which self-determination was expressed, although by no means the prevalent one, was through electoral consultation, e.g., elections, plebiscites, and referenda. International monitoring of population consultations first took place in 1857 when an international commission composed of French, British, Prussian, Russian, Austrian, and Turkish representatives supervised the General Elections organized in Moldavia and Wallachia.¹² Initially, election monitoring by international organizations like the League of Nations¹³ and by the United Nations was confined to the context of decolonization.¹⁴ In 1989, however, the Secretary-General agreed to oversee elections in Nicaragua, "committing the United Nations to observe elections in an independent state for the first time."¹⁵ Gregory Fox notes that "[w]hile decolonization was no longer the rationale for the monitoring process, the missions applied and developed the same set of standards."¹⁶

While organizational support by the United Nations for internal democracy began only in 1989, the Universal Declaration on Human Rights, a General Assembly resolution passed on December 10, 1948, already expressed the ideal of internal democracy by declaring that "[e]veryone has the right to take part in the government of his country. . ."¹⁷ and by articulating the principle that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."¹⁸

Drafted within the United Nations system and later submitted to the different states for ratification, the principal treaty embodying the right to political participation is the International Covenant on Civil and Political Rights, Article 25 of which states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country;

Indeed, "the evolution of the U.N. towards the acceptance of democratic principles as a universally recognized value and their active promotion was linked to the slow progress of the U.N. human rights programme."¹⁹

But just how far does international law protect the right of citizens to participate in the governance of their country? In what, exactly, does this "democratic entitlement" consist? And to what does it entitle the Filipino people, in particular, and peoples all over the world, in general?

In evaluating whether Philippine democratic institutions give effect to the Filipino people's democratic entitlement in international law, this writer decided to focus her inquiry on the nature of Philippine electoral participation. Although conceptions of the nature and content of democracy vary widely - from "thin" to "thick"²⁰ - there is agreement that elections are the paramount mode of political participation in liberal democracies.²¹

This paper will be divided into six parts, the first of which is this introduction. The first chapter of this paper will discuss the evolution of the democratic entitlement in international law but will pay particular attention to the meaning and content of the right to electoral participation in the context of the right to political participation in the International Covenant on Civil and Political Rights, to which the Philippines is a party. It will also examine parallel and applicable standards for free and fair elections developed by U.N. monitoring missions, intergovernmental organizations, and international non-governmental organizations.

The second chapter of this paper will trace the development of democratic institutions and practices, particularly the conduct of elections, throughout the various stages in Philippine history in order to provide the perspective through which to understand the character of modern Philippine electoral participation.

The third chapter will describe the Philippine legal framework for political participation, in general, and for electoral participation, in particular, and simultaneously point out its flaws as revealed by actual practice and evaluate its compliance with international norms.

¹⁰ BEIGBEDER, *supra* note 12, at 91.

²⁰ See Henry J. Steiner, *Political Participation as a Human Right*, 1 HARVARD HUM. RTS. Y.B. 77, 99 (1988).

²¹ See *id.* at 98, and 108.

¹⁰ *Id.* at 7, (emphasis supplied); see also Gregory Fox, *The Right to Political Participation* 17 YALE INT'L L. J. 539 (1992); W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866 (1990); James Crawford, *Democracy in International Law*, 64 BRIT. Y.B. OF INT'L L. 113 (1994).

¹¹ Franck, *Democratic Governance*, *supra* note 6, at 52.

¹² See YVES BEIGBEDER, *THE INTERNATIONAL MONITORING OF PLEBISCITES, REFERENDA, AND NATIONAL ELECTIONS: SELF-DETERMINATION AND TRANSITION TO DEMOCRACY* 78 (1994).

¹³ *Id.* at 83.

¹⁴ Gregory Fox, *The Right to Political Participation*, 17 YALE INT'L L. J. 539, 578 (1992).

¹⁵ *Id.* at 578.

¹⁶ *Id.*

¹⁷ Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 21(1) U.N. Doc. A/810 (1948) [hereinafter UDHR].

¹⁸ UDHR, art. 21(3).

The first part of the fourth chapter will describe the character of post-EDSA electoral participation and discuss what has been and can be done to reform the system, both locally and internationally. The last portion of the fourth chapter will attempt to suggest how international norms on free and fair elections could be made more responsive to the problems of elite democracies and offer the writer's reflections on the directions Philippine democracy should pursue to achieve more meaningful participation. The final part of this paper will summarize the writer's insights and conclusions.

I. THE DEMOCRATIC ENTITLEMENT AND ELECTIONS IN INTERNATIONAL LAW

Although relatively new to the international scene, the idea that people have a right to be consulted when political choices need to be made is "as old as the Athenian polis, or the gathering of African elders around the village Baoab tree."²² But while the right to democratic governance, in the form in which it is asserted today, did not previously exist in international law, democratic norms have existed in the international legal order for some time and have contributed to the emergence of the democratic entitlement. Thus, Professor Thomas Franck proposes:

In seeking to assess whether an international democratic order is emerging, data will be marshaled from three related generations of rule making and implementation. The oldest and most highly developed is that subset of democratic norms which emerged under the heading 'self-determination.' The second subset - freedom of expression - developed as part of the exponential growth of human rights since the mid-1950's and focuses on maintaining an open marketplace of ideas. The third and newest subset seeks to establish, define, and monitor a right to free and open elections.²³

This writer finds Professor Franck's framework helpful in seeing the "big picture" of the right to democratic governance and will borrow it in order to organize her own discussion of the theoretical portion of this paper. Hence, this first chapter shall be divided into three parts: the right to self-determination, the right to political participation, and the right to free political expression,²⁴ such as the rights to free speech, press, assembly, and association. However, this paper and, hence, the greater portion of this chapter, shall be devoted to Franck's third subset - the right to free and open elections - but will subsume the discussion of elections under the more general right to political participation and consider the elections clause together with the "take part" clause.

A brief discussion of the right to self-determination is helpful, because it is "the historic root from which the democratic entitlement grew."²⁵ As it is understood today,

²² Franck, *Democratic Entitlement*, *supra* note 9, at 6.

²³ Franck, *Democratic Governance*, *supra* note 6, at 52.

²⁴ See Steiner, *supra* note 20, at 88.

²⁵ Franck, *Democratic Governance*, *supra* note 6, at 52.

self-determination has taken on plural meanings but, classified in general terms, can be either external or internal. Historically, however, self-determination in international law was first understood to refer to its external aspect. Professor Yves Beigbeder explains the difference between the two concepts:

External self-determination enables the population of a territory to decide freely whether to join, or not, an existing state, or whether it will become an independent sovereign state. Internal self-determination enables the people of a country to choose their political system, their political, economic, and social institutions and their political leaders, or to make important constitutional or political decisions.²⁶

The concepts are similar in that they both "imply a democratic process, i.e., free and clear choice by the population of the territory or country through a plebiscite, referendum, or through elections."²⁷

Democracy seems to imply a goal and a process operating in a certain type of political environment. Self-determination, whether external or internal, seems to emphasize the goal of democracy, and electoral participation demonstrates one of the means through which the goal of self-determination is expressed, the other mode being through the "take part" clause of the right to political participation. The last subset of norms - freedom of expression and association and other similar rights - relates to the kind of environment that would facilitate the free and genuine expression of political will through the different modes of political participation. These rights, in fact, play an "essential role in most political activities [and]...must in some way inform any theory of participation."²⁸

A. The Goal: The Right to Self-Determination

The international community's early experience with self-determination pertained to the right's external, rather than its internal, aspect through the doctrine of "no annexation without consultation of inhabitants." Professor Beigbeder suggests that this doctrine first found formulation in a 1790 decree of the French Constituent Assembly by which France definitively renounced wars of conquest, because

[t]o the philosophers of the French revolution, the right of conquest, one of the divine rights of monarchs, was incompatible with the right of peoples to choose their own rulers. To assert that a conqueror could retain his domination over the inhabitants of a conquered territory against their will was to deny the doctrine of popular sovereignty and to change free men back to slaves.²⁹

²⁶ BEIGBEDER, *supra* note 12, at 18.

²⁷ *Id.* at 18.

²⁸ Steiner, *supra* note 20, at 88.

²⁹ BEIGBEDER, *supra* note 12, at 78.

France annexed a number of territories³⁰ nonetheless, but initiated plebiscites in order to harmonize its foreign relations policies with its political philosophy.³¹ Despite the emergence of this revolutionary doctrine and the existence of international monitoring missions of electoral consultations in the mid-nineteenth century,³² the principle of self-determination did not ripen into a rule of international law even during the early years of the United Nations, because of its inconsistent application. Population consultation was not the order of the day. For "plebiscites were only rare exceptions to the general rule of arbitrary, forceful conquest or international political compromises, followed by annexation."³³

After World War I, the right to self-determination found a vigorous and influential advocate in American president Woodrow Wilson, who asserted that

no peace can last, or ought to last, which does not recognize and accept the principle that governments derive their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property.³⁴

Consequently, Wilson insisted on "the settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship upon the basis of the free acceptance of that settlement by the people immediately concerned."³⁵ Despite Wilson's inclusion of the term "self-determination" in his first and second drafts of the Covenant of the League of Nations ("League Covenant"), the term is not found in the final text. For the political reality was again far from the ideal, with conquest and negotiation still being very much the order of the day.³⁶ And although the League considered carrying out plebiscites twice - for the Aaland Islands and Vilna - it failed to do so and found success only in organizing the Saar Plebiscite which was authorized not by the League Covenant but by the Treaty of Versailles.³⁷

The Charter of the United Nations ("U.N. Charter"), contrary to the League Covenant, strongly affirms the principle of self-determination.³⁸ Because of the "moral and political imperatives of decolonization,"³⁹ this principle gradually evolved, albeit

contentiously,⁴⁰ from a limited and temporary right, belonging to colonial territories while they are under foreign rule, to a universal and permanent one, belonging to "all peoples" and "for all time."⁴¹ Self-determination was promoted to the status of a human right with its embodiment in the two major human rights treaties created within the U.N. system, namely, the International Covenant on Civil and Political Rights ("ICCPR")⁴² and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR").⁴³

Despite its undisputed status as a right, self-determination's scope, especially with respect to the term "peoples," remains unclear⁴⁴ and thus has engendered plural meanings and purposes. Only in the context of "classic colonialism,"⁴⁵ where existing states are invaded or controlled by a foreign power, is there understood to be an absolute right to self-determination through independence. The incorporation of self-determination into the human rights corpus has extended the right's applicability and relevance to other contexts, namely, the right to protect one's identity and the right to participate effectively in the political and economic life of one's country.⁴⁶ The former context is significant to the plight of minorities and indigenous peoples; the latter context, to the emergence of the democratic entitlement, which shall be discussed in greater detail in the following section.

As an organization, the United Nations has supported the right to self-determination in the context of decolonization either by organizing or monitoring self-determination plebiscites or referenda in colonial territories in order to certify that such processes were free, genuine, and representative of the will of the people⁴⁷ or by temporarily administering a few territories "as an interim authority before a transfer of sovereignty, or a plebiscite or referendum, or elections."⁴⁸

B. The Process: The Right to Political Participation

1. INTERNAL DEMOCRACY AND THE UNITED NATIONS

Just as the international texts initially emphasized the external aspect of self-determination, "first generation" U.N. observer missions were likewise concerned only with self-determination in trust and non-self-governing territories and their mandate

⁴⁰ States, for example, were usually concerned with the possible abuse of the right by secessionists.

⁴¹ See Hannum, *supra* note 39, at 11-24 (discussing 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. [No. 16] 66, U.N. Doc. A/L.323 [1960] and 1970 Declaration on Principles of International Law Concerning Friendly Relations G.A. Res. 2625, U.N. GAOR, 25th Sess. Supp. [No. 28], 121, U.N. Doc. A/8028 [1970]).

⁴² Art. I(1), International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) 52, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

⁴³ International Covenant on Economic, Social, and Cultural Rights, December 16, 1966, art. I(1), *reprinted in* 6 I.L.M. 360 (1967); Annex to G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16), 490, U.N. Doc. A/6316 (1966).

⁴⁴ Hannum, *supra* note 39, at 31.

⁴⁵ *Id.* at 32.

⁴⁶ *See id.* at 58.

⁴⁷ BEIGBEDER, *supra* note 12, at 126.

⁴⁸ *See id.* at 91 (1994).

³⁰ *Id.* BEIGBEDER enumerates: Comtat-Venaissin and Avignon in 1791 and Savoy, Mulhouse, Hainaut, and Rhineland in 1792.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 79 [citing examples of annexations without consultation: United States with Louisiana Purchase (1803), Florida (1819), Texas, New Mexico, and California (1848), Alaska (1867), Hawaii (1897), and the Philippines (1898); Prussia with Schleswig (1867) and Alsace-Lorraine (1871)].

³⁴ *Id.* at 79, quoting President Woodrow Wilson, address to the U.S. Senate (22 January 1917).

³⁵ *Id.*

³⁶ *See id.*

³⁷ *See id.* at 83.

³⁸ *See* U.N. Charter art. 1, ¶ 2; *see also* U.N. Charter art. 73 (self-government) and art. 76 (self-government and independence) [hereinafter U.N. Charter].

³⁹ Hurst Hannum, *Rethinking Self-Determination*, 34 VA. J. INT'L. L. 1, 12 (1993).

was limited to ensuring that the process of self-determination was free and fair.⁴⁹ A respect due to national sovereignty and Article 2(7) of the U.N. Charter prohibiting intervention in matters within a member State's domestic jurisdiction constrained U.N. concern for internal democracy.⁵⁰

The second phase of U.N.-led multilateral election observer missions began in July 1989 when the Secretary General responded to the request to oversee elections in Nicaragua and committed the United Nations to observe elections in an independent state for the first time.⁵¹ Since then, the monitoring of national elections has become a regular activity of the United Nations; created in 1992, the U.N. Office of Electoral Assistance "has provided aid to thirty-two member states in the first year of its operation."⁵²

2. INTERNAL DEMOCRACY AND INTERNATIONAL HUMAN RIGHTS TREATIES

What accounts for the shift in international attention from the external to the internal aspect of self-determination? Long before the United Nations began lending institutional support to internal democracy, international human rights law had not only enshrined the right to self-determination as a human right, but, as early as 1948, had also articulated the basic tenet of the democratic tradition, that government authority, to be legitimate, must be based on the consent of the governed. Article 21 of the Universal Declaration of Human Rights (UDHR) provides:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The International Covenant on Civil and Political Rights, or the ICCPR, the most widely subscribed treaty guaranteeing participatory rights,⁵³ was created within the United Nations system, and the principal provision on political rights is Article 25 which states:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

⁴⁹ *Id.* at 148.

⁵⁰ *Id.* at 91.

⁵¹ See Fox, *supra* note 14, at 578.

⁵² Gregory Fox and Georg Nolte, *Intolerant Democracies*, 36 HARVARD INT'L. L. J. 1, 4 (Winter 1995).

⁵³ Fox, *supra* note 14, at 570, noting that as of January 1992, 105 states were parties to the ICCPR.

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country;

Professor Henry J. Steiner considers the provisions of Article 25 of the ICCPR unusual among human rights norms because "they do more than declare a right. They articulate a political ideal inspiring that right."⁵⁴ And while the drafters were careful not to invoke a single political tradition such as democracy,⁵⁵ Article 25(b) affirms that "the popular vote is meant to guarantee the free expression of the will of the electors."⁵⁶

Common between the right to self-determination and the right to political participation is the role played by popular consent in political decision-making, but what international human rights law achieves by giving all peoples a right to self-determination and by enshrining participatory processes as a human right is to "offer a legal basis for a claim to representative government."⁵⁷ The progress made in international human rights law, although a distinct development from U.N. peace-keeping and monitoring activities,⁵⁸ ran parallel to and influenced the latter and contributed to "the evolution of the U.N. towards acceptance of democratic principles as a universally recognized value and their active promotion."⁵⁹

3. THE CONTENT OF THE RIGHT TO POLITICAL PARTICIPATION

ICCPR Article 25 contains three particular guarantees: non-discrimination, the right to participate in public affairs, and the right to free elections.

a. Non-Discrimination

Article 25 states that the rights guaranteed under it shall be enjoyed "without any of the distinctions mentioned in Article 2 and without unreasonable restrictions." ICCPR Article 2, in turn, prohibits distinctions which are based on the following grounds: race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status. Professor Gregory Fox explains that the phrase "without unreasonable restrictions" implies that some distinctions may be permissible

⁵⁴ Steiner, *supra* note 20, at 86-87.

⁵⁵ *Id.* at 87.

⁵⁶ *Id.*

⁵⁷ See GUY S. GOODWIN-GILL, FREE AND FAIR ELECTIONS: INTERNATIONAL LAW AND PRACTICE 13 (1994).

⁵⁸ Fox, *supra* note 14, at 588.

⁵⁹ BEIGBEDER, *supra* note 12, at 91.

so long as not based on prohibited grounds and are "reasonable."⁶⁰ According to the Fox, the delegates included this phrase

to allow denial of suffrage to minors, convicts, and the mentally ill, and those not meeting residency requirements, and to permit the existence of certain limitations on the right to hold public office, such as the requirement of professional training.⁶¹

Finally, Professor Fox clarifies that the non-discrimination rule, while directed to individuals, may be read to prohibit states from discriminating against political parties espousing a particular ideology.⁶²

b. The Take Part Clause

Professor Steiner notes that both Article 25 and the debates during its drafting "are not illuminating about other ways to realize or institutionalize citizens' right to 'take part' in public affairs."⁶³ Fox concurs and infers that since Article 25(b) requires periodic and genuine elections, "paragraph (a) must contemplate additional means of influencing public policy."⁶⁴ Paragraph (a), however, does not specify these means, and because the delegates rejected a proposal that would have applied to "all organs of authority," Fox concludes that "below the primary level of leadership, Article 25(a) is satisfied if appointed officials are 'in some way responsible to elected officials.'"⁶⁵

c. The Elections Clause

The elements of voting under ICCPR Article 25(b) are as follows: (1) universal and equal suffrage; (2) secret ballot; and (3) periodic and genuine, that is, guaranteeing the free expression of the will of the electors.

(1) Universal and Equal Suffrage

Fox writes that by the term "universal and equal suffrage," the delegates meant that each citizen's vote must count equally, but the delegates left to the individual states "the question whether votes would have equal effect, to be determined in part by whether a country followed a proportional system or a simple majority electoral system."⁶⁶

⁶⁰ Fox, *supra* note 14, at 553.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Steiner, *supra* note 20, at 93.

⁶⁴ Fox, *supra* note 14, at 555.

⁶⁵ *Id.*

⁶⁶ *Id.* at 556.

(2) Secret Ballot

Some delegates asked whether ballot secrecy was appropriate for states with a high percentage of illiterate voters, but "the majority concluded that ballot secrecy was a fundamental aspect of a fair election and should be retained."⁶⁷

(3) Periodic and Genuine

"Periodic" has no specific meaning and "is yet another of those terms susceptible to varying interpretations."⁶⁸ To understand the term "genuine election," it must be related to the phrase "guaranteeing the free expression of the will of the electors." Fox reports that during the drafting process, the Chilean delegate stated that "the adjective genuine had been used to guarantee that all elections of every kind faithfully reflected the opinion of the population and to protect the electors against government pressure and fraud."⁶⁹ Hence, a "genuine election" is one which guarantees the will of the election, freely expressed.⁷⁰ This implies a process which allows voters to express their preferences without bribery or intimidation and which is free from fraud.

d. Comment on the Elections Clause

The bare and skeletal requirements of ICCPR's elections clause are flexible enough to contemplate a wide variety of electoral systems. Primarily due to a broad consensus among the drafting states that the ICCPR "could not impose upon its parties one or another of the different electoral systems current among liberal democracies,"⁷¹ the ICCPR is neutral about the type of electoral system a state may adopt:

[H]uman rights law offers no guidelines for the selection of an electoral system in a given political and socio-economic context, no theory of broad or fair electoral participation or access which might influence the contextual choice by a state among many possibilities.⁷²

Whether international human rights law ought to remain neutral or evolve clearer standards regarding the type of electoral system a state selects is important to the kind of political participation its citizens will enjoy, for Professor Steiner points out that the "quality of that participation is strongly affected by the ways in which elections are institutionalized."⁷³

⁶⁷ *Id.*

⁶⁸ GOODWIN-GILL, *supra* note 57, at 28.

