

The Dynamics and Processes of Writing the 1987 Constitution

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The process of framing the 1987 Constitution illustrates a close relationship between constitution-making and economic class interests. This is also true when the 1899, 1935 and the 1973 Constitutions were still being framed, if one would consider the visible as well as the "invisible" forces that influenced the decisions of many of the Commissioners and the ideological foundations of the political dispensation. Notwithstanding such an occurrence, the new Constitution contains saving features that can usher the country forward.

Introduction

It is an understatement to say that writing the fundamental law is a very serious responsibility because the final output will affect millions of lives. It must be a document that should find its application not only on the present generation but on all the generations to come.

Ideally, the Constitution must reflect the interests, needs and aspirations of the people. But it had been discovered in the initial stages of deliberations that varying interests represented by the drafters themselves colored their perceptions of what was the common good. In time, it became clearer that the supreme law of the land was to be a product of compromises—an accommodation of the interests articulated by the framers whose world-views were shaped by their social backgrounds and, if we may dare say, their self-interests. As in most cases where the majority of framers came from the establishment, the guardians of the status quo conspired to maintain the existing arrangement of forces and resources in society.

Needless to say, everyone in the Commission was particularly conscious of his place in history. His sense of patriotism was sharpened, the words he used were carefully selected, considering that he was being closely watched by the public and his performance would be irrevocably recorded in the annals of constitutional history. To whom would he be likened? To the elitist delegates of the Malolos Congress who were later sold out to the new colonialists, or to Mabini and the few other delegates who had the welfare of the people at heart?

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But while every Commissioner's consciousness of his historic role was strong, the centrifugal forces of the predominant social structure were, for many, even stronger. For how could one just sign away his huge landholdings and shares of stocks? How could he afford to antagonize his multinational clients? Would he allow the activists, who were not even lawyers, to have their way, without even giving a fight?

At no time in the history of constitution-making in this country have the dynamics been so ideologically oriented, even if most of the Commissioners themselves were unaware of it. The 1934 and the 1971 Constitutional Conventions were mainly concerned with political issues. In contrast, the heightened consciousness of the eighties was reflected in the fierce debates that took place in the Batasan session halls from June to October 1986. The ideological division was particularly evident in the heated discussions about the role of foreign investments, the future of American bases, the ban against nuclear weapons, the land reform and the rights of labor.

The issue was not only property rights but also the very sovereignty of the Philippine nation. It is interesting to recall that the infringement by vested interests on the framing of the fundamental law has antecedents in the experience of the United States. Charles Beard described the American constitution, as "an economic document drawn with superb skill by men whose property interests were immediately at stake; and as such it appealed directly and unerringly to identical interests in the country at large."¹ He said that it was "based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities."²

The same phenomenon arose during the drafting of the 1899 Malolos Constitution. The propertied framers went beyond the ambit of the law in furthering their economic interests. They found that collaboration with the Americans would ascertain their dominant position in the social structure. Teodoro Agoncillo, described the betrayal of the Revolution by the moneyed class:

It is difficult, if not impossible, to rationalize the attitude of the "Haves," for when they accepted the high positions in the government they were, both from the legal and moral standpoints, expected to be loyal to that government. In the present case, they accepted the positions proffered them but by insidious means undermined its foundations—through financial manipulations or through secret understandings with the Americans. Pardo de Tavera, Arellano, Paterno, Buencamino, Araneta, Legarda, and others of lesser category, exemplify those who, while still in the government, were already in sympathy with the American propaganda line of "benevolent assimilation." There was, therefore, in their actuation, something of bad faith and something of hypocrisy. It is significant to note that these men, the first collaborators of the Americans, were also the first to receive the "blessings" of America and, consequently, to rise in the social and economic ladder of the country.³

In discussing, therefore, the dynamics and processes of writing the 1987 Constitution, we shall describe the close interrelationship between the constitution-making process and the economic interests represented by the members of the Constitutional Commission.

