CONSTITUTIONALISM IN THE PHILIPPINES — A VIEW FROM ACADEMIA*

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I. INTRODUCTORY

Constitutionalism has been understood in various ways,[1] but in this jurisdiction where the sovereign people have ordained a written constitution as the supreme law which sets limits to governmental powers and guarantees fundamental rights, constitutionalism means fidelity to that law by both governors and the governed.

The beginnings of constitutionalism go back to philosophers of ancient Greece and Rome. McIlwain who traced its evolution from its earliest manifestation through the medieval period to the present, has pointed out that the most lasting of the essentials of true constitutionalism "still remains what it has always been almost from the beginning, the limitations of government by law" and that the

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[1]The meaning of constitutionalism is very close to the meaning of the "rule of law" (q.v.). It can be defined as a determinate, stable legal order which prevents the arbitrary exercise of political power and subjects both the governed and the governors to "one law for all men." Constitutionalism is not identical with constitutions, which at times are rather meaningless paper documents, incongruous with the existing political organization and processes. An effective constitution, "written" or "unwritten", is, however, an essential ingredient of the legal order which may be called constitutionalism. J. DUNNER, DICTIONARY OF POLITICAL SCIENCE 120 (1964).

The term has two related meanings: one concerning constitutionalism as practice, the other as the positive valuation of that practice.

Constitutionalism as practice is the ordering of political processes and institutions on the basis of a constitution, which lays down the pattern of formal political institutions and embodies the basic political norms of a society. The constitution not only regulates the relationships of organs of government to each other; it also limits the discretionary powers of government, and, in doing so, protects the citizen. Such regulation and limitation require arbitration by some judicial body (e.g. in the USA and the German Federal Republic, by 'supreme' or constitutional courts which apply judicial review to governmental acts; in Britain by the ordinary system of courts and civil and criminal remedies), as well as enforcement. Thus while the USSR, for example, possesses a constitution, neither the specific machinery for its enforcement nor the acceptance of its constraints by the political authorities is much in evidence. Though not found only in democratic regimes, constitutionalism is a basic requirement of a democracy.

As a term of valuation, constitutionalism refers to the ideas of those who wish to preserve or introduce the political supremacy of a constitution within a particular state, to act as a protector of the citizen from arbitrary government and as a statement of political relationships, especially where these do not exist already in satisfactory form. Stress is laid on the 'rule of law' as a fundamental concept from which constitutionalism derives. G.K. ROBERTS, A DICTIONARY OF POLITICAL ANALYSIS 49-50 (1971).

"two fundamental correlative elements of constitutionalism for which all lovers of liberty must yet fight are the legal limits to arbitrary power and a complete political responsibility of the government to the governed."[2]

II. CONSTITUTIONALISM IN THE PHILIPPINES

What is the state of constitutionalism in the Philippines?

At the end of the last century as our forebears fought free of Spanish control and valiantly resisted American domination, the revolutionary congress met in Barasoain and adopted the Malolos Constitution. This was not the only charter the Filipinos considered nor yet adopted. From 1896 to 1900, various constitutional plans were formulated. Among these were the provisional constitution of Biak-na-bato, the constitution of Makabulos, the provisional constitution of Ponce, and Mabini's constitutional program. Each prescribed the structure of government and its limits.

After the Americans took over, they introduced their own institutions and principles of government. From these Philippine constitutionalism evolved. It is important to call to mind some of these principles, thus:

1. The constitution as fundamental law provides for the organization of government, defines and delimits its powers and prescribes guarantees to human rights.
2. The constitution as fundamental law is the supreme law to which all acts of government must conform.
3. Under the American type of constitution introduced in the Philippines, it is the function of the judiciary to say what the law is and where an act of any organ of government, even of a co-equal branch like the executive or the legislative, violates the constitution, to declare such act null and void.
4. A written constitution represents the supreme will of the sovereign people. Having promulgated it, the people themselves are bound by its limitations. They do not themselves act directly except to participate in elections and in the constitutional amendment process unless in the extreme, when all else fails, they make a revolution.[3]
5. The constitution though the supreme law, is not self-executing. It falls on the various organs of government to implement it and for the people to insist that this be done.