⁶⁹ Fox, *supra* note 14, at 556.

⁷⁰ *Id.*

⁷¹ Steiner, *supra* note 20, at 90.

⁷² *Id.* at 108.

⁷³ *Id.*

4. ANOTHER POSSIBLE SOURCE OF NORMS: MISSION STANDARDS

Contrasted against the bareness of ICCPR standards for free and fair elections is the specificity and comprehensiveness of election observing or monitoring standards evolved both by inter-governmental organizations, such as the United Nations, as well as by other intergovernmental organizations and international non-governmental organizations which have vast experience in election observing or monitoring (collectively, "mission standards").

a. *International Governmental and Non-Governmental Organizations*

Professor Fox explains that initial authority for U.N. observer or monitoring missions was based, not on human rights treaties, but on the United Nations' peace-keeping and decolonization powers, because U.N. election monitoring activities preceded the development of these human rights instruments. Nonetheless, U.N. mission standards "approximate quite closely the participatory rights guaranteed by the Political Covenant and other instruments."⁷⁴ Hence, Fox suggests that, while no formal link exists between the two distinct but parallel systems of participatory rights in international law, U.N. mission standards may be used to clarify or flesh out ambiguous provisions in human rights treaties.⁷⁵ He argues that since these two systems affect the same state actors, address the same issues, and protect the same substantive rights, these systems represent the "international community's views of a 'free and fair' election."⁷⁶ Hence, because of the "coincidence of purpose and principles between monitoring activities and treaty norms... future monitoring missions should be explicitly based upon the treaties themselves, in order to better link treaty-based rights with a viable enforcement mechanism."⁷⁷ To bolster his argument, Fox cites a provision of the Vienna Convention on the Law of Treaties to the effect that evidence of the ordinary meaning of treaty terms, in this case, "free and fair elections" in the ICCPR, may be derived from sources not formally linked to the treaty, in this case, U.N. mission standards.

In addition to the United Nations, other organizations, both inter-governmental ("IGOs")⁷⁸ and nongovernmental organizations ("INGOs"),⁷⁹ have played an advisory as well as operational role in the monitoring of national elections and have developed

⁷⁴ Fox, *supra* note 14, at 570.

⁷⁵ *Id.* at 570 and 588.

⁷⁶ *Id.* at 588.

⁷⁷ *Id.* at 570.

⁷⁸ BEIGBEDER, *supra* note 12, at 222-269, enumerates: the Organisation of American States, the British Commonwealth, the Council of Europe, and the European Community.

⁷⁹ *Id.* at 270-296. Among those cited by Beigbeder are the International Human Rights Law Group, the National Endowment for Democracy, the National Democratic Institute for International Affairs, the International Republican Institute, the Council of Freely Elected Heads of Government, the International Foundation for Electoral Systems, La Federacion Internationale des Droits de l'Homme, the International Commission of Jurists, the Inter-Parliamentary Union.

valuable expertise in the field.⁸⁰ The International Human Rights Law Group ("Law Group"), which is responsible for pioneering responsible election monitoring and the linkage of human rights concerns to the elections process, designed in 1984 a manual for election monitoring which is widely used and has been translated into French and Spanish.⁸¹ Apart from tackling logistical concerns of organizing a mission, the manual affirms⁸² and amplifies the elections clause, identifies aspects to which particular attention must be given in evaluating an election, and, on the whole, reflects the Law Group's belief that

a truly free and fair election consists of more than secret ballots, convenient polling places, and the responsible reporting of the results; an election is a process which includes the ability of individuals to register and to vote, of candidates to campaign, of newspapers to publish and radio and television stations to broadcast, of people to gather at rallies, and of individuals feeling safe when casting their votes.⁸³

IGO and INGO mission standards have an even more remote likelihood of informing ICCPR norms than those evolved by U.N. missions, either because they are based on different treaties or are developed by non-state groups not directly connected to ICCPR organs or the United Nations. Nonetheless, it has been argued that the activities of these IGOs and INGOs may be considered as a form of practice that could play a significant, normative role in the evolution and enrichment of the right to free and fair elections in customary international law.⁸⁴

b. *Mission Standards Evolved in the Practice*

Mission standards are instructive both as to their overall approach as well as their specific content. As to approach, great attention is paid to the *means* chosen for implementing the right as well as the *actual practice*. Necessarily, guidelines are sensitive to the history and contemporary politics of a particular state. Law Group Guideline VA.1, for example, urges observers to be sensitive to "specific electoral laws and procedures adopted by the host country that may reflect the historical development of the country or particular problems facing the country"⁸⁵ and should only criticize the laws if they are "contrary to explicit international standards or are manifestly unfair to a segment of a population."⁸⁶ Law Group Guideline VB.1, for another, states that

⁸⁰ *Id.* at Chapters Eight and Nine.

⁸¹ *Id.* at 274.

⁸² See GUIDELINE VC.1, INTERNATIONAL HUMAN RIGHTS LAW GROUP, GUIDELINES TO INTERNATIONAL ELECTION OBSERVING 35 (Larry Garber, ed. 1984) [hereinafter LAW GROUP GUIDELINES].

⁸³ *Id.* at 274.

⁸⁴ See generally GOODWIN-GILL, *supra* note 57.

⁸⁵ See Guideline VA.2., LAW GROUP GUIDELINES, *supra* note 82, at 32.

⁸⁶ See COMMENTARY TO GUIDELINE VA.2., *id.* at 33.

*observers should evaluate whether imperfections in an electoral process actually resulted in the thwarting of the popular will of the citizenry*⁸⁷ in recognition of the fact that "electoral processes frequently have some elements of unfairness. Thus, simple black and white judgments...may prove impossible."⁸⁸

As to content, mission standards break down the features of the electoral process and environment in order to better evaluate the substance and quality of political participation. These features can be classified under the elements of the elections clause. For example, providing a level playing field to candidates and political parties in their registration and campaign activities could be viewed as more specific implementation of the non-discrimination norm. Also, the norm of universal and equal suffrage could be evaluated in the light of constituency delimitation, voter registration, voter attitudes and information; and the norm of periodic and genuine elections could be assessed based on the independence and impartiality of election administration, the efficiency and transparency of the processes of voter registration, balloting, counting of votes, and announcement of results, and the effectivity of complaints and dispute resolution.⁸⁹

c. The Environment: The Rights to Free Political Expression

For self-determination to be meaningfully and genuinely expressed, the processes by which the right is exercised - whether electoral or non-electoral - must take place in a certain environment that allows free and open debate and discussion of issues. Hence, another "building block" of the democratic entitlement and which constitutes the essential preconditions to a free and open electoral process is that group of rights composing the right to free political expression, namely, rights to freedom of opinion and expression, peaceful assembly, and association. First enunciated in the UDHR⁹⁰ and later embodied in the ICCPR,⁹¹ the rights to free political expression are individual rights recognized and protected by international law. Professor Steiner views the prominence given by the ICCPR to these rights as a reminder that the right to political participation in ICCPR Article 25 "should not be approached as an isolated provision, detached from the larger structure of rights in the Covenant. That larger structure here suggests that the 'take part' and 'elections' clauses assume some degree of public political debate and of citizen's participation in political groups expressing their beliefs or interests."⁹²

⁸⁷ See COMMENTARY TO GUIDELINE VB.1, *id.* at 33.

⁸⁸ See COMMENTARY TO GUIDELINE VB., *id.* at 34.

⁸⁹ See generally GOODWIN-GILL, *supra* note 57, at 27-80; LAW GROUP GUIDELINES, *id.* Appendix IV at 52-57; and Fox, *supra* note 14, at 590.

⁹⁰ See UDHR, arts. 19 and 20, *cited in* Franck, *supra* note 9, at 61.

⁹¹ See ICCPR, arts. 18, 19, 22, *cited in id.*

⁹² Steiner, *supra* note 20, at 88.

While UDHR Article 19 and ICCPR Article 25 seem to enshrine democracy, the debates surrounding the drafting of Article 25, in particular, reveal that the states were careful not to institutionalize any one particular political tradition.⁹³ Nonetheless, Professor Steiner notes that the UDHR and the ICCPR invoke the democratic tradition by controlling the reasons by which states may limit the exercise of rights protected by the documents, i.e., only for the purpose of "meeting the just requirements of morality, public order, and the general welfare in a democratic society."⁹⁴ Hence, it would seem that the free and open atmosphere for discussion and debate which characterizes a democratic society provides the background and environment for the exercise of the right to political participation. Moreover, Professor Steiner notes—

particularly in view of its origin in the Universal Declaration, a document drafted when the hegemony in the United Nations of the liberal democracies was unquestioned, the expression "democratic society" invites comparison with restrictions on assembly and association in those democracies rather than, for example, with the practices of communist countries.⁹⁵

Keenly aware of the importance of the right to free political expression in a free and open electoral process, mission standards include in their assessment of a "legally sufficient election" issues relating to the ability of citizens to organize and join political parties, the composition of the dominant parties, the conduct and atmosphere of the political campaign, and media access and attitudes.⁹⁶

Professor Fox raises an interesting point that treaty-based participatory rights may potentially conflict with other international human rights:

It has been argued that the potential for a "tyranny of the majority" in a democracy requires that other, countermajoritarian rights be given preference by the international community. Others argue that a minimum level of economic development is a prerequisite to meaningful political participation, and thus subsistence or welfare rights should be given priority.⁹⁷

Nonetheless, he concludes that these arguments find no support in human rights treaties, as the latter "view political participation as a keystone right - an essential prerequisite to the enjoyment of all other rights."⁹⁸ The practice in the United Nations supports this view. In 1990, the U.N. General Assembly passed a virtually unanimous, albeit non-binding, resolution which stressed the members'

conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the

⁹³ *Id.* at 87.

⁹⁴ *Id.* at 88-89, *citing* UDHR, art. 29(2).

⁹⁵ *Id.*

⁹⁶ Fox, *supra* note 14, at 590.

⁹⁷ *Id.* at 595.

⁹⁸ *Id.*

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⁹⁵ *Id.*

⁹⁶ Fox, *supra* note 14, at 590.

⁹⁷ *Id.* at 595.

⁹⁸ *Id.*

government of his or her country is a crucial factor in the effective enjoyment of all of a wide range of other human rights and fundamental freedoms embracing political, economic, social, and cultural rights.⁹⁹

More recently, in March 1993, U.N. Secretary-General Boutros Boutros-Ghali stated in a speech that

[d]emocratization is the thread which runs through all the work of the Organization. Within nations as much as within the family of nations, democracy should underpin the structures of international peace and security. Human rights, equal rights, and government under law are important attributes of democracy. With participation, social and economic development become meaningful; with freedom of speech and of thought, civil institutions become durable. Individual involvement in the political process enhances accountability and responsiveness of governments. Governments which are responsive and accountable are likely to be stable and promote peace.¹⁰⁰

This writer believes that the second issue raised by Fox - the existence of a minimum level of economic development - ought not to be dismissed too lightly. It is particularly important in the Philippine context where, as will be demonstrated in the following chapter, a political process dominated by well-trenched political and economic elite will make it difficult, if not impossible, for ordinary citizens to influence the decisions of the government, whether directly or indirectly.

⁹⁹ G.A. Res. 45/150, U.N. G.A.O.R., 45th Sess., U.N. Doc. A/RES/45/150 (1990), quoted in Franck, *Democratic Entitlement*, *supra* note 6, at 14.

¹⁰⁰ Boutros Boutros-Ghali, *Maintaining International Peace and Security: The United Nations as Forum and Focal Point*, (March 25, 1993), quoted in Fox and Nolte, *supra* note 52, at 5.

II. THE HISTORICAL CONTEXT OF PHILIPPINE ELECTIONS

To evaluate the quality of Philippine electoral participation, it is important to appreciate both the current context in which this participation takes place as well as the historical circumstances which gave rise to the institution and practice of Philippine elections and which, consequently, molded and informed them. This second chapter will describe the general character and conduct of Philippine political participation from the Spanish colonial regime to the collapse of the Marcos dictatorship but will highlight electoral participation throughout Philippine history.

A. Political Participation without Self-Determination under the Spanish and American Colonial Regime

Democratic processes like plebiscites, referenda and elections are some of the modes - perhaps the most acceptable ones in international law - through which people can exercise their right to self-determination, but they by no means are held exclusively in independent states or in states on the verge of independence. Elections have long been a feature of the Philippine political landscape. Even as a colony of Spain and the United States of America, the Philippines institutionalized elections as a means of selecting native leaders, initially for local administration and subsequently for the national legislature. This is not surprising, for as Professor Steiner notes:

All regimes, including over time, the most repressive, permit or encourage or even require some institutionalized modes of political participation. Reasons additional to the need to be informed of popular discontent argue for a government's inviting political participation. The government may thereby enlist popular support and gain international as well as domestic legitimacy. It may reduce the risks accompanying efforts to rule exclusively by force.¹⁰¹

1. ISOLATION AND INDIRECT RULE UNDER THE SPANISH COLONIAL REGIME

The Filipino native during the Spanish regime had very little contact with his Spanish conqueror. Apart from the friars and a few officials of the Spanish colonial government, no other Spaniard was in constant contact with the native.¹⁰² This isolation from Spanish society and economy was due partly to the archipelago's rugged topography and decentralized population pattern,¹⁰³ but largely to clerical efforts to protect the natives from the abuses of Spanish laymen. Friars thus opposed laymen penetration of the Philippine countryside and combated "economic development

¹⁰¹ Steiner, *supra* note 20, at 97-98.

¹⁰² PETER STANLEY, *A NATION IN THE MAKING: THE PHILIPPINES AND THE UNITED STATES, 1899-1921*, 13 (1974). In 1810, there were no more than 4,000 Spaniards and Spanish mestizos, inclusive of military and religious personnel, in the Philippines; in 1848, only 293 non-military or religious Spaniards lived outside Manila and Tondo.

¹⁰³ *Id.* at 8.

because of its harmful effects upon the indigenous population."¹⁰⁴ Demographics and friar opposition aside, however, few Spaniards had the incentive to migrate to the archipelago to begin with, because the "islands were a long way off from Spain and lacked either a highly developed civilization or obvious forms of surface wealth."¹⁰⁵ The few Spaniards who did come to the Philippines confined themselves to Manila because the profitability of the Manila galleon trade with Mexico could not be matched by anything the countryside could offer.¹⁰⁶

Because of this isolation, the Spaniards relied heavily on indirect rule through the native elites. In fact, native political participation under Spain was essentially participation by the native elites, primarily at the local level and also at middle levels of central government:

Filipino elite politics under Spain, especially in the second half of the nineteenth century, were played out at two almost mutually exclusive levels. At one level, municipal elites competed for several posts through a rigidly restricted electoral process within each town. Centered in Manila and to a lesser degree in provincial capitals and urban centers, the other level of politics involved Western-educated Filipinos, especially those with advanced degrees called *ilustrados*, who sought positions and promotions at the middle levels of colonial bureaucracy.¹⁰⁷

a. Native Participation in Local Government

The Spaniards recruited traditional native leaders to fill offices below the rank of *alcalde*, initially through appointment but later through elections. Positions available to natives included the posts of *gobernadorcillo*, the highest position for which a native could aspire, *cabezas de barangay*, and four slots in the municipal tribunal, namely, *teniente mayor*, *juez de policia*, *juez de ganados*, and *juez de sementras*.¹⁰⁸ In general, native local officials were charged with administrative functions formerly entrusted to the *encomenderos* who had settled the area during the early years of the Spanish conquest: law enforcement, dispute settlement, tax collection, and exaction of forced labor.¹⁰⁹

The voter and candidate base of local elections under the Spanish colonial regime were comprised by four categories of adult males, known collectively as the *principalia*,

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Id.* at 8.

¹⁰⁶ *See id.* at 8-9.

¹⁰⁷ Michael Cullinane, *Playing the Game: The Rise of Sergio Osmeña, 1898-1907*, in *PHILIPPINE COLONIAL DEMOCRACY* 70, 71 (Ruby Paredes ed., 1989).

¹⁰⁸ Glenn May, *Civic Ritual and Political Reality: Municipal Elections in the Late Nineteenth Century*, in *PHILIPPINE COLONIAL DEMOCRACY* 13, 17 (Ruby Paredes ed., 1989).

¹⁰⁹ *See* STANLEY, *supra* note 102, 13-14.

namely: the *gobernadorcillo*, the current *cabezas de barangay*, the *cabezas reformados* (former *cabezas* who held the post for ten consecutive years), and the *capitanes pasados* (former *gobernadorcillos* and a few other former officeholders).¹¹⁰ The incumbent *gobernadorcillo* would automatically be an elector, while twelve other electors were chosen by lot by a seven-year old boy through a procedure called *sorteo*.¹¹¹ The Provincial Governor would then read a speech, whose contents were fixed by law, exhorting the electors to put aside "all personal interest, all particular preference and all party spirit, being directed only by their concern for the well-being of the townspeople and the proper administration of the town."¹¹² The only vote which required a written ballot was that for the nominees for *gobernadorcillo*. The electors needed to write down the names of their first and second choices for the post, it being understood that the incumbent was included unless he was suspended. The votes would then be tallied and the top three names, with the incumbent automatically being the third name on the list, would comprise the *terna*, or list of nominees, which would then be submitted to the Governor General in Manila on whom the final decision rested. To qualify for a seat in the municipal tribunal, only the top vote-getters would be considered as nominees, not the top three for each seat, and their names would likewise be submitted to the Governor General. The results of the election would then be read before all the *principalia*, who would have a right to object. A period of investigation would ensue whereby local authorities at the first instance, and the Provincial Governor, at the next, would prepare reports on the nominees based on personal knowledge and inquiries and submit them to the Governor General. The Governor General's staff would then scrutinize the data, make their own reports and recommendations, and the Governor General would make his decision. Although central government officials preferred to confer office on men who seemed to have the support of the electorate, the highest vote-getter did not always get the post if, based on the reports, there were sound reasons for excluding him from office.¹¹³

In evaluating the quality of local elections under the Spanish colonial regime, one must remember that elections were instituted to facilitate indirect rule by providing the Spaniards a means to select local officials, and not as a mode of population consultation. Nonetheless, native leaders saw in these elections the opportunity to gain access to the perks of public office;¹¹⁴ hence, these contests tended to be heated and hard-fought, and the campaign techniques employed by rival factions - ranging from bribery to outright coercion - "were just as creatively illegal as those that we have come to know in the twentieth century Philippines."¹¹⁵

¹¹⁰ May, *supra* note 108, at 16.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.* at 16-18.

¹¹⁴ *Id.* at 27.

¹¹⁵ *Id.* at 29.

Without dwelling on the specifics of these private reasons, it is clear that the participants' motivation for public office differed greatly from the ideal intended by the Spanish colonial authorities in instituting elections. Commenting on the speech read by the Provincial Governor before choosing the nominees, historian Glenn May writes:

The content of the speech . . . provides us with an initial hint about the reality that lay behind the electoral ritual. What the speech did was to contrast those reasons for selecting an official that the Spanish authorities considered valid - the character, ability, and energy of a candidate - with some of the reasons the authorities knew, often determined a voter's choice - the promotion of personal or factional interests. Clearly, then the rulers were aware that a gap existed between their view of the function of elections and the one held by Filipino voters, and clearly too, as evidenced by the inclusion of the speech in the electoral ritual, they wanted to close the gap. But it seems doubtful that the speech contributed anything to the result: like many other admonitions uttered on ritual occasions, this one seems to have been studiously ignored.¹¹⁶

Hence, instead of being means by which Spanish authorities could "enlist suitable servants of the Crown [these elections] became instead the means by which local men of influence pursued objectives of their own."¹¹⁷

Historian Peter Stanley attributes this dichotomy between form and spirit of social institutions to the exigencies of priestly and indirect rule which, in turn, were necessitated by the islands' isolation. To facilitate conversion to Catholicism, for example, the friars substituted the natives' *Bathala* and lesser deities with God and His saints; hence, Philippine folk Catholicism has elements of superstition and myth that are absent from traditional Roman Catholic theology and doctrine. Stanley explains:

Social institutions and practices are culturally specific; they develop out of the historical experience of a people. Their adaptation to changing circumstances and needs, therefore, depends upon the perceptions of the society doing the adapting. The cultural context that informed Spanish structures such as the church and the courts was never transmitted compellingly or integrally to Filipinos because of the shallowness and sparsity of intercultural contact. On the other hand, certain key institutions and practices of traditional Filipino society that survived the Spanish conquest had been divorced by it from the values and goals that had originally informed them. Accordingly, there evolved an *ad hoc* Hispano-Philippine culture that was not simply hybrid or eclectic, but often quite specifically dysfunctional, using the structures or vehicles of one of the parent culture as substitutes for those of the other without reference to their appropriate ends.¹¹⁸

¹¹⁶ *Id.* at 17.