The Social and Political Environment

The Constitutional Commission was convened three months after the EDSA Revolution. It is essential to point out that the peaceful upheaval was mainly an anti-dictatorship revolution whose main objective was the overthrow of the Marcos regime. Its ideology was not basically against foreign domination nor did it champion the liberation of the lower classes, having been led as it was by the moderate, middle forces. The fitting symbol of such a revolution was an American-bred lady from the landowning gentry but nonetheless, one who epitomized innocence and integrity—the supposed opposite of what the former dictator stood for.

It would be incomplete an assessment, however, to credit only the middle forces for the Revolution. The events of February 1986 was merely the crescendo of sustained protests against the dictatorial rule since its inception in 1972. At the forefront of the anti-fascist movement were the so-called Leftists; the Democratic Socialists, the Muslim secessionists, as well as the fragmented political opposition.

The assassination of Senator Benigno Aquino on August 21, 1983 which gave rise to "yellow" organizations, was indeed a significant catalyst. Since the late Senator was a prominent figure from the elite, the protest movements attracted a substantial number of hitherto indifferent clerics, professionals, businessmen and other members of the middle class. The participation of these middle forces became a potent weapon against the Marcos regime because they traditionally controlled two crucial socializing agencies: the church and the schools, in addition to the commercial sector. These were also the sectors that had strong links with the foreign media and the Filipino-American community, which was very helpful in providing the much-needed logistical support. The stage was set for the mobilization of a Metro-based yuppies movement dedicated to the libertarian ideals of the West.

At the helm of this urban middle-class movement were the political leaders who consistently opposed the dictatorship. The charisma of these luminaries sat well with the patron-client proclivities of the traditional political culture. Nowhere was this better demonstrated than in the mammoth rally at the Independence Grandstand and Ugarte Field which commemorated the first anniversary of Senator Aquino's death. Festive mood also characterized the EDSA Revolution. At EDSA, the celebration preceded the reason for

it, reflecting the native optimism of the Filipinos.

There was still some of this euphoria remaining when the members of the Constitutional Commission were appointed. Despite the confusion of the post-revolutionary situation, there was confidence that the deliberative body would bring about the necessary structural reforms in our battered society. People's hopes were constantly raised—at the 1984 spectacle at the Independence Grandstand and Ugarte Field, at EDSA in February 1986, and at the Batasan where the Constitutional Commission convened in June 1986.

Selection of Members

Who were the women and men who drafted the new Constitution? In April 1986, the President announced the government's plan to convene the Constitutional Commission and invited the public to submit nominations. More than 1,000 persons were nominated; their names were published in the main newspapers along with the individuals and organizations which endorsed them. Feedback about the backgrounds of the nominees was submitted by the public and was fed into the computers at Malacañang.

Some quarters criticized the decision of the President to appoint the members of the Commission. However, the justification offered by the administration was that an election at such an early time would be very costly and would be disrupted by counter-revolutionary elements. It was claimed that most constitution-making bodies, anyway, were appointed, including the Philadelphia Convention of 1787, the West German Constitutional Commission and our own Malolos Congress.

The appointees were announced on May 25 during the "Reunion of EDSA heroes" at Camp Aguinaldo. Of the forty-eight appointees, thirty were lawyers, twelve were landlords and fishpond owners, eleven were businessmen, and five were lawyers and consultants of firms with multinational connections. There were six full-time professors, five university administrators, two newspapermen, one youth leader, one retired army officer, two human rights lawyers, one former ambassador, one urban poor spokesman, one farmer leader and one retired labor leader. There were five religious: a nun, a priest, a bishop and two pastors. There were two former Supreme Court Justices, one lower court judge, one former speaker of the House of Representatives, eight former assemblymen and eight former members of the 1971 Constitutional Convention. The average age was 54. Sixteen of the Commissioners were 70 years old and above, seven were in their sixties, twelve in their fifties, ten in their forties, two were in their thirties and one was in his twenties.

The composition of the Commission was clearly elitist. Even if the members were elected, it could not probably have been more broadly based,

given the nature of our electoral system.