III. CONSTITUTIONALISM IN PRACTICE

Organic acts promulgated for the government of the Philippines from President McKinley's instructions to the Second Philippine Commission to the Jones Law contained the essential features of a constitution. From the start the Filipino people demanded independence but the Americans believed that it was necessary to prepare them first for self-rule. In the process constitutionalism began to evolve along the American model.

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[2]C.H. McILWAIN, CONSTITUTIONALISM: ANCIENT AND MODERN 21, 142 (REV. ED., 1947).

[3]V. SINCO, PHILIPPINE POLITICAL LAW 66 (11th ed., 1962) citing Comm. v. Collins, 8 Watts (Pa.) 331, 349.

When a definite date for independence was finally set, a transition government was organized under a constitution which the Filipino people framed and adopted subject to conditions laid down in the Tydings-McDuffie Law.

The best minds of the country worked on that constitution which served as the basic law for the ten-year period of transition and for the independent Republic of the Philippines. Claro M. Recto was president, and among its members were Manuel Roxas, Jose P. Laurel, Manuel Briones, Wenceslao Vinzons, Tomas Confessor, Camilo Osias, Gregorio Perfecto, Salvador Araneta, to name but a few.

The 1935 constitution followed closely the American pattern. Its essential features included a bill of rights, the establishment of a presidential type of government based on the principles of separation of powers, and an explicit provision for judicial review.

Until 1946 the United States retained the power to oversee governmental operations, the U.S. High Commissioner being in law and in fact the highest government official in the Philippines. The limits imposed by the constitution were faithfully observed. However, as sovereign, the United States was not necessarily constrained from deviating from provisions of that constitution. This was done when Quezon's term as President was extended beyond eight years.

The test of the state of constitutionalism in the Philippines came after the proclamation of independence on July 4, 1946. During the Commonwealth period the Supreme Court had occasion to determine which of two constitutional agencies had jurisdiction to prescribe the rules for filing electoral protests,[4] to pass upon the constitutionality of acts of the President as well as of the legislative.[5] The more significant cases illustrating the workings of constitutionalism under the 1935 constitution were to come after the United States overseeing presence officially terminated. Among these were:

1. The Emergency Powers Cases involving the validity of the exercise by the President of delegated law-making powers. In *Rodriguez v. Gella*[6] the Supreme Court ruled that the President exceeded those delegated powers by exercising them after the emergency had ended.
2. In *Macias v. Comelec*[7] the Supreme Court declared unconstitutional the first and only reapportionment measure ever attempted.
3. The Supreme Court held that the President exceeded the power of general supervision over local governments in a number of cases[8] and in other instances that the civil service protection extended to public officials had been infringed.[9]

   The far from edifying practice of midnight appointments came under close scrutiny revealing the dynamics of *ad interim* appointments and the style of three successive Presidents in their exercise.
4. Acts of the legislature were measured against substantive as well as

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[4] Angara v. Electoral Commission, 63 Phil. 139 (1936).

[5] Planas v. Gil, 67 Phil. 62 (1939).

[6] 92 Phil. 603 (1953).

[7] 113 Phil. 1, (1961).

[8] Hebron v. Reyes, 104 Phil. 175 (1958); Pelaez v. Auditor General, G.R. No. 23825, December 24, 1965, 64 O.G. 4781 (May, 1968); 15 SCRA 569.

[9] Garcia v. Executive Secretary, G.R. No. 19748, September 13, 1962, 6 SCRA 1.

procedural constitutional limits. Nationalization acts were upheld.[10] On the other hand the Court declared null and void an act authorizing the use of public funds for a private purpose[11] (*Zulueta* case) and another statute for violating the requirements of subject and tilte of bills.[12]

5. The cases involving individual rights of speech, press, assembly, due process and equal protection of the laws that come before the Court would require more extended treatment.
6. More in point are the cases on the constitutional amendment process.[13] In *Mabanag v. Lopez Vito*[14] the Supreme Court declared as political and non-judicial the question of whether the parity amendment proposal had been passed by the required congressional vote and in *Tolentino v. Commission on Elections*[15] it held the piecemeal submission of proposed constitutional amendments unconstitutional. These are but two of the numerous controversies involving the amendment process[16] before martial law became an overwhelming fact of political reality in this country.

