

## SECOND THOUGHTS ON THE SYSTEM OF GOVERNMENT\*

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As the Filipino people prepare to go to the polls to choose delegates to the Constitutional Convention, one aspect of a written constitution comes to the fore, namely, that it is a covenant by which the people establish certain principles for governing themselves (*State v. Parkhurst*, 9 N.J.L. 427, 443 as cited in *Sinco*:66). This concept, traceable to the old theory of social contract, is enshrined in the Philippine Constitution. Using unmistakable language, it declares (Art. II, sec. 1) that, "sovereignty resides in the people and all government authority emanates from them." The 1935 constitution did not become effective until its acceptance by the people; its amending process prescribes (Art. XV) popular ratification as an essential requisite. It is, therefore, appropriate that while no more than 320 delegates will participate in the deliberations of the 1971 Constitutional Convention, the rest of the citizenry should be concerned with the amendments proposed for incorporation in the fundamental law.

The convention is called to amend the constitution, but it will be legally acting within its powers to rewrite the whole instrument and, in doing so, to propose any system of government, even a dictatorship or a monarchy. Ultimately, the people themselves will decide at the ple-

biscite to which the proposals must be submitted, what system of government they want. Instead of risking a rebuff at that plebiscite, the delegates will undoubtedly gauge the popular desire before attempting concrete proposals. It is unlikely that the convention will propose a system wholly unknown to the people themselves.

With this in mind I shall confine my discussion to systems of government which have been tried or heretofore proposed for establishment in this country. These are the presidential, the parliamentary, and the semi-parliamentary systems. In preparing this paper I have utilized the studies made for the Constitution Revision Project of the U.P. Law Center, particularly the report of Committee V (of which I was chairman) and of an opinion survey conducted by the Institute of Mass Communications of the University of the Philippines.

The present constitution provides for a presidential system of government. Its chief characteristics are as follows: Executive powers are concentrated in one official, the President, who is elected directly by popular vote for a fixed term. He may not be removed from office during that period except by impeachment. There is a separation of executive and legislative powers. The members of the legislature are also chosen for a fixed term. The legislature itself cannot be validly dissolved, although for cause, an individual member may be expelled or he may forfeit his seat.

Critics of the system claim that, *first*, it is too

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inflexible because elections are held at fixed intervals. Regardless of issues or crises, the executive or the legislature may only be changed when their terms expire. *Second*, it has the tendency to reduce politics to a question of personalities and is inevitably connected with the spoils system (Sinco 1929, 1967). *Third*, praise and blame for actions are all heaped on the President (Batalla 1969). *Fourth*, where the President and the Congress belong to different political parties, there are frequent deadlocks creating confusion in national policy (Manglapus 1968). *Fifth*, newly emergent nations have rejected the system. At present some 86 states have parliamentary governments, as against 48 which have the presidential (World Almanac 1970; Statesmen's Yearbook 1970; Peaslee 1966).

On the other hand, it is argued that the presidential system is the one we know best (Malcolm 1934)<sup>1</sup>; it is workable and its defects are not irremediable; a change to another system would mean learning over again, requiring a period of difficult adjustment; the separation of powers is a safeguard against either the executive or the legislature overextending itself; and finally, a fixed term makes for stability and continuity in government policies.

The principal difference between the presidential and parliamentary government lies in the relation of the executive to the legislature. In the presidential system each functions and enjoys tenure independently of the other. In the parliamentary system, while there may be a titular executive, the majority in parliament determines who should constitute the government, i.e., the prime minister, who is the real executive, and the other members of the ministry. When disagreement over a major issue occurs, the parliament may force the government to resign, or the latter may dissolve parliament and call an election and so bring the issue to the people for decision.

There are variations of this system. The English type is more appropriately called a cabinet government. The Prime Minister organizes a ministry of some 70 or more members, of which

a smaller group of 20 or so constitute the cabinet. It is the cabinet that initiates important legislation and directs governmental policy. The House of Commons is the forum for debates on the program of government. The reigning monarch appoints the Prime Minister, summons and dissolves Parliament, assents to legislation and performs other acts on advice of ministers who are responsible for them (Hitchneroud Harbold 1965:311-15, 345).