Initial Discussions

The Commission was formally convened on June 2, 1986. Former Supreme Court Justice Cecilia Muñoz-Palma was elected as president. Her brilliant record as a legislator and jurist enabled her to command the respect of the Commissioners. Her leadership style allowed the deliberations to freely take their course, bound only by the strictures of parliamentary procedures and the timetable set by the Steering Committee. But many felt that she could have inspired the Commissioners to come up with a vision of a desired society by offering, at the outset, a comprehensive framework derived from the needs and realities of Philippine society and that would have goaded the Commission in its work. What President Palma did provide was the example of diligence, discipline and moral uprightness. She was a deeply religious person who tried to inject spirituality and old-fashioned ethical values in the proceedings and was strongly libertarian in her convictions.

The main preoccupation of most Commissioners from the start was the form of government: was it going to be presidential or parliamentary? The Commissioners with exposure to cause-oriented organizations reminded the majority that before we deliberated on this subject, it was first necessary to know what the problems of the country were and analyze their causes. Only when we considered solutions to social problems could we begin to talk about what form of government would best respond to the demands of the people. At that point could we examine the possibilities of institutionalized people's power. The legalistic majority was, however, allergic to tedious social analysis, which they deemed theoretical.

Father Joaquin Bernas was called upon to present the pros and cons of the two systems of government. It was obvious that most Commissioners were prejudiced all along against the parliamentary system, because of its association with the previous government. This writer pointed out that Marcos' form of government was a corruption of the parliamentary system, and it was nothing but an authoritarian system with a Prime Minister appointed by the President and with a rubberstamp legislature which called itself a Parliament.

These arguments, notwithstanding the minds of most Commissioners were set on the presidential system. This was still the period when Cory Aquino was larger than life. As the Revolution revolved around her, so too, many felt, should the government. It is never fair to judge based on hindsight, but would not the present political situation have been better if we had a parliamentary system? The Prime Minister elected from among the members of Parliament would have attended to the complex, day-to-day affairs

of government, while President Aquino would have been an ideal head of state who will maintain unity and provide the moral example.

Committee Deliberations

The different committees then set out to conduct its meetings and hearings. The committees formed by the Commission President and the appointed chairpersons were as follows:

- 1) Steering Committee: Jose Bengzon, Jr.;
- 2) Amendments and Transitory Provisions: Jose Suarez;
- 3) Accountability Committee: Christian Monsod;
- 4) Bill of Rights and Citizenship Committee: Jose Laurel;
- 5) Constitutional Commissions and Agencies: Vicente Foz;
- 6) Executive Committee: Lorenzo Sumulong;
- 7) General Provisions Committee: Florangel Braid;
- 8) Human Resources Committee: Wilfrido Villacorta;
- 9) Judiciary Committee: Jose Concepcion;
- 10) Legislative Committee: Hilario Davide, Jr.;
- 11) Local Government Committee: Jose Nollado;
- 12) National Economy and Patrimony Committee: Bernardo Villegas;
- 13) Preamble, National Territory and Declaration of Principles:
Decoroso Rosales;
- 14) Social Justice Committee: Teresa Nieva.

Other functional committees formed were: finance, rules, privileges, public hearings, public information, sponsorship and style.

The problem in committee work was time allocation. For several weeks, the plenary sessions were suspended to allow the committees to hold their meetings. However, every Commissioner was a member of 3-5 committees and oftentimes, these committees met at the same time. Conscious of the

September 30 deadline and the high operational costs, the committees worked from 9 a.m. to the late hours of the evening. One could not help but admire the septuagenarians who arrived punctually at 9:00 a.m. and 1:30 p.m. and stayed on until the end of the sessions.

The Research Staff

In addition to committee assignments, the Commissioners had to submit several resolutions which contained their proposed provisions for the draft constitution. This required careful research and preparation.