The incidence of litigations and the nature of the issues involving the constitution demonstrate the growing awareness of constitutionalism among the bench, the bar and the people themselves. That awareness was further shown when demands for amending the 1935 constitution bore fruit and a convention was called for the purpose.

It will be recalled how elaborate were the safeguards adopted in the election of delegates to the convention and what special efforts were taken to ensure that all sectors of the society would be represented by the best qualified.

What happened to that convention is part of history. The declaration of martial law interrupted its work but also caused that body to produce a complete

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[10]Republic Act No. 1180 (1954) in Lao Ichong v. Hernandez, 101 Phil. 1155 (1957); Republic Act No. 3018 (1961) in Universal Corn Products, Inc. v. Rice and Corn Board, G.R. No. 21013, August 17, 1967, 20 SCRA 1048; Republic Act No. 1180 (1954) in connection with Section 2-A of Com. Act No. 108 (1936) as amended by Rep. Act No. 134 (1947) in King v. Hernaez, 114 Phil. 730 (1962).

[11]Pascual v. Secretary of Public Works and Communication, 110 Phil. 331 (1960).

[12]Rep. Act No. 4790 (1966) in Lidasan v. Commission on Elections, G.R. No. 28089, October 25, 1967, 21 SCRA 496.

[13]*Cf.* Garcia v. Domingo, G.R. No. L-30104, July 25, 1973, 52 SCRA 143; Buendia v. City of Baguio, G.R. No. 34011, July 25, 1973, 52 SCRA 155; Flores v. Flores, G.R. No. 28930, August 17, 1973, 52 SCRA 293; Alfanta v. Nao, G.R. No. 32362, September 19, 1973, 53 SCRA 76; People v. Molina, G.R. No. 30191, October 7, 1973, 53 SCRA 495; Republic v. Villason, G.R. No. 30671, November 28, 1973, 54 SCRA 83; People v. Zauna, G.R. No. 34090. November 16, 1973, 54 SCRA 47; Pablo v. Court of Appeals, G.R. No. 133845, December 18, 1973, 54 SCRA 253; People v. Baenz, G.R. No. 36161, December 19, 1973, 54 SCRA 288 and Asia Surety and Insurance Co. v. Herrera, G.R. No. 25232, December 20, 1973, 54 SCRA 312.

[14]78 Phil. 1 (1947).

[15]G.R. No. 34150, October 16, 1971, 41 SCRA 702.

[16]Gonzales v. Commission on Elections, G.R. Nos. 28196 & 28224, November 9, 1967, 21 SCRA 774; Imbong v. Ferrer, G.R. Nos. 32432 & 32443, September 11, 1970, 35 SCRA 28; Del Rosario v. Commission on Elections, G.R. No. 43576, October 20, 1970, 35 SCRA 367.

draft in an even shorter period than it would have taken. The manner of its submission for ratification became a turning point in the path of constitutionalism in this country.

The constitutionalism evolved during the previous seven decades came to the fore in the determined efforts starting in December 1972 to challenge (1) the holding of the plebiscite for the submission of the constitution (2) the "ratification" of that constitution; (3) the referendums, referendum/plebiscite; (4) other amendments; and (5) numerous habeas corpus cases, challenging the jurisdiction of the military tribunals and other acts of government.

Professor Charles Black, writing on judicial review, has pointed out the checking and legitimating functions performed by the United States Supreme Court.[17] His observations on these dual functions are equally relevant in this jurisdiction.

The course of constitutionalism from 1973 on can be traced by a study of decisions of the Supreme Court during the period. How closely have these decisions adhered to the principles of government of limited powers under a constitution as supreme law?

Javellana v. Executive Secretary[18] is a landmark case representing new directions taken in constitutional interpretation. A majority of the members of the Supreme Court who wrote separate, often extended opinions, agreed that the challenged ratification complied with the explicit requirements of *neither* the 1935 nor the proposed constitution. When the Court dismissed the petitions challenging that ratification with that now famous statement "there is no further judicial obstacle to the New Constitution being considered in force and effect," added to the opinion in which then Chief Justice Roberto Concepcion summarized the stand of the members of the Court and wrote his dissent, did the decision have the effect of legitimizing the New Constitution? The *Javellana* case has been the subject of searching study and analysis but continues to befuddle students of the law. The reservations then held as to the ratification of the new constitution have not been dissipated[19] in spite of other Supreme Court decisions reiterating the view that the 1973 constitution is in force and effect.[20]

According to the original agenda of this paper, the general area of "Constitutionalism in the Philippines" could be discussed along three quesions:

1. How should the Constitution be amended so that it may indeed be the solid basis for freedom and justice in our society?
2. How could the institutions of our Government be strengthened so that they could truly uphold the Constitution and its principles?