¹¹⁷ *Id.* at 34.

¹¹⁸ STANLEY, *supra* note 102, at 21-22.

Stanley concludes that what indirect rule and, hence, isolation achieved was that "what had been learned and what had permanently disrupted the folk culture of the past could not be broadened, nor deepened, nor made more meaningful and less of a "veneer."¹¹⁹

b. Filipino Elite Politics in Central Government

With the demise of the galleon trade came the decline of the Spanish merchants. And with the influx of the European and American commercial houses, came the rise of the agricultural and provincial elite who thrived in an agricultural export economy. Displaced from their leading role in the economy, the Spaniards flocked to government jobs. Their situation, however, was exacerbated by the arrival of Spanish immigrants from newly-independent, former colonies of Spain. Hence, the Spaniards in the Philippines divided into factions - the newly arrived peninsulares against the resident *creoles* and *mestizos*. Peninsular Spaniards presumed themselves more purely Spanish, more loyal, and more deserving of high positions in the Manila government; insular Spaniards asserted their claims based on their identification with the islands.¹²⁰

Notwithstanding their internal conflicts, the Philippine Spaniards coalesced against the "brutes laden with gold."¹²¹ These "brutes" were the new Filipino elite composed of native (or "indio") and Chinese *mestizo* landlords whose wealth grew with the expansion of the country's agricultural export economy. Eventually, the agricultural elite was complemented by an urban wing composed of those members who went on to work in the railroad, parts of the cigar factory or the offices of commercial houses and government, or became doctors, lawyers, or journalists: "[d]etached from provincial culture by their new wealth and responsibility, and often stimulated by education or travel abroad, the members of the new elite were the dynamic, westernizing element in Hispano-Philippine civilization."¹²² May notes that participants in 19th century municipal elections in Batangas were not always members of the elite; rather, they were "political surrogates" or local non-entities who, once elected, could be expected to follow orders.¹²³ Perhaps due to their new wealth and status in the islands, the *principalia* rejected their traditional roles in the Spanish hierarchy, and this rejection, in turn, led to the transfer of the powers of local office to central government. Hence, Stanley explains:

Ethnic isolation ran directly in opposition to their aspiration to hispanize themselves; and this, along with governmental reforms which stripped gobernadorcillos and cabezas of much of their authority and left them only onerous

¹¹⁹ *Id.* at 23.

¹²⁰ *See id.* at 24-35.

¹²¹ *Id.* at 36.

¹²² *Id.* at 37.

¹²³ *See May, supra* note 108, at 22 and 34-36.

responsibilities, caused the new de facto leaders of indio and mestizo society to shun election to office.¹²⁴

From this new economic elite emerged a Filipino *intelligentsia*, called the *ilustrados* or the enlightened ones, who would clamor not for secession, but for assimilation. Waging their "Propaganda Movement" overseas, the *ilustrados* demanded that the educated segment be granted the political rights enjoyed by Spaniards,¹²⁵ including those natural rights associated with the general stream of ideas of the late eighteenth century European Liberalism.¹²⁶ Their struggle focused on two issues, both related to the friars - clerical nationalism and ownership of land by the friar orders.¹²⁷ Because of their education, the *ilustrados* contended not only that they were articulating the aspirations of the people but also that they knew what was good for the people.¹²⁸ While the Spaniards may have been willing to grant some reforms, their insecurity and internal division made them respond to demands for reform as sedition.¹²⁹ The Spaniards responded to these attempts at peaceful reform with two waves of repression, the first one culminating in the public execution of Mariano Gomez, Jose Burgos, and Jacinto Zamora, leaders of the Filipino clergy, and the second one with the arrest and deportation the leaders of the Propaganda Movement, the most prominent of them being the national hero, Jose Rizal.

c. Revolution

Nonetheless, the constant agitation of the propagandists in the Philippines and overseas awakened the masses to their plight and stirred them to revolt.¹³⁰ On the day of Rizal's banishment to Dapitan, Andres Bonifacio founded the *Katipunan* and led the popular uprising in 1896. Three constitutions were drafted at the height of the Revolution which made public the aims of the Revolution and the aspirations of the Filipino people: the *Biak-na-Bato* Constitution, the revolutionary constitution, and the Malolos Constitution. Drafted in 1897 by Filipino lawyers, the *Biak-na-Bato* constitution "declared the separation of the Philippines from Spain, presented a bill of rights, and established a government along republican lines."¹³¹ Aguinaldo cut the revolution short, however, when he agreed, for \$1.5 million Mexican dollars and a promise of reforms by Governor General Primo de Rivera, to cease fighting and leave the Philippines.¹³² Encouraged by the Americans to return at the outbreak of the Spanish-American War, Aguinaldo resumed fighting in 1898 and a revolutionary constitution

¹²⁴ STANLEY, *supra* note 102, at 37.

¹²⁵ MAJUL, *supra* note 3, at 2-3.

¹²⁶ *Id.* at 187.

¹²⁷ STANLEY, *supra* note 102, at 43-44.

¹²⁸ MAJUL, *supra* note 3, at 187.

¹²⁹ STANLEY, *supra* note 102, at 36 and 46.

¹³⁰ See MAJUL, *supra* note 3, at 187.

¹³¹ *Id.* at 5.

¹³² *Id.* at 6.

was drafted to temporarily establish a dictatorial government until such time when the country would be ready for a constitutional republic.¹³³

The Malolos Constitution was drafted after Spain's surrender to the United States, and the Filipino revolutionaries fled to Malolos, because they feared that the Americans intended to occupy the Philippines indefinitely. This indigenous charter clearly provided that sovereignty of the country resided in the people themselves and that the government of the republic was to be popular, representative, alternative, and responsible and would be divided into three branches, legislative, executive, and judicial.¹³⁴ Moreover, the constitution intended to foster popular institutions, as it "entrusted the administration of the affairs of the towns, the provinces, and the nation to municipal assemblies, provincial assemblies, and national assemblies, respectively, upon the principle of popular and direct election."¹³⁵ The Malolos Constitution was drafted by the *ilustrados* who had joined the Revolution and who were concerned that the military element be neutralized by intellectual oligarchs in the legislature. In the words of Felipe Calderon, an *ilustrado* framer of the constitution:

Being fully convinced... that in case of obtaining our independence, we were for a long time going to have a really oligarchic republic in which the military element, which was ignorant in almost its entirety, would predominate. I preferred to see that oligarchy neutralized by the oligarchy of intelligence, seeing that the congress would be composed of the most intelligent elements of the nation. This is the principal reason why I vested the congress with such ample powers... In one word where oligarchies are concerned, I preferred the oligarchy of the intelligence of many to an ignorant oligarchy.¹³⁶

That the *ilustrados* had seized control of a revolution started by the masses is a development brought about by the masses themselves who, "either by habit or by the felt need for guidance in an organization that had attained national proportions, were actually the very ones who invited the *ilustrados* to play a role in the Revolution."¹³⁷

When President McKinley issued his Benevolent Assimilation Proclamation in January 1899, it became evident that the United States would not recognize Philippine independence. Because the Filipinos refused to accept American sovereignty, hostilities eventually broke out, and a savage pacification campaign was launched. General Arthur MacArthur said that if the Filipinos could voice out their opinions, they would say: "We are not fighting to drive America from the Islands but to convince them... that

¹³³ *Id.* at 7.

¹³⁴ LAUREL, *supra* note 2, at 57, citing MALOLOS CONST. arts. 3 and 4.

¹³⁵ *Id.* at 57-58.

¹³⁶ MAJUL, *supra* note 3, at 163.

¹³⁷ *Id.* at 188.

we have ideals, aspirations, and hopes which must be recognized by giving us a government generally acceptable, and in the construction of which we must be consulted."¹³⁸

But with the capture of Aguinaldo on March 23, 1901 and the surrender of the last major guerrilla force under General Miguel Malvar on April 16, 1902, the struggle for Philippine independence and the realization of the Filipino people's hopes and aspirations "were [henceforth] to be sought within the political framework established by the United States."¹³⁹

2. BENEVOLENT ASSIMILATION:

TUTELAGE IN DEMOCRACY THROUGH PARTICIPATION IN GOVERNMENT

While the government of the French Revolution was aware that it had to hold plebiscites in its annexed territories in order to harmonize its foreign relations policies with its consent-based political philosophy,¹⁴⁰ the United States had instead "stumbled, unawares, to the pragmatic discovery that, of all forms of government, the modern nation-state based upon consent is the least suited to empire."¹⁴¹ But unlike France, the United States did not hold any electoral process to determine whether the Filipino people desired to be assimilated into it. The continued resistance of Filipino revolutionaries to American rule clearly indicated what the results of any plebiscite would be. Instead, the Americans adopted the "policy of attraction" through which they coopted the Filipino elite:

[t]he character of the Philippine insurrection and the politics of imperialism at home required that victory be complemented by accommodation - that Filipinos be not merely defeated, but converted. Wherefore, the forbearance of Filipinos being essential to the very survival of the American empire in the islands, conquest did not produce subjugation; and the people of the islands retained significant leverage, or bargaining power, with which to affect their future.¹⁴²

Hence, in much the same way the Spanish colonial regime relied on the traditional local elite to facilitate indirect rule, the American colonial officials drew the Manila *ilustrados* and the provincial native leaders into the political process to jointly pursue the goal of establishing in the Philippines a modern, libertarian state after the American model.¹⁴³

¹³⁸ *Id.*

¹³⁹ *Id.* at 12.

¹⁴⁰ See BEIGBEDER, *supra* note 12, at 78-79.

¹⁴¹ STANLEY, *supra* note 102, at 268.

¹⁴² *Id.*

¹⁴³ *See id.*

But if native participation during the Spanish regime was a means of facilitating indirect rule, native participation under the American regime was a means not only of soliciting native cooperation but also of training them for democracy. Hence, the Americans broadened native participation both in terms of the electorate and the positions which were open to natives.¹⁴⁴ The electorate expanded to include the ordinary peasant with the gradual removal of property qualifications for voters and with the spread of literacy through the American public education system. The horizontal expansion of the voter base was complemented by a vertical extension of the offices available to the Filipino. Initially, American officials appointed Filipinos, usually Manila *ilustrados*, to the Supreme Court and the Philippine Commission,¹⁴⁵ the body which exercised executive power during the early years of the American colonial period. Subsequently, Filipinos were allowed to run for the office of provincial governor in 1901, for seats in the legislature beginning 1907, and eventually, for the post of chief executive during the Philippine Commonwealth in 1935.

Because electoral participation during the Spanish era was limited to the *principalia*, election activity was confined to this group. With greater peasant participation at elections, the *principalia* modified their campaign practices, for they realized that they needed to sink political roots into the villages. Ironically, instead of opening up to the masses the opportunity to govern, the Americans inadvertently allowed factional rivalries of the local elite to play a role in national politics.¹⁴⁶ In his seminal study of Filipino political parties, Carl Lande explained that, owing to the unequal distribution of land dating back to the Spanish times, Philippine society was a two-class system composed of the landed wealthy and the peasants.¹⁴⁷ The relationship between these two classes was one of mutual aid, rendered on an individual, rather than a collective, basis: the rich, who could afford to spare cash or grain, have traditionally been expected to come to the aid of the poor, who were in a chronic state of insecurity and need;¹⁴⁸ the poor, in turn, could repay their debts "with such intangibles as personal loyalty and obedience."¹⁴⁹ Hence, there is a bartering of favors between dyadic partners, and in return for aid received, the poor client could barter a host of personal services to help his rich patron achieve his personal goals. With the expansion of the franchise during the American period, the poor's currency now included his vote. In later years, the Philippine political elite were no longer exclusively drawn from the landowner class, but generally from those who could afford to be patrons. Hence, the nature of this patron-client ties is highly relevant to any study of the Philippine political system, because "this reciprocal aid relationship between superordinate and subordinate [is]

¹⁴⁴ CARL LANDE, LEADERS, FACTIONS, AND PARTIES 28 (1965).

¹⁴⁵ Ruby Paredes, *The Origins of National Politics: Taft and the Partido Federal*, in PHILIPPINE COLONIAL DEMOCRACY 41, 46 (Ruby Paredes ed., 1989).

¹⁴⁶ Alfred McCoy, *Quezon's Commonwealth: The Emergence of Philippine Authoritarianism*, in PHILIPPINE COLONIAL DEMOCRACY 114, 121 (Ruby Paredes ed., 1989) [hereinafter McCoy, *Quezon's Commonwealth*].

¹⁴⁷ LANDE, *supra* note 144, at 9.

¹⁴⁸ *Id.* at 10.

¹⁴⁹ *Id.* at 44.

a social pattern that long antedates the introduction of national elections in the Philippines and has been taken over almost intact into the political system.¹⁵⁰ These preexisting local groups formed the building blocks of the first two nationwide political parties, namely the *Partido Federal* and *Partido Nacionalista*, when they first competed for national offices in 1907,¹⁵¹ but the basic patron-client structure became pyramidal and multi-class, as positions open for candidacy became more remote from the ordinary voter in the municipality:

Candidates for governorship and Assembly seats, and after 1916 candidates for the Senate, had to rely more and more on the help of political leaders in the municipalities who either in their own right or through their connections with barrio leaders were able to deliver votes of the local populace. Such leaders could expect, in return, to receive substantial donations of money to finance their [sic] own campaigns for municipal offices as well as a share of provincial and national spoils of patronage. In this way chains of vertical alliances were formed linking ordinary voters to village leaders, village leaders to town politicians, and town politicians to politicians competing for provincewide leadership. Provincial leaders in turn sought alliances with a smaller number of great regional and national leaders.¹⁵²

By the time Manuel L. Quezon became Commonwealth President in 1935, he had refined this system of patronage and had developed a style of leadership which left an indelible imprint on the Philippine state:

Through force of personality and judicious use of government regulatory and financial agencies, Quezon placed himself at a junction of interaction between the State and the private corporate sector. . . he cultivated a coterie of the country's richest Americans, Spanish, and Filipino businessmen. In return for government contracts, loans, or regulatory intervention, Manila's millionaires made large donations to Quezon's Nacionalista faction and generous gifts to the President himself.¹⁵³

Political patronage existed not only among Filipinos but also between Filipinos and the ultimate patron during that period, the American colonial officials.¹⁵⁴ While Filipinos held positions in local and central government, Americans retained control of resources, public services, and overall direction of government policy. As a result, "[l]ocal political officials. . . continued to be dependent on higher levels of the colonial government for their fundamental needs and services."¹⁵⁵ More important, the political careers of leading Filipino officials, namely Trinidad H. Pardo de Tavera, Sergio Osmena, and Manuel L. Quezon rose and fell depending on the support, assistance, or

¹⁵⁰ *Id.* at 12.

¹⁵¹ *Id.* at 5.

¹⁵² *Id.* at 30.

¹⁵³ McCoy, *Quezon's Commonwealth*, *supra* note 146, at 132.

¹⁵⁴ See Paredes, *supra* note 145, at 46.

¹⁵⁵ See Cullinane, *supra* note 107, at 73.

cooperation, or lack thereof, that they received from American colonial officials.¹⁵⁶ Appointed by Governor William H. Taft to the Philippine Commission, Pardo de Tavera was the highest ranking Filipino official during the early American period, but after a falling out with Governor General Luke Wright, American colonial officials junked Pardo de Tavera and decided to cultivate new clients, no longer among the proud and difficult *ilustrados*, but among the less proud, less educated, and more malleable provincial politicians,¹⁵⁷ the most prominent of whom being governors Sergio Osmena of Cebu and Manuel L. Quezon of Tayabas. Writing to Taft, chief advisor James Le Roy outlined this new strategy for colonial politics:

I believe we can now get hold of the young men whose ideals are sufficiently defined to themselves so that they will never accept the guidance of the caciques, yet who have not the knowledge and experience to frame a program for themselves. . . I would give a good deal for the chance to try reconciling this element of young Filipinos. . . and making them a new political element of force in the country. . . one that would be the most important, because it would hold the possibility of growth along the right lines.¹⁵⁸

Just as the Filipino elite during the Spanish colonial regime were able to subvert the political institutions for their own ends, so were they able to use democratic institutions to maintain their political and economic dominance throughout the American period. The politics of attraction backfired. Rather than facilitate the manner in which democracy would be introduced to the islands with the help of the local elite, "[t]he politics of attraction wed the United States to the class interests of the Philippine elite."¹⁵⁹ Thus, according to historian Michael Cullinane:

The introduction of democratic institutions within the colonial context contributed significantly to the consolidation of local elite dominance. Moreover, it created a hierarchical system that legitimated local leaders' control over society. From the beginning, democratic institutions were manipulated - with American collaboration - not to uplift the "humble commoner" but to serve the Filipino "directing class" and American policy. Enshrined as the "special relationship" between America and the Philippines, this mutuality of interests has long demanded the sacrifice of popular will and integrity of the Philippine democratic process.¹⁶⁰

Elite and clientelist politics aside, historian Ruby Paredes believes that "[t]he whole American effort to develop democracy under colonialism was flawed by an organic contradiction."¹⁶¹ She believes that no democracy is possible when sovereignty is external to the territory rather than derived from the consent of the people of the

¹⁵⁶ See Paredes, *supra* note 145, at 46-63; and Cullinane, *supra* note 107, at 76.

¹⁵⁷ See Paredes, *supra* note 145, at 60.

¹⁵⁸ See Paredes, *supra* note 145, at 63, quoting Le Roy to Taft, in Taft Papers (6 February 1906) (alteration in original).

¹⁵⁹ STANLEY, *supra* note 102, at 270.

¹⁶⁰ Cullinane, *supra* note 107, at 105.

¹⁶¹ Paredes, *supra* note 145, at 65.

territory. Internal self-determination is illusory if the people of a territory do not exercise external self-determination. Paredes explains:

Any attempt at the development of democratic institutions in circumstances so constitutionally antithetical to their prosperity can only produce a distorted experience for the colonized. Rather than developing organically according to the traditions and requirements of the populace, emerging democratic institutions are placed in a colonial procrustean bed which alternatively chops, stretches, and ultimately distorts them to suit the colonizer's convenience. Not only are institutions distorted but political leadership is inevitably compromised. Elections and public service do not create titans legendary for their bold, commanding leadership, but pygmies stunted by the constraints of collaboration.¹⁶²

B. The Philippine Republic

When the United States transferred sovereignty to the Philippines on 4 July 1946, the dichotomy that existed between the ruler's intentions behind instituting structures for political participation and the ruled's reasons for participating, disappeared. For now, ruler and ruled were one. Intra-elite competition in Philippine politics continued in the Philippine Republic as it had under the Spanish and American colonial period. Thus, despite the existence of democratic government and procedures for participation, "[t]he constitutional period never became fully democratic because the economic elite could manipulate the system, often frustrating reform through control of the patron-client networks embodied in two political parties."¹⁶³ Rather than being a means through which the people could influence public policy, the vote remained a form of currency through which people in the lower rungs of the pyramid could secure favors from their richer, more powerful patrons in the higher rungs who had access to government funds and privileges. At the top of the pyramid was the president, and following Quezon's style of patronage politics, post-war Philippine presidents from Roxas to Marcos "used the state's licensing powers as bargaining chips in their dealings with national and local elites, thereby creating benefices that favored the dominant political families."¹⁶⁴

But this competition would not proceed undisturbed. Just as modernization, population growth, education, and media exposure upset the status quo under the Spanish regime, so did they erode the traditional patron-client network which formed the basis of Philippine politics and sowed the seeds of discontent:

This transformation of many rural landlords into urban capitalists and the intrusion into village life of moneylenders and political leaders seeking electoral support undermined the traditional, all-purpose patron-client relationship, which had been a key element in the social structure. Among some urban workers, plantation laborers, and tenants on large haciendas a much more impersonal relationship with employer and overseer developed. The seeds of class consciousness were being planted by many who moved into the new social space to serve as peasant or labor leaders. At the same time educational opportunity expanded, as did media exposure. Aspirations were raised; material wants expanded but were often unmet.¹⁶⁵

Personal loyalty no longer being sufficient to secure votes, bribery and coercion, intimidation, and even violence, became even more necessary for success at the polls.¹⁶⁶ Legitimacy was undermined as elections became dirtier and more violent. Lande notes, however, that there were no coordinated attempts to rig elections throughout the country, especially for higher offices such as the presidency,¹⁶⁷ and the military showed "little inclination to interfere with the freedom of elections in the Philippines."¹⁶⁸ The nature of electoral fraud during the constitutional regime would change during the Marcos years.