Most of the younger and inexperienced Commissioners hired high-powered researchers and legal consultants who were in touch with the grass-roots because of their experience in the "Parliament of the Streets." These assistants developed into a pool of support personnel whose expertise was shared by a loose grouping of Commissioners who came to be called by the media as the "Nationalist Bloc." The assistants of the progressive bloc were the most visible and active. Their presence in the galleries and constant readiness to help were valuable sources of moral support to the novices of the Commission.

Lobby Groups

People's organizations, delegations of tribal minorities and labor and farmers groups lent life and color to the otherwise somber portals of the plenary session hall. The right-to-life lobby was particularly aggressive. While feminist organizations like GABRIELA gave fiery speeches at rallies outside the Batasan, their presence was not sustained, as compared to that of the well-oiled, Opus Dei-supported anti-abortion.

The National Economic Protectionism Association, the Philippine Chamber of Commerce and Industry and other business organizations strongly lobbied for economic nationalism during the proceedings on the national economy. Their efforts were, of course, subtly countered by multinational corporations which expectedly had friends in the Commission. It was only when the provision requiring 70% Filipino equity in all advertising firms was passed (a fortunate accident, because the voting took place when many of the conservatives were absent) that multinational advertising firms came out in the open. Their executives unabashedly approached their allies in the Commission during breaks in the deliberations—a privilege that was not given to other lobbyists. They failed, however, in their attempts to reverse the decision of the body, but their friends managed to insert a grace period for the divestment of foreign shares in the Transitory Provisions.

Another vociferous group was the Spanish lobby. A delegation of Spanish language teachers constantly descended on the Commissioners' offices and in the session halls to push for the retention of the compulsory teaching of Spanish. The Spanish lobby was also able to convince Cardinal Sin to write the Commissioners a hortatory letter, enumerating the historic importance of the Castillian language. So influential was the Spanish group that even after the Article on Education was already passed on third reading, one of their spokesmen in the Commission still asked for a reconsideration of the language provision. Of course, the Human Resources Committee, which sponsored the Article, refused to budge.

The Catholic Educational Association of the Philippines (CEAP) was likewise frantic about the original proposal of the Committee on Human Resources to make Filipino the sole medium of instruction. Clerics came in hordes to plead with the framers to retain English as a medium of instruction. They prevailed, given the strongly Catholic profile of the Commission. The CEAP did not have to lobby for a provision that allowed foreign religious groups to have 100% ownership of schools. Despite the data which the Committee provided showing that most Christian schools have no problem with 100% Filipino ownership, the champions of the Catholicity in education succeeded in persuading their conservative colleagues to veto the proposal for the complete filipinization of all schools.

The landlords, of course, had their interests intact in the persons of the Commissioners with big landholdings. But there were scores of individuals calling themselves "small landlords" who pressed for the protection of land-owners' rights. Most of them were old and appealed to the emotions of the Commissioners. The farmers held big rallies outside, but the few who went to listen to them were those who were already convinced about land reform.

Impressive were the waves of gradeschool children who lobbied for an anti-nuclear policy. They held spine-chilling die-ins, which served to win over the majority who voted for the nuclear-free provision.

The daily presence in the galleries of Mr. Richard Holmes, then chief political officer of the US Embassy, was highly noticeable. It was as if someone wanted to put across the point, "Big Brother is watching." There was an unconfirmed report by two Commissioners that they were approached by the political officer in the comfort room to ask them to vote in favor of retaining the US bases. In any event, it was to the credit of Mr. Holmes that to our knowledge, he carried himself with propriety, avoiding interviews and refusing to join the Commissioners in the lounge even when he was invited by some.

Provincial Hearings

In addition to the public hearings conducted by the committees, four weekends were reserved for provincial hearings. The more physically fit were farmed out to the provinces in teams, while the more feeble ones conducted public hearings inside Metro Manila or in nearby towns. Different sectors were represented in the hearings. The hearings were organized by civic organizations, Bishops-Businessmen Conference, the National Movement for Free Elections (NAMFREL), and some cause-oriented groups in coordination with the local officials.