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[17] C. BLACK, THE PEOPLE AND THE COURT 56-8 (1962).

[18] G.R. Nos. 36142, 36164-65, 36236 and 36283, March 31, 1973, 50 SCRA 30.

[19] Planas v. Commission on Elections, G.R. Nos. 35925, 35940-42, 35948, 35953, 35961, 35965 & 35979, January 22, 1973, 49 SCRA 105; Sanidad v. Commission on Elections, G.R. No. 44640, 44684 & 44714, October 12, 1976, 73 SCRA 333; Dela Llana v. Commission on Elections, G.R. No. 47245, December 9, 1977, 80 SCRA 525; Hidalgo v. Marcos, G.R. No. 4732, December 9, 1977, 80 SCRA 538.

[20] Occeña v. Commission on Elections, G.R. No. 52265, January 29, 1980, 95 SCRA 755, which questioned the power of the Interim Batasang Pambansa to call local elections; Gonzales v. National Treasurer, G.R. No. 56404, April 2, 1981, 104 SCRA 1 in which the petition asserted that the 1973 constitution is not the fundamental law, the *Javellana* ruling to the contrary notwithstanding.

3. What concrete steps should be taken so that the *political* forces that seem to have been unleashed by the assassination of former Senator Benigno S. Aquino, Jr. against and for the present Administration may be harnessed to effect that kind of political renewal that is needed if we are to "secure for ourselves and our posterity the blessing of democracy under a regime of justice, peace, liberty and equality? "

In responding to these questions and for my general approach to these problems, I shall take up the first sub-topic in relation to the second since the subject of amendments cannot be dissociated from institutions of government operating within a constitutional scheme.

Once again amendments to the constitution are being considered. The Philippine experience in constitution making and its amendment has been, to say the least, spotty during the last decade, despite the frequency of the exercise.

Besides problems which arose from the process followed in submitting the 1973 constitution for ratification, the instrument contained provisions which were self-defeating in character. The defect in the manner of submission was not only the absence of an election as it is usually understood. Also as salient is the fact that no one at the time, even the best informed could truly say that what was submitted was fully understood. For besides the textual provision of a document that included eclectic innovations in governmental structures it also contained a rider that all presidential issuances, would become part of the law of the land. This comprehended not only proclamations, orders, decrees, instructions and other acts already issued, the number and scope of which were not fully ascertained, but also those yet to be issued. The constitution being supreme law emanating from the sovereign people, it should go without argument that the people who promulgate it should know what they have adopted. Even granting that the ratification of that constitution would pass muster, it cannot seriously be claimed that those who ratified it were fully informed of what that document contained or what it would include subsequently.

Another serious substantive defect was immediately evident. The transitory provisions stated clearly that "an interim assembly shall exist immediately upon ratification of the Constitution," but because it was left to the President to convene it initially and he chose not to do so there was no way for the legislature to exist in fact even if legally it was already in existence.

In the *Javellana* case one of the arguments advanced for the constitution having come into force and effect was the theory of acquiescence. But acquiescence could not even have come into play. The *Javellana* and its companion cases were brought within a week[21] after the President's proclamation announcing the ratification; the Supreme Court dismissed the petitions in less than three months after they were filed. The theory of acquiescence did not have any solid base then, although it could have developed in time if the provisions of that constitution had become operational long enough. But in 1976 the President proposed amendments to the new constitution. The Supreme Court, with two members dissenting, upheld the presidential exercise of constituent power. The 1976 amendments which created in lieu of the interim assembly a Batasang Pambansa, also clothed the President with legislative power as well. And so it came to pass that two law-making

[21] Javellana v. Executive Secretary, and other cases, G.R. Nos. 36142, 36164-65, 36236, 36283, were filed on January 20 & 23, 1973 after the issuance of Proclamation No. 1102 on January 17, 1973, announcing the ratification of the Constitution.

agencies operate under the constitution, one composed of more than one hundred elective and appointive members and the other of the President alone, the latter being superior to the first.