In Japan the highest organ of state power is the Diet, which has the sole law-making authority (Japanese Constitution of 1946, art. 41). Executive power is vested in the Cabinet (art. 65) which is responsible to the Diet (art. 60). The Emperor appoints the Prime Minister designated by the Diet (art. 6), and the Prime Minister appoints the ministers of state (art. 68). On a no-confidence vote, the constitution requires the cabinet to resign en masse unless the House of Representatives is dissolved within 10 days (art. 67) upon declaration of the Emperor with the advice and approval of the Cabinet (art. 7).

The French system under the Fifth Republic is another variation. The President, elected by direct universal suffrage, exercises substantial power (French Constitution of 1958 as amended, arts. 6 and 7). He appoints the Premier and other members of the government (art. 8). On a vote of censure or when a program of general policy is disapproved, the Premier must submit the resignation of the Government to the President (art. 50). After consultation with the Premier and the Presidents of the Assemblies, the President may dissolve the national assembly (art. 12).

The Filipino revolutionaries at the turn of the century adopted a constitution vesting executive powers in a President of the Republic who was to exercise it through his Secretaries (Malolos Constitution, art. 56). The President was to be elected by absolute majority of a constituent assembly (art. 58). The President had the power to convoke, suspend, and close the sessions or dissolve the Assembly with its concurrence (art. 75). The Secretaries were jointly responsible to

the Assembly for the general policy of the government (art. 36).

Advocates of the parliamentary system point out, *first*, that it is more responsive to the will of the people, enabling them to act directly on public issues of great moment. According to the late Senator Recto (1960:25):

Congress may repudiate the prime minister and his government in one day should they prove themselves unworthy of confidence; or they may be retained without limit of time by the successive Congresses renovated at general elections. A harassed administration obstructed by an irreconcilable legislature, or a parliamentary minority confident of winning the majority of the electorate can take their case to the people without delay and at the proper time, by obtaining a dissolution of the Congress and a new election. The President himself may be allowed to bring an unworthy Congress before the bar of the people.

It thus presents a means of settling by popular verdict irreconcilable breaches between the executive and the legislature. *Second*, a positive executive leadership of the legislature is both provided and accepted (Hitchner and Harbold 1965:32). *Third*, it is not unfamiliar to the Filipinos, since the Malolos Constitution and other constitutional plans prepared during the revolutionary period were along the lines of parliamentarism.<sup>2</sup>

The drawbacks to adopting the parliamentary system in the Philippines are that, *first*, frequent cabinet changes create instability of government. France during the Third Republic had 108 ministries in a 66-year period (1875–1941); Germany from 1919 to 1933 had 21, and Italy from 1943–1970 had 30, or an average life of about seven months in France, eight months in Germany, and eleven months in Italy. As Senator Tolentino has pointed out (1964:129):

We are an emotional people; that trait is not a good basis for the parliamentary system, and is the surest indication that the government under the system would be characterized by frequent cabinet changes, such as what we witness in France. And then, there is that minor element of *amor proprio* which is manifested by a tenacious refusal on the part of the government officials to leave their posts even when they have no more right to them; with this under a parliamentary system of government, we will have frequent dissolu-

tions of the parliament or lawmaking body by prime ministers who cannot graciously accept a vote of lack of confidence.

*Second*, we are not ready for the parliamentary system because we have not devised an effective procedure for the conduct of honest and fraud-free elections without the aid of the armed forces (Aquino 1956:332). *Third*, our candidates for office have yet to learn the spirit of sportsmanship (*ibid.*), to fight clean and accept defeat forthrightly. *Fourth*, elections are expensive.<sup>3</sup> We cannot afford to have them too frequently.

The success of parliamentarism, particularly in England, is attributed to unwritten conventions which in turn depend in their operation upon common beliefs and behavioral patterns (Friedrich 1961:563); not the least of these is party discipline.

A semi-parliamentary system of government has also been proposed, either by providing that the President be elected by the legislature instead of by direct popular vote, or by permitting members of Congress to become members of the cabinet (Manila Times 1953; Paredes 1960). The first alternative is intended to cut down on the expenses of a nationwide presidential campaign, thereby attracting the qualified though less moneyed. The second would be a return to a practice followed before the 1935 constitution. This gave the lawmaking body a voice in the Cabinet and the executive some spokesmen in the legislature for administration measures.

The objection to the first is that indirect election would remove from the people their active participation in the choice of the highest elective officials, a right now enjoyed and not easily to be surrendered. Against the second is that by having members of the legislature in the cabinet, a specially powerful group of legislators will emerge. This can be expected to feed instead of cut down, on political horse trading.