All told, about 90 provincial hearings were conducted throughout the country. In most of these hearings, preference was expressed for a unicameral legislature, more controls in foreign investment, industrialization, a broader-based national language, genuine land reform, free high school education, and curbs to military abuses. People were divided on the issue of US bases, although the consensus was that there should be less dependence on these foreign bases, and on foreign aid and loans. The call for a more nationalistic policy was very strong in all these hearings.

Plenary Deliberations

After the committee and provincial hearings, each committee submitted its report. The committee members were subjected to interpellation and the Commission at large debated certain proposed provisions. It was then passed on first reading. Usually, the more controversial points were ironed out in the committees, with the assistance of Commissioners who raised certain objections. Then, the Article concerned was calendared for further discussion. If provisions were approved on second reading, they were forwarded to the Style and Sponsorship committee for further refinement. They were then deliberated on for the last time, before their approval on third reading. So hectic were the plenary sessions that during the last weeks of deliberations, about ten Commissioners yielded to hypertension and heart attacks.

Polarization Over Issues

The most controversial topics were the filipinization and industrialization of the economy, the US military bases and social justice.

The issue of filipinization of industries polarized the body into two blocs: the conservative bloc, and the nationalist bloc. The major bone of contention when the national economy provisions were being discussed was the extent of Filipino participation in public utilities. Because of the close relationship of public utilities to national security, the nationalist bloc proposed that there be a 100% Filipino equity in this sector. The bloc was later willing to

compromise and concede to 75% equity. However, the shock came when no less than the Chairman of the National Economy and Patrimony Committee went against this proposal of his own committee and voted along with the conservative majority who wanted only 60% equity for Filipinos. This resulted in a walkout of five Commissioners. Because of the pressure of public opinion, they returned after a week, accompanied by Senator Lorenzo Tañada. Their decision was arrived at, after they received appeals from the public to return because they had already made their point and there were many other causes which they should champion inside the Commission.

Indeed, the initial mood of reconciliation after the five Commissioners went back to the body facilitated the passage of certain progressive provisions on education and social justice. But the conservatives remained steadfast as far as what they considered to be the non-negotiables were concerned: 40% equity for foreign investors, congressional prerogative in determining retention limits and compensatory schemes for land reform, maintenance of English as a medium of instruction, and the retention of US bases until 1991. The lesser demands of the nationalist bloc were tolerable: nationalism and patriotism in education, a stronger bill of rights, free high school education, right of labor to organize, extensive coverage of land reform, etc. But the message was loud and clear: Don't touch the multinationals and the US bases. Don't threaten the landlords.

Conclusion

It is clear that like the 1898, 1934 and 1971 Constitutional Conventions, class interests played a very important role in the 1986 Constitutional Commission. Many factors were responsible for this development: the predominantly elitist composition of the Commission, the visible as well as "invisible" forces that influenced the decisions of many of the Commissioners, and the very ideological foundation—moderate in form, conservative in substance—of the present political dispensation. This paper has sought to describe these different factors and to impress upon the reader that their occurrence was something to be expected, given the unchanged character of Philippine social structure.

Having made this point, this writer does not think that all the dynamics and processes of constitution-making exercise were all for naught. The new Constitution contains saving features that if genuinely implemented can move this country forward. For one, it has one of the best provisions for the protection of human and civil rights. It has laid the foundation for a comprehensive program for social justice and educational development.

Our Constitution requires that our territory be ecologically safe and completely free from nuclear weapons. Although it does not call for the scuttling of US bases before 1991, neither does it guarantee its retention after that period. The duties of the military vis-a-vis supreme civilian authority are clearly delineated, and the exercise of people's power in the legislative branch and local levels of government is institutionalized.

The 1987 Constitution has great promise, for as long as the government itself—not just the military—is faithful to the spirit and letter of its provisions. The people themselves must have the political will to defend the fundamental law and with it, their rights, their interests, their future.

Endnotes

¹Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: MacMillan Co., 1947).

²*Ibid.*, p. 324.

³Teodoro Agoncillo, *Malolos: The Crisis of the Republic* (Quezon City: University of the Philippines, 1960).