Accompanying the internal erosion of the patronage network was agitation for reform from elements excluded by the dominant participants in the electoral process. Tactical and doctrinal third parties organized to challenge the hegemony of the two national political parties. Tactical third parties were formed by veteran politicians who found themselves "in the losing side in a battle and thought it better to withdraw than to be expelled or reduced to impotence."¹⁶⁹ After demonstrating political strength, leaders of these parties normally try to rejoin one of the two major parties on better terms.¹⁷⁰ Doctrinal third parties were composed of non-elites, such as peasants and laborers, who, by pressing for radical reforms, have constituted the most serious threat to the status quo since the American period. Their tactic was two-pronged: they first attempt to participate in the electoral process, but eventually resort to violent uprisings when frustrated by the elites. Examples of doctrinal third parties include the Tangulan movement, which participated in elections in the 1920s and took up arms in 1931; and the Sakdalista party, which won several national and local positions in 1934 but staged an unsuccessful insurrection in 1935.¹⁷¹ In the 1940s and 1950s the elites coalesced against the Hukbo ng Bayan Laban sa Hapon, or the Huks. Originally

¹⁶² WURFEL, *supra* note 163, 326.

¹⁶³ See *id.* at 327.

¹⁶⁴ LANDE, *supra* note 144, at 66.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 83.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 93.

¹⁶² *Id.*

¹⁶³ DAVID WURFEL, *FILIPINO POLITICS: DEVELOPMENT AND DECAY* 113 (1988). During the American period, there were two parties: the Partido Federal, which later became the Partido Progresista and then the Partido Democrata; and the Partido Nacionalista. The Partido Democrata eventually disbanded, but the Partido Nacionalista split into the Osmena and Quezon factions. The Nacionalista factions reunited in the 1930's, but the party split again during the 1946 Presidential Elections between the Osmena's Nacionalista Party and Manuel Roxas's Liberal Party.

¹⁶⁴ Alfred McCoy, *Introduction to AN ANARCHY OF FAMILIES: STATE AND FAMILY IN THE PHILIPPINES* 12 (Alfred McCoy ed., 1993).

formed as a peasant guerrilla group during the Japanese occupation, the Huks were also determined enemies of exploitative landlords. In 1946, they threw 33% of Central Luzon's congressional vote behind the Democratic Alliance, a reform-minded party,¹⁷² but President Manuel Roxas refused to seat the elected representatives and drove them underground.¹⁷³ Hence, the peasant-backed, Communist-led Huks staged a decade-long armed struggle against government forces. Another sector that became increasingly militant was the student movement. Although formerly described as self-serving and pro-establishment, the student movement of the late 1960s was idealistic and ideologically defined which, by 1969, spouted the Marxist rhetoric of revolution¹⁷⁴ and staged violent demonstrations against the government.

Elite response to agitation for reform was likewise two-pronged: it was peaceful as well as forceful. For example, coupled with both token and sincere attempts at agrarian and labor reform to appease peasant unrest, the Philippine government also launched military offensives against the Huks, with the military advice and assistance of the United States.¹⁷⁵ In the early 1970s, however, just when the enactment of meaningful changes in the political system, through electoral and constitutional reform, seemed most hopeful and realizable,¹⁷⁶ President Ferdinand Marcos, who was nearing the end of his second and final term in office, deliberately fomented disorder, arrested his opponents, suspended Congress indefinitely, and declared martial law.

C. The Martial Law Regime

Except for families affected by arrest, initial public reaction to the declaration of martial law was largely one of relief and hope. Relief because martial law had brought an end to escalating crime and violence, and hope because of Marcos's promises that his New Society would deliver direly needed social, economic, and political change. People were willing to have their civil and political freedoms restricted temporarily in exchange for reform.¹⁷⁷

1. THE NEW SOCIETY: "PATRIMONIAL AUTHORITARIANISM"

Rather than change traditional politics, Marcos merely perfected it. He eliminated his elite competition by abolishing Congress, which was their bastion, by jailing his opponents, and by centralizing the various networks of patronage under himself as

¹⁷² *Id.* at 83.

¹⁷³ WURFEL, *supra* note 144, at 14.

¹⁷⁴ *Id.* at 107.

¹⁷⁵ *Id.* at 14-15.

¹⁷⁶ *Id.* at 104-113.

¹⁷⁷ See Benedict J. Kerkvliet and Resil B. Mojares, *Introduction to FROM MARCOS TO AQUINO: LOCAL PERSPECTIVES ON POLITICAL TRANSITION IN THE PHILIPPINES 7-8* (Benedict J. Kerkvliet and Resil B. Mojares eds., 1991); WURFEL, *supra* note 163, at 22.

supreme patron. To start with, Marcos prepared and enacted the budget; thus, he could release pork barrel directly.¹⁷⁸

Through Presidential Decree No. 1 Marcos reorganized the central administration. He multiplied the number of executive departments, thereby weakening the role of the department secretaries by increasing the number of officials who reported directly to him. Heading these numerous executive departments were the so-called "technocrats," Marcos appointees who exercised their functions with no interference from the old elite-dominated Congress and who formed part of the new elite which emerged during martial law.¹⁷⁹ Initially, government became more efficient, but corrupt old ways returned by 1973, and government looting took place at all levels of the bureaucracy, for "when clerks and division chiefs, and even cabinet members themselves, know that their peccadilloes pale into insignificance compared to the illegal profit of their superiors, there is no way to halt the spread of corruption."¹⁸⁰

Marcos tried to weaken the influence of the old elite by imprisoning them, seizing their assets,¹⁸¹ and breaking their power bases in the provinces. By creating the barangay as a political unit, Marcos bypassed the traditional local political leaders and distributed pork barrel directly to what eventually became the basis of his personal, nationwide political machine. Even after the terms of all elected local officials had expired in 1976, Marcos dared not hold local elections but made these officials beholden to him by extending their terms by appointment.¹⁸² Marcos also tried to gain mass support through his land reform program. Unfortunately, lackluster implementation, landlord resistance, and government preference for corporate farming watered down the program and fomented Communist-organized agrarian unrest in the countryside.¹⁸³

Apart from the technocrats, the new elite also included the "cronies" or favored businessmen, who amassed wealth from loans, both foreign and domestic, and government contracts.¹⁸⁴ Economic growth was one of the promises of the New Society. Marcos intended to fuel this growth through increased flow of foreign loans and investment. Economic aid also flowed in steadily increasing amounts from the United States during the early years of martial law. While the primary beneficiaries of these economic policies were the cronies, the old elite also got some windfall, and not without great resentment of the cronies.

¹⁷⁸ *Id.* at 139.

¹⁷⁹ ERIC GUTIERREZ, *THE TIES THAT BIND: A GUIDE TO FAMILY, BUSINESS, AND OTHER INTERESTS IN THE NINTH HOUSE OF REPRESENTATIVES 28* (1994) [hereinafter GUTIERREZ, *TIES*].

¹⁸⁰ WURFEL, *supra* note 163, at 137.

¹⁸¹ GUTIERREZ, *TIES*, *supra* note 179, at 28.

¹⁸² WURFEL, *supra* note 163, at 130 and 138.

¹⁸³ *See id.* at 165-176.

¹⁸⁴ GUTIERREZ, *TIES*, *supra* note 179, at 29.

Finally, the new elite included the military. Even before martial law, Marcos already "set out to establish himself as the supreme patron of the armed forces as well as their commander-in-chief."¹⁸⁵ The defense budget under martial law grew ten times from 1972 to 1977; it was augmented further by U.S. military aid in the form of cash and material, which Marcos obtained by renegotiating the U.S. military bases agreement at the height of the cold war.¹⁸⁶ Moreover, the size of the forces grew from 35,000 in the 1960s to 113,000 in 1976. Apart from increasing in size, the armed forces' functions likewise multiplied. Prior to martial law, Marcos had used the military as a "force for development" to construct roads and schoolhouses, since they were "'more efficient,' 'more skilled,' and capable of moving 'more quickly' than civilian agencies."¹⁸⁷ The military also took over the Bureau of Telecommunications, Bureau of Posts, Philippine Ports Authority, and sat on the boards of corporations formerly held by elite families who opposed Marcos, e.g., the Manila Electric Company, the Philippine Long Distance Telephone Corporation, and Jacinto Steel. Like the political factions of the old elite, the politicized military likewise became factionalized between the intensely loyal General Fabian Ver and West Point-trained General Fidel V. Ramos.¹⁸⁸

2. LEGITIMACY THROUGH ELECTIONS

Marcos was perennially insecure of the military for two reasons. First, he needed them to suppress the Communist New People's Army as well as the Moro National Liberation Front struggling for self-determination in Mindanao.¹⁸⁹ Second, and more basically, he came to power with military backing and depended on them for his continued stay in power. Hence, to create the impression of legitimacy, Marcos held plebiscites, referenda, and elections, which exercises were, in turn, validated by a Supreme Court dominated by his appointees. In 1972, Marcos created the Citizen's Assemblies to ratify, by "consensus" rather than by ballot, the new Constitution from which he derived his vast powers. From 1973 to 1976, referenda were held as "consultative mechanisms" through which the President asked the people if they wanted him to continue beyond 1973, to approve of the way he had exercised legislative powers, and to ratify proposed constitutional amendments. The last referendum, however, was marred by the first organized public boycott by a mounting opposition.¹⁹⁰

The most significant effort to legitimize the martial law regime was the holding of the Interim Batasang Pambansa elections in 1978. Heading the opposition party Lakas ng Bayan ("LABAN") was the strongest Presidential contender prior to martial law,

¹⁸⁵ WURFEL, *supra* note 163, at 146.

¹⁸⁶ *Id.* at 184-90.

¹⁸⁷ *Id.* at 142.

¹⁸⁸ *See id.* at 140-152.

¹⁸⁹ *See id.* at 154-165.

¹⁹⁰ *See id.* at 114-122.

Senator Benigno "Ninoy" S. Aquino, Jr., who was languishing in a Fort Bonifacio cell. Despite limited campaign opportunities, pre-election surveys revealed that some LABAN candidates would win. Hence, the government pulled all stops: it raised the salaries of civil servants, held last-minute voter registration, and committed massive election fraud; thus, not a single LABAN candidate won a seat. But the victory was a pyrrhic one:

The effort at legitimization backfired. Some of the more radical candidates went underground, and the net effect was further to polarize the Philippine political scene, strengthening the Left in relation to the moderate opposition. Said former senator "Soc" Rodrigo, "Marcos is driving the people to radicalism."¹⁹¹

In 1981, Marcos lifted martial law but not without keeping his vast lawmaking powers through yet another constitutional amendment and the establishment of a parliamentary government patterned after the French model. Presidential elections were also held in 1981, which the opposition, in an unprecedented display of unity, boycotted.

3. TWILIGHT OF THE DICTATORSHIP

Ideologically, opposition to the Marcos regime was of three kinds: reformist, religious, and revolutionary. The reformist opposition was composed of the surviving elements of the two national political parties; they advocated for political reforms, some degree of socioeconomic reforms, but followed non-violent tactics. The most significant religious opposition came from the Catholic Church which became an important channel of political dissent in the Philippines after martial law had crushed or driven all political parties and unions underground. Finally, the revolutionary opposition led by the Maoist Communist Party of the Philippines whose armed wing, the New People's Army, steadily grew in strength in the countryside.¹⁹² Found in all three types of opposition were the non-governmental (NGO) and people's organizations (PO) which were attuned to a broad conception of *people's participation* rooted in popular empowerment at the workplace or community level. Development Economist Benjamin T. Tolosa Jr. describes the Marcos-era NGO/PO movement:

In the Philippines, the emergence of NGO's and PO's was associated with the struggle against the Marcos dictatorship when the electoral arena was virtually closed to the opposition. The NGO's and PO's were therefore honed in mass-based extra-parliamentary pressure politics which also instilled in their members an innate distrust of electoral politics and "traditional politicians (*trapos*)."¹⁹³

¹⁹¹ *Id.* at 133.

¹⁹² *See id.* at 204-232.

¹⁹³ ED GARCIA, JULIO P. MACUJA II, and BENJAMIN T. TOLOSA, JR., *Introduction to PARTICIPATION IN GOVERNANCE: THE PEOPLE'S RIGHT* (1993).

The singular event which galvanized the fragmented opposition against Marcos, accelerated his decline, and culminated in his eventual overthrow during the EDSA revolution was the August 21, 1983 assassination of Ninoy Aquino at the tarmac of the Manila International Airport:

Anger at this brazen killing spread to segments of the population that were never before politicized, both high and low. A more rapid erosion of regime legitimacy and a sudden acceleration in the growth of demonstrations and other forms of political participation - the government dared not enforce prohibitions that originated from martial law years - were the most immediate consequences of the assassination, setting the stage for the succession struggle.¹⁹⁴

Political instability caused by the Aquino assassination triggered an economic crisis, shattering investor confidence and leading to massive capital flight. The peso was devalued in October 1983, and a moratorium on foreign debt repayment was declared. Opposition by the business community became overt and had profound consequences on subsequent political events.¹⁹⁵ The Aquino assassination also brought changes in U.S.-Philippine relations, with the U.S. Congress and the State Department showing more willingness to distance themselves from Marcos.¹⁹⁶

Under international pressure to prove regime stability and legitimacy, Marcos held the 1984 Batasang Pambansa elections. Despite boycott by some factions, opposition participation was significant during these elections, as was citizen involvement in election monitoring through the National Movement for Free Elections ("NAMFREL"). Nonetheless, by using fraud, coercion, money, and pure concoction, Marcos limited opposition victory to twenty percent of the seats and strengthened regime decay.¹⁹⁷

The systematic rigging of national elections, heretofore absent in the constitutional regime, was the *modus operandi* of Marcos-era elections. Replacing party representation at the Board of Election inspectors with public school teachers whose salaries came from the central government, Marcos could doctor the certificates of canvass upon whose figures the official results were proclaimed.¹⁹⁸

With the massive outlay of funds during the 1984 elections, the Philippine economy worsened and inflation reached an annual rate of 60 percent.¹⁹⁹ Concern

about succession was aggravated, because of persistent rumors of the president's ill health. Succumbing once more to international pressure, Marcos submitted to the holding of presidential elections in February 1986. With the intercession of Catholic prelate Jaime Cardinal Sin, the fractious opposition consolidated forces behind a single candidate - Ninoy's widow, Corazon Aquino. Through unprecedented fraud and violence, Marcos won the 1986 "snap elections," but the opposition and its supporters were unwilling to accept the verdict. On February 16, 1986, Aquino proclaimed victory on the basis of the NAMFREL's parallel count and called for civil disobedience and boycott of Marcos-controlled newspapers as well as of banks and corporations controlled by the government and the cronies. On February 21, officers of the Reform the Armed Forces Movement ("RAM") plotted with Defense Minister Juan Ponce Enrile to seize power and establish a military junta. After General Ver discovered the plot, the coup plotters persuaded General Ramos to join them. After securing the support of Cardinal Sin and ambassadors of the United States and Japan, Enrile and Ramos held a press conference at Camp Aguinaldo and broadcasted over the Catholic station Radio Veritas that they could no longer support Marcos as commander-in-chief because Corazon Aquino was duly elected president of the Philippines.²⁰⁰

Responding to the appeal of Cardinal Sin, thousands of Filipinos from all walks of life streamed to Epifanio de los Santos Avenue (EDSA), brought food for the soliders, and camped for four days outside Camp Aguinaldo to create a buffer between the defectors and Marcos troops. Told to "cut and cut cleanly" by White House confidant Paul Laxalt, Marcos soon fled Malacanang on a U.S. Air Force jet for Hawaii where he died in exile and disgrace. These four days at EDSA have come to be known as the "People Power" Revolution which is credited with having started a worldwide resurgence of democracy. It was on this euphoric note that Corazon Aquino began her term as president, bearing on her shoulders the great hope of the Filipino people for meaningful political and social change after 20 years of dictatorship.

²⁰⁰ See *id.* at 295-304.

¹⁹⁴ WURFEL, *supra* note 163, at 277-278.

¹⁹⁵ *Id.* at 278.

¹⁹⁶ *Id.* at 282.

¹⁹⁷ See *id.* at 282-287.

¹⁹⁸ See LUZVIMINDA G. TANCANGCO, THE ANATOMY OF ELECTORAL FRAUD: CONCRETE BASES FOR ELECTORAL REFORMS 58, 61, 64 (1992).

¹⁹⁹ WURFEL, *supra* note 163, at 282.

III. THE LEGAL STRUCTURE FOR ELECTORAL PARTICIPATION

Determined to rid the country of the legacy of Marcos, President Corazon C. Aquino abolished the Batasang Pambansa, proclaimed a "revolutionary constitution" granting the presidency temporary legislative powers, and created a fifty-man constitutional commission to draft a new constitution for the Republic of the Philippines.

The current Philippine Constitution, ratified on February 2, 1987, reinstates the presidential system of government established under the 1935 Constitution. As a reaction to Marcos's ability to manipulate the old document, however, new provisions were included limiting the president to one six-year term, specifying detailed steps for presidential succession, prohibiting the appointment of the president's spouse to government office, augmenting the power of the bicameral Congress, and restricting the president's discretion to appoint Supreme Court justices. Likewise, the Constitution featured innovations such as provisions declaring the Philippines was a "nuclear-free zone," creating a presidential commission on human rights, and providing for autonomy for the Cordillera and Muslim regions. While the Constitution contained radical provisions on social justice, agrarian reform, and political participation, such as party-list representation in the House of Representatives to allow smaller parties to compete in the electoral process, all these were mostly policy statements whose implementation remained subject to implementing legislation.

A. Political Participation under the 1987 Constitution

Political participation under the current Constitution allows direct and indirect participation by the citizenry in the electoral process as well as participation outside the electoral process.

Within the electoral process, "people power" is said to have been institutionalized by the "initiative and referendum" provisions. These provisions grant citizens the power to directly initiate amendments to the Constitution²⁰¹ as well as to propose new statutes, local laws, and ordinances, or amendments to existing ones,²⁰² subject to the approval by a majority of votes cast in a plebiscite or referendum.²⁰³ The implementing law has since been passed by Congress.²⁰⁴ Generally, provided the requisite number of

signatures are obtained,²⁰⁵ a petition may be filed with the Commission on Elections ("COMELEC"). COMELEC may pass upon the sufficiency of the petition, publish the same, and set the date for the plebiscite or referendum within 45 to 90 days from the time the petition is determined to be sufficient. No such petitions have as yet been filed. Citizens also have the right to indirectly influence public policy by electing their representatives to the executive and legislative positions in the central and local government. The mechanics of electoral participation shall be discussed and examined in detail in this chapter.