These then are three possible choices among systems of government which the 1971 convention will have. To determine the people's think-

ing on these and other amendment proposals, the U. P. Law Center asked the Institute of Mass Communications of the University of the Philippines to conduct an opinion poll among voters of the Greater Manila area.<sup>4</sup> The sampling was done by the U. P. Statistical Center. After describing the present system of government, the questionnaire asked respondents what best described their feelings about the system. The 862 respondents answered as follows:

<i>Opinion on present system</i>	<i>Per cent</i>
Very successful	15.8
Fairly successful	33.7
No opinion	10.0
Fairly unsuccessful	20.8
Very unsuccessful	17.1
Other	1.4
No response	1.3
<b>Total</b>	<b>100.1</b>

The parliamentary system was also described and this question was asked: "Considering the psychology, political maturity and experience of the Filipinos, would this system be workable in our country?" Of the 862 respondents, 148 (17.2 per cent) said Yes; 385 (44.4 per cent), No; 39 (4.5 per cent) suggested some other form, and 289 (33.9 per cent) gave no response.

The semi-parliamentary system was next described and the respondents asked to choose among the presidential, the parliamentary, and the semi-parliamentary systems. The results were these:

<i>System</i>	<i>Per cent in favor</i>
Presidential	51.4
Parliamentary	11.2
Semi-parliamentary	9.0
No response	28.4
<b>Total</b>	<b>100.0</b>

The result of the poll confirms my own views and the proposal made by my Committee to the U. P. Law Center Constitution Revision Project. We submitted, after considering the advantages and disadvantages of the presidential, parliamentary and semi-parliamentary governments, that the present system be retained. For despite its defects, the presidential system is to our mind best suited to the Philippines. What needs to be done is to purge the system of its defects. To this end we have formulated proposals for the convention to consider.

As the report on the opinion survey states:

The findings show that the presidential system is still very much favored by many for various reasons. Whereas the advantages of the two other systems are recognized, the prevailing attitude is that Filipinos are, in general, not yet politically mature enough to handle the parliamentary or semi-parliamentary systems of government, and that the present system is the most familiar and seems to be workable for Filipinos.

On this note, I should like to close.

#### Notes

<sup>1</sup>Malcolm observed (1934): "The best constitutions have been those which have not departed from the formulas which time has proved correct."

<sup>2</sup>Consider, for example, Mabini's Constitutional Program, the Provisional Constitution of Ponce, and the Political Program of Paterno.

<sup>3</sup>Former President Diosdado Macapagal is quoted by Filemon V. Tutay as placing the average cost of running for Congressman or governor at P200-500,000; for Senator at P1-3 million, and for president at P50-100 million ("The High Cost of Elections," *Philippines Free Press*, November 15, 1969). Public expenditures for the election itself can be easily shown from figures released by the Commission on Elections. Thus, the amount spent during the 1961-1967 elections are these: 1961, P10,797,269.77; 1963, P19,799,169.13; 1965, P40,130,184.67; 1967, P16,512,886.30. The 1965 figure included the cost of introducing the new system of permanent registration of voters. The costs to individual candidates are largely unobtainable. In the case brought against Senators Katigbak, Manglapus, and Antonino, the expenses proved were those for printed propaganda, radio and TV time for which contracts had been signed (*Hidalgo v. Manglapus, et. al.*, Electoral Case No. 5, Senate Electoral Tribunal).

<sup>4</sup>The report on the survey (Feliciano, Lozare, and Manahan 1970) describes the methodology employed, interprets the results and mentions among other things that after consultations with the Law Center staff, an 18-page interview schedule composed of structured, semi-structured and unstructured questions was designed to elicit data that would meet the objectives of the study. The schedule was drafted in such a way that it served as a medium of information and education, besides being a data-gathering tool. This was deemed necessary in view of pre-survey findings showing the inadequate awareness and knowledge of the people in the Constitution. The interview schedule was administered in English and in Pilipino.

The subjects were relatively young - 29 per cent belonging to the 20-29 age level, 26 per cent to the 30-39 age level, and 22 per cent to the 40-49 age level; 15 per cent were 50-59 years old, and 46 per cent were below 20 years of age.

A majority of the respondents had completed their primary and secondary education; while 48 per cent had received college education, less than 1 per cent had had no formal education whatsoever. Mimeographed relevant portions of the survey report are incorporated in the published report of the U. P. Law Center Constitutional project.

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