The 1973 constitution had adopted features of parliamentary government. In 1981 the constitution was again amended. The resulting governmental structure is dubbed modified parliamentary or modified presidential system depending on who views it. This last amendment places the Presidency in an even more dominant position than under the 1935 constitution, leaving untried the plan of the 1973 constitution which transformed the office to that of symbolic head of state. The position of Prime Minister which under the 1973 plan would have been head of government and the real power, was reduced to a subordinate category.

A new scheme for presidential succession was also devised. Instead of one specific official to succeed the President as in the 1935 constitution, a collegial body, Executive Committee, headed by the Prime Minister has been created. This Committee assists in the exercise of the President's powers and functions and in case of permanent disability, death, removal from office or resignation shall exercise the powers of the President until a President shall have been elected and qualified.

This feature of the 1981 amendments is now the subject of controversy. Concern over Presidential succession is not a matter of recent date. It goes back from the beginning of "constitutional authoritarianism."[22] With the President exercising executive and legislative powers and through military tribunals judicial powers as well, the question of succession is of utmost importance, particularly to foreign entities dealing with the country. When reports of the President's failing health became current, the question acquired even greater urgency. The national tragedy of former Senator Benigno S. Aquino's assassination triggering a crisis of confidence of serious political and economic consequences, has magnified the problem of succession.

Under the 1935 constitution, three presidents died in office. The vice-president assumed the rein of government without incident. Three incumbent Presidents sought re-election and lost. The succession to the office went on smoothly. A limitation on the term of the President had been provided under the 1935 constitution, the founding fathers in their wisdom believing that a limit should be set. True, the single six-year term was later changed to eight successive years in office. Even then, until President Marcos, no Philippine President had succeeded in getting re-elected to serve for eight successive years. The 1973 constitution changed all this by adopting a modified parliamentary system which has never been given a trial. The move to restore the vice-presidency in the desire for orderly succession has much to be commended. The collegial scheme is untried and promises to be unwieldy. As it stands the constitution places the succession in the whole Committee, not in its chairman.

The first sub-topic posed as a question, states: "How should the constitution be amended so that it may indeed be the solid basis for freedom and justice in our society? " It would be simplistic to think that amendment alone will effect the cure of what ails constitutionalism in this country. The constitutions of 1935 and of 1973 as amended in 1976, 1980, and 1981 incorporate provisions designed to

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[22] F.E. Marcos, *The Role of the Judiciary in a Developing Society*, 5 J. INTEG. BAR PHIL. 16, 20 (1977).

be solid foundations for freedom and justice, at the same time they had defects which could negate achievement of those ends. Positive steps were initiated to remedy the defects of the 1935 constitution, unfortunately they did not come to fruition. The 1973 constitution has not proved to be an improvement over the first, partly because it has never been seriously given a chance to operate. Subsequent changes have created more problems than solutions.

In the process of experimenting on governmental structures and effecting changes in the constitution, principles of constitutionalism became casualties.

Thus, changes in a written constitution, which is the supreme law and the expression of the will of the sovereign people, can only be effected in accordance with the procedure prescribed in that constitution. This has not been followed. In the last decade the Supreme Court has countenanced deviations, even justified them.[23]

The essence of constitutionalism is government of limited powers. Since 1972 government powers have expanded at the expense of individual rights and the development of the last decade has been towards concentration of more and more of these powers in the hands of the President.

The second sub-topic refers to institutions of government which could be strengthened. Most certainly the Presidency is much too strong. It needs no further strengthening. What it needs is limitations on power.

When in the late sixties the U.P. Law Center undertook its constitution revision project, my assignment was the Presidency. I thought then after a study of the office and the powers placed in it that limitations in the commander-in-chief powers as well as in the emergency powers provisions should be introduced. The Philippine experience during the last decade reinforces that view.