Outside the electoral process, citizens are likewise encouraged to participate through various sectors whose role in government has been recognized by the constitution. Among these sectors are the youth,²⁰⁶ labor,²⁰⁷ the private sector,²⁰⁸ and non-governmental, community-based, sectoral,²⁰⁹ and people's organizations.²¹⁰ Significantly, the provisions on people's organizations also institutionalize people power, this time outside the electoral process, partly in recognition of the vital role they played in overthrowing the dictatorship. The article provides that the state shall respect the role of independent people's organizations, defined as "bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership, and structure," to "pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means." The state guarantees the right of people and their organizations "to effective and reasonable participation at all levels of social, political, and economic decision-making" without abridgment and likewise undertakes to provide the legal structure to facilitate the establishment of adequate consultative mechanisms.

Whereas NGO's and PO's prior to 1987 mobilized the people against the Marcos government, these groups have since served as a vital link between government and the people, owing to "their accessibility and acceptability to grassroots groups and communities and...adeptness at utilizing innovative approaches to development work."²¹¹ The Philippine government has expressed support for NGO's by providing

²⁰⁵ Petitions pertaining to constitutional amendments must be signed by at least 12% of the total number of registered voters, of which each legislative district must be represented by at least 3% of registered voters therein; petitions pertaining to statutes, local laws, and ordinances must be signed by at least 10% of total number of registered voters, of which each legislative district must be represented by a at least 3% of registered voters therein.

²⁰⁶ PHIL. CONST. art. II, § 13, recognizing "the vital role of the youth in nation-building."

²⁰⁷ PHIL. CONST. art. II, § 18 and art. XIII, § 3, affirming labor as a primary social economic force.

²⁰⁸ PHIL. CONST. art. II, § 20, recognizing the "indispensable role of private enterprise, encouraging private enterprise, and provid[ing] incentives to needed investments."

²⁰⁹ PHIL. CONST. art. II, § 23 encouraging these organizations in promoting the welfare of the nation.

²¹⁰ PHIL. CONST. art. XIII, §§ 15-16.

²¹¹ Antonio B. Quizon, *A Survey of Government Policies and Programs on Non-Governmental Organizations in the Philippines*, in *A Strategic Assessment of NGOs in the Philippines 1* (Antonio B. Quizon ed., 1992).

²⁰¹ PHIL. CONST. art. XVII, § 2.

²⁰² PHIL. CONST. art. VI, § 32.

²⁰³ Under Philippine law, plebiscites are held to ratify constitutional revisions or amendments and referenda, to approve new or amendments to statutes, local laws, and ordinances.

²⁰⁴ Republic Act No. 6735, The Initiative and Referendum Act (1990).

tax incentives as well as a process for their recognition and accreditation. Executive agencies with NGO linkages include the Departments of Agriculture, Agrarian Reform, Environment and Natural Resources, Health, Trade and Industry; the Housing and Urban Development Coordinating Council, the National Economic Development Authority, the Presidential Commission for the Urban Poor, and the Presidential Management Staff. NGO involvement has likewise been significant in independent constitutional commissions, notably the COMELEC.

NGO participation in elections antedates the 1987 constitution. One recalls the critical role that NAMFREL played during the 1984 and 1986 elections under Marcos, as a result of which it became a model for domestic monitoring organizations.²¹² COMELEC formally designates NGO's through an official accreditation process, and since 1987, other NGO's, such as VOTECARE and PPCRV,²¹³ have assisted COMELEC in performing vital functions such as verifying voters' lists, voter education and candidates fora, voter assistance centers, poll watching, and quick count operation. The commitment and skill of these NGO's is recognized to "provide a tremendous resource to COMELEC and, indeed, represent a unique strength of the Philippine electoral system."²¹⁴

B. Philippine Electoral Participation

By and large, the primary and most significant mode by which Filipinos participate in the conduct of their government is through elections. Studies are near unanimous in indicating that elections are a key institution in patterning Philippine political life:

While its power and appeal may have suffered some erosion, the electoral process remains widely regarded in the Philippines as the way through which leaders and holders of public office gain legitimacy and the charter to govern. One notes... that EDSA was less a denial of the electoral process and more a popular undertaking to affirm it.²¹⁵

Thus, studying the interplay between elections and the country's socioeconomic system and cultural values has been said to be "at the core of any analysis of Philippine government and politics."²¹⁶

All in all, there have been around nine major election laws passed throughout Philippine history:

(1) under the Spanish regime, there were the Ordinances of 1642 and 1768, the Municipal Election Law of 1847, and the Maura Law of 1893;

(2) the election laws of the American colonial period were Act No. 1582 and Commonwealth Act Nos. 233 and 357;

(3) the main election law during the Philippine Republic was Republic Act No. 180, which was amended several times; and

(4) the Marcos years saw two main election laws - Presidential Decree 1296, passed in 1978 to regulate the 1978 Interim Batasang Pambansa elections, and Batas Pambansa Blg. 881, passed in 1985 for the 1986 snap presidential elections.

Batas Pambansa Blg. 881, also known as the Omnibus Election Code ("OEC"), was amended several times under the Aquino and Ramos presidencies but continues to provide the framework for the conduct of Philippine elections, plebiscites, and referenda today. This third chapter shall study the OEC in its current amended form and evaluate its effectivity in actual practice and its compliance with the elections clause. Provisions of the OEC shall be organized under five headings, all of which represent the elements of a free and fair election, namely, non-discrimination, universal and equal suffrage, secret ballot, periodic and genuine expression, and the election environment.

1. NON-DISCRIMINATION

This section shall discuss restrictions placed by Philippine law on the right to be elected by individual aspirants and by political parties; the section devoted to universal and equal suffrage shall discuss restrictions imposed on the right to vote. Recall at the outset that international law permits the imposition of "reasonable restrictions" on the right to hold public office, such as the requirement of professional training.

a. Individual Candidature

The expansion of offices available to Filipinos throughout the colonial period was completed during the Commonwealth era when Filipinos were allowed to run for the office of chief executive. Under the OEC, the offices to which Filipino citizens may be elected in central government are the following: president, vice-president, 24 seats in the Senate, and 200 seats in the House of Representatives. In local government, Filipino citizens may be elected to the offices of provincial governor and vice-governor, city or municipal mayor and vice-mayor, and seats in the provincial, city, and municipal legislative assemblies.

Present-day qualifications and disqualifications for candidacy were first imposed during the American period²¹⁷ but have become less restrictive with the removal of property requirements. Common among existing qualifications for the above offices

²¹⁷ See Act No. 1582, An Act to Provide for the Holding of Elections in the Philippine Islands, for the Organization of the Philippine Assembly, and for Other Purposes, §§ 12-13 (1907).

²¹² Jennifer McCoy, Larry Garber, and Robert Pastor, *Pollwatching and Peacemaking*, in *The Global Resurgence of Democracy 185-86* (Larry Diamond and Marc F. Plattner eds., 1993).

²¹³ VOTECARE means Voter's Organization, Training, and Education Towards Clean, Authentic, and Responsible Elections; PPCRV stands for Parish Pastoral Council for Responsible Voting.

²¹⁴ International Foundation for Electoral Systems, *Technical Assessment of the Philippines Electoral System 199* (July to August 1995), document on file with the writer [hereinafter IFES Report].

²¹⁵ Kerkvliet and Mojares, *supra* note 177, at 7.

²¹⁶ WURFEL, *supra* note 163, at 93.

are citizenship,²¹⁸ age, period of residency, and literacy. Apart from failing to meet the qualifications, an aspirant would be ineligible if he were disqualified due to insanity, incompetence, criminal conviction, and commission of election offenses²¹⁹ and acts of falsehood or material misrepresentation in the certificates of candidacy. The COMELEC may also refuse to allow a "nuisance candidate" from running to prevent them from making a mockery of the election process or causing confusion among voters.²²⁰ The qualifications and disqualifications for individual candidacy seem in consonance with reasonable requirements in other states. Even the prerogative to ban nuisance candidates, although broad enough to allow the arbitrary exercise of COMELEC discretion, seems reasonable as a threshold requirement.

Apart from not imposing unreasonable restrictions on the right to be elected into public office, the Constitution also imposes a positive duty to guarantee equal access to public office by prohibiting "political dynasties."²²¹ While discriminatory on its face, the provision is a reaction to the proliferation of elite political families in various branches of Philippine government, a situation that has existed since the Spanish time but brought to the extreme by the deposed dictator Marcos. It would respond to an INGO concern regarding a level playing field. It must be noted, however, that no law has yet been passed implementing this state policy.

b. Political Parties

As a reaction to the dominance by two major political parties during the post-war constitutional regime, the current constitution would like to foster greater participation by encouraging a "free and open party system."²²² To participate in the electoral process, a political party must be registered with the COMELEC.²²³ To maintain their registration, political parties must obtain at least 10% of the votes in the constituency in which it nominated candidates.²²⁴ The following groups cannot be registered: religious sects; groups which seek to achieve their goals through unlawful means; groups which

refuse to adhere to the constitution; groups which are supported by a foreign government.²²⁵ The latter three disqualifications could be justified as reasonable measures to protect the sovereignty or even survival of the Philippine state under the limitations clause in ICCPR Article 4. The ban against religious sects seems to violate ICCPR Article 2 which prohibits discrimination on the basis of religion. Seen in historical context, however, the ban aims to ensure the voter's freedom of choice by insulating him from clerical influence which has been strong and pervasive since the Spanish era. The requirement to maintain registration seems not only burdensome but also discriminatory against small parties. Again, it is better understood in the context of Philippine political culture where the overeagerness to compete must be weighed against various factors such as the possibility of causing voter confusion and the state's limited resources to accommodate all participants, even those which are not really representative of a significant portion of the electorate. Threshold requirements to restrict truly marginal parties have not been considered unreasonable by election INGO's.²²⁶

Because throughout history Philippine elections have been dominated by elite-led parties, the 1986 Constitutional Commission felt it necessary to discriminate in favor of disadvantaged sectors by providing for party-list and sectoral representation. In order to enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations, and parties who lack well-defined political constituencies to contribute to the formulation and enactment of legislation,²²⁷ the Constitution provides that 20 percent of the House shall be reserved for representatives to be elected, by proportional representation, through a party-list system of registered national, regional, and sectoral parties, organizations, and coalitions. Beginning May 1998, voters shall cast two votes - one for an individual candidate and the other for a party, and parties which obtain two percent (2%) of the votes cast shall be entitled to one seat in the House, not exceeding a maximum of three seats per party. A party-list representative who switches parties during his term forfeits his seat. Before 1998, however, half of the seats allotted to party-list representatives shall be filled by presidential appointment from among the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as shall be provided by law.²²⁸ Albeit discriminatory on its face, the measure does not violate international law, because discrimination is not based on any of the prohibited grounds and is actually meant to achieve substantive equality among participants in the process and to promote politics based on issues rather than on personality.

²¹⁸ The President, Vice-President, Senator, and member of the House of Representatives must all be natural-born citizens, i.e., those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. This excludes naturalized citizens and those who elect citizenship, because one of their parents may be a foreigner or they were born in a state recognizing the *jus solis* principle.

²¹⁹ Batas Pambansa Blg. 881, The Omnibus Election Code (1985, as amended). See §§ 68, 80, 83, 85, 86, 261(d), (e), (k), (cc), which include vote-buying; threats, terrorism, intimidation, coercion of subordinates; spending beyond legal limits for campaign expenditures, accepting prohibited contributions, violating rules on campaigning and dissemination of election propaganda.

²²⁰ B.P. 881, § 69: A nuisance candidate is one who has filed a certificate of candidacy "to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances which clearly demonstrate that the candidate has no *bona fide* intention to run for . . . office."

²²¹ PHIL. CONST. art. II, § 26.

²²² PHIL. CONST. art. IX-C, § 8.

²²³ B.P. 881, § 60.

²²⁴ B.P. 881, § 60.

²²⁵ PHIL. CONST. art. IX-C, § 2(5).

²²⁶ See GOODWIN-GILL, *supra* note 57, at 56.

²²⁷ Republic Act No. 7941, An Act Providing for the Election of Party-List Representatives through the Party-List System, § 2 (1994).

²²⁸ PHIL. CONST. art. VI, § 5(2).

2. UNIVERSAL AND EQUAL SUFFRAGE

a. Qualifications

Consistent with the international trend to broaden the voting franchise,²²⁹ Philippine law has progressively relaxed voting qualifications over the years.²³⁰ Moreover, voting is not only a right but an obligation.²³¹ Note, however, that exercise of suffrage became obligatory by virtue of Presidential Decree No. 1296, the Marcos election law, in order to discourage opposition boycott in Marcos-era elections.

Whereas suffrage used to be confined to males up to 1937 and subject to property²³² and literacy requirements,²³³ it is today subject to no other substantive qualifications apart from citizenship, age, and residence²³⁴ and no other procedural requirement except pre-registration.²³⁵ Disqualifications include insanity, incompetence, and criminal conviction.²³⁶

Literacy requirements are all but non-existent. Illiterate and disabled voters have been allowed to vote with the assistance of a relative within the fourth civil degree of consanguinity or affinity or by a member of the Board of Election Inspectors ("BEI"), who shall, in turn, execute an affidavit attesting that he prepared the ballot in accordance with data supplied by the voter.²³⁷ Despite the seeming compassion of this law, Commissioner Rama noted that illiterate voting was allowed only during the Marcos regime and it opened the floodgates to cheating. Hence, he vigorously advocated for a literacy requirement not only to improve the quality of the voting pool but to prevent cheating,²³⁸ but his proposal was defeated 21 to 6²³⁹ for being elitist and anti-democratic.²⁴⁰ The issue of ballot secrecy in relation to voting by illiterate and disabled persons shall be discussed in the following section. Even a perfectly acceptable limitation such as residency has been relaxed, as there is a constitutional mandate to provide for absentee voting by qualified Filipinos residing or working abroad for the government or otherwise.²⁴¹

²²⁹ GOODWIN-GILL, *supra* note 57, at 43.

²³⁰ See Chapter Two, *supra*.

²³¹ Presidential Decree 1296, The 1978 Election Code § 5 (1978) and retained in B.P. 881, § 4.

²³² See Act No. 1582, § 3.

²³³ See Act No. 1582, § 3; Commonwealth Act No. 357; P.D. 1296 §§ 90-91 (1938); and Republic Act No. 180, § 98 (1947).

²³⁴ Per PHIL. CONST. art. VI, § 5(2), minimum voting age is eighteen, and a voter must reside for at least one year in the Philippines and at least six months in the place where he proposes to vote.

²³⁵ P. D. No. 1296, § 5 and retained in B.P. 881, § 4.

²³⁶ B.P. Blg. 881, § 118.

²³⁷ B.P. Blg. 881, § 127.

²³⁸ See Sponsorship Speeches of Commissioner Rama, 2 RECORDS of the 1986 Constitutional Commission 8-9, 16-17 [hereinafter 2 RECORDS 1986 ConCom].

²³⁹ 2 RECORDS 1986 ConCom 29.

²⁴⁰ See Speech of Commissioner Joaquin Bernas, 2 RECORDS 1986 ConCom 15-16.

²⁴¹ See PHIL. CONST. art. V, § 2, ¶ 1.

b. The Issue of Retail Fraud

Chapter Two discussed how the breakdown in traditional patron-client relationships led to an escalation in cheating. The most common cheating practices observed in Philippine elections may be divided into three phases:

1. At the pre-election phase, manipulative practices include paying voters to register or not to register or paying registration officials to pad the blank registration forms to which they have access with fictitious voters.
2. On election day, voters are paid or intimidated to vote or not to vote, fraudulent votes may be cast by those assisting illiterate or disabled voters or by those engaging in "chain voting"
3. After the polls close, the counting process may be corrupted by improperly counting or misreading the ballots, or prior to or during the counting of votes, certain ballots may be defaced in order to invalidate them, and ballot boxes may be stolen, switched with others, or emptied of their contents.²⁴²

These practices have been described as "retail fraud" and proliferated during the constitutional regime with the breakdown of traditional patron-client ties. They involve the bribery or intimidation of individual voters or election officials and employees to perform overtly illegal acts to defraud the electoral process. Measures to address the first two practices, because they relate to the individual voter, shall be discussed in this section; whereas measures to address the third practice, because they relate to election officials and employees, shall be discussed in a latter section.

Owing to the Philippines' vast experience with retail fraud, Philippine election laws prescribe detailed steps to safeguard the integrity of the voting process. To ensure that a voter votes only once, he must first identify himself to the BEI and present his residence certificate or voter's identification if his identity is doubted, then sign the voting record and have indelible ink placed on his right forefinger before receiving his ballot. The voter then enters the voting booth alone and fills out the ballot by writing the names of his candidate using the official pen. After voting, the voter must affix his thumbmark on the ballot coupon and the voting record, and the BEI chairman and poll clerk must sign at the back of each folded ballot before it is cast as well as beside the voter's thumbmark on the voting record.²⁴³ A voter is only allowed to replace his ballot twice in case he mistakenly spoils it. In addition, the OEC outlaws every imaginable incarnation of voter bribery and coercion and regulates campaign expenditures, contributions, and propaganda, and attempts to register or vote more than once or to tamper with election forms. Violation of these provisions, which are made election offenses are punishable by imprisonment, disqualification to hold public office, deprivation of the right to suffrage, and a P 10,000.00 fine. The COMELEC has the exclusive power to conduct preliminary investigation of all election offenses and to prosecute the same.²⁴⁴

²⁴² Summarized from IFES Report, Appendix on Fraudulent Electoral Practices, *supra* note 214.

²⁴³ See B.P. Blg. 881, §§ 191, 193-194, 198.

²⁴⁴ See B.P. Blg. 881, §§ 261-265.

Finally, the COMELEC has undertaken efforts to better educate the voter. While not part of the elections clause, voter attitudes and education are noted in mission standards.²⁴⁵ To assist the voter in finding his precinct and polling place on election day and to help familiarize him with information about all candidates competing in an election, the COMELEC sends, by registered mail, a Voter's Information Sheet ("VIS") thirty days before a scheduled election. This VIS must contain (1) an unfilled official sample ballot; (2) the VIS proper containing the voter's name, address, place where he is registered, and simplified voting instructions; (3) a list of all registered national, provincial, and city candidates with three-word description of their occupation.²⁴⁶ During the May 1992 elections, COMELEC adopted a policy of complete transparency and enlisted the aid of media to assure wide appreciation of and support for election rules and safeguards.²⁴⁷

3. SECRET BALLOT

The OEC safeguards ballot secrecy by prohibiting voters from tearing, defacing, or marking ballots, from showing their ballots to anyone, and from making copies of their ballots through the use of carbon paper, paraffin, or other similar materials.²⁴⁸ Violation of these rules is an election offense punishable by imprisonment or fine.

In the same way ICCPR delegates raised the question of whether ballot secrecy was appropriate for states with a high percentage of illiterate voters, the Constitutional Commission engaged in lengthy debates regarding the issue of literacy in relation to ballot secrecy. Because current election laws allow illiterate and disabled voters to vote with the assistance of other persons, this procedure compromised ballot secrecy:

This is an infringement of the most fundamental tenet of democratic voting - the secrecy of the ballot. So, there is an inherent flaw in this system where illiterates are made to vote when they themselves would not be voting alone; they themselves would not know what their assistants will be writing on the ballots.²⁴⁹

Notwithstanding the imperfections of the current system for illiterate and disabled voting, the Constitutional Commission, not wishing to "throw out the baby with the bath,"²⁵⁰ allowed illiterates and disabled persons to vote under existing

²⁴⁵ See Appendix IV of Law Group Guidelines, *supra* note 82, at 55.

²⁴⁶ Republic Act No. 7904, An Act Amending Section 185 of the Omnibus Election Code, as amended, by Requiring the COMELEC to Furnish Every Registered Voter at least Thirty Days before an Election with an Official Sample Ballot, Voter's Information Sheet, and a List of Candidates (1995).

²⁴⁷ Report of the Commission on Elections to the President and Congress of the Republic of the Philippines on the Conduct of the Synchronized National and Local Elections of 11 May 1992, at 8 (1993).

²⁴⁸ B.P. Blg. 881, § 196.

²⁴⁹ Sponsorship speech of Commissioner Rama, 2 RECORDS 1986 ConCom 8.

²⁵⁰ Speech of Commissioner Christian S. Monsod, 2 RECORDS 1986 ConCom 20.

procedures, but mandated Congress to design a procedure whereby these persons may vote without the assistance of other persons.²⁵¹

4. PERIODIC AND GENUINE

a. Periodic

By periodic is meant that elections are held at regular intervals. The only period in Philippine history when elections were not held periodically was during the Marcos years. Pre-martial law elections were held every two years; post-EDSA elections are supposed to be held every three years.

b. Genuine Elections and the Issue of Wholesale Fraud

By genuine is meant an electoral process in which the electorate is free to express its will without bribery or coercion and which is relatively free from fraud. There are two types of fraud in Philippine elections: "retail fraud" and "wholesale fraud." Whereas retail fraud involves the bribery or coercion of individual voters or election employees and was characteristic of pre-Marcos elections, wholesale fraud involves the manipulation of all phases of the election process and was widely practiced during the Marcos years:

It starts with the pre-election preparations to set the groundwork for its final execution during the canvassing stage or after the closing of voting. This is the time when votes are aggregated at different canvassing boards...This is done through tampering with aggregated vote counts reflected in the election result forms, substituting genuine returns or certificates of canvass with manufactured ones, or outright addition of "ghost" in the total number of precincts canvassed.²⁵²

Another way to look at it is that retail fraud occurs outside the system and is unlikely to alter overall results, especially on the national levels, but wholesale fraud is built in to the system and has historically affected overall results, even on the national levels. The issue of retail fraud, in so far as it pertains to the individual voter, was discussed in the earlier section on universal and equal suffrage.

(1) Independent Body

In ascertaining the fairness of an election, mission standards examine whether election administration is entrusted to an independent body.²⁵³ The independence of the election administration is especially crucial in the Philippine setting, for "institutionally...the nerve center of any scheme of wholesale fraud is located at the poll body itself. It starts at the precinct level up to the central level."²⁵⁴

²⁵¹ PHIL. CONST. art. V, § 2, ¶ 2.

²⁵² TANCANGCO, *supra* note 198, at 60.

²⁵³ See Fox, *supra* note 14, at 590, Appendix IV of Law Group Guidelines, *supra* note 82, at 52-57.

²⁵⁴ TANCANGCO, *supra* note 198, at 60.

The enforcement and administration of election laws are entrusted to the Commission on Elections or COMELEC, one of three independent commissions created by the constitution, which exercises administrative, quasi-judicial, and judicial powers.²⁵⁵ For example, the COMELEC decides all technical questions regarding the conduct of elections, accredits political parties and official watchers, has jurisdiction over election contests, and recommends disciplinary action with respect to violation of election laws. No pardon, amnesty, or parole may be granted by the President for election offenses without the recommendation of COMELEC. To prevent incumbents from using government privileges to their advantage during election period, the COMELEC has the power to supervise and regulate the enjoyment and utilization of all public franchises, and deputize law enforcement agencies including the Armed Forces of the Philippines.

To guarantee the independence of COMELEC, it is empowered to appoint all of its officials and employees and enjoys fiscal autonomy. In addition, the seven COMELEC commissioners are prohibited from holding any other office or employment, practicing any profession, engaging in the active management or control of any business, or being interested, directly or indirectly, in a contract with, or in any franchise or privilege granted by the government or any of its agencies, instrumentalities, and corporations.

Representing the COMELEC at the precinct level during registration and election days are the Boards of Election Inspectors or BEI. The BEI is constituted 30 days before preparation of the voters' list and is composed of three members, all of whom are public school teachers. The BEI is responsible for the conduct of registration and elections as well as for the counting of ballots, tallying of votes, and preparation of election returns.

Before 1951, the BEI was composed of two members from the majority party and one member from the minority party.²⁵⁶ Because most inspectors worked for partisan advantage and a single minority voice was a feeble defense against fraud, Congress in 1951 changed the composition of the BEI.²⁵⁷ Hence, from 1951, the BEI was composed of one public school teacher who acted as chairman, one inspector representing the majority party, and one inspector representing the minority party.²⁵⁸ To guarantee the BEI's independence, its inspectors may not be related to other BEI members or to candidates to be voted for in that same precinct. During the 1978, 1980, and 1981 elections, political parties were no longer represented on the BEI but were limited to fielding watchers. Hence, it became possible for Marcos to commit systematic, centralized fraud, for he had full control of the public school teachers who staffed the BEI, as their salaries were paid by the central government which he, in turn, controlled.

²⁵⁵ See PHIL. CONST. art. IX-C.

²⁵⁶ See Act No. 1582, § 15, C.A. No. 357, §§ 69-75.

²⁵⁷ WUN-EL, *supra* note 163, at 94.

²⁵⁸ See Republic Act No. 180, The Revised Election Code § 75 (1947).

Political party representation on the BEI was made a condition for opposition participation during the 1984 and 1986 elections and, hence, was restored. In order to prevent two-party dominance, the 1986 Constitutional Commission abolished party representation on voter registration boards, BEI, boards of canvassers, or other similar bodies.²⁵⁹

(2) Precinct and Polling Places

A precinct is the unit of contiguous, compact territory within a barangay constituted for the purpose of voting which shall have not more than 300 voters. COMELEC establishes all precincts and posts maps at the polling sites at least five days before the first registration day.²⁶⁰ A polling place is the building or place where the BEI conducts its proceedings and where voters cast their votes. COMELEC likewise designates polling places but may not use premises which belong to parties, candidates or their close relatives, religious organizations, or the military.²⁶¹

The power to designate polling places used to belong to city and municipal councils, but the power was transferred to COMELEC in preparation for the 1951 and 1953 elections because of the commission of rampant abuses, particularly during the fraudulent elections of 1947 and 1949.²⁶² Nonetheless, these provisions have allowed COMELEC to spilt precincts even at the last minute, thus causing confusion on election day and disenfranchising voters:

As shown by the 1986 and 1987 experiences, last-minute transfer of voters' names from one precinct to another prevented a good number of registered voters [from] cast[ing] their ballots. Apart from decreasing the number of votes that will more likely go to rivals of the favored candidate/s, lower voters' turnout had also increased the number of votes that can be added without exceeding the number of total registered voters. When vote-addition is kept within the margin provided by lower turnout, it is very difficult to detect fraud.²⁶³

(3) Accountable Forms and other Election Paraphernalia

COMELEC supplies all election paraphernalia which include voting booths, guard rails, ballot boxes, official ballots, tally boards, election returns, certificates of votes and canvass.²⁶⁴ Private printing firms are engaged by COMELEC to print election forms, and their number is based on voter estimates, rather than actual voter count. Official ballots, for example, are printed at a ratio of 1.5 ballots for every voter, and this

²⁵⁹ PHIL. CONST. art. IX-C, § 8.

²⁶⁰ See B.P. Blg. 881, §§ 149-151.

²⁶¹ See B.P. Blg. 881, §§ 152-155, 163.

²⁶² See TANCANGCO, *supra* note 198, at 134.

²⁶³ *Id.* at 57.

²⁶⁴ See B.P. Blg. 881, §§ 158-161, 181-189, 231.

allows for cheating: extra official ballots have been used for the use of reserved voters provided by padded lists, while excess election returns are used for the so-called "ghost" precincts.²⁶⁵ In addition, the use of private printing firms to print election forms is "highly suspect" because of inefficiency in monitoring the process by all concerned, particularly by political parties, difficulty in serial numbering the accountable forms, and it opens up more opportunities to corrupt the process.²⁶⁶ Aggravating this is the limited access given to the electorate to witness pre-election preparations.²⁶⁷

(4) Voter Registration

The existing registration process, which has been in place since the American period,²⁶⁸ is based on a permanent list of registered voters which is updated by periodic general registration set between one to three months before each scheduled election day. Professor Luzviminda G. Tancangco has criticized this process as "flawed" and "problematic," because the short period of time does not give the COMELEC sufficient time to verify the identity and qualifications of voters. Moreover, giving BEI officials access to blank registration forms permits such anomalous practices as padding of voters' lists, which "determines the margin or magnitude of tolerable fraud without outright detection."²⁶⁹

(5) Voting Procedure²⁷⁰

The OEC outlines in detail all the steps to be followed during election day, and requires the BEI to prepare certified minutes of all proceedings. Failure to comply is an election offense. The law specifies that only the BEI, accredited watchers, voters voting, voters waiting (who shall not be more than twice the number of voting booths, there being ten booths per precinct) may be present in a precinct at any one time. The police, members of the Armed Forces and of civilian home defense units, and armed persons must stay 50 meters away from the polling place unless he will vote or there is a disturbance. In the latter case, the BEI may only summon them upon majority vote and must note this fact in the minutes of the proceedings.²⁷¹ Among the facts to be noted in the minutes are the time of voting, serial numbers of ballots and returns received, number of ballots used and unused (unused ballots must be disposed of subsequently), number of voters who cast votes or who were challenged. Copies of the minutes must

²⁶⁵ TANCANGCO, *supra* note 198, at 56.

²⁶⁶ *See id.* at 85.

²⁶⁷ *Id.* at 61.

²⁶⁸ *See* Act No. 1582, § 17; C.A. No. 357, §§ 90, 91, 95; R.A. No. 180, § 99; P.D. 1296, §§ 70, 80-82; and B.P. 881, §§ 113-148.

²⁶⁹ TANCANGCO, *supra* note 198, at 96.

²⁷⁰ B.P. Blg. 881, § 191; *see also* discussion on universal and equal suffrage, *infra*.

²⁷¹ B.P. Blg. 881, § 192.

be placed in the ballot box and furnished to the election registrar and accredited political parties.²⁷²

(6) Counting the Votes²⁷³

As soon as voting is finished, the BEI must count the ballots cast in the polling place, publicly and continuously, and ascertain the results. The OEC details the procedures for dealing with excess, marked, or spoiled ballots as well as the appreciation of ballots. In the interest of free, orderly and honest elections, the COMELEC can order that counting be done in any other public building aside from the polling place, except military or police camps or reservations. In case of imminent danger of violence, terrorism, or disorder, the BEI, by unanimous vote, can transfer counting, with concurrence of majority of watchers.

The BEI chairman reads the ballot aloud, one by one, while the poll clerk records the vote on the election returns and the other BEI member writes on the tally board. The BEI must assume such positions as will allow the watchers and the public unimpeded view of the ballots, the returns, and the board. The BEI must record in the election return the number of votes for each candidate in words and figures and sign and thumbmark the return immediately after the last vote is recorded. Copies of the return are given to the BEI, the COMELEC, the canvassing body, the city or municipal trial court judge, and the last copy is kept inside the ballot boxes. After completing the returns, the BEI must orally and publicly announce the total number of votes received by each candidate in the election held in the polling place concerned and state the corresponding office. Before leaving the polling place, the BEI must also issue a certificate of votes containing the number of votes obtained by each candidate to duly accredited watchers. Ballot boxes are delivered after counting to the office of the city or municipal treasurer who will keep it in a secure place for three months.

The six accredited major political parties may appoint one watcher each per precinct. This watcher can stay in polling place and must be allowed full unimpeded access to proceedings so they can read the names of those written on ballots being counted with unaided natural vision, consistent with good order of polling place. They must affix their signatures on the election return if belonging to ruling coalition or dominant opposition parties. Watchers may also witness and inform themselves, take notes and pictures, file protests, and be furnished with a certificate of votes. Failure to issue a certificate of votes to the watcher upon his request constitutes an election offense. Apart from the major accredited political parties, the following may also appoint one watcher per polling place, with prior COMELEC authority: the duly accredited Citizen's Arm, civic, religious, professional, business, service, and youth organizations.²⁷⁴

²⁷² B.P. Blg. 881, §§ 203-204.

²⁷³ B.P. Blg. 881, §§ 206-220.

²⁷⁴ B.P. Blg. 881, §§ 178-180.

Tancangco points out that, during Marcos-era elections and the first two elections of the post-EDSA government, the parties most interested in the elections, i.e., the political parties, were not given copies of the election returns and were, instead, only allowed to post watchers with the right to be furnished certificates of votes. This rule prevents candidates from checking the accuracy and honesty of vote counts, because they do not have copies of the actual tallies and are limited to receiving regional and national aggregates.²⁷⁵ However, Republic Act No. 8045 which amends OEC Sec. 27 restores the dominant majority party's right to receive a copy of the election returns and gives another copy to the accredited citizens' arm for the unofficial count.

(7) Canvassing of Returns and Proclamation of Results²⁷⁶

The composition of the Board of Canvassers ("BOC") varies depending on the position for which votes are canvassed.²⁷⁷ Note that political parties may likewise not be represented on the BOC. At 6:00 p.m. on election day, the BOC commences the canvass of votes and shall meet everyday until the canvass is complete, adjourning only to wait for the arrival of returns. Upon completion of canvass, the BOC shall prepare a certificate of canvass and proclaim the elected officials which it is authorized to proclaim. Winning candidates must assume office within six months of proclamation or otherwise forfeit their seat. Absence of party representatives in the BOC is a serious flaw, because the canvassing stage is the most critical stage in the commission of wholesale fraud: "Since its full operation happens during the consolidation of votes at different levels, it implies that as the aggregation goes higher than the precinct or barangay level, the chances of committing wholesale type fraud and concealing it at the same time correspondingly increase."²⁷⁸

(8) Challenging Results

Mission standards agree that a procedure for challenging election results is an important aspect of the election process, because "[t]he right to a remedy for violation of human rights is itself a human right."²⁷⁹ There are three ways in which candidates may challenge the results of an election: pre-proclamation controversies, election contests, and *quo warranto* proceedings.

Any question pertaining to or affecting the proceedings of the BOC which may be raised by any candidate or any registered political party or coalition before the board

regarding election returns must be raised by any candidate or registered political party in a pre-proclamation controversy. An oral objection must be made during the canvass, and the BOC will defer and proceed to canvass other returns; the written objection must be filed with COMELEC subsequently. If it deems the petition meritorious, COMELEC may suspend or annul a candidate's proclamation; however, the right to bring pre-proclamation cases expires upon the beginning of the term of office by the challenged winner. To challenge a winner after the pre-proclamation period, the candidate or political party concerned can initiate an election contest with the proper electoral tribunal.²⁸⁰ Finally, any voter can contest an election based on the winner's ineligibility or disloyalty to the Republic of the Philippines by filing a *quo warranto* proceeding in the regional trial court.²⁸¹

5. THE ELECTION ENVIRONMENT

Although not directly referred to by the elections clause, features of the election environment, such as access to and control of media²⁸² and methods of campaigning,²⁸³ are given prominence in mission standards. The OEC regulates the election environment to protect freedom of expression, to ensure an orderly and level playing field among participants, and to prevent undue influence on voters.

Candidates may only be nominated within 165 or 75 days before election day,²⁸⁴ and partisan political activity may only be conducted during the campaign period.²⁸⁵ The OEC fixes the amount that candidates and parties may spend for campaigning,²⁸⁶ and it is an election offense to exceed such limits.²⁸⁷ Candidates must file a statement of expenses, which must be supported by receipts, with the election registrar within thirty days after election day or risk not entering into office.²⁸⁸ The OEC likewise

²⁸⁰ B.P. Blg. 881, §§ 249-260; The electoral tribunals are as follows: the Supreme Court acts as Presidential Electoral Tribunal; the Senate and the House constitute their own electoral tribunals, COMELEC for regional, provincial, and city officials; the regional trial courts for municipal officials; and the municipal trial court for barangay officials.

²⁸¹ B.P. Blg. 881, § 253.

²⁸² Fox, *supra* note 14, at 590; Appendix IV, Law Group Guidelines, *supra* note 82, at 52-57.

²⁸³ Appendix IV, Law Group Guidelines, *supra* note 82, at 52-57.

²⁸⁴ Republic Act No. 7166, The Synchronized Election Law (1991). See § 6: candidates for president, vice-president, and senator - 165 days before election day; and candidates for house of representatives and local government - 75 days before election day.

²⁸⁵ B.P. Blg. 881, § 2: campaign period for candidates for president, vice-president, and senator is 90 days before election day, and for candidates for the house of representatives and local government officials, 45 days before election day.

²⁸⁶ R.A. 7166, § 13: Candidates for president and vice-president may spend P 10.00 per voter; other candidates may spend P 3.00 per voter currently registered in their constituency; and political parties may spend P 5.00 per voter currently registered in their constituency.

²⁸⁷ B.P. Blg. 881, § 68(c).

²⁸⁸ B.P. Blg. 881, § 80.

²⁷⁵ TANCANGCO, *supra* note 198, at 58.

²⁷⁶ B.P. Blg. 881, §§ 221-240.

²⁷⁷ Boards of Canvassers are as follows: Congress for president and vice-president; COMELEC for the Senate and regional officials: provincial, district, and city or municipal board of canvassers for the House of Representatives and provincial officials, municipal officials, and city or municipal officials, respectively; and barangay board of canvassers for barangay officials.

²⁷⁸ TANCANGCO, *supra* note 198, at 60.

²⁷⁹ GOODWIN-GILL, *supra* note 57, at 80.

determines which expenditures are lawful, and these include expenses for transportation, salaries, telecommunications, and advertisements.²⁸⁹ Candidates or their relatives may not provide transportation food, or drinks five hours before and after a public meeting or on the day before as well as on election day.²⁹⁰ They may likewise not make any contributions for any structure for public use or use by religious or civic organizations during campaign period.²⁹¹

Campaign contributions, which must also be duly accounted, shall be made by a person in his name, and a report must be filed with COMELEC, also within 30 days after election day, specifying the amount of the contribution, name of candidate, and agent of the candidate or the party.²⁹² Prohibited contributions include gifts, donations, subscriptions, loans, advances, deposits of money, or anything of value, contract, promise or agreement to contribute made for influencing the results of an election.²⁹³

The OEC determines the kind of election propaganda which may be used as well as access to media during the campaign period. Lawful election propaganda which include pamphlets, leaflets, cards, decals, stickers, and written or printed materials and streamers not exceeding a certain size,²⁹⁴ must be posted, aired, or printed on COMELEC-designated poster areas or COMELEC broadcast time or print space,²⁹⁵ and must bear the name and address of payor as well as the name and address of printer.²⁹⁶ Prohibited election propaganda include gadgets like pens, gadgets, lighters, fans, flashlights, athletic goods, wallets, shirts, hats, bandannas, watches, cigarettes; however, supporters accompanying candidates can wear hats and shirts.²⁹⁷ The power of COMELEC to regulate media access can be used to ensure that all candidates, regardless of wealth, will have equal exposure during the campaign period. The potential for the administration to abuse this rule, however, is great. Marcos, for example, used it to restrict opposition access to media.

6. PHILIPPINE ELECTIONS AND INTERNATIONAL NORMS

Philippine law addresses traditional forms of election anomalies or retail fraud: detailed provisions outlaw poll violence, individual vote-buying, ballot box snatching,

²⁸⁹ B.P. Blg. 881, § 102.

²⁹⁰ B.P. Blg. 881, § 89.

²⁹¹ B.P. Blg. 881, § 104.

²⁹² B.P. Blg. 881, §§ 98-99.

²⁹³ B.P. Blg. 881, § 94(a).

²⁹⁴ B.P. Blg. 881, § 82.

²⁹⁵ B.P. Blg. 881, §§ 90-93. Newspapers, radio, and television companies may sell print space or broadcast time only to the COMELEC.

²⁹⁶ B.P. Blg. 881, § 84.

²⁹⁷ B.P. Blg. 881, § 85.

and other tried and tested means of cheating and intimidation. It is, however, disturbing that the most significant form of fraud is made possible by the structure of the electoral system itself. Safeguards to cheating are present at the voting and counting stage, but the substantial cheating takes place prior to voting, i.e., in the designation of the precincts and in registration, or after counting, i.e. at the canvassing stage. Because of their vague and broad nature, ICCPR Article 25 provides only the very basic hallmarks of genuine elections, and, under these standards, Philippine election laws comply with international law. Mission standards, being sensitive not only to election day activities but to all stages of an election process, including the election environment and the attitudes of the participants, are more helpful in assessing whether Philippine elections are indeed free and fair.