I do agree with the view implicit in the formulation of the sub-topic that to uphold constitutionalism it is necessary to develop institutions. Individuals come and go but their ideas and contributions to the common good can endure long after they are gone. The trauma of the Aquino Assassination illustrates this best. When that bullet fired by a still to be identified gunman snuffed out his life, the ideas of the slain Aquino became dramatically alive to a growing number of the Filipino people. Through institutions, what has been initiated can be picked up, developed and continued beyond the natural life span of mortals. The term institution is used in its comprehensive sense to include "a significant practice, relationship or organization in a society or culture."

We have been asked to consider "the institutions of our Government" which could be strengthened so that they could truly uphold the constitution and its principles. The presidency is not one such institution in need of strengthening, but the judiciary most certainly is.

Under the principle of separation of powers scrupulously though not absolutely observed in the past, it was accepted that of three independent, co-equal and interdependent departments of government, the judiciary was the weakest. It had control neither of the purse nor of the sword; had to depend, among other

[23] Aquino, Jr. v. Commission on Elections, G.R. No. 40004, January 31, 1975, 62 SCRA 275 which justified authority of President to call referendum and to legislate; Aquino, Jr. v. Ponce Enrile, G.R. Nos. 35546-7, 35538-40, 35547, 35556, 35567, 35571 & 35573, September 17, 1974, 59 SCRA 183 questioned the validity of the proclamation of martial law; Aquino, Jr. v. Military Commission No. 2, G.R. No. 37364, May 9, 1975, 63 SCRA 546 which justified authority of military commissions to try civilians; Garcia v. Mata, G.R. No. 33713, July 30, 1975, 65 SCRA 517.

things, on the legislature for funds for its maintenance and on the executive for the enforcement of its decisions. Its strength lay in its power of judicial review in the exercise of which it could declare null and void legislative as well as executive acts violative of the constitution. Indispensable to the exercise of this power by the judiciary for seven decades, this independence was carefully nurtured and jealously guarded.

The advent of martial law and of the 1973 constitution eroded that independence. The Supreme Court itself played an important part in this.

Under martial law, military tribunals were conferred jurisdiction over cases not involving the military and previously pertaining to the civil courts. Early Commander-in-Chief announcements were in fact so all-embracing as to include assumption of all powers of government including the judicial.[24] Under the 1973 constitution[25] judicial tenure became ephemeral, for the president by appointing anyone qualified to a judicial position could replace the incumbent. As if this were not enough, Presidential appointees were directed to submit letters of resignation which the President could pick up when he chose.[26] The *coupe de grace* came with the Judicial Reorganization Act which the Supreme Court also upheld. Today, the unparalleled situation exists in this country, where every member of the judiciary from the lowest to the highest court is an appointee of one man.

Following the *de la Llana decision*[27] a total revamp of the judiciary can in the future be effected, the legislature and the President so deciding. This eventuality can be forestalled, not by amending the constitution to extend the judges' term beyond age seventy but by adopting a positive and clear constitutional prohibition against its future recurrence.

The need for strengthening the judiciary is compelling if constitutionalism is to survive. For without a firm and independent judiciary standing guard over fundamental rights and exercising the checking function over government acts the constitution may be no more than a scrap of paper.

CONCLUSION

The quest for a just and free society under the rule of law is every person's concern. Constitutions are adopted not merely to meet the problems of the day but to provide for unforseen contingencies of the future. Even when reduced to writing, however, it is not meant to be unchangeable. Thus, provision for amendment is usually made for constitution-makers know only too well that with changing times inadequacies will develop, unsuspected defects will surface and the need to remedy these will become inevitable. But the constitutional provision on amendment is as much a part of the fundamental law as provisions on the Bill of Rights and on the structure of government.

Today, therefore, it is important to resolve that the amending process be

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[24] General Order Nos. 1 (September 2, 1972); 3 (September 22, 1972); 3-A (September 24, 1972); 8 (September 27, 1972); 12 (September 30, 1972); 12-A (September 30, 1972); 12-B (November 7, 1972); 12-C (October 2, 1972); 21 (January 16, 1973).

[25] Const., Art. XVII, secs. 9 & 10.

[26] Letter of Instruction No. 11 (September 29, 1972).

[27] De la Llana v. Alba, G.R. No. 57883, March 12, 1982, 112 SCRA 294.

faithfully observed, as once again proposals for amendment are being explored. Short cuts dictated by expediency are a disservice to the people and their sovereign will is subverted when the amending process which the constitution prescribes is disregarded.