IV. TOWARDS MEANINGFUL ELECTORAL PARTICIPATION: LOCAL AND INTERNATIONAL SOLUTIONS

Although the institution of elections was introduced to the Philippines from the outside and arguably at a time when its society may not have been prepared for it, the current legal structure of Philippine elections demonstrates the Filipinos' attempt to make the institution effective despite the shortcomings of its civil society. Chapter Two described how the ability of the elite to manipulate the electoral process to perpetuate their hold on power and to effectively exclude challengers tarnished the legitimacy of elections as the means for translating popular will into public policy. Nonetheless, the long years of dictatorship impelled the Filipino people to reaffirm their commitment to democracy and to reform their democratic institutions.

Chapter Three presents a snapshot of the legal framework for political participation as it has been modified since the EDSA Revolution, discusses its strengths and flaws, but demonstrates that the structure basically complies with the elections clause, often addressing even the concerns of mission standards. The first part of this final chapter seeks to evaluate the quality of electoral participation that has since taken place within this current framework and to discuss what has been and can be done to respond to its problems from the standpoint of both domestic law and current international law. In the last part of this chapter, this writer would like to suggest approaches which may be adopted to make international norms more responsive to the problems of elite democracies such as the Philippines and to offer her reflections on how participation may be made more meaningful in the Philippines.

A. Efforts Towards Reform in the Post-EDSA Era

1. THE RECURRENT PROBLEM OF ELITE DOMINATION

After the "miracle of EDSA," there was great hope as well as real potential for broader participation. For one thing, the coalition that catapulted Cory Aquino into power represented diverse political forces, such as the military, the traditional politicians, the business elite, as well as the progressives. For another, the new Constitution tried to institutionalize "people power" by allowing marginalized sectors in society to participate in the political process and making it more possible for them to

compete with wealthier, well-established political parties. Hence, it appeared as if it would be possible for all sectors of society to be given a voice in the new government, and for a while these groups were all represented in the first Aquino cabinet. However, once rid of their common enemy, the different elements of the coalition began to shift around, as they no longer had any need to forego individual interests, and were free to compete amongst themselves. Through a succession of attempted coups, the politicized military was able to win large concessions from the Aquino government, including the firing of progressives (labeled "Communists") in her cabinet.²⁹⁸ And the post-EDSA elections clearly marked a return to pre-martial law politics.

a. "Trapo" v. Progressive Politics: *Something Old, Something New*

The overthrow of Marcos, the superpatron, allowed the traditional elites to recapture their former area of dominance - Congress. The Institute for Popular Democracy ("IPD"), established a few months after the EDSA revolt to "unravel the implications of people power,"²⁹⁹ has produced studies of the 1987 elections for Congress and local government as well as of the 1992 Congress, all of which have been useful in answering questions regarding the quality of post-EDSA electoral participation.

(1) The Return of the Oligarchs

The IPD describes the first post-Marcos Congress as "an enclave dominated by the elites" with a total of 166 congressmen, or 83% of the House, drawn from old and established political families.³⁰⁰ It is a sorry tribute to new politics that the progressive *Partido ng Bayan* party only won two out of an expected 40 seats in the House.³⁰¹ The remaining congressmen, while considered new to the political scene, were not exactly non-elites, for a number of them controlled significant economic interests.³⁰²

A more detailed study undertaken after the 1992 congressional elections attempted to describe more clearly what elite interests mean in Philippine politics. Taking note of the economic interests, family connections, and career backgrounds of the members of the Ninth Congress, "[w]hat emerges from the data...is a web of interlocking family, business, and professional connections that link the members of the House to one another and to other sections of the country's economic and political elite."³⁰³ Out of

²⁹⁸ WURFEL, *supra* note 163, at 311-318.

²⁹⁹ GUTIERREZ, FAMILY, *supra* note 7, at 3.

³⁰⁰ *Id.* at 162.

³⁰¹ *Id.* at 168.

³⁰² *Id.* at 162.

³⁰³ GUTIERREZ, TIES, *supra* note 179, at 3.

199 congressmen, 88 belong to the upper class,³⁰⁴ 98 from the upper middle class,³⁰⁵ 13 from the lower middle class,³⁰⁶ and none from the lower class.³⁰⁷ Out of these same 199 congressmen, 128 belong to the "old elite" and 71 to the "new elite."³⁰⁸ That 100% of the Ninth Congress are wealthy is not surprising, for "since the 1898 Malolos Congress, wealth has been one of the most distinctive characteristics of Filipino legislators. Spanish-speaking ilustrados and landowners monopolized seats in the legislature throughout the late Spanish and American colonial periods."³⁰⁹

What is different in the composition of the Ninth House, as compared to the pre-martial law Houses, is that there is greater diversity in the sources of wealth. While 132 congressmen have interests in land and agricultural enterprises, landholding is no longer the major source of wealth. In fact the most prominent legislators are business tycoons and industry leaders with 45 owning interests in real estate, 50 in trade and retail, 17 in logging, 14 in mining, and 18 in construction.³¹⁰ In addition, a significant portion of the House is recruited from an upwardly-section of the middle class: "these men and women were schooled in the best universities, they developed connections to the wealthy and powerful, and were in the government bureaucracy or the law profession prior to their election to Congress."³¹¹

The economic interests represented by these congressmen often have a significant bearing on their policy preferences and is "one of the most formidable obstacles that block genuine democratization from being implemented in the country."³¹² For example, the House has reduced the democratic impact of two popular legislations, notably, that implementing comprehensive agrarian reform and that providing for the effective participation of people's organizations in the executive department.³¹³ The Philippines' need for agrarian reform cannot be overemphasized. In Chapter Two, this writer pointed out that the Filipino people's attitude towards electoral politics was shaped largely by the situation of economic dependence that existed between landlord and tenant as early as the Spanish times, and that this economic dependence was brought about by the vastly unequal distribution of land ownership. Admittedly, land is no longer the only source of wealth for the traditional elites, as they have since branched out to other

³⁰⁴ *Id.* at 36. Upper class includes those owning controlling interests in major businesses, landowners with more than 100 hectares, or those with a net worth of over P 10 million.

³⁰⁵ *Id.* Upper middle class includes established professionals, lawyers with several years of practice, rural and commercial bankers, owners of import-export wholesale or large retail businesses, and landowners with 20 to 100 hectares.

³⁰⁶ *Id.* Lower middle class includes white-collar or skilled workers, lawyers with two to three years of practice, first level supervisors, retail businessmen with few employees, landowners with less than 30 hectares.

³⁰⁷ *Id.* Lower class includes unskilled or semi-skilled laborers, businessmen without employees, tenant farmers, owner cultivators without tenants.

³⁰⁸ *Id.* at 35.

³⁰⁹ *Id.*

³¹⁰ *Id.* at 5-6.

³¹¹ *Id.* at 5.

³¹² GUTIERREZ, FAMILY, *supra* note 7, at 4.

³¹³ *See id.*

economic activities. Nonetheless, land is still the most significant source of wealth for the elites in Congress and arguably remains a source of political power in their constituencies. Meaningful agrarian reform, therefore, remains an urgent and much-needed measure in order to increase the poor's capacity for economic independence, in the short term and, in the long term, to effect a fundamental change in the attitude of the poor towards the elites, a manifestation of which is shown in the conduct of electoral politics.

(2) Alternative Politics

This is not to say that the comeback of traditional politics has been total or complete. Current trends in local government, senatorial, and presidential elections show that candidates not belonging to old political clans or not supported by established political machinery have won public office and have changed the character of Philippine elections.

In local government, results of the first post-Marcos local elections in 1988 follow the same general trend of elite predominance but to a much lesser degree, for out of 351 elected local officials, a total of 201, or 56.1%, were members of established political clans.³¹⁴ This trend has continued even during the 1992 and 1995 elections.³¹⁵ While alternative politicians only won two seats in the House in the 1987 elections, they met with greater success at the local government level. It has been observed that

it is at the local government level, both sanggunian and mayorality/governorship that new non-traditional entries seem to have better chances of winning. Perhaps because the stakes are not so high, so that the conservative clans do not feel the need to gang up on them. Perhaps because at that scale the emerging alternative constituencies and candidates have more than sheer principles and programs, but also enough power (constituency, machinery, and finances) to make a difference.³¹⁶

Victories by alternative politicians at the local government level must, however, be studied more closely to determine whether non-traditional sectors have indeed been able to penetrate elite domains. In her study of electoral participation by non-governmental and people's organizations in Cebu, Negros, Davao, Samal, and General Santos City, Ana Maria O. Clamor notes that NGO's and FO's in Cebu, Negros, and Davao actually fielded candidates from the progressive elites or even turncoats from the Marcos regime. In General Santos City, the NGO candidate who won as mayor eventually practiced the same brand of traditional politics to stay in power. Only in one place - Banwag in Samal Island - may it be said that the participation in the electoral arena was purely a grassroots initiative, with the candidate coming from the ranks of the electorate. Note, however, that the Banwag elections were held for the position of barangay captain, and when the same candidate tried to run for vice-mayor

³¹⁴ *Id.* at 163.

³¹⁵ Keith B. Richburg, *Messy Philippine Election Reaffirms President's Agenda*, WASHINGTON POST, 26 May 1995, quoting Randy David, sociology professor, University of the Philippines.

³¹⁶ GUTIERREZ, TIES, *supra* note 179, see *Foreword* by Edicio de la Torre at ii (1994).

in the next local elections, he lost.³¹⁷ Nonetheless, the effect of NGO and PO electoral participation should not be discounted, for it "helped elevate the quality of electoral campaigns by drawing attention away from mere personalities and political intrigues to issues, programs, and platforms."³¹⁸ Likewise, one should view their victories from the perspective that prior to the EDSA revolution, NGO's and PO's did not participate in electoral politics.³¹⁹

But more encouraging than the trend in local elections, the traditional bastion of the old political clans, is the trend in national elections. Parenthetically, however, note that the character of national politics has always differed from that of local politics since the Spanish times. Beginning with the 1992 elections, a new breed of leaders have led the race for national office. While he had the most extensive political machine, Speaker Ramon V. Mitra was hurt by popular backlash against the traditional politicians ("trapos") and landed a sorry fifth place. Topping the list were candidates who had no previous electoral experience, namely, eventual winner Fidel V. Ramos, who actively sought NGO support and described his political campaign as one whose basic policy was to alter "the political culture based on patronage and power brokering,"³²⁰ and Miriam Defensor-Santiago, a former judge who campaigned, notably without a political organization, on a tough anti-corruption platform and was supported by a strong youth constituency.³²¹ The surprising results of the 1992 presidential elections has been attributed in part to the undermining of the "traditional role of political clans...by market³²² and media."³²³ This trend towards new politics have been reinforced by the results of the May 1995 elections which have been described as signaling

a generational change in Philippine politics, with some traditional and long-serving political veterans tossed out or struggling to win seats as the final votes are counted. A younger generation of Philippine voters seemed to favor relative political novices who have made their names as economists, technocrats, businessmen, or competent managers of government departments in the nine years since the fall of dictator Ferdinand Marcos.³²⁴

³¹⁷ See ANA MARIA O. CLAMOR, *NGO AND PO ELECTORAL PARTICIPATION: DOCUMENTATION AND ANALYSIS* 69, 107 (1993).

³¹⁸ *Id.* at 105.

³¹⁹ GARCIA ET AL., *supra* note 193, at 1-2 (1993).

³²⁰ Associated Press, *Ramos's Lead Lengthens in Philippines: Challenger Fast, Claiming Vote Fraud*, THE WASHINGTON POST, 24 May 1992, p. A49.

³²¹ William Branigin, *Washington Post Foreign Service, Filipino Warns Against Election Fraud, Presidential Candidate Says She Would Urge Civil Disobedience*, THE WASHINGTON POST, 15 May 1992, p. A28.

³²² GUTIERREZ, TIES, *supra* note 179, at i-ii. "Market" is defined by Edicio de la Torre as voters not committed to power brokers and clans.

³²³ *Id.* See *Foreword* by Edicio de la Torre, at ii.

³²⁴ Richburg, *supra* note 315.

Among those cited as examples of this new breed of politicians are economist Gloria Macapagal-Arroyo, former justice Secretary Franklin Drilon, and former Health Secretary Juan Flavio. Indeed, since 1992, there have been

[n]ew entries into the race, and even new reasons for winning. Not overwhelming, for sure, and not enough to change the basic composition and character of our would-be representative structures, but signs of change nonetheless. Even the efforts by politics to coopt the label of "new politics" and to be defensive about being a "trapo" are indicators that some shift is happening at least in their perception of the electorate.³²⁵

b. Local Solutions

Beginning 1993 and through the efforts of COMELEC chairman and former NAMFREL chief Christian S. Monsod, the COMELEC has commissioned various studies³²⁶ of the Philippine electoral process and designed a comprehensive plan of modernization called "Operation Modernization and Excellence," or "Operation Modex." A fundamental step of this effort is legal reform; hence, the comprehensive and far-reaching proposals of COMELEC, which encompassed both technical and substantive issues in the electoral process, were embodied in a bill filed with both houses of Congress in September 1993.³²⁷ Although certified as priority and urgent legislation by President Fidel V. Ramos, the proposed new Election Code of the Philippines ("PNEC") did not pass. Christian Monsod lamented, on the eve of his last day as COMELEC Chairman, that "our electoral reforms are dead in the water." In language that could also be used to describe the fate of agrarian reform legislation in Congress, Christian Monsod sums up the COMELEC's experience with Congress in working towards electoral reforms:

We at the COMELEC thought that if we worked hard for two years, starting with a self-assessment of our shortcomings and our primitive election system that is prone to error and fraud at every step of the way, if we re-studied 15 election laws and the constitutional provisions that have not been implemented and tried to integrate everything into one user-friendly election code and then gave Congress 14 months to debate and hopefully pass it; if we secured a grant from the UNDP, took on international consultants and local experts to tell us about the available technologies in the world today and the systems that are best suited to Philippine conditions; if we sent an observation team to the United States to see how these systems work and invited leading companies to competitive bidding; if we sent our own people to Romania, Russia,

Cambodia, Mozambique, and Mexico to help in their elections, as well as gain insights on how to improve our own; if we received a promise from no less than the three highest elective officials in the country, after consultations with multisectoral groups, that a minimum of eight priority bills would be passed; was it reasonable for us to expect that the laws to finally reform and modernize the election system would see the light of the day for the 1995 election?³²⁸

Thus, Monsod concludes:

The lesson in advocacy is that it is not enough for your proposals to be meritorious, or for them to be an implementation of constitutional provisions. It is not enough to secure three certifications from the President - one as priority and two as urgent legislation - to secure passage of electoral reform laws...In Congress, one cannot propose a law that is perceived as going against the interest of any legislator. For there is an unwritten rule that legislators defer to their peers even when they have personal axes to grind, unless of course the interest of another legislator is at stake. And with electoral reform, there is really no one who is actively FOR it, regardless of their public pronouncements...It is essentially a reactionary Congress which tends to dislike anything new. They would rather stay with a system they already know than with a new system that some privately admit will force them to think of new ways of cheating which they are not even sure will work with the modernized safeguards.³²⁹

What happened, instead, was that the mother bill was broken up into its component issues in order to be tackled as separate bills. This section will discuss the fate of a number of substantive reforms. A later section shall tackle the fate of technical reforms.

Of the substantive electoral reforms pending in Congress, one which has been watered down considerably is the anti-political dynasty bill which implements Art. II, Sec. 26 of the Constitution. Under PNEC Sec. 115, persons related to each other within the third civil degree of consanguinity or affinity cannot hold elective offices simultaneously or the same office successively in a region, legislative district, province, city, municipality, or barangay. Spouses include both legal and common law partners. The bills presently pending in Congress, however, cover only the legal spouse, as opposed to common law spouses, and relatives within the second, instead of the third, civil degree of consanguinity or affinity of an incumbent elective public official. These relatives cannot: (1) hold or run for elective office simultaneously with an incumbent elective official within the same province; or (2) occupy the same office immediately

³²⁵ GUTIERREZ, TIES, *supra* note 179, see *Foreword* by Edicio de la Torre, at i.

³²⁶ See Study prepared by Marie Garber, Consultant in Election Administration (June 1993); Information Systems Planning Study for the COMELEC, prepared by Andersen Consulting, Philippine Computer Society, and the National Economic Development Authority (July 1993); and Technical Assessment of the Philippines Electoral System, prepared by the International Foundation for Election Systems (July to August 1995).

³²⁷ Called "The Proposed 1993 Election Code," the bill was filed as Senate Bill No. 1427 (later as S.B. Nos. 1429, 1450, 1472, and 1679) in the Senate and House Bill No. 10911 in the House of Representatives [hereinafter PNEC].

³²⁸ COMELEC and Meaningful Change: Unrelenting Advocacy and the Use of the Ballot, Response Delivered by Hon. Christian S. Monsod, Chairman, Commission on Elections, during A Tribute to Christian S. Monsod, Hotel Inter-Continental, Makati, Metro Manila, Philippines, 13 February 1995.

³²⁹ *Id.*

after the relative-incumbent's term of office; or (3) run simultaneously for elective public office within the same province, even if neither is related to an incumbent elective official.³³⁰

A large number of proposals for substantive reforms pertain to the use of pork barrel and access to media during elections. One provision proposed in the PNEC but not revived in any of the piecemeal bills currently pending in Congress is that which would require any mass media reporter or correspondent (in addition to columnists, commentators, announcers) who is a candidate, campaign volunteer, or retained or employed in any capacity by a candidate to take a leave of absence from work in media from the beginning of the campaign period up to election day.³³¹ One which was revived, however, would prohibit any person to show, air, print, during election period any movie, film, television or radio program, advertisement, commercial, or material featuring, involving, or written by a candidate, other than legitimate election propaganda.³³² Some proposals, however, seek to liberalize current rules regulating access to media.³³³ One would allow political parties and candidates to buy air time or print space directly from media, giving COMELEC only the right to approve the ads and requiring media to donate to COMELEC time or space equivalent to 10% of its gross receipts for the latter to devote to candidates who have not purchased time or space or for voter education and information campaign. Another would render obsolete the requirement that election propaganda be posted only in common poster areas by allowing parties or candidates to post in private spaces, with permission of the private owner, or in public places, upon paying a fee. These proposals, rather than leveling the playing field, would again tilt the balance in favor of candidates or parties with greater resources or better connections, and represent a step backward in the efforts towards electoral reforms.

c. International Solutions

While mission standards consider elite domination a significant factor in assessing whether an election is genuine, elite rule, *per se*, is not repugnant to international law. Professor Franck concedes that "traditional elitism" is one of several examples of factors for which majoritarian preferences may be set aside³³⁴ and notes that "[a]n elite deference still perpetuates both Britain's House of Lords and our [America's] electoral college."³³⁵ Perhaps traditional elitism may not have stifled popular preferences in other societies, but in the Philippine context, the elite have systematically excluded various sectors in society from taking part in government and

³³⁰ See, for example, two anti-political dynasty bills: House Bill No. 2692, filed by Rep. Egmidio S. Tanjuatco, Jr. and House Bill No. 3584, filed by Rep. Alfredo E. Abueg, Jr.

³³¹ PNEC § 129 (2).

³³² See PNEC § 129(3) and House Bill No. 3988, filed by Rep. Narciso Monfort.

³³³ See similar proposals in House Bills Nos. 166 (Rep. Alfredo E. Abueg, Jr.), 202 (Reps. Miguel Romero and Jose de Venecia), 1196 (Rep. Erico B. Aumentado), 1586 (Rep. Manuel Roxas), and 3037 (Rep. Narciso Monfort).

³³⁴ Other factors being stability and continuity, history, geography, and ethnicity. See Franck, *Democratic Entitlement*, *supra* note 9, at 6.

³³⁵ *Id.*

have appropriated the people's right to influence the conduct of public affairs by buying or coercing their votes. Even if they have popular support, the elites in Philippine government represent not their constituencies' interests but their own or that of their constituencies' only in so far as these are consistent with their own interests, but as long as they are elected in free and fair elections, it seems that they are beyond the reach of international scrutiny.

2. THE VOTE AS COMMODITY

a. Retail Fraud

Chapter Two described how broadening the franchise, at a time when the great majority of Filipinos were economically dependent on patrons, did not translate into greater democracy. Giving the ordinary citizen the vote only gave them another commodity by which to repay debts owed to their patrons. With the erosion of the patron-client network came the selling of the vote and, hence, the proliferation of retail fraud. This writer believes that there is some failure on the part of Filipino electorate to appreciate the meaning and power of the vote. At the core of it is the basic understanding that the vote is a means to improve one's lot but how that improvement is achieved is very different from that intended by the democratic process. Using the vote as commodity or currency leads to short-term individual deals struck with politicians. Once the vote is parted with, the politician who wins is free to pursue his own agenda in government. The constituents' concerns are never elevated to the level of government policy, because these are met by the politician individually who shares with his supporters the largesse he is able to access through his office.

b. Local and International Solutions

It is doubtful whether local laws can be made any more responsive to retail fraud. At this stage, the problem is probably one of enforcement;³³⁶ hence, it is in deterring retail fraud that vigilance, whether by domestic or international monitors, would be most effective. In the long term, perhaps the solution lies in voter education. Voter education for this writer is not confined to merely informing voters of the location of polling sites and voting procedures, but ought to include efforts to strengthen civil society by raising voter consciousness on the meaning of the vote, on their role in the democratic process, and on the power of democracy. In this area, local and international NGO's, with their expertise and experience, can make and have made effective contributions.

³³⁶ Haydee Yorac, *Prospects of Electoral Reforms: Philippine Experience* 162, 166 in Garcia, Macuja, and Tolosa, *supra* note 193, at 162, 166.

3. THE SYSTEMATIC RIGGING OF ELECTIONS

a. *The Problem of Wholesale Fraud*

More subtle yet more serious than retail fraud, however, is "wholesale fraud," for its potential exists throughout the structure of Philippine election laws. By designing the law to centralize election administration in a COMELEC which he controlled and by removing party representation from all stages of the electoral process, Marcos was able to build into the law "a blueprint for fraud" and structurally rig elections. As discussed in the previous chapter, the following features of Philippine election laws "contribut[e] to a 'sanitized' operation of manipulating the final count":³³⁷ (1) the hasty and disorganized registration process; (2) the failure to maintain permanent precincts; given the unlimited discretion of COMELEC to create precincts; (3) the procedures for the preparation of accountable forms and other election paraphernalia and lack of access to the electorate at this stage; and (4) the abolition of party representation in the Boards of Election Inspectors and Canvassers. What is both disturbing and ironic is that the potential for wholesale fraud continues to exist in the post-EDSA era, because the structures which allowed wholesale fraud during the Marcos regime have not been removed from current election laws.

b. *Local Solutions*

Among the technical reforms identified as necessary by Tancangco and contained in the PNEC, the most significant proposals which are either currently being considered in Congress or are already being pilot-tested by COMELEC are computerized and continuous registration, the computerization of the procedures for voting, counting, and canvassing, and the preparation of accountable forms, which are considered "the heart of the COMELEC's modernization program."³³⁸

(1) Computerized and Continuous Registration³³⁹

Whereas voter registration used to be held periodically, usually a few days before a scheduled election, current proposals would make registration continuous and computerized. On any given day, citizens who will have turned 18 or will have resided in a locality at least six months by election day, may register in the office of the election officer by filling out a registration form. The application will be set for hearing and notices of this hearing as well as copies of the application shall be sent to all heads or representatives of political parties who may appear to contest the applicant's eligibility. If his application is approved, the applicant shall be given a voter's identification card. No registration shall be allowed between 45 to 90 days before scheduled elections, and the certified list of voters must be posted between 60 to 75 days before an election and furnished to provincial and central files as well as to political parties, upon the

³³⁷ TANCANGCO, *supra* note 198, at 61.

³³⁸ See IFES Report, *supra* note 214, at 24.

³³⁹ See PNEC § 152-183; House Bill Nos. 1213 (Rep. Edgar R. Lara), 1254 (Rep. Erico B. Aumentado), 4136 (Rep. Edcel C. Lagman), and 4952 (Rep. Egmidio S. Tanjuatco, Jr.).

latter's payment of fees. This procedure represents a significant improvement over current procedure and gives COMELEC enough time to verify the identities and qualifications of voters, to clean up voter's lists by striking out those who have died or been convicted, and generally, to make sure that the number of voters is accurate. Computerized registration shall be pilot-tested for the March 1996 elections of the Autonomous Region of Muslim Mindanao ("ARMM").³⁴⁰

(2) Computerizing the Voting, Counting, and Canvassing Process

For the first time in the history of Philippine elections, computerized voting, counting, and canvassing shall be used in ARMM elections. Voters shall no longer manually write out the names of their chosen candidates but shall mark their ballots in such a way that the machine can read them. After the close of elections, ballot boxes shall be locked and sent to municipal counting centers where votes shall be counted continuously in the order at which the ballot boxes arrived. The ballots shall then be hand-fed to optical readers with memory packs, each pack having the capacity to read results of ten precincts, and these packs shall be read into a personal computer and tabulated. The central processing unit will be programmed to receive diskettes with precinct results to further cumulate the vote totals for the entire region for the canvass. It is hoped that this new procedure will not only speed up the notoriously slow election process but will also minimize wholesale cheating by making it more difficult for BEI personnel to misread ballots, to tally the votes incorrectly, or to tamper with election returns and certificates of canvass.

(3) Preparation of Accountable Forms

Under the law governing the pilot test of the March 1996 ARMM elections, only the National Printing Office or the Bangko Sentral ng Pilipinas can print the ballots and other accountable forms. Ballots shall be watermarked for security, and serial numbers shall be printed on the stubs. Because of the new voter registration process, the number of ballots to be printed can be based on actual voter count rather than estimates; hence, the ARMM law provides that ballots shall be printed in quantities not to exceed 100% (or a ratio of one ballot per one voter) of registered voters in a polling place. Again, this addresses concerns pointed out by Tancangco and discussed in Chapter Three.

While the institution of technical reforms will address age-old problems in the administration of elections and is definitely a good sign for Philippine democracy, merely changing the procedures will not reform the character of Philippine politics. For, as even the expert consultants note, "[w]ithout a change in cultural values and political structure, it is reasonable to expect that any change in technology or administrative practice will result in a predictable, but unknown, shift to new or different fraudulent practices."³⁴¹

³⁴⁰ See Republic Act No. 8046, Pilot Test of Computerization Effort for the ARMM (Autonomous Region of Muslim Mindanao) Elections in March 1996 (June 2, 1995).

³⁴¹ See IFES Report, *supra* note 214, at Appendix on Fraudulent Electoral Practices.

c. International Solutions

The elections clause provides no guidance in the attempts to deal with the technical issues of wholesale fraud. Nonetheless, mission standards pay close attention to the structure of election laws, the independence of election administration, and the conduct of the entire electoral process and are, therefore, more fine-tuned to apprehend the flaws of the Philippine electoral system. Moreover, INGO's with technical expertise in election systems have been most helpful in modernizing the primitive Philippine electoral process. COMELEC has sought the assistance of international experts such as Marie Garber, Andersen Consulting, and the International Foundation for Election Systems to assist them with Operation Modex.

B. The Right to Political Participation in an Elite Democracy

1. THE NEED FOR GREATER SPECIFICITY OF INTERNATIONAL STANDARDS

As stressed repeatedly throughout this paper, ICCPR Article 25 is of little use to the assessment of the genuineness of elections held in elite democracies. At best, it is helpful in distinguishing an authoritarian situation from a non-authoritarian situation. Only Marcos-era electoral exercises, which were not periodic and were characterized by blatant and centralized cheating, could be said to violate ICCPR Article 25. Short of that, however, the elections clause seems irrelevant.

a. Fleshing Out the Norms

In Chapter One, this writer noted that the long tradition of election monitoring by the international community has generated mission standards with core features identical to the elections clause but with greater detail. Certainly, examining Philippine electoral law and participation in the light of mission standards yielded more useful and pertinent conclusions.

This writer, therefore, agrees with Professor Fox's proposal in Chapter One that mission standards be viewed as an additional source by which the elections clause could be informed, concretized, and enriched. Election observing and monitoring missions have heretofore been *ad hoc* and, consequently, inapplicable to UN member states and ICCPR signatories at large. To start with, guidelines of missions sent by the United Nations to ICCPR signatory states ought to make formal reference to ICCPR norms. In the same way as the ICCPR Committee has prepared General Comments expounding on the meaning and implications of ICCPR provisions, it could perhaps also issue a General Comment on Article 25 and use mission standards as a source of interpretation and elucidation. Apart from elaborating the treaty norms, mission standards could, as suggested in Chapter One, also be viewed as a form of state practice which could inform the development of customary international law on free and fair elections in a process parallel to the elaboration of ICCPR Article 25.

b. A Goal-Oriented Assessment

The Philippine experience illustrates how a system with all the hallmarks for free and fair elections nonetheless can still fail to achieve the goal of facilitating meaningful political participation by the citizenry. The lack of correspondence between institution and practice, and between the intention underlying the electoral system and the private reasons motivating participants within the structure, suggests that perhaps one should look beyond a procedural evaluation of elections. As Professor Steiner explains:

Elections serve a variety of purposes for both the voters and the polity Scales calibrated to different values would weigh different phenomena, or give varying weights to phenomena like elections. It is not then sufficient for a believer of political participation simply to urge "more," an urge indeed felt by all theorists of democracy. Rather, an advocate must address underlying questions: *what type of participation, by which groups or classes or interests, through what institutional arrangements, for what individual or collective purposes, with what likely consequences?*³⁴²

To a certain extent, mission standards address these underlying questions, because they are goal-oriented and contextual. Goodwin-Gill characterizes the right to political participation as an "obligation of result":

States undertake to achieve a specific result, but enjoy substantial choice of means in determining which path they will follow to reach the internationally required objective. Whether a State has fulfilled an obligation of result depends [not only] the means chosen for implementation, but also on what actually happens in practice³⁴³

By scrutinizing a state's election law, election administrators, the registration and regulation of candidates and parties, voter quality and attitudes, the political campaign and the election environment, the entire procedure for voter registration, voting, counting, canvassing, and proclamation of results, among others, mission standards reflect the importance of evaluating the responsiveness of chosen means and actual practice to the goal of political participation. In deciding whether a rule or practice violates international law, principles of reasonableness or proportionality are applied to determine whether the rule bears a reasonable relation to the goal.³⁴⁴

Moreover, mission standards display a sensitivity to historical context. If the ultimate aim of human rights law is to ensure that the internationally protected rights of all peoples within their particular societies are protected, then international law cannot ignore the long-standing, deeply undemocratic tendencies in a society like the Philippines and confine its scrutiny to a superficial examination of the conduct of elections that "democratizes" these tendencies. Professor Yves Beigbeder concludes that on the basis of recent experience gained by the United Nations,

³⁴² Steiner, *supra*: note 20, at 98-99 (italics supplied).

³⁴³ GOODWIN-GILL, *supra* note 57, at 7 (alteration in original).

³⁴⁴ See *id.* at 28; Commentary to Guideline VA.2, Law Group Guidelines, *supra* note 82, at 33.

it appears unrealistic and counterproductive to limit strictly the purposes and duration of a U.N. election-monitoring operation. As evidenced by the Haitian case, the continued involvement and intervention of the U.N. in various forms, after the coup, proved necessary and hopefully effective. While the U.N. does not have the necessary resources to improve significantly, on a long-term basis, the political, economic, and social conditions in a country, nor to eradicate the deep roots of internal conflicts, its short- or mid-term assistance and monitoring may be sufficient to prevent or resolve post-electoral conflict.³⁴⁵

For the long-term, however, evaluation of elections must perhaps be evolve a more purposive approach. This writer suggests that elections could be viewed as a "thermometer reading" of what stage a state is at in its historical progression towards greater representation of the diverse interests in that society and, ultimately, of how well these elections signal greater achievement of the overall aims of international human rights law. Goodwin-Gill writes:

From an international law perspective, what counts is what finally results, and a tradition of free and fair elections must be maintained and consolidated over the long-term. To this extent, election obligations and the goal of representative democracy have a *programmatic* dimension, anticipating progress in building democratic institutions, strengthening the confidence of the people in the democratic process, and leading to better and more democratic government.³⁴⁶

2. REFLECTIONS ON PHILIPPINE DEMOCRACY

By studying the form and practice of Philippine elections, this writer sought to gain a better understanding of the nature of Philippine democracy. Elections provide the best view into this phenomenon, because it is undoubtedly the primary means by which Filipinos participate in public life. Running Philippine elections through the checklist of the elections clause and mission standards was interesting not because it revealed the almost obvious conclusion that Philippine elections more or less complied with international standards, but, rather, because the exercise unveiled areas that the norms could not reach. The inadequacy of elections clause criteria to apprehend the real ills of the Philippine electoral system nonetheless shed light on the nature and distribution of political and economic power as perhaps the underlying explanation for the venality of Philippine political culture. In this reflection, viewing the Philippine experience in terms of some democratic theory has been helpful and enlightening.

Robert Dahl writes that a core justification of democratic theory is the equality of the individual. Equality can be weak, as seen in the idea of intrinsic equality which translates into principle that interests be equally considered,³⁴⁷ or strong, as

³⁴⁵ BEIGBEDER, *supra* note 12, at 185.

³⁴⁶ GOODWIN-GILL, *supra* note 57, at 84.

³⁴⁷ See ROBERT DAHL, *DEMOCRACY AND ITS CRITICS*, Chapter 6, 83-96 (1989).

demonstrated by the idea of personal autonomy which assumes a substantial portion of adults are qualified to govern themselves.³⁴⁸ In a democracy, the collective process of decision-making is oriented around this idea of equality; thus, in his criteria of a democratic process, equal opportunity pervades all stages - from the expression of preferences ("effective participation", to the actual voting "voting equality at the decisive stage"), to the discovery and validation of the choices to be made ("enlightened understanding"), and to the setting of the agenda ("control of the agenda").³⁴⁹ One objection to this emphasis on equal opportunity - and one which resonates loudly in the Philippine experience - is that it "can be reduced to nothing more than formal or legal requirements that ignore important differences - in resources, for example."³⁵⁰ Dahl explains that the objection "draws its force from the familiar fact that influence is a function of resources, and typically resources are unequally distributed."³⁵¹

Reflecting on Philippine political history with the aid of these general points, one can better appreciate why, despite having democratic structures and non-discriminatory requirements for participation, there is in the Philippines a strong tendency towards guardianship. Dahl describes guardianship below:

In this view, the notion that ordinary people can be counted on to understand and defend their own interests - much less the interests of the larger society - is preposterous. Ordinary people ... are clearly not qualified to govern themselves. The assumption by democrats that ordinary people are qualified ... ought to be replaced by the opposing proposition that rulership should be entrusted to a minority of persons who are specially qualified to govern by reason of their superior knowledge and virtue.³⁵²

On the one hand, the tendency of the masses to relinquish leadership to the more educated members of society was apparent even during the Spanish times. Recall how, after having started the revolution, Aguinaldo and his peasant army had the opportunity to craft institutions and policies reflecting their concerns but relinquished control of the movement to the *ilustrados*. On the other hand, *ilustrados* like Sergio Osmena believed that they were "trained for leadership of [their] less fortunate countrymen...[and] never questioned [their] right to rule in their name."³⁵³ In Dahl's terms, both the Filipino masses themselves and the *ilustrados* believed that the ordinary Filipino has no personal autonomy.

The role that education plays in Philippine political leadership cannot be overemphasized. All throughout Philippine history the catalysts for change have come from the educated, enlightened, yet excluded segments of society which felt

³⁴⁸ See *id.* at Chapter 7, 97-105 (1989).

³⁴⁹ See *id.* at Chapter 8, 106-118 (1989).

³⁵⁰ *Id.* at 114. The other objection is that an opportunity to act to do something is that it implies that one might choose not to act.

³⁵¹ *Id.* at 115.

³⁵² *Id.* at 52.

³⁵³ Cullinane, *supra* note 107, at 103.

entitled to and capable of participating in governance. Education, however, usually becomes accessible if there are sufficient economic resources. Note that the rise of the *ilustrado* class in the 19th century can be traced to the economic prosperity enjoyed by the native agricultural elite. Conversely, the *absence* of education and economic prosperity could also help to explain the "vote as commodity" phenomenon. Aside from engendering disbelief in personal autonomy, lack of education also contributes to the failure to appreciate the meaning and power of the vote. Economic dependence, apart from making education inaccessible, exacerbates the need to barter the vote for individual benefit.

Regardless of how the idea and institutions of democracy were introduced to Philippine soil, the EDSA revolution demonstrates that democracy has sunk deep roots into Philippine political culture over the years. The current task, perhaps, is to reflect on how this Filipino democratic tradition can be strengthened, given the historical interaction between democratic theory and institutions with Philippine culture. It would be simplistic and self-defeating to propose that the Philippine government redistribute economic resources to allow the ordinary Filipino to have access to education and, ultimately, to leadership. One can hardly expect elites in power to initiate the very change that could oust them from power.³⁵⁴ Hence, legislative reform alone would not provide an answer; in the field of elections, such reforms have in fact become commonplace.³⁵⁵ Short of proposing total revolution, this writer advocates instead strengthening and improving engagement, i.e., "taking part," in public life. In "thick democracy," perhaps, lies the hope of Philippine politics. For just as the *ilustrados* of the Propaganda Movement enlightened the masses about the abuses of the Spanish regime and the students successfully lobbied for the passage of the law calling for the 1970 Constitutional Convention despite resistance from Congress, NGO and PO-led mass action prepared the way for EDSA, so have NGO's and PO's as well as a strong youth vote in post-EDSA electoral exercises forced traditional politicians to re-examine their old campaign habits. This is consistent with Professor Steiner's observation that "[i]n liberal democracies, most political participation stems from the initiatives of individuals or of institutions that are not formally part of government."³⁵⁶ By analogy, a comparison could be drawn to the success of non-state actors in the international community to push the human rights and environmental agenda despite state resistance.

The vehicles for "pressure politics" in the Philippines have included not only independent workplace and community organizations such as labor unions, but, significantly, the church. The Filipino church has assumed two incarnations in

³⁵⁴ See Steiner, *supra* note 20, at 85.

³⁵⁵ *Id.* at 110.

³⁵⁶ *Id.* at 109.

Philippine history: the first as a reactionary, corrupt beneficiary of the status quo, and the second, as educator and organizer of the oppressed. During the Marcos years, for example, the Basic Christian Communities movement in rural villages "not only brought new awareness of the faith to the peasantry but related that faith to everyday problems."³⁵⁷ And lest we forget that it was Cardinal Sin's plea to protect the defecting soldiers that the Filipino people responded and streamed to EDSA. Hence, the potential of church-based organizations as vehicles of political participation is great. The state, however, has been wary of the tremendous influence of an overly politicized church; hence, religious sects may not register as political parties,³⁵⁸ ecclesiastics cannot run for public office,³⁵⁹ and there are proposals to prohibit the use of the pulpit to campaign for candidates supported by the Church to avoid "undue ecclesiastical influence."³⁶⁰

Vehicles aside, this writer believes that improving the quality of non-electoral participation in the Philippines has yielded - and will continue to yield - slow yet significant results that will eventually translate into meaningful participation at the polls. And perhaps with the greater experience gained by victorious people's groups at governance, the eventual reform of Philippine political structures will someday be achieved. On a more general level, the quality of non-electoral participation could also provide a backdrop or a context against which the quality of electoral participation can be assessed and taking both modes of participation together would provide a clearer picture of how well the citizens' right of political participation is being ensured. After all, it was a militant citizenry that transformed what could have been just another sham presidential election of the Marcos era into an affirmation of the electoral process as the foremost way in which leaders gain legitimacy to rule, and the true miracle of EDSA is that it demonstrates to the Filipino that he possesses the social and moral resources needed to effect the kind of reform that will result in truly meaningful political participation and in a truly democratic society.³⁶¹

³⁵⁷ WURFEL, *supra* note 153, at 261-262.

³⁵⁸ See PHIL. CONST. Art. IX-C, § 2(5).

³⁵⁹ Act No. 2711, Revised Administrative Code of the Philippines, § 2175 (1917) (as amended).

³⁶⁰ PNEC § 124.

³⁶¹ Kerkviet and Mojares, *supra* note 177, at 5.