There is undoubtedly need for serious inquiry into the state of the constitution and of constitutionalism in this country today. The problem that presses itself with critical urgency is the sweeping provisions that allow for the exercise of powers that tend to undermine the fundamental principles of the democratic polity.

Self-destruct provisions have no place in enacted laws much less in a constitution, lest the fundamental law be reduced to an instrument the meaning of which will be fraught with uncertainty and subject to the vagaries of power. This in the end will spell the difference between the rule of law and the rule of men.

The great Recto once spoke in glowing terms of the vindication of the 1935 constitution:

> The Constitution of our Republic has known many enemies. It has felt the mailed fist of the invader, the torch of rebellion, the corruption of imperialism, the criminal assaults of its very sworn defenders and protectors. But I believe I do not exaggerate when I say that it has survived the most sinister and deadly of all its dangers, the danger of its own suicide. For in the famous test cases whose decision we celebrate today, it was pretended that the Constitution could be nullified by the Constitution itself, that the provisions of the Constitution were at war with one another so that an apparently constitutional power and prerogative could be used and abused to destroy the entire structure of our democracy. Fortunately for the Republic, the highest court of the land has repudiated this judicial heresy, this preposterous theory of constitutional suicide. Fortunately for our people, it has been solemnly proclaimed and declared, for all who love democracy to hear and understand, that the will of one man, no matter how exalted his position as the chief magistrate of the nation, can not prevail against the Constitution.[28]

Had he lived to witness the course of constitutionalism during the last decade, what would have been his message?

It is asked what concrete steps need to be taken so that the political forces that seem unleashed by the Aquino assassination may be harnessed to effect political renewal. One such step should be a return to the basic principles of constitutionalism starting with the faithful observance of the constitutional rules on the proposal and adoption of amendments.

Moving from the procedural to the substantive, the next step would be to do a thorough reveiw of the constitution. The question may well be asked, which constitution? This should not be an insurmountable problem for as the 1971 constitutional convention did, the work could start from scratch. The important thing is to avoid the mistakes of the past, and purge the fundamental law of self-destruct provisions or provision which in Recto's language could be basis for a theory of "constitutional suicide."

In the category of these provisions are those on martial law, emergency powers, amendment no. six of 1976, the provision making presidential issuances part of the law of the land, and the provision granting immunity to the President and those who act under his orders.

It would, however, be naive to think that formulating a perfect constitution

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[28] C.M. Recto *The Triumph of the Constitution*, September 24, 1949, in R. CONSTANTINO (Ed.), RECTO READER 138-9 (1965).

would usher in the millenium and transform the Philippines into the best possible society.

Vicente G. Sinco, the venerable constitutionalist who was mentor to at least two generations of students of the College of Law articulated the concept of "constitutional morality," of thorough understanding, appreciation and respect of the constitution — "so ingrained in the character of the nation that observance of its mandates becomes a part of the mores of the community."[29]

We may expound endlessly on the multifarious facets of constitutions and constitutionalism, on the pros and cons of proposals reforms and what have you. We may repeat with vigor that the ultimate constitutionalism is no more nor less than the rule of law, which recognizes no man no matter how high as above the law.

As we consider once more what needs to be done to make the constitution truly reflect our national aspirations let us take to heart these words of Recto for it has particular poignancy to us today:

> We are the Constitution in the sense that it can live only in us, through us, for us and because of us. The best amendment to the Constitution would be the amendment of our lives, the amendment of our attitudes, outlook and actions the realization that we are free men, and the resolution to live and act as free men.[30]

The sacrifice of former Senator Benigno S. Aquino on the tarmac that fateful Sunday in August shook the nation and reverberated around the world. It has also produced an awareness of what we as a people can do. It has made us realize that in the end the essence of our system of democratic republicanism is this: it is the people who chart their destiny.

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[29] V. SINCO, PHILIPPINE CONSTITUTIONAL LAW 3 (2d ed., 1960).

[30] C.M. Recto, *The Challenge of the Unforseen*, February 9, 1952, in R. CONSTANTINO (Ed.), *supra* note 28 at 135.